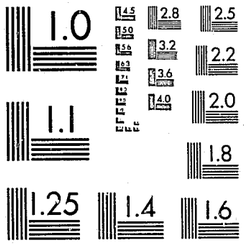


93884

BEYOND THE COURTROOM:

A COMPARATIVE ANALYSIS OF MISDEMEANOR SENTENCING

Anthony J. Ragona
John Paul Ryan

*This study was funded by Grant Number 81-IJ-CX-0006 awarded to the American Judicature Society by the National Institute of Justice, U. S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the American Judicature Society or the U. S. Department of Justice.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

PREFACE

This is a study of four misdemeanor courts: Austin, Texas; Columbus, Ohio; Mankato, Minnesota; and Tacoma, Washington. Our focus is sentencing--specifically, what types of sanctions are imposed upon defendants and why. Our exploration of "why" takes us not only inside the courtroom to look at such factors as the nature of the offense or the individual judge, but also outside the courtroom to look at political and economic explanations for sentencing practices. Misdemeanor courts are political institutions located within a local economic and political climate. Our exploration, in a preliminary way, of these issues and their impacts on sentencing constitutes a departure from, but we hope an advance in, the study of criminal courts.

Necessarily, our stories about sentencing, economics and politics in these four courts take place at essentially one point in time, approximately the period from 1977 to 1982. Conditions inevitably change as the course of public affairs progresses. Our concerns herein are less with precise factual accuracy in 1983 or prophecy beyond than with the relationships and linkages that we attempt to establish for the particular time period of our data collection.

In collecting our data, we are grateful to a very large number of people. We thank the administrative staffs of the four courts, which facilitated the collection of case file data on individual defendants. We thank the judges, prosecutors, defense attorneys, probation departments, court administrative staff, and county commissioners and their staffs in the four sites who gave of their time to be interviewed at length. Finally, we thank the citizens surveyed in each of the four sites for the highly encouraging response rate to our mail questionnaire about issues of crime and punishment.

In the preparation of this document, we thank the American Judicature Society (AJS) for its support, particularly Darlene Dragosavac who typed innumerable versions with great skill, patience, and good cheer. Likewise, we thank other colleagues from the AJS Research Department for their suggestions and advice, and especially Malcolm Rich who participated in the data collection.

Finally, we are grateful to the National Institute of Justice for supporting this research and earlier studies of misdemeanor courts upon which we have drawn. In particular, we wish to acknowledge the continuing support and interest of Cheryl

Martorana of the Adjudication Division, and of Project Monitors Jack Katz and Bernie Auchter. We are also most appreciative of the comments and critique of reviewers of an earlier version of this report, especially Professor Martin Levin.

PART I

INTRODUCTION

Chapter 1

SENTENCING: AN INTRODUCTION

Comparative and case studies of felony court sentencing practices have become commonplace in recent years (see, e.g., Eisenstein and Jacob, 1977; Mather, 1979; Uhlman, 1979), yet lower criminal courts remain one of the least understood American judicial institutions (Alfini, 1980). Researchers seeking the glamorous, controversial, and timely topic have all too often avoided America's misdemeanor courts. Though misdemeanor courts may be neither glamorous nor controversial, they render decisions and impose sentences on a daily basis which significantly affect peoples' lives. In fact, the 1967 Presidential Commission on Law Enforcement and the Administration of Justice estimates that more than 90% of all criminal cases handled in this country are adjudicated by these lower courts. Moreover, some lower court defendants are sentenced to spend time in overcrowded county jails with those awaiting trial for serious, often violent, crimes.

Broadly conceived, our study is a comparative analysis of the sentencing process in four misdemeanor courts--Columbus, Ohio; Austin, Texas; Tacoma, Washington; and Mankato, Minnesota. The comparative focus is particularly critical, for as Levin (1977:2) reminds us:

> There is probably no such thing as a typical criminal court . . . Perhaps the most frequent and erroneous presumption about urban criminal courts is that they are all alike. Discussions typically refer to some mythical monolith--"the criminal courts"--as if there were a single pattern common to all; or they leap to misleading generalizations by suggesting that a study of the activities of one court represents a general model for all.

Substantively, we compare and contrast the sentencing patterns across these four courts. We examine differences in the <u>types</u> of sanctions imposed, for misdemeanor courts--unlike felony courts--have the opportunity to utilize a wide variety of sanctions. These include both punitive approaches, such as fines and jail terms, as well as rehabilitative approaches, such as counseling or treatment programs. We also examine differences in the <u>severity</u> of sanctions imposed, for misdemeanor court sentences, especially fines, vary rather widely. Finally, we search for the factors that account for these differences, from both a micro and macro-level perspective. It is our central assertion that an adequate theory of

sentencing must take into account not only what goes on inside of these courtrooms, but also what occurs outside of them. This requires an examination of both the internal dynamics of courthouse justice and the external factors beyond the courtroom which influence lower criminal court sentencing.

<u>Courthouse Justice</u>

Studies examining the dynamics of courthouse justice have frequently focused on the sentencing practices of felony courts. Considerable debate currently exists between those who stress the centrality of "legal" factors in determining sentencing decisions and those who highlight the importance of "extra-legal" considerations in structuring these decisions.

Advocates of the legalistic approach to sentencing maintain that differences in sentencing outcomes are the product of differences in the legal facts surrounding a case (e.g., Chiricos and Waldo, 1975; Lotz and Hewitt, 1977). Central to this perspective is the idea that differences in the types and severity of sentences imposed on criminal defendants are explicable in terms of differences in such factors as the seriousness of the case, the type of offense, and the defendant's prior record. Though critics of the legalists maintain that political and economic factors unrelated to the case are important determinants of sentencing (e.g., Chambliss, 1969; Lizotte, 1978; Quinney, 1974; Thornberry, 1973), the weight of the evidence would seem to suggest that such factors as age, race, gender, and socio-economic status are, at best, of only minimal importance in explaining case outcomes (Hagan, 1974).

Evidence presented on both sides of this controversy is drawn almost exclusively from studies examining individual case dispositions. Focused as they are on the internal dynamics of case processing, these studies often ignore the variation in the types and severity of sentences imposed by criminal courts from one community to another (see, e.g., U. S. Department of Justice, 1975; Eisenstein and Jacob, 1977; Levin, 1977; Harries, 1974). While strict adherence to the legalistic position would lead one to attribute these geographical variations to differences in the types of cases presented to these courts, it is equally possible that such geographical variations reflect differences in community environments.

<u>Beyond the Courtroom</u>

The concept of "community" has long been a hallmark of sociological explanations of crime and social reaction. As early as the 1930s, Shaw and Mac

Kay (1931) used the concept of community to account for differences in local crime rates. Central to their analysis were the ideas that communities vary with respect to the types of activities considered criminal and deserving of punishment and that some communities support, even encourage, certain types of aberrant behavior. Similarly, Friedman (1964:143) argues that:

> The state of criminal law continues to be--as it should be--a reflection of the social consciousness of a society. What kind of conduct a community considers at a given time sufficiently condemnable to impose official sanctions, impairing the life, liberty or property of an offender is a barometer of the moral and social thinking of the community.

A more recent analysis of sentencing disparity among white collar offenders by Wheeler et al. (1982) reaches a similar conclusion.

Geographers and political scientists have also stressed the importance of community attitudes as an explanatory variable accounting for differences in the severity of social reactions to crime (see e.g., Harries, 1974; Levin, 1977; Ryan, 1980). Political scientists have used the term "political culture" to explain variations in the sentencing behavior of courts. Rarely, however, have the concepts of "community" or "political culture" been operationalized or empirically tested. Too often, as Kritzer (1979) also notes, they have been used merely as residual terms to explain otherwise unaccountable variation. So, for example, Neubauer (1979) notes that felony courts in southern and rural areas impose harsher sentences than their northern and urban counterparts, arguing that these differences seem not to flow from differences within the courts themselves (e.g., in the severity or mix of cases), but from differences in the external environments within which courts operate. Similarly, Eisenstein and Jacob (1977), finding marked differences in the sentencing practices of Baltimore courts as compared with those in Chicago and Detroit, attribute the harsher sentences imposed in Baltimore to a heritage of "racism" and "conservatism" in that city. Only Levin (1977) used political culture systematically, to explore variations in the severity of felony court sentences in Pittsburgh and Minneapolis.

To date, there have been no systematic comparative studies of misdemeanor court sentencing practices. The findings of more recent case studies, however, point to the importance of the community.[1] In a study of the New Haven, Connecticut lower court, for example, Feeley (1979) found that few defendants received jail terms and/or large fines (in excess of $50). By contrast, Ryan (1980) found jail terms and large fines to be quite typical of the sentences imposed by the

lower court in Columbus, Ohio. Ryan (1980:79) suggests that these contrasting findings can best be explained by differences in the local political culture:

> The findings suggest that the Columbus court is much more severe (than the New Haven court) in the sanctions imposed upon convicted defendants. These differences are attributed, in part, to contrasting local political cultures whose influence upon courts is mediated by police department orientations, police-prosecutor relationships, and methods of judicial assignment.

How distinctive local environments are, and precisely what, if anything, it is about them that accounts for such differences remain largely unanswered questions. In this study, we examine two different--but related--elements of community environment. First, we look at political culture by measuring local citizen attitudes toward crime and punishment in the lower courts. Secondly, we examine the economic environment by identifying the structure of local court and criminal justice system financing.[2] Through this two-fold approach, we seek to map and partially test linkages between the environment of a community and its lower court sentencing practices.

Citizen Attitudes toward Crime and Punishment

Recently, researchers have begun to address the content and homogeneity of citizen attitudes toward crime and punishment in particular community settings. For example, Rossi et al. (1974) found considerable agreement within the Baltimore population on the relative ordering of the seriousness of different crimes. Rossi et al. (1974:237) concluded:

> The norms defining how serious various criminal acts are considered to be are quite widely distributed among blacks and whites, males and females, high and low socio-economic levels and many levels of educational attainment.

Findings derived from a random sample of more than 3,000 households in a "Southeastern SMSA" led Thomas et al. (1976:116) also to conclude similarly that:

> . . . regardless of the type or category of offenses examined, (our findings) are not supportive of any prediction that suggests variations between different categories of the population in either perceptions of relative seriousness of offenses, or the levels of sanctions that are viewed as appropriate. Instead, we find evidence of a remarkable level of consensus, even after separating the sample on the basis of their sex, race, age, income, occupational prestige, and educational attainment.

Finally, Blumstein and Cohen (1980:223) found that in the Pittsburgh area ". . . considerable agreement (exists) across various demographic groups on the relative severity of sentences to be imposed for different offenses," though they also noted some differences in the absolute magnitude of sentences desired.

Taken together, these findings unmistakably point to the presence of community-wide norms about law-breaking and punishment. But given that each is a case study conducted at different points in time focusing on somewhat different criminal offenses, we still know little about the ways in which citizen attitudes vary across communities, or whether they vary significantly at all. Most importantly, as Sarat (1977) laments, we know little about how the popular culture is linked with the operation of legal institutions. In other words, to what extent are sentencing practices influenced by community attitudes and values? We explore this question systematically through an analysis that matches local attitudes with local court sentences.

Courts and Criminal Justice Financing

The structural characteristics of a community's social control apparatus may also play a role in accounting for sentencing differences across communities. Judges, attorneys, court administrators, and other court personnel often criticize the levels of funding for criminal justice services as inadequate, but political elites responsible for generating revenue and spending taxpayers' money respond that criminal justice must compete with other public agencies for scarce resources (Baar, 1975; also Ragona, 1981; Friedson, 1968; Saari, 1967). Although this issue has received relatively little scholarly attention, Saari (1967) has suggested that criminal justice support levels may be linked to the values and priorities governing the distribution of public funds to various other local services. Ragona's (1981) analysis of community crime prevention programs illustrated the ways in which the performance of these programs are affected by the political and economic decisions of funding agencies. These findings and observations suggest that economic and fiscal contingencies within a community are important components of its environment and may potentially contribute significantly to community variations in court sentencing patterns.

These same contingencies, however, may also be affected by political and economic issues that transcend the local community. Within the confines of an inflationary and, more recently, recessionary economy, all levels of government--especially the federal and state--have been forced to seek ways of curtailing the

ever-widening gap between revenues and expenditures (O'Connor, 1973). Budgetary cutbacks have occurred in all areas of government. These reductions have already affected, and we believe will increasingly come to affect, local justice at the misdemeanor level. We explore these issues systematically, by addressing how the fiscal health and stability of a community interact with the judicial calculae of sentencing options in that community.

Methodology

We have a broad range of data bases to address these issues. For examining sentencing practices in the four communities, we draw upon court records. Samples drawn from individual defendant case files between 1977 and 1979 provide systematic and detailed--though not complete--information about the patterns of lower court sentencing in Austin, Texas; Columbus, Ohio; Mankato, Minnesota; and Tacoma, Washington (for further details, see Appendix A). For examining the politica. culture of the communities, we draw upon a mail survey of citizen attitudes about crime and punishment undertaken in the four communities in 1982 as part of this study (for further details, see Appendix A). Finally, to assess the economic environment of a community and its interaction with court sentencing practices, we conducted lengthy, probing interviews with key court and political personnae. Judges, prosecuting and defense attorneys, probation officers and supervisors, court administrators, court budgeting specialists, county administrators, county finance specialists, and elected county board members were typically interviewed.[3]

The Plan of the Study

Chapter 2 provides the setting for our study. We describe the four communities from a demographic point of view, then move to a discussion of the work of the four courts. The mix of cases, the characteristics of case processing, and the sanctioning alternatives available to and used by judges are described in a comparative framework.

Part II examines the sentencing practices and patterns of the four courts. Chapter 3 focuses upon the factors affecting the types of sentences imposed in each court, specifically the type of offense, other case characteristics, and the individual judge. The relative import of these factors and sources of variation from community to community are analyzed, with special attention to the influence of the individual judge. Chapter 4 focuses on the severity of sentences

imposed in each court. Factors similar to those identified in Chapter 3 are analyzed for their contribution to sentence severity in each court. Sharpest variation occurs in the imposition of fines, and so these are the object of primary focus. A special section highlights the disposition of drunk driving cases, the most common type of case adjudicated in the four courts.

Part III examines the community environment of the four locales and how it interacts with, conditions, and constrains the aggregate sentencing practices of the four courts. Chapter 5 reports the results of a survey of citizen attitudes about crime and punishment in the lower courts for the four communities. We examine the extent to which these attitudes vary across communities, and the degree to which community attitudes are congruent with actual local court sentencing practices. Chapter 6 examines the economic and fiscal environments of the communities through the eyes of court and political actors. Here, we outline linkages between fiscal constraints, on the one hand, and sentencing options on the other. Chapter 7 provides a short, but highly focused, analysis of jails, illustrating how economic constraints, local politics, and court sentencing interact.

Finally, in the concluding chapter we attempt to integrate our analysis within the courtroom with our view beyond the courtroom. We assess the implications of our findings for the future of misdemeanor courts, especially sentencing practices. We also offer some thoughts for future sentencing research and related policy questions.

NOTES

[1]For earlier case studies of lower courts and their sentencing practices, see Blumberg, 1967; Mileski, 1971.

[2]The economic environment may be viewed as deriving from the larger political environment or vice-versa (from a Marxist point of view), but nevertheless we treat these two elements of the community environment as analytically distinct.

[3]Circumstances--both time and budgetary limitations--regrettably precluded a full exploration of the economic environment of Columbus, Ohio. For this reason, we have omitted Columbus from these analyses in Chapters 6 and 7. For precise information on which types of elites were interviewed in each community, see Table A-4 in Appendix A.

Chapter 2

THE FOUR COMMUNITIES AND THEIR COURTS

A recurrent theme of our study is that courts are conditioned by the community environment in which they are located. In this chapter, we briefly describe the four communities, their demographic characteristics, and crime rates. Then, we describe the four misdemeanor courts under study, including jurisdiction, size, organizational structure, resources and services, and case processing and disposition practices.

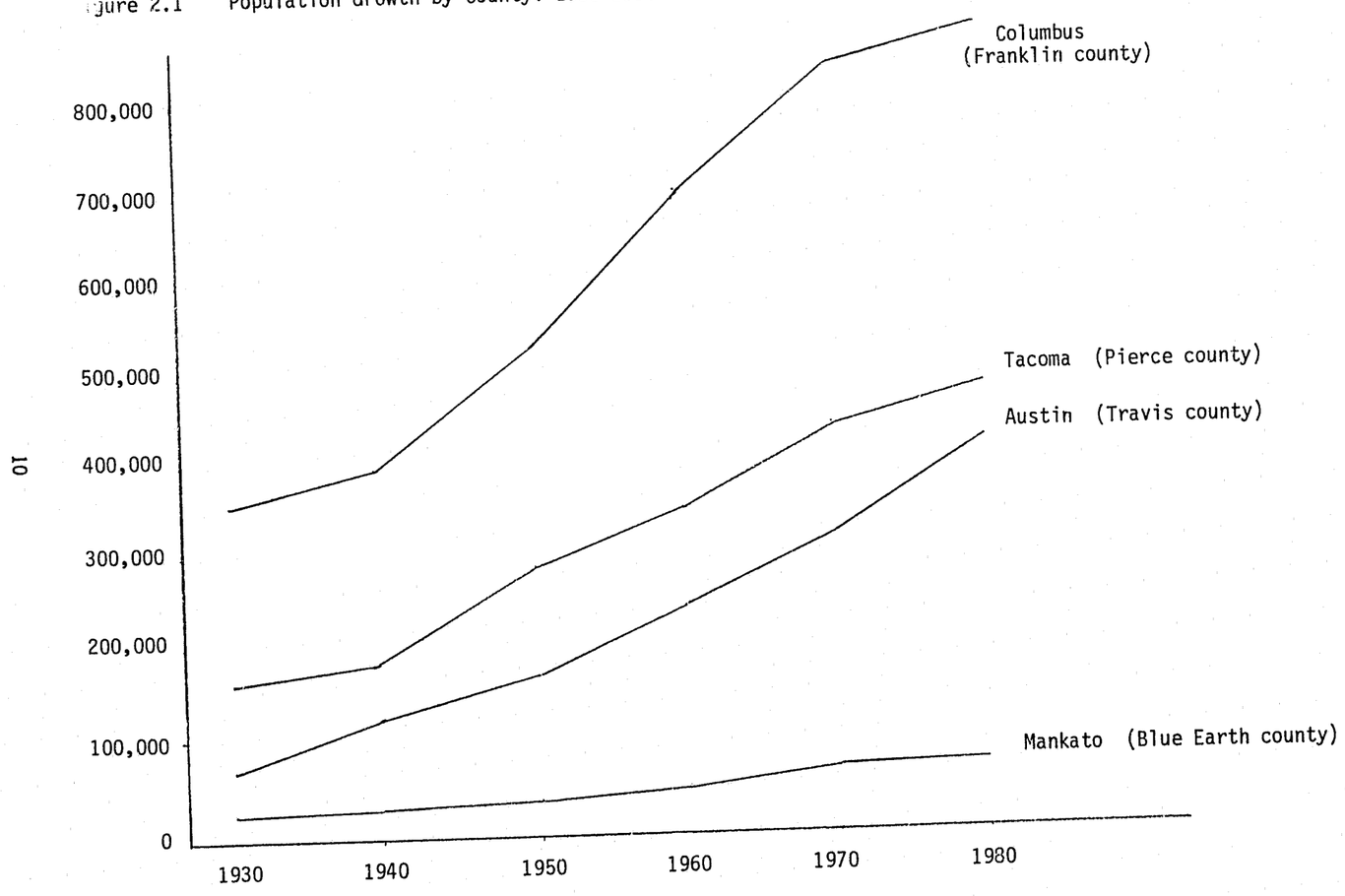
Mankato (Blue Earth County, Minnesota)

The smallest of our four communities, Blue Earth county has a population of only 52,000 (1980), slightly more than half of whom reside in the town of Mankato. It is a lush, expansive, midwestern agricultural community with a relatively high median family income for rural areas ($19,453). Few blacks or other minorities (less than 1%) live here. In the words of one local attorney, "We probably have 50,000 or 60,000 people, but we're just a country town . . . we are dependent upon agriculture for our economy . . . a lot of our clientele are farmers . . ." Actual and proportional growth in population has been very slow (see Figure 2.1). In the words of another local attorney, "most of the people you find in the community have been here for a while . . . they have kind of settled here and they have stayed here and grown up here." Speaking to the stability of traditional values, one political figure identified the "family" and "personal responsibility" as values central to the Mankato area which are seen to be eroding in the more urban parts of Minnesota.[1]

Tacoma (Pierce County, Washington)

An equally sprawling but more populous community, Pierce county has a population of 485,000 (1980). Only 158,000 reside in the city of Tacoma, leaving a substantial population distributed across smaller towns and rural areas within the county. The metropolitan area has grown substantially over the years, especially from post-World War II through the 1960s, whereas the city of Tacoma has remained relatively stable in population since the 1950s. Located on the Puget Sound, Tacoma remains primarily a lumber town without the economic diversification of neighboring Seattle (Barone et al., 1980). Median family income

gure 2.1 Population Growth by County: 1930-1980



($20,311), though reasonable by national standards, is well below the statewide average. A modest minority population (6% black, 3% Asian) lives in the county. There are two large military bases, which add a significant transient population.

Austin (Travis County, Texas)

Travis county has a population of 419,000 (1980), nearly all of whose residents live in the thriving and rapidly growing city of Austin (345,000). The county is the most racially diverse of our communities, having an 11% black population and a sizeable hispanic community (17%). Austin houses the state capitol in Texas as well as the main campus of the University of Texas, where more than 40,000 students attend. Unlike other Texas cities, Austin "is not an oil town or an industrial town or even an agricultural marketing town; economically, its mainstays are state government and higher education" (Barone et al., 1980). Median family income ($20,514) is well above the state average. Austin appears to be a hotbed of liberalism, at least compared with surrounding Texas. In the words of one local attorney: "we have, what I would call, a very liberal jurisdiction, a very tolerant community . . ."

Columbus (Franklin County, Ohio)

Franklin county is the most populous of our four communities, having 869,000 residents (1980) of whom 565,000 live in the city of Columbus. The population has grown sharply since World War II, leveling off only in the late 1970s. The county has a sizeable black population (15%), but few other minorities. Columbus, like Austin, has a thriving economy, boosted by Ohio State University, the state capitol, scientific research centers, and corporate business. It has been characterized as being dominated economically by big banks and insurance companies (Barone et al., 1980). Median family income is largest among our four communities ($20,970). Though more socially heterogeneous than Mankato, Columbus residents seem in agreement with one another--in the words of one local informant--not to permit the drifting of the "dirty, crime-ridden northeastern (Ohio) quadrant" into their southern Ohio community.

Mapping Crime and Disorder

The amount of crime in a community sets the immediate context for the work of criminal courts. Of course, some crimes go unreported, others are not always treated as a matter of law enforcement by the police (see, e.g., Wilson,

1968; Brown, 1981), and still others go unsolved. Nevertheless, on average "high crime" communities seem likely to produce more work for their courts than "low crime" communities.

Among our sites, Mankato stands out as a "low crime" community. This is particularly evident for 1976, where the rate of Type 1 offenses was far lower than for any of the other three communities (see Table 2.1). When Type 1 offenses are broken into the least serious category--"larceny-theft"[2]--and "other" (e.g., murder, aggravated assault, robbery, burglary, etc.), the pattern of crime also becomes clear. The more serious offenses were particularly infrequent in Mankato compared to the other communities, whereas the larceny rate in Mankato for 1976 was only slightly lower. In other words, larceny comprised a much greater percentage (71%) of the total crime in Mankato. By 1980, the more serious crime rate was still comparatively very low in Mankato, but the larceny rate grew substantially and actually exceeded that of the other three communities (see Table 2.2). Mankato court personnel shared the view that serious crime was infrequent. In the words of one attorney, "it's really been years since there has been a murder in Mankato." Mankato reflects the low incidence of crime in rural America generally.

Tacoma and Columbus are the "high crime" communities among our four sites. For both 1976 and 1980, the incidence of more serious crime in these two cities is about twice the rate in Mankato. By contrast the larceny rate in Tacoma and Columbus is more modest and, thus, a much smaller percentage of the total crime picture. Austin falls in-between, having a higher incidence of serious crime than Mankato but lower than Tacoma or Columbus. Its larceny rate is comparable to the other communities; thus, in Austin almost as much as in Mankato larceny comprises a predominant share of the total crime. The local prosecutor in Austin reported significantly increasing pressures from crime: "We are getting overridden with crime and that's a function . . . of our growth of population . . . burglaries have just gone out of sight." Tacoma, Columbus and Austin each reflect the higher crime rates typical of more urbanized parts of the country.[3]

THE WORK OF THE FOUR COURTS

All of the four courts under study are lower courts that hear--in addition to some range of minor civil cases--a variety of misdemeanor and traffic offenses. The Blue Earth County Court in Mankato, Minnesota has original jurisdiction for

Table 2.1 Crime Rates in the Four Communities: 1976*

	1976			
	Total Crime Index	Larceny/ Theft	Other Type I**	Larceny % of Total
Austin, Texas	7,699	4,875	2,824	63%
Columbus, Ohio	8,674	5,131	3,543	59%
Mankato, Minnesota	5,534	3,913	1,621	71%
Tacoma, Washington	7,670	4,242	3,428	55%

*Rate per 100,000 inhabitants.

**Includes murder, forcible rape, robbery, aggravated assault, burglary, and motor vehicle theft.

Table 2.2 Crime Rates in the Four Communities: 1980*

	1980			
	Total Crime Index	Larceny/ Theft	Other Type I	Larceny % of Total
Austin, Texas	8,755	5,695	3,060	65%
Columbus, Ohio	9,844	5,300	4,543	54%
Mankato, Minnesota	9,582	7,143	2,439	75%
Tacoma, Washington	10,446	5,752	4,694	55%

*Rate per 100,000 inhabitants.

**Includes murder, forcible rape, robbery, aggravated assault, burglary, and motor vehicle theft.

misdemeanors throughout the county. The maximum sentence is 90 days in the county jail and/or a $500 fine. No other court in the county hears such cases. The Franklin County Municipal Court in Columbus, Ohio likewise has exclusive jurisdiction over misdemeanors throughout the county. Maximum sentence is one year incarceration in the county jail and/or a $1,000 fine. The Travis County Courts-at-Law in Austin, Texas have concurrent--or shared--jurisdiction over misdemeanors throughout the county with other specialized and limited jurisdiction courts. Most minor traffic offenses are heard in municipal or justice of the peace courts in Travis county. Maximum sentence in the Travis County Courts-at-Law is one year incarceration and/or a $1,000 fine. Finally, Pierce County District Court No. 1 in Tacoma, Washington has jurisdiction over misdemeanors in most parts of the county. Three other district courts have small geographic territories in the outlying parts of the county, and municipal courts in the city of Tacoma and elsewhere in the county hear municipal ordinance violations, including minor traffic offenses. Maximum sentence in the Pierce County District Court is six months incarceration and/or a $1,000 fine. Table 2.3 summarizes the jurisdiction and maximum fine and jail sentences available in each of the four courts.

Mix of Offenses

All four courts hear a substantial number of drunk driving cases, ranging from 25% of the post-arraignment docket in Mankato to 35% of that docket in Austin (see Table 2.4).[4] In each court, judges and attorneys consistently recognized the central place that drunk driving cases occupy. Both their frequency and seriousness dictated as much. Lesser traffic offenses comprise a large share (nearly half) of the dockets in Mankato and Tacoma, but a much smaller share in the Columbus and Austin courts. When broken down, speeding and reckless driving are typically the most common of the minor traffic violations heard except in the Austin county courts where driving with a suspended or revoked license predominates (see Table 2.4a). Theft cases represent at least 10% of the docket in all of the courts except Tacoma, where some theft cases are heard in other lower courts. Assault cases comprise a substantial share of the docket in Columbus, but not elsewhere.[5] Each court hears a variety of other criminal offenses, including drug possession, alcohol violations, vandalism, prostitution, bad checks, and disorderly conduct, in proportions reflective of local enforcement policies and lifestyles (see Table 2.4b).

In sum, drunk driving is a problem in each of the four communities and a major concern of the four courts under study. No other courts in these locales

Table 2.3 The Four Courts: Jurisdiction

	Court under Study	Maximum Sentence	Other Limited Jurisdiction Courts
Austin, Texas	Travis County Courts-at-Law	1 year/$1,000	Municipal, Justice of Peace Courts throughout the county, with jurisdiction over minor traffic and local ordinance violations.
Columbus, Ohio	Franklin County Municipal Court	1 year/$1,000	None
Mankato, Minnesota	Blue Earth County Court	90 days/$500	None
Tacoma, Washington	Pierce County District Court No. 1	6 months/$1,000	Pierce County District Courts No. 2, 3, 4 in outlying parts of the county, with similar jurisdiction; municipal courts with jurisdiction over ordinance violations.

Table 2.4 The Four Courts: Mix of Offenses*

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Drunk Driving	34.8%	30.2%	25.2%	28.6%
Other Traffic	11.0	17.8	46.8	47.2
Assault	3.6	17.1	2.1	1.7
Theft	14.9	10.8	11.1	3.1
Other Criminal	35.7	24.1	14.8	19.4
N	(1,849)	(2,764)	(1,059)	(1,159)

*Post-arraignment dispositions only. For further sampling details, see Appendix A.

Table 2.4a The Four Courts: Composition of "Other Traffic" Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Speeding	15.0%	14.7%	28.8%	26.5%
Reckless driving	3.0	21.8	10.1	11.2
Failure to stop	--	7.2	10.1	7.8
Illegal turns	--	3.2	1.8	3.2
Driving in prohibited areas (one-way, left of center, etc.)	--	18.1	5.8	1.9
Driving with suspended or revoked license	57.1	13.4	12.7	15.9
License/registration violations	11.9	21.6	15.2	19.4
Other	13.0	--	15.5	14.1
	100.0%	100.0%	100.0%	100.0%
N*	(204)	(1,059)	(537)	(535)

*Includes all charges in cases designated as "other traffic" (i.e., non-DWI traffic cases).

Table 2.4b The Four Courts: Composition of "Other Criminal" Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Drug possession	53.1%	3.4%	2.0%	13.6%
Alcohol violations	—	2.7	11.5	22.6
Prostitution	4.1	4.5	—	—
Other sex-related	—	2.5	2.8	5.8
Child-related	—	3.6	—	2.9
Vandalism	11.1	7.0	8.8	7.8
Trespass	1.5	7.0	1.3	6.1
Harassment/menacing	1.4	16.5	1.3	—
Disorderly conduct	1.4	7.2	28.4	12.8
Resisting arrest	4.8	3.5	1.3	5.8
Escape	2.9	—	.7	—
Firearms violations	10.5	4.5	2.0	9.1
Stolen property	—	.9	3.4	1.2
Bad checks	—	23.7	8.1	—
Obstructing justice	—	2.8	8.1	2.9
Housing violations	—	3.3	4.1	—
Other business violations	—	1.7	3.4	1.6
Animal-related	—	.6	4.7	1.2
Other	9.2	4.6	8.1	6.6
	100.0%	100.0%	100.0%	100.0%
N*	(660)	(825)	(148)	(243)

*Includes all charges for cases designated as "other criminal" (i.e., not theft or assault).

have any jurisdiction over drunk driving cases. By contrast, the incidence of lesser traffic offenses, assaults, thefts, and miscellaneous criminal offenses varies from court to court, largely because of variations in the establishment of parallel courts with concurrent jurisdiction, in the use of diversion programs, and in statutory definitions. Our focus in this report is necessarily upon how the courts under study handle these varieties of cases.

Court Personnel

Three of the four courts have small benches. In 1982, only three judges sat in Blue Earth County Court in Mankato, four judges in the Travis County Courts-at-Law in Austin, and five judges in the Pierce County District Court No. 1 in Tacoma.[6] The Franklin County Municipal Court in Columbus is much larger; it had thirteen judges in 1982. Judges are elected in all four communities, for terms of 4 years in Austin and Tacoma, 6 years in Mankato and Columbus. There is no hint of partisan politics in these elections in Tacoma and Mankato, reflective of the "good-government"-progressive era ethos dominant in Washington and Minnesota. By contrast, judges in Columbus are nominated by partisan ballot (but elected "non-partison") and in Austin both nominated and elected by partisan ballot. Despite these differences in formal selection, the judges have quite similar professional backgrounds and experiences, typically having served in the criminal or civil division of the local prosecutor's office and/or for a time in private practice. In Austin, several judges had previously served as justices of the peace. The composition of the bench has been most stable in Mankato, where there has been no turnover since the mid-1970s. More turnover has occurred in Columbus, where some judges have been defeated in bids for re-election, as well as in Austin where judges frequently use the lower courts as a steppingstone to higher judicial office.

The prosecutor's offices for these courts vary from a large fifteen attorney office in Columbus to a one-person office in Mankato. Austin and Tacoma fall in between, each having about six or seven attorneys working in the misdemeanor area. All of the multi-person offices specialize, usually including a complaints and screening section, an appeals division, and possibly victim/witness assistance. In these offices, most of the assistant prosecutors who work in the courtrooms are young and relatively inexperienced, frequently having only a year or two tenure. Upward mobility--either into private practice or the felony division of the county prosecutor's office—is a way of life. Prosecutors were the most experienced and respected in Columbus, young but not widely criticized in Austin, and in Tacoma

young and sharply criticized by defense attorneys and judges alike. Lack of adequate supervision and the absence of guidelines in plea negotiations may have exacerbated inexperience among Tacoma prosecutors, according to some local actors. In Mankato, the one-man city prosecutor was also viewed as young and inexperienced but "learning the ropes."

The structure and utilization of defense attorney services also vary sharply among the four courts. For indigent defendants, all of the courts except Austin provide public defender representation (Mankato changed from assigned counsel to a public defender system during the course of our study). The defender offices range from fifteen full-time attorneys in Columbus to three part-time attorneys in Mankato. Austin, by contrast, utilizes a system of assigned counsel, supplemented by a University of Texas Law Clinic staffed with third-year law students. Availability of indigent defense services appears to be related to the application of the criteria for indigency: the well-staffed Columbus defender's office accepts nearly all applicants with minimal judicial screening for eligibility, whereas the Mankato judges screen carefully to determine who is qualified, and Austin judges rarely find defendants sufficiently poor to call upon the private bar at public expense.

The size and influence of the private bars run the gamut from very small in Mankato to very large in Austin. In Mankato, there are fewer than one-hundred attorneys in practice. Only a handful do a substantial amount of criminal work, either at the felony or misdemeanor level, and most of these depend upon civil cases to make a livelihood. Before the public defender system was implemented for the misdemeanor court, most defendants (about two-thirds) were unrepresented at disposition (Table 2.5). Steep attorney fees, reluctance by attorneys to take cases on the installment plan, and a community unaccustomed to frequent litigation combined to minimize attorney representation for defendants in misdemeanor cases in Mankato. Austin, by contrast, has a horde of attorneys, due in large part to the presence of the University of Texas Law School and the attractive lure of Austin as a place to live ("there are just so many attorneys . . . a great, great number of attorneys here in town," according to one judge). For this reason, resistance to a public defender system has been particularly strong in the Austin area. Equally, the need to find a pool of defendants for young criminal lawyers to defend has been acute. In the words of one Austin judge:

> You can go to some jurisdictions and 20 to 30% of the people have lawyers at the misdemeanor level. Here, in excess of 95% of the people have lawyers and one reason is

Table 2.5 The Four Courts: Frequency and Type of Defense Counsel Representation

	Type of Representation							
	Public Defender	Court Appointed	Private	Other*	Total Represented	Pro Se	Total	N
Austin, Texas	—	3.7%	86.5%	2.7%	92.9%	7.1%	100.0%	(1,864)
Columbus, Ohio	32.2	—	59.6	—	91.8	8.2	100.0	(2,731)
Mankato, Minnesota	—	7.7	24.3	—	32.0	68.0	100.0	(996)
Tacoma, Washington	NA**	—	NA**	—	52.9	47.1	100.0	(1,180)

*University of Texas Law Clinic.

**Not available.

> that the judge is sitting there saying you are faced with going to jail for two years . . . (Now) if I sat there and said you're looking at deferred adjudication and not paying any money and not doing anything, most of them would say, well, I don't need a lawyer, but the bar would be very, very unhappy if you did that. They complain periodically if they think you are appointing too many court-appointed lawyers, or if you let people plead without lawyers, then they get a little upset about that. (emphasis added)

Most Austin judges reported either the need or desirability for each defendant to have his or her own lawyer. Thus, representation is high, but the less lucrative assigned counsel appointments are infrequent (3.7% in our sample; refer to Table 2.5).

The private bars of Columbus and Tacoma fall in-between these two extremes. The active, full-time public defender staffs in the two communities insure that a substantial portion of defendants are represented. In Columbus, one-third of the defendants in our sample were represented by the public defender. Further, the greater competition among private criminal defense attorneys for business--when compared with Mankato--promotes the kind of flexibility of fees and payments that leads to more frequent representation. In Columbus, more than 90% of all defendants were represented by counsel; in Tacoma, more than 50%. In both communities, the private bar and public defender's office each represent a significant share of criminal defendants in the misdemeanor courts, unlike the imbalances in Austin and Mankato.

All four courts have active probation departments which, in some combination, prepare presentence reports, supervise misdemeanants, and refer defendants in need of alcohol, drug, or other counseling to appropriate public or private agencies. The emphases differ, however, from community to community. In Austin, presentence report work has recently been all but abandoned in misdemeanor cases in the name of economy. The ratio of probation officers who supervise versus those who do presentence investigations is about 6:1. This is, in part, a function of the large percentage of defendants in Austin who are sentenced to probation (see Table 2.8). In Columbus, presentence investigation is still a major probation department activity; the ratio of supervising to investigative officers is about 1:1. The proportion as well as number of probation sentences appear on the rise in Columbus, though exact figures were unavailable. Reflecting limited resources, about half of Columbus probationers—at the misdemeanor level—are on a "non-reporting" status. The Tacoma probation department is of a much smaller scale than Austin or Columbus, having about seven probation officers who primarily

engage in "brokering" services rather than individualized supervision (see Grau, 1981). Finally, Mankato has the smallest probation department, with but two full-time officers who do both presentence investigations (increasingly in simplified form) and supervisory/referral work. An estimated 90% of the presentence work occurs in drunk driving cases, where Minnesota law requires an alcohol assessment for each defendant so charged.

Court administration is evident in all four of our sites. It is most elaborate in the largest court, Columbus, where a court administrator, an assistant with responsibility for budgeting, and an assignment commissioner in charge of case scheduling combine to perform the function played by the clerk of court in Mankato. Though lacking the title, the Mankato clerk of court performs a variety of policy, planning, budgetary, and liaison roles that make him akin to a court administrator. Tacoma has for many years had a system of professional court administration. The current court administrator has more than ten years of professional experience. By contrast, court administration is a rather new concept to the Austin courts, which (like other Texas courts) historically have been individual fiefdoms with little semblance of administrative coordination. A professional court administrator was first hired in 1978 in Austin, after a long political struggle. Since then, several incumbents of the office have come and gone, and the position of court administrator has now been eliminated. Clerical personnel perform some of the functions that the court administrator once performed.

Defendants

Defendants in these four courts reflect a variety of citizens and walks of life; certainly, they are a much more heterogeneous sampling than in felony courts. Although predominantly male, defendants span the range of ages, occupations, and life-styles, particularly in traffic offenses. In the words of one Austin prosecutor:

> In misdemeanor courts, you are not handling the kind of people that you are in felony courts. You're handling people like you and me who screw up here and there . . .

Nearby military bases and a large campus with more than 40,000 students provide additional sources of defendants in Austin. One judge in Tacoma was more pointed in delineating the makeup of defendants in his court, emphasizing the difference between traffic offenders and other defendants:

> I think you have a typical misdemeanant who is a misdemeanant other than for traffic offenses and then you have

> the typical traffic offender. I think they are two different things. With the traffic offenders, especially with the drunk driving traffic offender, you get a lot of average businessmen kinds of people. They hold a job and sometimes they might have very good jobs . . . Whereas with the average misdemeanant, there are a lot of unemployed, lower income . . . if they do have a job, they are still lower income.

The prosecutor in Mankato, too, noted this general distinction, emphasizing the youthful, rebellious character of one segment of the misdemeanant population:

> I guess I would put them into two categories. I've got, on the one hand, people that I see from the first day I started this job and I still see them today. I would say they are between 18 and 25, male. They don't, generally speaking, get into any more serious trouble than the misdemeanor level, but they are always out there, creating trouble. They're being arrested for disorderly conduct, fights in bars . . . they're not in college, they have no real means of support. A lot of times they are unemployed, living with friends, certainly not at home . . . They are always going to be on the fringe of society. . . On the other hand, the other group of people is, I would say, kind of a cross-section . . . DWI, shoplifting. I can get any number of people and different types of people committing those offenses . . . I've had a number of people that have been charged with DWI, some fairly well-known names in the community.

In sum, citizens arrested for traffic offenses including drunk driving seem to represent nearly all walks of life in the four communities. By contrast, defendants in minor criminal offenses such as assaults, disorderly conduct, public drunkenness, prostitution,and the like represent a more homogeneous slice of the citizenry, in terms of age, economic stability and well-being, and lifestyle.

Methods of Case Disposition

There are common as well as idiosyncratic elements across the four courts in their methods of case disposition (see Table 2.6). Three of the four courts--all except Tacoma—disposed of most of their misdemeanor cases by guilty plea, ranging from 51% in Columbus to 69% in Mankato. Likewise, all the courts except Tacoma reflect a low trial rate, and in all four courts the jury trial rate for the periods sampled does not exceed 2%. Dismissals, too, play a significant role in each of the courts, ranging from a low of 15% in Mankato to a high of 38% in Columbus. And bond forfeitures are used to dispose a small proportion of (usually minor) cases in all the courts. Thus, there are some striking commonalities in case disposition practices across these courts.

Table 2.6 The Four Courts: Methods of Case Disposition

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Plea	64.0%	51.2%	69.2%	23.4%
(original)*	(63.1)	(19.5)	(60.0)	(5.2)
(reduced)	(.9)	(31.7)	(9.2)	(18.2)
Trial	3.5	3.3	12.9	41.5
(bench)	(2.4)	(2.0)	(11.3)	(39.2) **
(jury)	(1.1)	(1.3)	(1.6)	(2.3)
Dismissal	26.9	38.4	13.9	26.1
Bond Forfeiture	5.6	7.1	4.0	9.0
Other	--	--	--	--
	100.0%	100.0%	100.0%	100.0%
	(1,848)	(2,401)	(1,033)	(1,184)

*Includes pleas of "no contest."

**Includes the practice of "reading on the record" in Tacoma.

But there are some idiosyncrasies as well. In Tacoma, a large percentage of cases were disposed by bench trial, many of which were a practice locally referred to as "reading on the record." Essentially, this was a stipulation of the facts precedent to a guilty plea, but with the preservation of the right to appeal to the higher level trial court in Tacoma. Because the Tacoma misdemeanor court was not a court of record, cases so "disposed" could be heard de novo in the Superior Court, providing defendants with delay and a second chance for a better sentence before a new judge. In 1980, however, the Tacoma misdemeanor court became a court of record, nullifying the trial de novo procedure in the Superior Court. Thus, guilty pleas now have become the most common mode of disposing misdemeanor cases in Tacoma, too.

The extent and form of plea negotiations preceding the entering of guilty pleas differs from court to court. Active plea negotiations, including charge reductions, are frequent in Columbus (see Table 2.6) and include defense attorney, prosecutor, and, sometimes, judge. Charge reductions are particularly common in drunk driving cases in Columbus, where the statute provides for a mandatory three-day jail term for defendants convicted of drunk driving (see Ryan, 1980). The presence of defense attorneys, whether public or private, also provides an atmosphere conducive to plea negotiations in Columbus that contrasts with, say, Mankato. There, many fewer defendants are represented by counsel, and local prosecutors in Mankato have been adamant in their refusal to negotiate with unrepresented defendants. Tacoma is much like Columbus with respect to frequent charge reductions, especially in drunk driving cases. In Austin, nearly every defendant is represented, yet few charge reductions appear in our case file data (Table 2.6). Our interviews and observations suggest, however, that sentence bargaining—not charge bargaining—is the prevalent mode of plea negotiation activity, which typically takes place between prosecutor and defense attorney without judicial participation. We cannot provide concrete numbers here, but the level of plea negotiation activity may be as great in Austin as in Columbus.

Adjudication of Guilt

In all four courts, the majority of cases that proceed beyond arraignment result in a conviction (Table 2.7). But this ranges from a low of 58% in Tacoma--where defendants were often acquitted in the abbreviated bench trial known as "reading on the record"--to a high of 82% in Mankato, where dismissals are relatively infrequent. Only a slightly larger percentage (61%) were convicted in

Table 2.7 The Four Courts: Adjudication of Guilt

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Not convicted	28.5%	39.5%	17.6%	41.6%
Convicted	65.9	53.4	78.4	49.3
1 charge	(65.9)	(43.3)	(69.7)	(42.0)
2 charges	--	(8.9)	(7.7)	(7.0)
3+ charges	--	(1.2)	(1.0)	(.3)
Convicted by BF*	5.6	7.1	4.0	9.1
N	(1,848)	(2,403)	(1,048)	(1,169)

*Bond Forfeiture, an informal dispositional practice.

Columbus, where dismissals are common--especially in the numerous assault cases. Almost three-fourths (72%) of defendants were convicted in Austin.

Our conviction rates for these four courts also include bond forfeitures, which comprised anywhere from 4% to 9% of the total dispositions. Bond forfeitures usually occur where the defendant fails to appear for trial or sentencing. The court, then, merely closes the case by calling for forfeiture of the bond (Feeley, 1979:139 refers to this as "a standard device for 'paying fines' in many of the nation's traffic courts"). But in Columbus, bond forfeitures also occur where the defendant is present. Here, it is used as a means of disposing cases upon agreement of both sides, analogous to plea bargaining (Ryan, 1980).

Table 2.7 also reveals the number of charges on which defendants were convicted in the four courts. In Austin, the two figures are identical because there are no multiple charge cases; each charge filed results in a separate case entry. In the other three courts, multiple charge cases occur with some frequency; thus, defendants are sometimes convicted on two or more separate charges. More frequent, though, especially in traffic cases in Columbus and Tacoma is a form of charge bargaining in which one charge is dismissed in exchange for a guilty plea to another charge, a phenomenon Feeley (1979:134) refers to as "splitting the difference" in New Haven.

Finally, what Table 2.7 does not reveal are the practices that take place in arraignment court. In Austin, nearly every case proceeds beyond arraignment, due in large part to aforementioned pressures from the private bar regarding representation. By contrast, large numbers of defendants plead guilty to misdemeanor offenses at arraignment in the other three courts.[7] Estimates run upwards of 50% in Tacoma, and as high as 75% in Mankato. Thus, it is likely that the conviction rates for the totality of misdemeanor cases differ somewhat, though not sharply, from our samples of post-arraignment cases in these courts.

Available Sanctions

There are generally a wide range of sanctions available to most misdemeanor courts, and these four misdemeanor courts are no exception. Unlike felony courts that hear mostly serious cases, the comparatively minor infractions that typically comprise the world of misdemeanor courts permit utilization of fines, jail terms, probation, community service restitution, victim restitution, and the imposition of court costs. In addition, community treatment programs--for alcohol or drug abuse--and safe driver programs may also be utilized. The combinations in which

sanctions and treatment programs may be used provide further variety to misdemeanor court sentencing (Ryan, 1980).

Still, as Table 2.8 reports, fines play a predominant role in the four courts we studied (see also, Hillsman et al., 1982). Fines, either by themselves (Mankato and Tacoma) or in combination with probation (Austin) or jail (Columbus and Austin), are the primary method of punishment. In all four courts, approximately two-thirds or more of all convicted defendants paid a fine of some amount. Jail was not too often utilized, particularly in Tacoma and Mankato where traffic offenses comprised nearly one-half the docket. Probation was extensively used in Austin (though mostly together with a fine), frequently used in Columbus (figures not available), but not often used in Mankato or Tacoma. Community service restitution was occasionally used in Mankato and Tacoma, but not at all in Columbus or Austin.

There is also some variation across the courts in the use of suspended sentences. More than half of all jail terms initially imposed were suspended in their entirety in Mankato, Tacoma, and Austin. Fully one-third of jail terms were suspended entirely in Columbus. Furthermore, for those defendants who do spend some time in jail, the number of days may be reduced. Fines, by contrast, were rarely suspended entirely. Rather, a portion of the fine may be suspended, as occurred frequently in Austin and Columbus but only occasionally in Mankato and Tacoma. Table 2.8 reports the utilization of sanctions, once suspended sentences have been taken into account.

The sanctions also vary in their administration across the four courts. Fines, for example, do not necessarily mean paying the entire dollar amount at the moment of a finding of guilt. In Austin and Tacoma, for example, fines are often paid in installments, sometimes as little as a few dollars per week or month. In Mankato, by contrast, the judges generally do not permit fines to be paid in part; rather, they allow the defendant some time --perhaps thirty or sixty days--to come up with the entire amount. In Columbus, an affidavit of indigency may be filed with the court--through the public defender's financial investigation staff--in order to circumvent the imposition or collection of a fine.

The probation experience, too, is somewhat different across the four courts. Austin is the most distinctive, through its "user's tax." All defendants placed on probation in Austin must contribute $15 per month--for the life of their sentence--toward the reimbursement of the county's probation department.[8] Supervision, too, is fairly frequent--if not intense--as the 6:1 ratio of supervising officers to

Table 2.8 The Four Courts: Utilization of Sanctions

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Probation	15.0%	NA	5.6%	3.0%
Jail	6.7	5.1	10.7	4.2
Fine	6.7	57.2	62.7	54.4
Fine & Probation	49.0	NA	4.4	4.8
Fine & Jail	22.2	29.6	2.0	3.2
Other Combinations	.4	--	4.8	2.1
None of above	--	8.1*	9.8**	28.3***
N****	(1,216)	(1,281)	(803)	(565)

*Includes fines and jail terms suspended in their entirety; possibly also probation sentences, for which data are unavailable.

**Includes fines and jail terms suspended in their entirety, as well as community work and counseling/treatment programs.

***Includes frequently high amounts of court costs imposed in lieu of fines, as well as community work.

****Excludes convictions by bond forfeiture, where punishment is tantamount to a fine.

other probation personnel attests. Mankato, by contrast, with slim supervisory resources rarely monitors defendants at all. Several local defense attorneys characterized probation in Mankato as "not getting into trouble again." Columbus and Tacoma seem to fall in-between with respect to the scrutiny placed on individual defendants. In Tacoma, one probation officer reported that fully 80% of his clients are "write-ins" (writing to the probation officer once per week), in the wake of programmatic reorganization that shifted the emphasis from supervision to brokerage of community services (see Grau, 1981). In Columbus, approximately half of the defendants on probation were said to be on a "non-reporting status," and there too supervision seems to be giving way to the "referral services" approach adopted in Tacoma.

Finally, some courts impose court costs to compensate for clerical work, subpoenaes, and juror fees, among other things. Court costs were routinely imposed in Austin and Columbus, typically ranging up to $50 in Austin, somewhat lower in Columbus. In Tacoma, court costs were often imposed at whopping levels, anywhere from $100 to $250, for reasons explored in detail in Part III. The Mankato court, by contrast, imposed no court costs, except for partial reimbursement for public defender representation.

Summary

That courts, including misdemeanor courts, vary from place to place, has by now become a commonplace empirical finding in the social science and criminal justice literatures. The four lower courts under study here, and their communities, also vary across a range of environmental and organizational dimensions described in this chapter. Many of the differences in the courts are, in part, a function of differences in community size. Mankato and surrounding Blue Earth County are small in population, part of rural America. Thus, the low (serious) crime rate, substantial traffic docket, and handful of judges, prosecutors, and defense attorneys who do the work of the lower court are to be expected. Likewise, the populous, metropolitan character of Columbus and surrounding Franklin county contributes to a large, differentiated work force handling the more heterogeneous traffic and minor criminal docket of its lower court. Between these two extremes, the Tacoma and Austin courts share some features in common such as organizational scale. But the Tacoma court is really more like the court in Mankato, and the Austin court is more like the court in Columbus on many of these dimensions, particularly the key characteristic of mix of cases. The more heterogeneous minor

criminal dockets in Austin and Columbus reflect the more urban populations of those communities. Courts indeed vary, but they do so in predictable ways in response to the community environments in which they are located.

NOTES

[1]It is interesting to note, here, that the divorce rate for Blue Earth county (Mankato) in 1975 was 3.3 per 1,000 population, roughly comparable to other parts of Minnesota (3.4) and well below the national average (4.9).

[2]"Larceny-theft is the unlawful taking or stealing of property or articles without the use of force, violence or fraud. It includes crimes such as shoplifting, pocket-picking, purse-snatching, thefts for motor vehicles, thefts of motor vehicle parts and accessories, bicycle thefts, etc." Uniform Crime Reports (1975:31). Only larceny-theft, among Type I offenses, is heard in the lower courts we studied.

[3]The Uniform Crime Reports report "offenses known to the police" for some counties, but not consistently for the counties of our study. Thus, we present the comparable data for the four cities here.

[4]In each court, samples were drawn from cases disposed subsequent to arraignment. For further detail, refer to Appendix A.

[5]In Tacoma, one judge reported that most assaults are initially written up by the police as felonies, leading them into the upper level trial court.

[6]Two of these five "judges" are actually commissioners, but they hear a similar range of offenses in District Court.

[7]Not all of these defendants plead guilty without benefit of advice from counsel, though. In Columbus, for example, a member of the public defender's office is always present at arraignment and frequently offers on-the-spot consultation. In Mankato, arraignment is sometimes continued by the judge until the defendant has had the opportunity to talk with an attorney.

[8]Probation department officials in Austin report a two-thirds success rate in collecting this fee from individual defendants.

PART II

SENTENCING: COURTROOM INFLUENCES

Chapter 3

THE CHOICE OF SANCTIONS

Misdemeanor courts impose a range of sanctions upon convicted defendants. We briefly described some of the more frequent sanctions, such as fines, jail terms, and probation, in Chapter 2. In this chapter, we analyze why one type of sanction is imposed instead of another. This is an especially pertinent question because the choice of sanction tells us (indirectly) much about the severity of the sentence as well as the philosophy of the court regarding rehabilitative versus punitive approaches to punishment. Specifically, we examine quantitatively the influence of the type of offense, the judge before whom sentencing takes place, and a number of other case characteristics. These are the variables that the sentencing literature has identified as important (Eisenstein and Jacob, 1977; Feeley, 1979; Mather, 1979, etc.).

We do not directly address the severity of the sentence imposed. Rather, our purpose in this chapter is to provide a comparative analysis of which types of sentences will be imposed under what circumstances. Discriminant function analysis is used to examine the factors influencing sentencing decisions in the four courts. This form of statistical analysis is appropriate where the dependent variable (type of sentence) is a multi-category, nominal level variable.[1] In each court, cases were grouped according to the type of sentence imposed. Since five sentences typically accounted for the overwhelming majority of sentences imposed, the analyses were restricted to these five sentences, except in Columbus where the analysis was restricted to the three sentence types for which data were available (refer to Table 2.8). Sentencing groups were defined in terms of the actual sentence received, once suspended sentences were taken into account.

Explanatory variables included type of offense, presence of defense attorney, judge at sentencing, mode of disposition, and the number of charges and convictions. Dummy variables were created for the type of offense (DWI, other traffic, theft, and miscellaneous criminal), for the presence or absence of defense counsel, for the identity of the judge at sentencing, and for the mode of disposition (whether the case resulted in a guilty plea or a trial). The number of charges and the number of convictions were reflected by the corresponding interval number.

Austin: The Choice of Sanctions

Four significant functions emerged from the Austin analysis. These functions accounted for more than 60% of the variance in the choice of sanctions. The first two functions were, by far, the most powerful, and the first function alone explained fully 44% of the variation (see Table 3.1).

The most important factor affecting the choice of sentence in Austin is the type of case brought before the court. As Table 3.1 indicates, the first function is dominated by miscellaneous criminal cases. The second function, which accounts for 17% of the variance, is dominated by minor traffic cases and the absence of DWI, theft and miscellaneous criminal offenses. Neither the mode of disposition nor representation by defense counsel contributed significantly, and the effects of the sentencing judge are minimal on both functions.

Figure 3.1 illustrates, through the mapping of the two major functions, how the functions discriminate among the choice of sanctions. The first function--the one dominated by criminal offenses--primarily discriminates between probation or jail on the one hand and economic sanctions (involving some fine) on the other. Cases resulting in a jail term or, especially, probation are most likely to be miscellaneous criminal cases. The Austin court imposes fines least often in miscellaneous criminal cases, usually opting to sentence defendants in these cases to either a jail term or probation. The second function--the one dominated by minor traffic offenses--discriminates sentences involving only a fine or a fine with some jail time from the other sentences. Cases resulting in some sort of economic sanction--but without the imposition of probation--are most likely to be minor traffic offenses.

In general, these findings suggest that sentencing decisions in Austin tend to be quite routinized and that the major factor affecting sentencing decisions is the type of offense. Other variables such as representation by counsel, the sentencing judge and the mode of disposition play a minimal role in determining the sanction to be imposed. The import of case type is clearly evidenced by the high loadings of case type variables on both of the statistically powerful functions identified in Table 3.1.

Mankato: The Choice of Sanctions

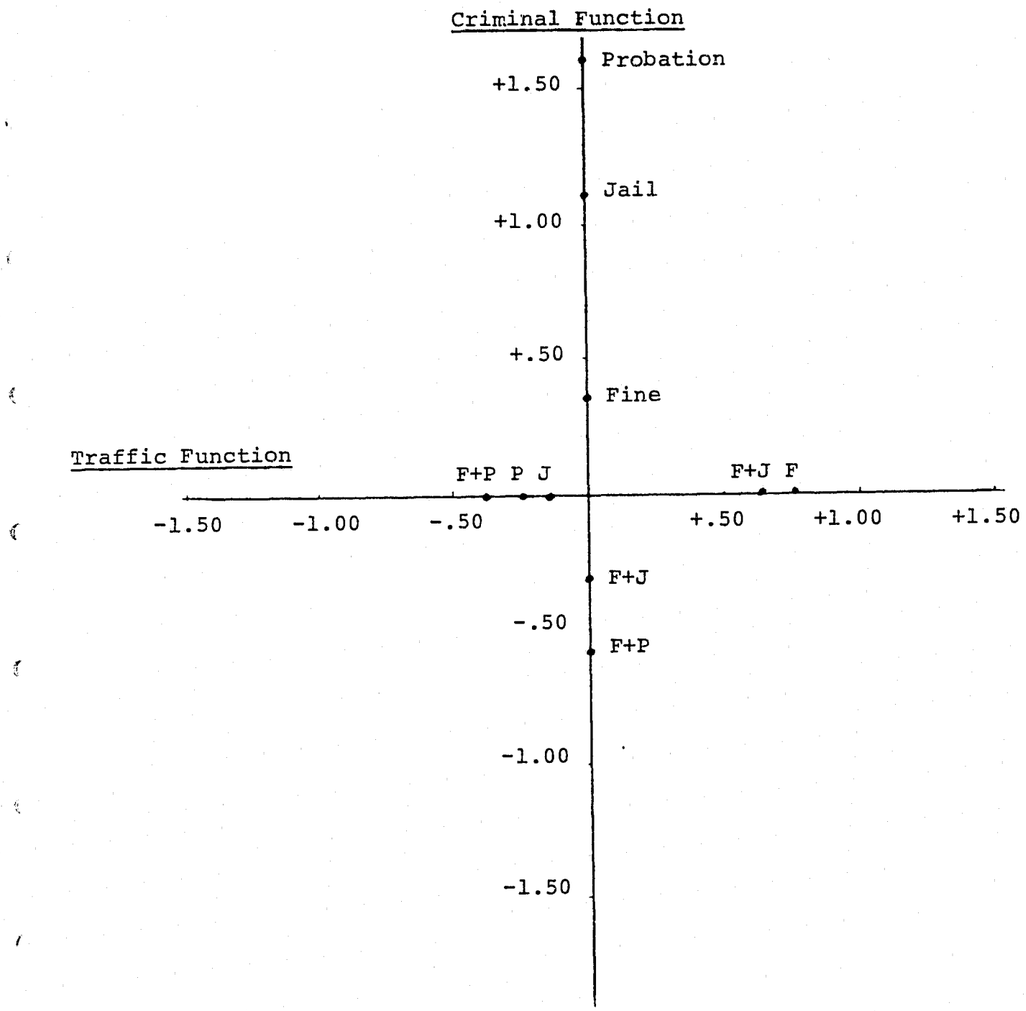
Four discriminant functions also emerged from the analysis of the Mankato data. These functions accounted for approximately 38% of the variance in the choice of sanctions, considerably lower than the 64% explained in Austin. The first

Table 3.1 Discriminant Function Analysis: The Choice of Sanctions in Austin

	Function 1	Function 2
DWI	-.32	-.78
Traffic	.02	.48
Theft	.10	-.74
Criminal	.83	-.59
Judge C	.06	.07
Judge E	.05	.12
Plea	ns	ns
Defense Attorney Presence	ns	ns
Canonical Correlation	.66	.41
% of Variance Explained*	44%	17%
N = 1199		

*The statistic in Tables 3.1 - 3.5 is Omega^2, which can be interpreted analogously to R^2.

Figure 3.1 Discriminant Functions and the Choice of Sanctions in Austin



two functions together accounted for 32%, and the first function alone explained fully 25% (see Table 3.2).

As in Austin, the single most important factor affecting the choice of sentence is the type of case brought before the court. The first and most powerful function is dominated by theft cases and, to a much lesser extent, the absence of drunk driving and other traffic cases. The second function is dominated by drunk driving cases. This function also reflects moderate loadings for criminal cases and Judge D. The moderately negative loading for Judge D on this function reflects a small difference in sentencing practices between him and the other judges on the court, notably the tendency to jail more defendants.

Figure 3.2 illustrates for Mankato how the first two functions discriminate among the choice of sanctions. The first function--the "theft" function--sharply discriminates those defendants receiving probation or jail sentences from those receiving fines, alone or in combination with jail or probation. Defendants in theft cases in Mankato are the most likely to be placed on probation or sentenced to jail; rarely do they receive a fine. Interestingly, this function parallels the "criminal" function in Austin (see Figure 3.1). The second function—the "DWI" function—discriminates primarily those receiving probation, either alone or with a fine, from those receiving jail. Cases resulting in probation, especially with a fine, are most likely to be drunk driving cases.

The findings in Mankato, as in Austin, suggest the importance of type of offense in structuring sentencing decisions. Casetype variables dominate both of the most powerful discriminant functions. There is, however, evidence to indicate less routinization of decision-making in Mankato when compared with Austin. The amount of variance explained by the statistically significant functions in Mankato is substantially less than in Austin. Furthermore, there is some evidence of judicial differences in Mankato.

Tacoma: The Choice of Sanctions

Two discriminant functions emerged from the analysis of Tacoma data. These functions together accounted for 39% of the variance in the choice of sanctions, a figure roughly comparable to Mankato but much lower than for Austin. The two functions in Tacoma were almost equally powerful in discriminating among sanctions, the first function accounting for 24% of the variance, the second for 15% (see Table 3.3).

The type of offense is an important, but not dominant, factor in structuring

Table 3.2 Discriminant Function Analysis: The Choice of Sanctions in Mankato

	Function 1	Function 2
DWI	-.23	.98
Traffic	-.29	-.03
Theft	.87	.19
Criminal	.16	.30
Judge D	.04	-.35
Judge B	ns	ns
Plea	ns	ns
Defense Attorney Presence	ns	ns
Number of Charges	ns	ns
Number of Convictions	.13	.20
Canonical Correlation	.50	.27
% of Variance Explained	25%	7%

N = 600

Figure 3.2 Discriminant Functions and the Choice of Sanctions in Mankato

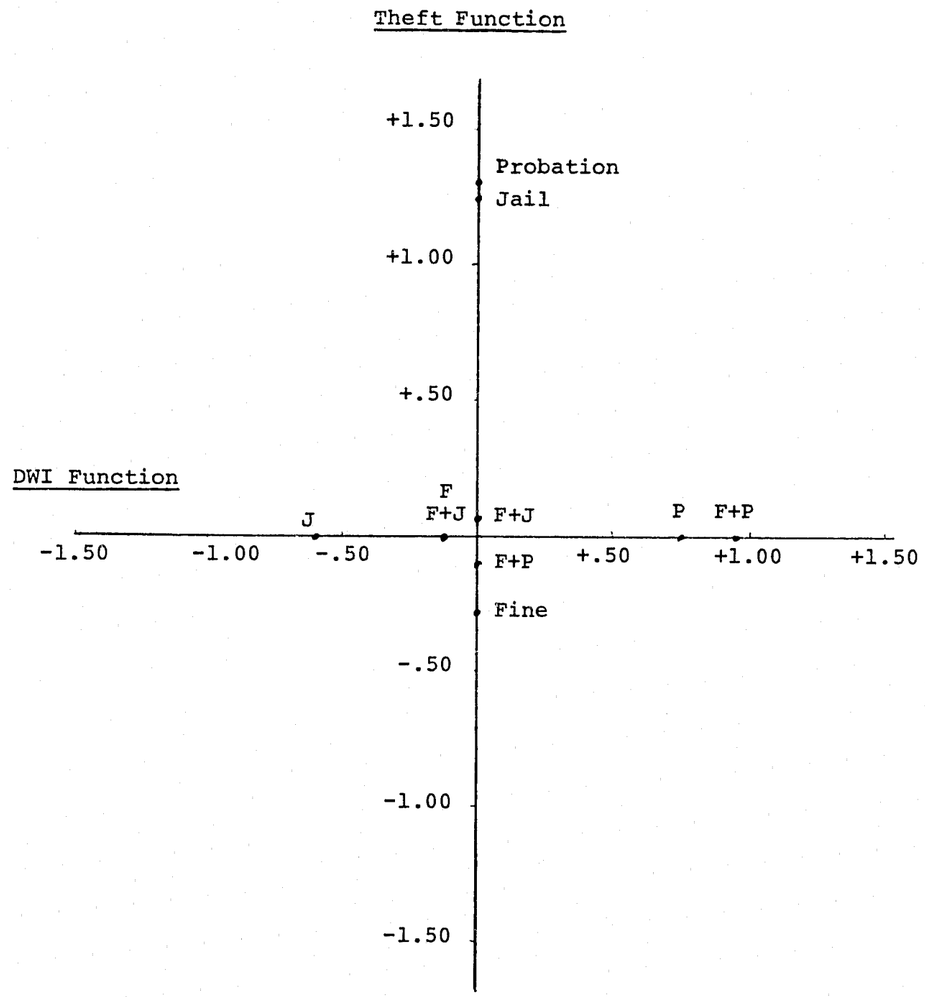


Table 3.3 Discriminant Function Analysis: The Choice of Sanctions in Tacoma

	Function 1	Function 2
DWI	.29	.84
Traffic	.77	-.04
Theft	ns	ns
Criminal	ns	ns
Judge A	.28	-.06
Judge B	-.10	-.61
Judge G	.30	-.07
Plea	.44	.04
Defense Attorney Presence	-.39	.02
Number of Charges	ns	ns
Number of Convictions	ns	ns
Canonical Correlation	.49	.39
% of Variance Explained	24%	15%

N = 388

the choice of sentences in Tacoma. Whereas other case characteristics were of virtually no import in Austin and only slight importance in Mankato, they assume a much greater role in Tacoma. As Table 3.3 indicates, the first function reflects a mixture of casetype and other case-related variables. First it is a "traffic" function, evidenced by the high positive loading for minor traffic cases. But a number of case characteristics also have moderate loadings on this function, including representation by counsel and the mode of disposition. Three judges--A, B, and G--also have small to moderate loadings on this function. In all, the function reflects a substantial degree of individualization of justice in the choice of sanctions in Tacoma. The second function is predominantly a "DWI" function; drunk driving cases have a very high loading. The loading for Judge B is also quite substantial on this function.

Figure 3.3 illustrates for Tacoma how the two functions discriminate among the choice of sanctions. The first function discriminates sharply between simple fines and all other sanctions, especially jail or probation. Defendants in traffic cases are the most likely to receive fines in the absence of other sanctions, as are defendants who plead guilty and who are without counsel. The second function discriminates between multiple sanctions--fine and jail or fine and probation--and individual sanctions, especially jail. Defendants in drunk driving cases are the most likely to receive fines in combination with jail or probation. By contrast, defendants before Judge B are much more likely simply to be sent to jail.

The findings in Tacoma suggest a blending of the importance of type of offense with other case characteristics, such as the presence of a defense attorney and the mode of disposition. In addition, substantial differences in sentencing patterns exist among Tacoma judges. In sum, justice is much more individualized in Tacoma than in either Austin or Mankato.

Columbus: The Choice of Sanctions

Two discriminant functions emerged from the analysis of Columbus. Together, these functions accounted for only 28% of the variance in the choice of sanctions, a figure somewhat lower than for Mankato and Tacoma and markedly lower than for Austin. In Columbus, the first function explained 19% of the variance, while the second accounted for 9% (see Table 3.4).

As in Tacoma, the type of offense in Columbus is an important, but not dominant, factor in structuring the choice of sanctions. Other case characteristics, too, play a significant role in shaping these decisions. The first function

Figure 3.3 Discriminant Functions and the Choice of Sanctions in Tacoma

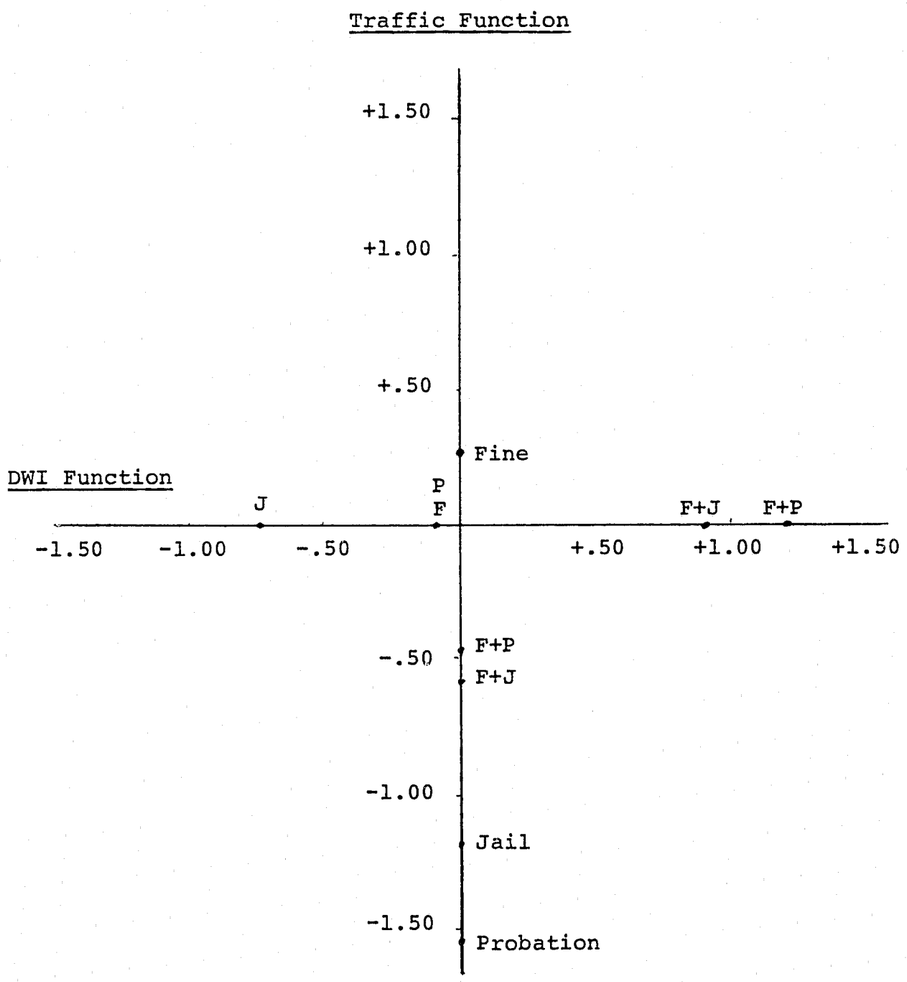


Table 3.4 Discriminant Function Analysis: The Choice of Sanctions in Columbus

	Function 1	Function 2
DWI	.48	.77
Traffic	-.35	.84
Theft	ns	ns
Criminal	-.21	.25
Judge A	-.37	.04
Judge B	-.10	-.34
Judge C	ns	ns
Judge D	-.16	.07
Judge E	-.19	-.14
Judge F	-.22	.11
Judge G	.16	.14
Judge H	-.33	-.39
Judge J	-.10	-.19
Judge K	-.16	.11
Judge L	.09	.12
Judge M	.21	.09
Plea	-.68	.45
Defense Attorney Presence	-.09	.24
Number of Charges	ns	ns
Number of Convictions	ns	ns
Canonical Correlation	.43	.30
% of Variance Explained	19%	9%

N = 1135

reflects a mixture of casetype and other case-related variables (see Table 3.4). It is, first, a "Mode of Disposition-DWI" function, evidenced by the high negative loading for pleas and the moderately positive loading for drunk driving cases. However, a wide array of judges also load on this function, ranging from moderately positive to moderately negative loadings. The function is most typical of the sentencing pattern used by Judges G and M, and least typical of the pattern employed by Judges A and H. The second function is a "Traffic/DWI" function, evidenced by the high positive loadings for drunk driving and other traffic cases. Pleas also have a moderately positive loading on the function, while Judges B and H have moderately negative loadings. The presence of judges--in varying magnitudes—on both functions suggests rather widespread sentencing differences among the court's judges as to the choice of sanctions.

In Columbus, however, judges do not have unfettered discretion in their sentencing of drunk driving defendants. Rather, judges are constrained by the Ohio legislature, which has imposed by statute a mandatory three-day jail term for defendants convicted of drunk driving. One result is extensive plea bargaining in drunk driving cases, for the purpose of reducing the charge to reckless driving and thereby avoiding the mandatory jail term. In fact, well over two-thirds of the court's drunk driving cases were reduced to reckless driving during our sample period.

The importance of the interaction between pleading to a reduced charge and drunk driving cases is clear from Table 3.5. When this interaction term is included in the model, the first function becomes dominated by drunk driving cases and pleading to a reduced charge in these cases. Case processing characteristics continue to play an important, though diminished, role in defining the function. And a wide array of judges still have moderately negative to moderately positive loadings on both functions. Inclusion of the interaction term increased slightly the variance explained by the first function from 19% to 21%, but did not alter the variance explained by the second function. The second function remains predominantly a "DWI-Traffic" function, in which drunk driving and other traffic cases contribute about equally. Pleas have a substantial loading on this function, as do a number of individual judges.

The refinement of the Columbus analysis through the addition of the interaction term suggests that there are two distinct types of drunk driving cases, each with its own set of sentencing consequences. Drunk driving cases where the charges are not reduced (Function 1)--perhaps because of the defendant's prior

Table 3.5 Discriminant Function Analysis Revised: The Choice of Sanctions in Columbus

	Function 1	Function 2
DWI	.95	.83
Traffic	-.27	.87
Theft	ns	ns
Criminal	-.16	.27
Judge A	-.35	.06
Judge B	-.11	-.33
Judge C	ns	ns
Judge D	-.17	.07
Judge E	-.20	-.13
Judge F	-.18	.13
Judge G	.16	.13
Judge H	-.34	-.37
Judge J	-.09	-.19
Judge K	-.15	.12
Judge L	.09	.12
Judge M	.21	.08
Plea	-.29	.58
Plea--DWI Interaction	-.75	-.17
Defense Attorney Presence	-.09	.24
Number of Charges	.14	.06
Number of Convictions	ns	ns
Canonical Correlation	.46	.30
% of Variance Explained	21%	9%

N = 1134

record or the aggravated nature of the incident—almost invariably lead to a jail term as well as a fine (see Figure 3.4). Judicial discretion here is limited, since there are few exceptions or legally acceptable alternatives to mandatory incarceration. By contrast, drunk driving cases which <u>are</u> reduced to reckless driving (Function 2) are treated more like other traffic offenses in sentencing. Fines, not a jail term, are typically imposed. For both types of drunk driving cases, however, there is judicial variability. Some judges incarcerate even after a plea to the reduced charge has been entered, whereas other judges sometimes find an alternative confinement procedure to jail even where the defendant pleads guilty to the original drunk driving charge.

<u>Review</u>

The discriminant function analysis yields an effective, sometimes powerful model of the choice of sanctions. The model is strongest in Austin, where more than 60% of the variance in sanctions is explained. In each of the courts, the discriminant functions facilitated more accurate prediction of sentence choice than would have been possible either by chance or simply by predicting the modal sentence category.

Conceptually, three different sets of factors were included in the analysis—casetype, other case-related characteristics, and the sentencing judge. The importance of these factors in structuring sentencing decisions varied considerably across the four courts. Casetype was typically the most important factor, but other case characteristics varied in importance from one court to another, as did the importance of the sentencing judge (see Figure 3.5).

Casetype accounted for fully 98% of the total discriminatory power[2] in Austin and for 92% in Mankato. By contrast, that figure drops to 56% in Tacoma and 29% in the revised Columbus model. Judges were actually slightly more important in Columbus, accounting for 36% of the model's power. In Tacoma, too, judges were important, accounting for 23% of the explained variance. By contrast, judges were of only slight import in Mankato (5%) and still less so in Austin (2%). Case-related characteristics were also of little significance in Austin and Mankato, but much more important in Tacoma and Columbus where they accounted for about one-fifth and one-third of the explained variance, respectively.

The contribution of different types of offenses also varied across the four courts. In Austin, miscellaneous criminal cases were by far the most discriminating type of case, accounting for 65% of the explained variance. Perhaps this is

Figure 3.4 Discriminant Functions and the Choice of Sanctions in Columbus, Revised

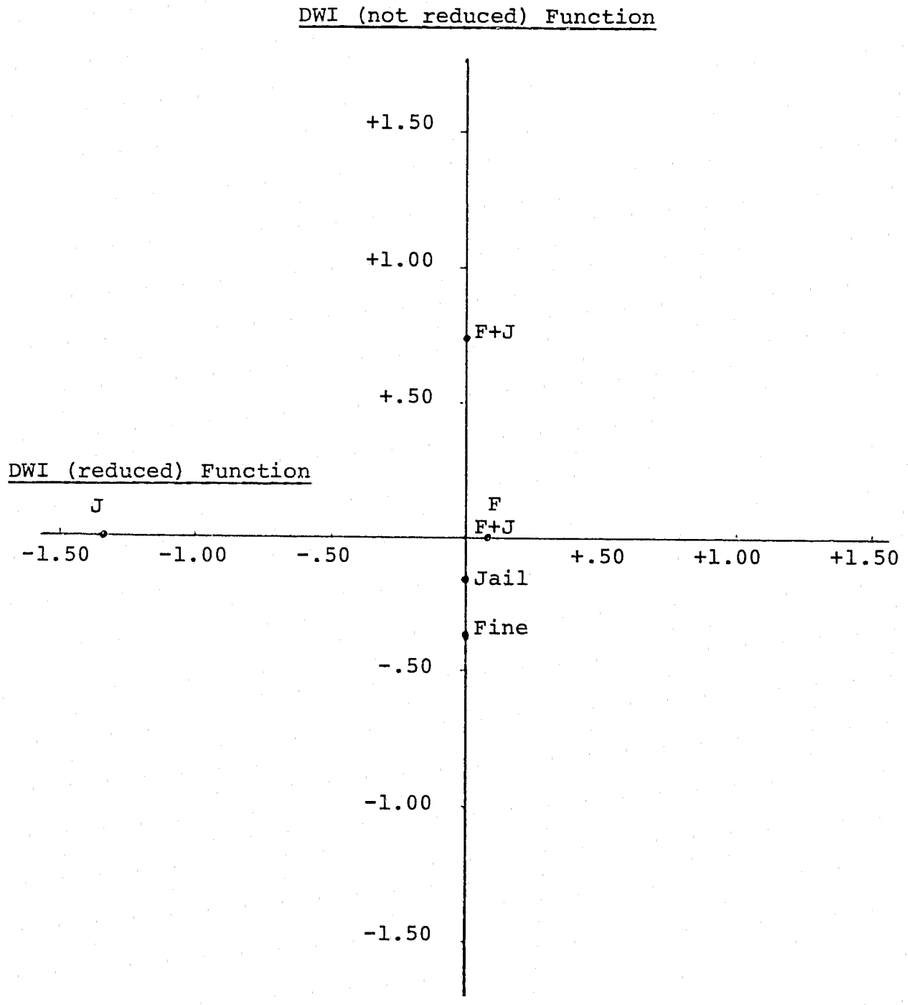
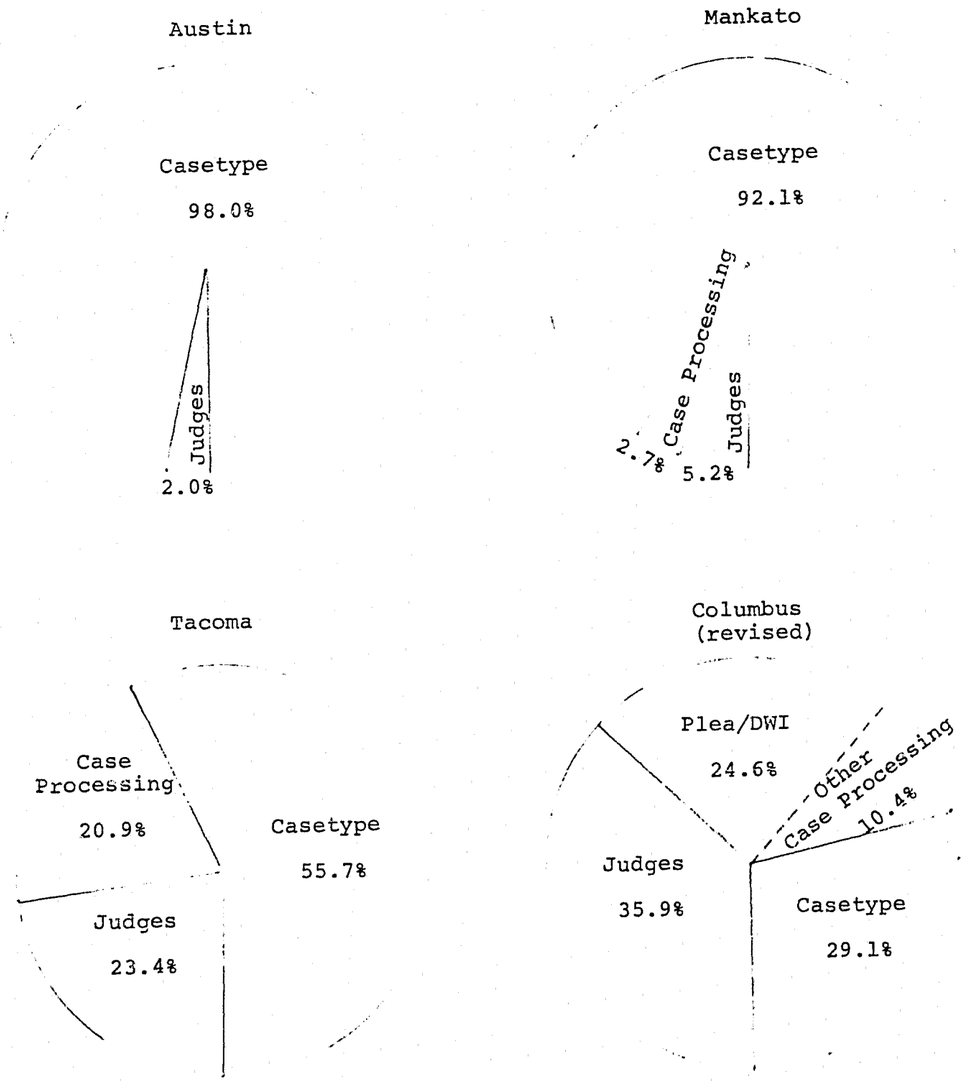


Figure 3.5 Relative Explanatory Power of Casetype, Judges, and Case Processing Characteristics in the Four Courts



because in Austin more than half of these miscellaneous cases were one type of case--minor drug possessions (Table 2.4b). In Mankato, theft cases contributed more than any other type of case to the explanatory power of the model (60%), whereas criminal cases--which were much more heterogeneous in character--made little contribution. In Tacoma, traffic cases accounted for the most variance (33%). And in Columbus, drunk driving cases made the greatest single contribution of the casetype variables (24%). Finally, in Columbus the single most important factor was not internal to the court, but arose as a consequence of constraints imposed by the Ohio legislature. In the revised Columbus model, pleading to a reduced charge in drunk driving cases--to avoid the state's mandated three-day jail sentence—was the most important variable.

The Influence of the Individual Judge In Sentencing: Why Do The Four Courts Differ?

Our quantitative analysis indicates that the influence of the judge in the choice of sanctions varies sharply from court to court. The individual judge matters little in Austin and Mankato, but is significant in Tacoma and especially Columbus. One judge (B) contributes to most of this variation in the five-judge Tacoma court, whereas at least three judges (G, H, and M) are particularly distinctive in the thirteen-judge Columbus court. Having discovered the presence and magnitude of inter-judge variation in this aspect of sentencing, we now turn to an analysis of the sources of variation, drawing upon our field observations and interviews.

Why are Austin and Mankato, apparently such different communities and courtroom cultures, so alike in the miniscule influence of the judge in the choice of sanctions? Our field data suggest two quite different sets of reasons. In Mankato, the three judges--by their own accounts--talk over general sentencing practices. With regard to the sentence in drunk driving cases, Judge D noted:

> . . .$300 to $325 is about the fair amount, again absent unusual circumstances. I think the three judges have met on that between ourselves, and looked at it as to we have authority to prevent judge-shopping, and that seemed to be the consensus of the three of us, somewhere between $300 and $325.

Judge A also spoke of discussions among the Mankato judges to achieve consistency in sentencing generally:

> Q. I know that there is a fine schedule for the lesser traffic cases. In the other cases, outside of traffic

entirely, is there the same kind of consistency in the court in terms of sentences. . . ?

A. Well, I think to some extent there is some consistency. We have discussed it without any commitment as far as what a fine should be, but we try also to avoid judge-shopping as much as possible. . . . so that one judge doesn't get all of one certain type of case because he imposes a smaller fine in that type of case.

The size of Mankato is also important in the push for sentencing consistency. It is a small town; significant judicial variation in sentencing could easily become "public" knowledge, thereby leading either to specialized judges and/or severely skewed judicial caseloads.[3] The informality and social homogeneity in this small community also promote judicial uniformity in sentencing, even without explicit conversations among the judges. In the words of Judge D regarding disposition of theft cases:

> . . . We will give a jail sentence in an appropriate case, but more common with the shoplifting would be a suspended sentence and alternate service. I think through conversations with all three of us that you would find that to be relatively uniform.[4]

Unlike Mankato, in Austin there is no evidence that the judges formally or even informally talk over their sentencing practices. Indeed, one judge proposed not to know—or to wish to know—of the sentencing policies of the other judges in Austin.[5] Rather, there is a theme of judicial impotence that runs through our interviews with Austin judges. Most often, this is couched in references to the power of the prosecutor's office. Of the prosecutor's dominance in sentence bargaining, Judge F--new to the bench--remarked:

> Well, generally what happens is the county attorney's office usually—in most plea negotiations, they have already bargained out, you know, how much they are going to agree to. If the state recommends a certain fine, it's almost pointless for the judge to say, well, I think that's dumb. I'm going to jack up the fine some or something like that because then what you get to is that a lot of times they'll ask for a jury trial. Of course, I can do three jury trials a week at the most, so if everybody starts going to that--if I start busting a lot of plea bargainers, it won't take much time to bog down the whole system. So, pretty much, I will follow the recommendations of the state, so that's pretty much how my fines are determined. . . (emphasis added)

Judge E--a veteran on the bench—sees himself equally handcuffed by the structure of the plea negotiation process, which he attributes--like Judge F--to the volume

of cases on the docket. As Judge E remarked in response to a question about whether he felt bound by the prosecutor's recommendation:

> Not at all. In fact, that's why I can hardly sit here and blame them for it. I'll show you what we're faced with. I have a thirty minute period to handle what we refer to as our 8:30 docket. These are all the cases set for 8:30 and I have just thirty minutes to handle that number of cases. Obviously, you can't sit there and discuss any case for a very long period of time. The system just requires that they be negotiated upstairs and the prosecutor would say we recommend this and I'll follow it. If I stop too many times, we run later and later and later. So, part of the system is the time. (emphasis added)

Judge C--also a veteran on the bench—confirms the widespread view that judges in Austin follow the prosecutor's recommendations:

> Q. Do you look for a particular kind of defendant to give community service restitution to?
>
> A. No. I consider almost every case where there is probation. But understand, the judge in sentencing--again, the prosecutor plays a large part in the sentencing process. The judges sit up there and look wise like truthful owls and talk about what they're going to do. But basically, the sentencing is part of the plea bargaining process. It is being worked out between the prosecutor and the defense lawyer . .
>
> Q. Do you ever get involved with plea negotiations?
>
> A. No. . . I try not to . . . I don't think there is any place in it for a judge.

In sum, all three judges point to the influence of the prosecutor's recommendations.[6] Likewise, the judges emphasize their own detachment from the sentencing and plea negotiation process, though they differ among themselves about the desirability of detachment for the delivery of justice.[7]

In contrast to Mankato and Austin, judges in Tacoma and Columbus are much more individualistic in their sentencing practices. The reasons, though, appear different from one court to the other. In Tacoma, the structure and operation of the prosecutor's office directly invites judicial participation in sentencing. Two features in particular--rapid turnover within the prosecutor's office and lack of office guidelines and supervision in the plea negotiation process--contribute to "inexperienced variation" in prosecutorial sentence recommendations to the judge. In contrast to Austin where judges, grudgingly or otherwise, comply with the

prosecutor's recommendations, judges in Tacoma professed to be much more scrutinizing. Judge A--a veteran on the bench—had this to say:

> Q. How influential are the prosecutor's recommendations?
>
> A. Well, I think they are pretty influential. I certainly don't consider myself bound by them and I deviate . . . where I think it is appropriate which is, in some cases, quite often.

Newcomer Judge F was more pointed in the circumstances under which he disregards the prosecutor's recommendation:

> Q. To what extent does the prosecutor's recommendation come into play?
>
> A. If the prosecutor and the defense attorney are widely divergent on their recommendations, then I'll get a presentence report and get a middle ground because obviously the defense attorney is for his client and I'll guess the prosecutor is trying to be for the state . . . So as far as that goes, the prosecutor's recommendation doesn't play a real big role except for the fact that it makes me get a presentence report if he recommends something a whole lot different from the defense attorney or vice versa.

Prosecutors, too, generally concurred with judges on this issue. When asked how influential their recommendations were, one prosecutor remarked: "It depends on the judge . . . some judges will pretty much follow our recommendations, and some of them don't."

Rapid turnover of personnel is one factor that accounts for judicial discrimination and selectivity regarding recommendations. Legal interns (third year law students) are used extensively in the Tacoma prosecutor's office, both in the charging process and in actual prosecution in the courtroom. Of these interns, veteran Judge D remarked: "We have a lot of them . . . very few ever stay very long." Judge E--new to the bench--commented upon the lack of experience of the young full-time recruits to the prosecutor's office:

> The prosecutor's office seems to operate much differently than it does in most other counties or the counties I have had experience with. There is a very high turnover here. People tend not to stay very long or, if they do stay, they move up to the felony level. They don't stay in the misdemeanor courts.

Lack of supervision—or a high degree of autonomy for assistants—is a consistent theme of local actors outside and within the prosecutor's office. The

supervisor of the prosecutor's office stated that each prosecutor has "a great deal of autonomy" regarding plea negotiations, acknowledging that there are no formal policies in this regard. One assistant prosecutor bluntly concurred:

> Q. Does the prosecutor's office have a formal policy (about plea negotiations)?
>
> A. None that I am aware of—nothing written. We each have <u>total</u> <u>discretion</u> over how we want to handle the cases that we are actually handling. (emphasis added)

One private defense attorney complained about the lack of coordination within the prosecutor's office, attributing it not simply to young prosecutors but to a "lack of supervision." Judges, too, seemed to notice the automony of assistant prosecutors. In the words of Judge A, "there seems to be a lot of disparity; one deputy is really harsh and the other may be very lenient; I am left to sort out which one is really appropriate."

The result of prosecutorial turnover, autonomy, lack of supervision, and philosophical disparity is a willingness on the part of the Tacoma judges to assume significant responsibility for sentencing. But unlike Mankato—where judges also assume such responsibility--judges in Tacoma do not attempt to be highly uniform with one another, or to discuss sentencing practices among each other, or to try to prevent judge-shopping. Judge A remarked:

> There probably is some fair amount of uniformity here with regard to most sentencing. I don't think it's all that good yet. There is still some disparity because we don't have better communication amongst us as to what each other is doing. DWIs, I think, are pretty much standard, but I think it varies with . . . like shoplifting or simple assaults or disorderly conduct.

Judge F sounded a similar theme, though perhaps with less regret that individual judges are different:

> There's uniformity within bounds. I'd rather have a little flexibility . . . The judges up here, I don't think, are totally uniform in everything they do . . . Some of us think some offenses are more serious than other judges think they are and so they treat them more seriously.

Judge D also agreed that the judges don't discuss sentencing practices much among themselves, noting some disparity in overall toughness or leniency:

> I don't think there is too much difference between Judge A and Judge F in sentencing as there is to me. Unfortunately, I seem to get the lost causes.

Finally, Judge F confirmed the presence of extensive judge-shopping, which typically accompanies systematic differences in sentencing among judges of the same court:

> Q. Is there judge-shopping in this court?
>
> A. Oh, everybody gets the right to have one affidavit of prejudice as a matter of course. That happens both by defense attorneys and by prosecuting attorneys . . . He usually affidavits a judge because it is a particular kind of case and he or she knows how that judge is going to handle that kind of case if the person is found guilty . . . I think that is always the reason why somebody affidavits a judge. If you want to call that judge-shopping, then that is judge-shopping . . . It's really shopping for sentencing . . . It's part of the rules and part of the way things are done around here. (emphasis added)

Thus, the picture that emerges in Tacoma is one of considerable judicial differentiation in sentencing, invited by the prosecutor's office but perhaps exacerbated by the reluctance of judges themselves to establish court-wide norms for sentencing. It is a picture that comports quite well with our quantitative analysis of the choice of sanctions in Tacoma, an analysis which highlights the significance of the individual judge.

In Columbus, the size of the court and the community encourage individualistic approaches to sentencing among the judges. There are thirteen judges on the court, almost three times as many as in any of the other courts. Almost necessarily, the judges have rather diverse backgrounds, interests, and professional experiences. Some judges come from the prosecutor's office, others from private practice, still others from county and municipal legal positions. The Columbus judges are simply less homogeneous than, say, the three judges in Mankato, each of whom followed virtually the same career path en route to the bench.

The size of the Columbus metropolitan area also encourages judicial diversity. There is a wider spectrum of political, economic and cultural values in Columbus than in smaller communities such as Mankato. Judgeships in Columbus are visibly political positions, most often attained through contested elections. Bar associations, interest groups, and local political parties all become involved in judicial elections, creating the opportunity for judges to gain office by virtue of distinctive political constituencies. These constituencies range from bar elites to "law and order" groups, and they provide incentives and reinforcement for judges to implement their own or the interest group's views of crime in the sentencing

process.

Substantial variation among the judges in sentencing philosophy and in the use of particular sanctions is an accepted and acknowledged state of affairs in Columbus. Judge G, whose own sentencing patterns are highly distinctive in the (high) proportion of defendants whom he jails and fines, says of himself: "I have the reputation of being a stiff sentencer . . . I'm likely to give the maximum." One reason is his deference to prosecutors in the plea bargaining and charging processes (he was a former prosecutor himself). With respect to dismissals he eschews any direct role, noting "the prosecutor should know." Judge C, like most other judges on the Columbus court, restricts the scope of the plea negotiation process between prosecution and defense to charge bargaining. Judge C asserts: "The prosecutor may recommend sentence to me, but I may not accept it." And Judge E characterized the court as quite diverse in sentencing philosophy, remarking: "The court runs the gamut . . . some tough, some lenient . . . I hope I'm in the middle somewhere."

Court actors apart from the bench also recognize the diversity of Columbus judges. The supervising officer in the probation department remarked: "Judges vary in their use of probation--some use it a lot, others selectively (taking into account our caseload problems), and one not at all." Similar reactions were obtained regarding judges' utilization of treatment programs, such as driver improvement and drunk driving clinics. And the chief of the municipal division of the public defender's office remarked that defendants initially ask two questions: "Can I get a personal recognizance bond?" and "Will I go before Judge G?" Thus, among the community of courtroom actors there is widespread awareness of judicial differentiation in sentencing, including who the court's tough judges are and which judges make frequent use of rehabilitation-oriented sanctions. This judicial diversity emerges in Columbus even though--in contrast to Tacoma--the prosecutor's office is relatively stable, well-respected by the defense bar and bench, and operates within a framework of policy guidelines and day-to-day supervision of assistants.

The foregoing analysis suggests a complex set of relationships among the prosecutor's office, the defense bar, the size of the bench and community, and judicial variation in sentencing. These relationships are complex because they sometimes appear to be curvilinear or interactive. For example, where a community and bench are very small (as in Mankato), one could hypothesize that judges will see the need to insure that the legitimacy of the criminal courts is not

tainted by inconsistent sentencing. In very large communities with many judges (such as Columbus), the different backgrounds of the judges and the politics of selection may preclude consistent sentencing. Furthermore, judges in these communities may not perceive the legitimacy of the courts to be jeopardized by the institutionalization of the different points of view toward sentencing already widespread in the community. In both the very small and large communities, then, there may be little that prosecutors can do to aggravate or limit the amount of judicial variation in sentencing. This appears to be the case in Mankato and Columbus. In-between the extremes of size, however, the experience and credibility of the prosecutor's office and the structure of defense attorney services may dictate the extent of judicial sentencing variation. Where prosecutors are inexperienced--and defense lawyers equally so--(as in Tacoma), one would hypothesize that the values of the judges will come to the foreground in sentencing. Conversely, where prosecutors are more experienced and the defense bar is large, highly vocal, and well-organized (as in Austin), the values of the judges will likely be suppressed.

These are hypotheses that flow, post-hoc, from our analysis of judicial variation in the imposition of sanctions. Though derived from misdemeanor courts, they may be equally applicable and testable in felony courts. Note, for example, that Eisenstein and Jacob (1977:277) found the identity of the judge to be an important discriminating variable in the choice of a prison or probation sanction in all three of the large cities that they studied. This conforms to our hypothesis that large benches are likely to have irrepressibly different values, usually including those of a few highly aberrant judges. In sum, the relationships among these variables are indeed complex but not necessarily idiosyncratic.

Summary

In this chapter, we have explored the basis for the choice of sanctions imposed upon convicted defendants in four misdemeanor courts. We confined our analysis to three types of sanctions--fine, jail, and probation and their combinations. In all four courts, defendants are pigeon-holed according to the offense with which they were initially charged. Drunk driving and traffic cases nearly always result in a fine, possibly along with jail or probation. By contrast, theft and other miscellaneous criminal offenses much less often result in a fine; more common is the use of jail or probation. The decision not to use a fine in many minor criminal cases may stem from a philosophy that such offenses are "too

serious" to be treated merely with a fine, that offenders are in need of ongoing counseling or supervision, the practical realization that many defendants cannot afford to pay a fine, or some combination of these. The linking of sanctions with types of offenses is most pronounced in Austin, where--perhaps not coincidentally--individual judges play a very small role in the sentencing picture.

The role of the individual judge indeed varies more sharply from one court to another. In Austin, where prosecutors and defense attorneys work out most details of sentencing, the judge appears to matter little. In Mankato, the individual judge matters little because the small, three-judge bench has consciously striven for internal consistency through group discussions. In Tacoma, where prosecutional inexperience in trial courtrooms and negotiation sessions has encouraged active judicial scrutiny of plea bargains and sentences, differences amongst the court's judges have emerged. And in Columbus, where the court is populated by thirteen judges, different judicial philosophies about sentencing are an acknowledged and accepted state of affairs.

We have analyzed in detail which sanction or sanctions are imposed upon convicted defendants in these courts, but not how much of these sanctions. How high are the fines? How long are the jail terms or probation sentences? And do similar or different factors account for variations in the amount of sanctions imposed? It is to these questions of sentence severity that we turn in the following chapter.

NOTES

[1] A stepwise selection procedure was used in the analyses. The variables selected for inclusion were those that contributed to the largest increase in Rao's V when added to the previous variables. In effect, this amounts to the greatest overall separation of sentencing groups.

[2] Total discriminatory power technically refers to "change in Rao's V," or the percentage of the total separation among the groups attributable to the variables included.

[3] Judge-shopping could, in theory, be easily accomplished given that the court deviates significantly from an individual case assignment system.

[4] There is some dispute over how uniform the three judges actually are in theft cases. The current prosecutor perceives one judge to be much tougher in theft cases than the other judges regarding the use of jail (see also, Chapter 5). Our case file data indicate that Judge D sent 66% of convicted theft defendants to jail, whereas Judge B sent only 44% to jail (insufficient numbers of cases for Judge A).

[5] In Austin (and throughout Texas generally), each individual judge is referred to as a "court." This terminology itself suggests a high degree of independence from one court (judge) to another.

[6] Some, but not all, judges made explicit references to the power of the criminal defense bar, both generally and in plea/sentence negotiations. The size of the criminal defense bar in Austin and the absence of a public defender's office may provide conditions conducive to such influence. For further elaboration on the possible influence of defense attorneys in nearby Houston, see Wice (1978:43); in Austin, see Grau (1981).

[7] One should note that judicial detachment from sentencing has long characterized the American south, where in some thirteen states the jury continues to play a significant sentencing role in noncapital cases. For a discussion of jury sentencing, see Kaplan (1973: 449-451).

Chapter 4

THE SEVERITY OF SANCTIONS

In previous chapters, we examined the range of sanctions utilized by the four courts and the factors influencing why one sanction instead of another was imposed. In this chapter, we directly address the severity of the sanctions imposed. Specifically, we look at the amount of fines, jail terms, and probation sentences, as well as factors within the courtroom—such as type of offense, case processing characteristics, and the judge at sentencing--that contribute to sentence severity.

Determining the severity of a sentence becomes problematic when multiple sanctions are imposed or in comparing one type of sanction (e.g., fine) with another (e.g., jail). It is not readily clear, for example, whether a $300 fine or 3 days in jail is the more severe. Nor is it clear how severe a sentence that mixes six months probation with a $50 fine actually is. The units of measurement are not readily comparable, and there is no standard equation that can translate jail days into dollars.

A number of researchers have addressed this thorny issue through some sort of scaling technique. The Administrative Office of the U. S. Courts (1972) introduced a severity scale (ranging from 0 to 50), as a way of comparing sentences across federal district courts. Subsequently, researchers adopted or modified that scale for felony court sentencing in the states (see, e.g., Uhlman, 1979). But arbitrariness and problems of validity are apparent. A probation sentence exceeding three years, for example, is weighted by the Administrative Office slightly more severe than 1-6 months imprisonment, an assessment that we believe few defendants would share. One Mankato defense attorney, for example, referred to keeping his clients out of jail as the "last line of defense." More important for our purposes, though, is the scale's focus on the more severe sanctions (e.g., incarceration), and its corresponding neglect of fines, which are assigned the same value regardless of amount. This type of scale is inappropriate for misdemeanor court sentencing where fines predominate.

Feeley (1979), in his study of the New Haven lower criminal court, developed a five-point scale for sentence severity. Though suited to misdemeanor court dispositions, Feeley's scale nevertheless discriminates fines only into categories

above and below $50. Also, the limited, ordinal character of his scale is not ideally suited to the regression analysis presented (Feeley, 1979:140).

Given the limitations of prior research efforts, we have adopted the posture of analyzing the severity of sanctions individually (see also Ryan, 1980), with special attention to the widely varying amounts of prevalent fines. But we also examine fine levels in combination with jail terms or probation, to determine whether the presence of additional sanctions enhances, ameliorates, or makes no difference in the severity of fine levels. Analyses are presented for all cases as well as for drunk driving cases separately. By focusing on drunk driving cases, we are able to control for the courts' widely varying dockets (refer to Table 2.4). The result is an in-depth look at the most common, and the most serious, offense these four courts handle.

Fines, Jail, Probation: How Much Do Defendants Get?

Fines are the central method of punishment in all four courts. Most convicted defendants pay some amount of fine, sometimes in combination with jail or probation (refer to Table 2.8). The actual amount of fines can, in theory, range up to $1,000 per case or charge ($500 in Mankato). Of course, in practice maximums are rarely imposed. As Figures 4.1 - 4.4 illustrate, though, the range of fines is rather wide in each of the four courts.[1]

The fines in Austin and Columbus are approximately normally distributed. Each court has a small number of very low and very high fines but a much larger proportion of intermediate-range fines. In Austin, the fines cluster around $150; in Columbus, around $100 (Figures 4.1, 4.2). By contrast, the distributions in Mankato and Tacoma are heavily skewed toward smaller fines. In Mankato, a second peak occurs at the high end (drunk driving cases), whereas in Tacoma the skewness levels off slightly more gradually (Figures 4.3, 4.4). The fine levels cannot be considered trivial, however, in any of the four courts. Whereas Feeley (1979:138) found over 90% of the fines in New Haven to be less than $50, the four courts studied here all reflect substantially higher fine levels than that. In Mankato and Tacoma, only about one-half of all fines are as little as $50; in Austin and Columbus, only about one-quarter of the fines.

Jail terms are a secondary mode of punishment in the four courts, reserved usually for the most serious misdemeanors, the most aggravated incidences, and the most recidivist offenders. Roughly one-third of convicted defendants serve some jail time in Austin and Columbus, whereas a much smaller percentage (15% or

Figure 4.1 Austin: Distribution of Fines

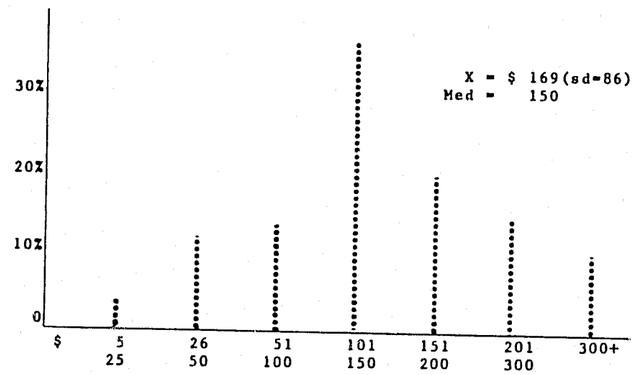


Figure 4.2 Columbus: Distribution of Fines

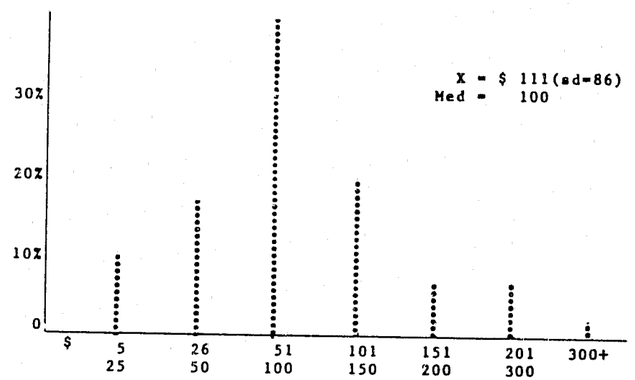


Figure 4.3 Mankato: Distribution of Fines

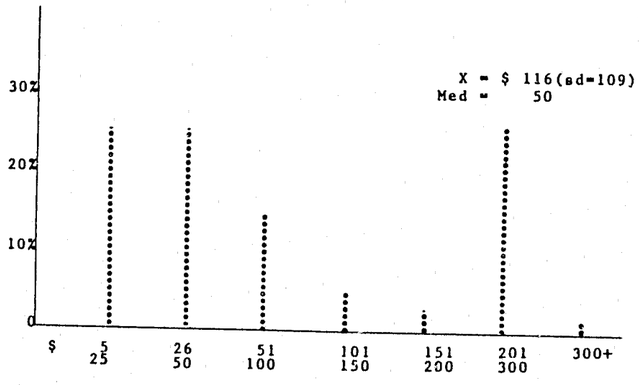
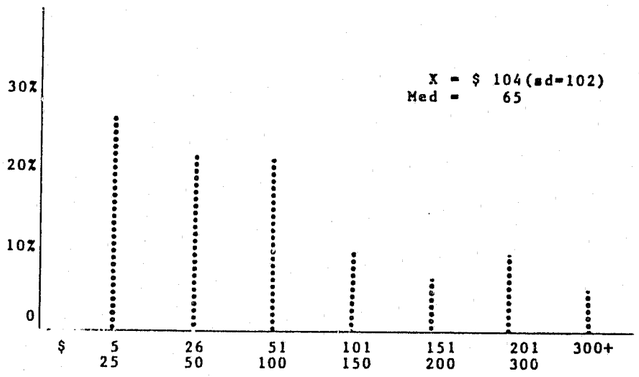


Figure 4.4 Tacoma: Distribution of Fines



less) are sent to jail in Mankato and Tacoma. Maximum sentences available by statute range from 90 days in Mankato to 6 months in Tacoma to one year in Austin and Columbus, though defendants may be sentenced consecutively on separate charges. Table 4.1 reports the length of jail terms in the four courts.

Jail terms are relatively short in all the courts, particularly when suspended sentences are taken into account (as Table 4.1 does). Jail terms tend to be somewhat longer on average in Tacoma, more highly skewed toward the extremes in Columbus, and somewhat shorter in Austin and Mankato. The high proportion of four day or shorter jail terms in Columbus reflects the three day mandatory jail term provided by Ohio law for defendants convicted of drunk driving.

Probation is the most variable form of punishment across the four courts. It is extensively used in Austin; about two-thirds of all convicted defendants are sentenced to probation. By contrast, only about 10% of defendants in Mankato and Tacoma are given probation. Columbus falls somewhere in-between, but exact data were not available. Where used, the probation sentence is nearly always one year in Austin and Tacoma, but in Mankato terms of six months or less are not infrequent.

Jail or probation is sometimes imposed in conjunction with a fine. This is particularly frequent in Austin, and occurs at least occasionally in the other three courts. What happens to fine levels when an additional punishment is added? Do fines go down, softened by the blow of a jail term or probation sentence? Or do fines go up, reflective of the perhaps more serious nature of an offense that justifies multiple forms of punishment? Table 4.2 provides the answer.

Where probation is imposed together with a fine, fines are uniformly higher. In Mankato and Tacoma, fines are typically 100% or more higher when accompanied by probation, in Austin, 30% higher. Where jail is imposed together with a fine, the picture is mixed. There is no visible relationship in Mankato or Tacoma; fine levels are approximately the same with or without jail terms. In Columbus, fines are substantially higher when accompanied by jail terms; in Austin, lower when accompanied by jail terms. Perhaps because jail terms are generally viewed by court participants to be much more punitive than probation sentences, fines are typically not increased when jail is imposed. We analyze the effects of additional sanctions upon fine levels more rigorously in a multivariate framework later in this chapter.

Analyzing Fine Levels Across Courts: Another Look at Court Severity

Figures 4.1 - 4.4 tell how much defendants pay in fines in the four courts but

Table 4.1 The Four Courts: Distribution of Jail Terms

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Days				
1 - 4	29.8%	51.1	37.1%	29.6%
5 - 9	28.4	7.4	21.0	13.0
10 - 15	27.2	7.2	16.1	16.7
16 - 30	10.1	20.6	11.8	24.1
31 - 45	8	.2	5.6	1.8
46 - 60	1.7	3.8	2.1	7.4
61 - 90	.3	3.8	5.6	5.6
91 - 120	.6	.7	.7	--
121 - 355	1.1	5.2	--	1.8
	100.0%	100.0%	100.0%	100.0%
N	(356)	(444)	(143)	(54)
X (sd) =	12 (12)	26 (46)	17 (23)	24 (4)
Median =	7	4	7	10
Mode	3/10	4	4	30

Table 4.2 The Four Courts: Mean Fine Levels by Utilization of Other Types of Sanctions

	Austin Texas		Columbus Ohio		Mankato Minnesota		Tacoma Washington	
	X Fine	(sd)	X Fine	(sd)	X Fine	(sd)	X Fine	(sd)
Was a Jail Term also Imposed?								
Yes	$149	(92)	$141	(111)	$122	(105)	$106	(137)
No	177	(82)	95	(65)	116	(110)	104	(102)
Was a Probation Term also Imposed?								
Yes	186	(80)	NA		210	(91)	223	(113)
No	140	(89)	NA		110	(108)	91	(91)

not why. Furthermore, inferring overall levels of court severity from the distributions of fines can be misleading, because the dockets of the four courts are significantly different. Mankato and Tacoma, for example, may have the generally lower fines indicated in Figures 4.3 and 4.4 because of their substantial minor traffic docket (nearly 50% of all cases in both courts).

Table 4.3 analyzes mean fine levels across the four courts by type of case. When the table is read horizontally, we find that the question of court sentencing severity is more complex than the simple distributions of fines suggest. Mankato emerges as the court imposing the highest fines in drunk driving cases; fine levels are somewhat lower in Austin and Tacoma, and much lower in Columbus. One reason fines may generally be lower in at least two other courts—Austin and Columbus--is that other sanctions more frequently accompany fines in drunk driving cases. Probation is frequently imposed along with a fine in the Austin court, while in Columbus defendants often face a jail sentence. Treatment-oriented sanctions such as driver improvement programs or alcohol counseling may be used in drunk driving cases in Mankato, but probation and jail rarely are utilized. In criminal cases, by contrast, Mankato stands out as having the lowest level of fines. Average fines in assault, theft, and miscellaneous criminal cases are substantially lower than for any of the other courts. Fines for these types of cases are generally highest in Austin, followed by Tacoma, and then Columbus.

In sum, the composition of the courts' dockets does influence aggregate levels of sentence severity. Tacoma is the best example. Were Tacoma's mix of cases more like Austin's—i.e., more criminal cases and fewer miscellaneous traffic cases --Tacoma's overall levels of fines would be nearly as severe. The high proportion of lightly-fined traffic cases in Tacoma contributes substantially to its modest overall fine levels. Mankato, on the other hand, would continue to have generally modest fines—in comparison to Austin or Columbus—even if its mix of cases were tilted more toward the criminal side. Only for drunk driving cases does the Mankato court impose fines comparable to, or greater than, the other courts.

Analyzing Fine Levels Within Courts: Why Do Some Defendants Pay More?

Table 4.3 also tells us something about the discriminating power of the type of case in predicting fine levels within each of the courts. In Mankato, type of case is highly discriminating, for nearly all large fines are likely to be drunk driving cases. The average fine for drunk driving cases is nearly four times as great as for

Table 4.3 The Four Courts: Mean Fine Levels by Type of Case

	Austin Texas		Columbus Ohio		Mankato Minnesota		Tacoma Washington	
	X Fine/sd		X Fine/sd		X Fine/sd		X Fine/sd	
Drunk driving	$198	(72)	$128	(61)	$238	(72)	$191	(107)
Other traffic	72	(42)	91	(140)	42	(42)	45	(40)
Assault	130	(88)	88	(74)	50*	(0)	117*	(115)
Theft	162	(68)	87	(52)	66*	(22)	166*	(142)
Other criminal	145	(111)	82	(62)	47	(37)	76	(51)

*Less than 10 cases.

any other type of offense. The comparative seriousness with which drunk driving cases are viewed in Mankato extends outside the court to local law enforcement. The small Mankato city police department trains some officers to be specialists in administering the breathalyzer machine for drunk driving cases. And in the words of one probation supervisor, "law enforcement is particularly attuned to drunk driving; they don't take drunks home, they arrest them." In Columbus, by contrast, the type of offense is only very slightly discriminating of fine levels. Fine levels are nearly identical for criminal and minor traffic cases, and drunk driving cases receive only marginally higher fines. Unlike Mankato where drunk driving cases always seem in the forefront of the thinking and concerns of court actors, in Columbus drunk driving cases are piled upon an already-busy docket. The frequency and seriousness of criminal cases as well as the overall volume of cases seem to preclude Mankato-like preoccupation with drunk driving in Columbus. Then, too, frequent charge reductions in Columbus from drunk to reckless driving render such cases, in fact, more like other traffic cases. Austin and Tacoma fall in-between with respect to the differentiation of fine levels by type of case. Fine levels for drunk driving cases in Austin and Tacoma are higher than for other types of cases, much more so than in Columbus, but not nearly so sharply as in Mankato. Among other types of cases, though, fines actually vary more in Austin and Tacoma than either in Columbus or Mankato.

In addition to the important role of type of offense in determining fine levels, several other factors are associated with fine levels in the courts. We view these case and judicial characteristics descriptively below, then more rigorously through multivariate analysis.

Number of Charges

Defendants face larger fines in multiple-charge cases than in single-charge cases. This is true in Columbus, Mankato and Tacoma (in Austin, a new case is filed in court for every charge). In Columbus, fine levels rise from a mean of $92 in single-charge cases to $140 in cases with 3 or more charges. A similar rise occurs in Mankato (from $110 to $152), though only a very small one in Tacoma (from $101 to $106). As the number of charges on which a defendant is convicted rises, fine levels increase significantly in all three courts.

Mode of Case Disposition

How a defendant's case is disposed—by what type of plea or trial—is also

associated with the amount of fine levied. The most clear-cut finding is the penalty associated with a jury trial. Though few in number, jury trials exact a high price from convicted defendants. In Austin, for example, the sixteen defendants who were convicted before a jury paid nearly $100 more on average than those who pled guilty (Table 4.4). The figures are equally or more stark for the smaller number of defendants in Mankato and Tacoma. Only in Columbus, where the practice of "charging rent for the use of the courtroom" is openly acknowledged by attorneys, was the penalty a modest one (in the range of $25 per defendant higher). Convictions by bench trial, by contrast, do not receive consistently higher fines. The picture with respect to different types of pleas is more mixed. Defendants who plead guilty to reduced charges receive modestly lower fines in Mankato and Austin but higher fines in Columbus and especially Tacoma, when compared with pleas to the original charge. All of these associations, however, are influenced by the relationship between casetype and mode of disposition. For example, most of the pleas to reduced charges in Columbus and Tacoma are drunk driving cases, which generally receive higher fines. Thus, conclusions about effects must await the multivariate analyses to follow.

Defense Attorney Representation

Defendants represented by a court-appointed attorney—and who are therefore categorized for local purposes as "indigent"--receive the lowest fines in three of the courts (Table 4.5). In Austin, Columbus, and Mankato, defendants represented by a privately-retained attorney or who represent themselves face larger fines. This may stem from a practical realization among courts that defendants represented at public expense don't usually have much money with which to pay a fine. In lieu of fines, community service restitution appears to be becoming an increasingly popular sanction for indigent defendants in some of these courts, particularly Mankato.

Looking at the data in Table 4.5 from a different perspective, defendants who represent themselves appear to receive lower fines than those retaining their own lawyer. This is visibly true in Austin and Mankato and probably so in Tacoma. But it should be recalled that there is a large percentage of pro se defendants in these latter two courts (Table 2.5), concentrated in minor traffic offenses. Again, a clearer view of the effects of defense attorney representation upon fine levels must await multivariate analysis.

Table 4.4 The Four Courts: Mean Fine Levels by Mode of Case Disposition

	Austin Texas		Columbus Ohio		Mankato Minnesota		Tacoma Washington	
	X Fine/sd		X Fine/sd		X Fine/sd		X Fine/sd	
Plea—to original charge	$168	(84)	$ 99	(115)	$127	(115)	$ 57	(63)
Plea—to reduced charge	157	(54)	116	(64)	91	(59)	107	(76)
Bench trial	156	(90)	92	(108)	59	(74)	102	(106)
Jury trial	244	(127)	136	(86)	171*	(144)	256*	(159)

*Less than 10 cases.

Table 4.5 The Four Courts: Mean Fine Levels by Type of Defense Attorney Representation

	Austin Texas		Columbus Ohio		Mankato Minnesota		Tacoma Washington	
	X Fine/sd		X Fine/sd		X Fine/sd		X Fine/sd	
Court-appointed	$117[a]	(52)	$ 98[b]	(79)	$ 82[a]	(70)		
							$132[d]	(114)
Private	171	(87)	114	(86)	146	(107)		
Other	166[c]	(67)	—		—		—	
Pro Se	156	(70)	125	(110)	109	(111)	74	(75)

[a]Assigned counsel.

[b]Public defender.

[c]University of Texas Law Clinic.

[d]Includes court-appointed and privately-retained attorneys. Data on type of defense attorney was not collected for Tacoma.

Judicial Variation

Defendants coming before different judges were given varying levels of fines, but the amount of the variation ranged substantially from court to court. In Mankato, the average (mean) fine imposed by the three judges varied only eleven dollars--ranging from a low of $111 to a high of $122. There was only slightly greater variation among the judges in Austin; the range was from $159 to $179. By contrast, the ranges were much wider in Tacoma and Columbus. The five Tacoma judges varied from a low of $74 to a high of $133. And the thirteen Columbus judges ranged from $77 to $146. Overall, this picture comports quite well with our discussion in the previous chapter of the role of the individual judge in the choice of sanction. There, too, we found that the individual judge made little difference in Austin and Mankato, but was much more determinative in Tacoma and Columbus.

A Multivariate Summary

The relationship between the several variables discussed above and the amount of fines imposed is presented in multivariate form in Table 4.6. The results generally confirm the tabular analyses already presented.

The sharp variations in fines by type of case (Table 4.3) are reinforced in the multivariate analysis. In all four courts, drunk driving cases contribute to higher levels of fines, even when all other variables--such as the judge, presence of defense attorney, or mode of disposition—are controlled. In several of the courts, minor traffic, theft, or miscellaneous criminal cases also contribute, usually to lower fines. Indeed, in Mankato all four types of cases effectively discriminate fine levels, accounting for most of the explained variance.

Various case characteristics make selective and small contributions to fine levels in these courts. For example, having a defense attorney contributes to higher fines in the two courts (Mankato and Tacoma) where many defendants are unrepresented. But this apparent anomaly can be explained by recalling the rather wide variation in miscellaneous traffic and criminal cases (Tables 2.4a, 2.4b). The more serious the offense, the more likely a defendant will obtain an attorney in Mankato and Tacoma.[2] This cannot be controlled even in our multivariate analysis, because of the undifferentiated nature of the miscellaneous traffic and criminal categories.

Pleading guilty rather than going to trial results in lower fines in Austin and Tacoma, when other variables are controlled. In Columbus and Mankato, however,

CONTINUED

1 OF 3

Table 4.6 Multiple Regression: Severity of Fine Level ($)

	Austin Texas	Columbus Ohio*	Mankato Minnesota	Tacoma Washington
Casetype				
DWI	.33	.19	.38	.70
Traffic	-.22	ns	-.53	ns
Theft	ns	ns	-.09	.21
Criminal	ns	ns	-.31	ns
Case Characteristics				
Plea	-.09	ns	ns	-.10
Defense Attorney Presence	ns	ns	.10	.12
Number of Charges	X	.14	.15	ns
Number of Convictions	X	.20	ns	.15
Judge				
A	X	-.09	ns	ns
B	X	-.07	ns	ns
C	ns	ns	X	ns
D	X	-.13	ns	.10
E	-.09	-.08	X	X
F	ns	ns	X	X
Other Sanctions Imposed				
Jail	ns	.10	ns	.09
Probation	.19	X	ns	.15
R	.50	.43	.87	.74
R^2	25%	19%	75%	54%
N	(933)	(1071)	(503)	(352)

*Also, Judges J (-.15), L (-.08), and N (-.07).

there is no relationships, probably because—while jury trials yield higher fines in these courts, bench trials yield significantly lower fines than guilty pleas (Table 4.4). Thus, while the effect of jury trials is large in dollars, it is small in a statistical sense because there are so few jury trials in these courts.[3]

The significance of the judicial variation reported earlier for Columbus is apparent in Table 4.6. Seven of the court's thirteen judges are distinctive (all on the lenient side) in their levying of fines, once case factors are controlled. The variation amongst judges reported for Tacoma, however, fails to materialize. Only one judge (D) remains significantly different, when other variables are controlled. Thus, we conclude that some of the variation in fine levels among Tacoma judges results from their having somewhat different cases before them.[4] The relative uniformity in fine levels among Austin and Mankato judges is reflected in Table 4.6. No judge in Mankato stands out as significantly different, and only one judge (very weakly) in Austin.

Finally, the imposition of additional sanctions generally contribute to a higher level of fine. In two of three courts, the imposition of probation is associated with a higher fine, when other factors are controlled. In the third court, Mankato, the initial bivariate relationship (Table 4.2) evaporates, because probation cases are very likely to be drunk driving cases. The impact of a jail term on fine levels is similar in direction, if slightly weaker. In Columbus and Tacoma, there is a significant effect: when a jail term is given, fines are larger. Actually, multiple sanctions--probation and fine or jail and fine--are probably the result in cases where the incident is aggravated or the offender has committed the same offense before.

The multiple regression models for the four courts differ considerably, not only with respect to individual variables but also as to overall explanatory power. In Mankato, fully 75% of the variation in fines is accounted for by the variables included in the model. That figure is a substantial 54% in Tacoma, but drops to 25% in Austin and 19% in Columbus. What this means is that fine levels are highly predictable in Mankato and substantially predictable in Tacoma. Variation in fines depends upon a few key variables, such as the type of offense with which the defendant is charged, how many different charges are involved, whether or not the defendant is represented by counsel, and before which judge sentence is imposed. By contrast, the imposition of fines appears to involve a much greater element of randomness in Austin and Columbus.[5]

When the results for the severity of sanctions (fines) are compared with the

results in Chapter 3 for the choice of sanctions, a quite similar picture emerges. In both Austin and Mankato, the type of offense structures not only the choice of sanction but also the severity of the predominant sanction—fines. For both analyses, casetype variables were the most powerful. Parallel results also emerged in Tacoma, where a hodge-podge of different variables accounted for both the choice and severity of sanction. Finally, in Columbus the identity of the judge predominated in determining fine severity, much as it did for the choice of sanction. Though overall levels of predictability (as measured by Omega^2 or R^2) vary between the two analyses, the specific variables that account for the choice and severity of sanctions are quite similar <u>within</u> courts. Across courts, though, the relative influence of type of offense, other case characteristics, and the judge vary, both for the choice of sanctions and the severity of the prime sanction, fines.

<u>Analyzing Sanctions in Drunk Driving Cases: A Closer Look at the Dynamics of Local Justice</u>

Drunk driving cases are the single most frequent type of case in each of the four courts. In the minds of courthouse actors, these cases are also usually the most serious, the ones that occupy a disproportionate amount of time, energy and concern. In the words of one Tacoma judge:

> The most serious case would be a drunk driving case with serious injuries . . . We don't have in this state felony drunk driving, except for negligent homicide. So you can have a person in this court who is a victim of a drunk driver who's a quadriplegic.

By looking in-depth at how each court handles its drunk driving cases, based upon our case file data and field interviews, we learn more about the distinctive local practices and norms that structure the delivery of justice in four communities. We also find some common patterns across most or all of the courts, which we discuss after the individual case studies.

Mankato: Getting the Charge Reduced

Jail is rarely imposed upon drunk drivers in Mankato. Only about 10% are incarcerated, but more than 80% of convicted defendants are fined. Thus, determining which factors influence levels of fines in Mankato is the central question.

The variable most sharply discriminating fine levels in drunk driving cases is the mode of disposition. Specifically, drunk driving cases that are reduced--usually

to "careless driving"--result in substantially lower fines. For the roughly 15% of such cases that were reduced during the time of our study, the average (mean) fine is $129 (sd = 44). Compare this with the $263 (sd = 47) average for drunk driving cases that were not reduced and similarly high fine levels for the few convictions resulting from bench or jury trials. It is quickly apparent that "getting the charge reduced"--though not a frequent occurrence--is the key to a lower fine. How is this accomplished in Mankato?

Getting an attorney is the key to a reduced charge in drunk driving cases (Table 4.7). Among defendants retaining their own attorney, more than one-third (36%) were able to plead to a reduced charge rather than to drunk driving; indeed, a few (6%) had their cases dismissed entirely. Those few indigent defendants for whom the court appointed an attorney also fared well. The majority pled to a reduced charge, and several had their cases dismissed. By contrast, only one pro se defendant out of 138 cases (.7%) was able to obtain a plea-reduction, and only two additional cases were dismissed. In all, the figures from our case file data are striking. Equally important, interviews with key participants in the process corroborate this picture. Virtually no unrepresented defendants obtain a reduced plea because local prosecutors have typically eschewed bargaining in the absence of an attorney. In the words of the newcomer local prosecutor who handles the bulk of the court's caseload:[6]

> I will not negotiate a case with an unrepresented defendant . . . there are things that could result which may make it look like the deal was a bad deal for the defendant and it may be an over-reach on my part, you know--a lawyer dealing with a non-lawyer . . . . I've got a lot of people who have been charged with offenses who will always call me or come in here and want to know if they can do something with this. I say I'm not going to say to you one way or the other whether we could do something with it. What I will tell you is if you want me to discuss this case with you, it has to be through an attorney. (emphasis added)

Merely obtaining an attorney, however, is no guarantee that a drunk driving charge will be reduced. For the real key is which attorney. One attorney (A) alone accounted for 11 of the 32 charge reductions in our sample, far disproportionate to the number of defendants he represented. Indeed, this attorney obtained a reduced charge in 11 of only 16 cases, or nearly 70% of the time. A second attorney (B) obtained 6 charge reductions in only 11 cases (over 50%). Otherwise, a handful of attorneys accounted for the remaining reductions. Even more striking was the large number of different attorneys among those drunk driving cases where no

Table 4.7 Mankato: The Role of an Attorney in Getting Drunk Driving Charges Reduced*

	Disposition of Drunk Driving Charges			
	Plea to Original Charge	Plea to Reduced Charge	Dismissal	(N)
Type of Representation				
Pro Se	97.8%	.7%	1.5%	(138)
Court-Appointed Attorney	27.3	54.5	18.2	(11)
Privately-Retained Attorney	58.4	36.0	5.6	(89)

*Excludes the few cases that were disposed by bench or jury trial.

$X^2 = 74.55$ (df=4)

Sig. = .001

reduction was obtained. It is apparent that many Mankato defendants were represented in drunk driving cases by attorneys who rarely practiced criminal law, perhaps a family friend or acquaintance who knew the defendant but did not know (and perhaps did not try to locate) the path to negotiated pleas. The words of Attorney A, whom we interviewed at length, are instructive regarding the "path:"

> Quite a few are reduced. I had some percentages worked up, but I don't remember what they were but it was well over 60% that we either won the case or got something better than DWI out of it. Now, I don't have any idea how my statistics would range with the overall statistics. I don't want you to believe that somehow I have some magical powers--I don't think I do. I don't think I am any superman. I think it's just a matter of being willing to look at the file and appear in court at the pre-trial. Some lawyers apparently, in my observation, just don't want to do that. Somehow they feel it's a bother or waste when they read the police report and they'll think it's locked in and they'll tell their client to just plead guilty. Being willing to show up there has all kinds of advantages. If the officer doesn't show, they lose. They can't get their chemical test in. The prosecutor may be willing to talk to you . . . Sometimes he might talk for reasons I don't know about, but I know that by just being willing to go up there and find out—I always ask—no matter how bad the case is--even if the guy is .30, I always ask him, well, have you got any deals? I tell him, this guy was pretty "careless," don't you think? I at least propose it.

Though Attorney A refers here to the newcomer prosecutor, it appears from our data that his techniques were equally as effective with the previous prosecutor. In his interview with us, Attorney A came across as a young, hardworking, articulate, no-nonsense, albeit expensive advocate. He characterized his current fee for a drunk driving case that does <u>not</u> go to trial to be in the range of $450. So defendants "pay" for an effective attorney--in the end, more than they would save directly at sentencing if their charge were reduced. Of course, they may also avoid other undesirable consequences stemming from conviction on drunk driving, including loss of license, insurance premium ramifications, and public notoriety.

Tacoma: Fines and Other Economic Sanctions

At first look, Tacoma appears to be much like Mankato. Few defendants (11%) are jailed. Charge reductions are a key to lower fines in drunk driving cases. Pleas to a reduced charge—usually, "physical control"--elicited fines, on the average, fifty dollars lower ($154 v. $207) than the bench trials which prevailed in the Tacoma court. Likewise, Tacoma appears to be much like Columbus in the

wide variation in fine levels among the court's judges.

Actually, Tacoma is unique in its handling of drunk driving cases. Fines are imposed in only a bare majority (58%) of convictions in these cases. A different economic sanction, court costs, is almost as frequently imposed. But whereas in Columbus and Austin, court costs are generally small and thus consistent with their original purpose (the Mankato court imposes no court costs upon defendants) in Tacoma court costs were imposed at very high levels--bearing little, if any, relation to costs associated with an individual case. In Tacoma, court costs were used to serve other purposes.

But which purposes? According to one judge, sentencing alternatives are expanded by the use of court costs in drunk driving cases:

> At least in this county for first time DWI offenders . . . what you did was you continued the case for a year. <u>Gave him court costs, instead of a fine</u>—the same amount as if he would have been found guilty of driving while intoxicated. Then, if at the end of a year, he had no major alcohol-related offenses or major traffic offenses, you reduced the charge to physical control. That way you had something hanging over the guy for a year. (emphasis added)

This judge (F) raises a mixture of purposes for court costs, including leniency to first-time offenders and control of recidivism through a form of bench probation. According to others within the court, however, the motivation behind this unusual use of court costs lay not in penology but in pure economic terms. These and related issues are explored in Chapter 6.

Whatever the mix of motivations, it is undeniable that court costs were imposed at high levels, often in lieu of fines, in drunk driving cases in Tacoma. In 36% of drunk driving convictions, only court costs were imposed; in another 12% of the convictions, court costs were given in addition to a fine (Table 4.8). The net result, in dollars owed by defendants, ironically was much the same. When only fines were imposed in drunk driving cases, the average (mean) fine was $210. When only court costs were imposed, the average (mean) fine was $188. When both were imposed, the average fine was $121 and the average court costs, $92. Thus, whatever the method, about $190-210 was demanded from defendants convicted—usually of a reduced charge--in drunk driving cases.

Not only were court costs imposed frequently and at high levels in many drunk driving cases, but the factors accounting for variation in court costs paralleled those for variations in fine levels. This is most apparent by examining

Table 4.8 Tacoma: Fines and Court Costs in Drunk Driving Cases

	Percent		X dollars/(sd)	
Economic Sanction				
None	6.2%		—	—
Fine Only	45.4		$210	(111)
Court Costs Only	36.0		188	(115)
Fine and Court Costs	12.4	Fine	121	(49)
		Costs	92	(28)
	100.0%			

individual judges. Judge D, who typically gave the highest fines (x = $243) in drunk driving cases also gave the highest court costs (x = $201). And Judge A, who typically imposed the lowest fines (x = $138) gave the lowest court costs (x = $122). The rank order correspondence in levels of fines and court costs in drunk driving cases among the five judges was visibly high. Thus, there is every indication that court costs in Tacoma did become, in the late 1970s, an alternative or additional type of economic sanction. Its use predominated in, but was not entirely confined to, drunk driving cases.[7]

Columbus: Who Is the Judge?

The key to getting a lower fine in drunk driving cases in Columbus bears little resemblance to the intricate processes described for Mankato or Tacoma. Getting the charge reduced—in Columbus, to "reckless driving"—has little bearing on the fines imposed. Fines for pleas to a reduced charge are about as high ($125 average) as pleas to drunk driving itself ($132 average). Likewise, the presence of counsel is not an important factor, for nearly every defendant is represented by counsel in drunk driving cases, either by a privately-retained attorney or by the public defender's office.

What matters most for the levels of fines in Columbus is the judge before whom the defendant is sentenced. Fines range from a low of $99, on average, for Judge J to a high of $176, on average, for Judge G. Not surprisingly, avoiding Judge G is a high priority for most defendants. Judge G bemoaned what he views as the creeping leniency of the court as a whole: "Fines are probably less now than ten years ago . . . because of the more lenient judges we have now." Although Judge G is fully $30 higher, on average, in his fines in drunk driving cases than any other judge on the court, a significant amount of variation remains below him.

Trials aggravate most Columbus judges toward imposing heavier fines in drunk driving cases. Though a number of judges said in interviews that they enjoyed "a good trial" as a diversion from the usual routine of case managment chores, this joy did not benefit defendants if convicted.[8] In six bench trials, defendants were fined an average of $194; in 9 jury trials, an average of $169. Both figures are much larger than the approximately $125 average for drunk driving cases which were disposed by plea. Although caution is necessary due to small numbers and the lack of statistical controls,[9] our data certainly point to a penalty for going to trial in drunk driving cases. As one member of the public defender's office remarked, "rent is charged for the use of the courtroom."

But avoiding high fines is not the only concern of Columbus defendants in drunk driving cases. Nearly half (44%) of all convicted defendants were sent to jail (almost always in addition to a substantial fine). The jail term is typically 3 or 4 days, reflecting the statutory minimum three day incarcertaion for defendants convicted on the original change of drunk driving. Unlike in Mankato or Tacoma, then, jail is a viable sanction for Columbus drunk drivers.

One important key to avoiding jail in Columbus is getting the charge reduced. Though of little utility in obtaining a lower fine (see above), a reduced charge is critical in avoiding jail. Whereas 70% of defendants who pled guilty to drunk driving were sent to jail (and fully 90% of those convicted at trial),[10] only 34% of defendants who pled to a reduced charge--typically "reckless driving"--were incarcerated.

The role that attorneys play in charge bargaining differs quite sharply from Mankato (Table 4.9). For one thing, unrepresented defendants in Columbus--though few in numbers--appear to be about as successful in obtaining reduced charges as represented defendants. Two-thirds of pro se defendants in Columbus (compared with 0.7% in Mankato) obtained a reduction, and a few (7%) gained outright dismissal of charges. Also, the type of attorney makes a slight, but statistically significant difference. Privately-retained attorneys in Columbus are slightly more likely to obtain reductions than public defenders (75% v. 63%; sig. = .005), perhaps because of greater skill or perseverance, perhaps because the clients of public defenders may have more prior drunk driving arrests and convictions. We cannot, however, determine for Columbus, because of lack of data, whether the individual attorney makes a difference (as in Mankato). Attorneys from the private bar predominantly represent Columbus defendants in drunk driving cases, and as a group are highly successful in obtaining reductions--so successful, though, that it is highly unlikely that a few attorneys account for a disproportionate share of the reductions (as in Mankato). Rather, it is more likely that attorneys across the board are successful in Columbus because charge reductions are a way of life in Columbus drunk driving cases but, by contrast, a scarce commodity in Mankato drunk driving cases.

Finally, judges do play a significant role in determining the likelihood of incarceration in drunk driving cases. This occurs not through charge reduction, because reductions are about equally prevalent in all courtrooms. Rather, once a reduction has been agreed to by the prosecutor, judges exercise their discretion as to whether or not to incarcerate (the mandatory jail term no longer applies). The

Table 4.9 Columbus: The Role of an Attorney in Getting Drunk Driving Charges Reduced*

	Disposition of Drunk Driving Cases			
	Plea to Original Charge	Plea to Reduced Charge	Dismissal	(N)
Type of Representation				
Pro Se	26.8%	65.9%	7.3%	(41)
Public Defender	32.7	62.8	4.5	(118)
Privately-Retained Attorney	19.8	74.8	5.4	(571)

*Excludes the few cases that were disposed by bench or jury trial.

$X^2 = 10.55$ (df=4)

Sig. = .03

resulting variation is quite large, ranging from Judge A who incarcerated only 6% of defendants with reductions to Judge G--the court's previously-noted tough judge--who incarcerated fully 63% of such defendants. Thus, while getting a charge reduction in drunk driving cases is usually a necessary condition for avoiding jail in Columbus, it is not sufficient. Avoiding Judge G, and several other incarceration-prone judges, is also required.

Austin: Unexplained Variation

There is a respectable amount of variation in the fines levied in Austin's drunk driving cases ($\bar{x}$ = 198, sd = 72). Nevertheless, finding the sources of that variation proved difficult. Unlike Columbus, the judge is not the critical courtroom actor in Austin. Variation in drunk driving fines, as in fines generally, is small from one judge to another (from $185 to $211, on average). Furthermore, the judges whom we interviewed acknowledged that the prosecutors and defense counsel work out most sentence decisions between themselves, leaving the judges with little more than ratification duties (refer to Chapter 3).

Getting the charge reduced to something less serious than drunk driving--such as occurs in Mankato or Tacoma--is not part of the negotiation process in Austin. The vast majority of defendants (95%) plead to drunk driving as charged, although most plead "no contest" rather than guilty. (In criminal courts, the legal effects of a "no contest" plea are identical to a guilty plea). Sentence bargaining prevails, with attention focused on the outcome--i.e., punishment--rather than on the charge.

Obtaining an attorney does not explain variations in fines, either. Nearly all defendants in Austin, whether in drunk driving or other types of cases, have an attorney. And--unlike Mankato--it is not readily apparent that one attorney typically does better than another, or that attorneys who frequently practice in the Austin courts fare better for their clients than those who rarely appear. For example, for the eight most frequently-appearing attorneys--who represented one-third of the defendants in our sample--the average fine in drunk driving cases was $189; for the dozens of other attorneys representing the other two-thirds of the defendants, the average fine was $192. One law firm was able to obtain systematically lower fines for its clients ($143 on average, sd = 47), but it represented a mere 5% of all drunk driving defendants.

In sum, the sources of variation in fines in Austin drunk driving cases cannot be identified. Perhaps other variables not available to us are important--e.g., prior

record of the defendant. Even so, prior record would seem to correlate more strongly with the imposition of jail time rather than an enhancement of the fine.[11] Perhaps a more likely influence is the identity of the prosecutor, or the working relationship between particular prosecutors and defense attorneys. In a court where judges play little role in sentencing, we should not be surprised to find little influence from a standard set of variables.

Summary

Sentence severity is a thorny issue to unravel, particularly in misdemeanor courts where a variety of different sanctions may be employed. Previous attempts at scaling sentence severity in the felony courts, though quantitatively sophisticated, seem poorly suited for adaptation to misdemeanor courts. Most defendants seem to say to their lawyer (if represented), "anything but jail." Nevertheless, the maze of other sanctions including fines, probation and community service are not easily ranked with respect to severity. Thus, analyzing which courts are the "more severe," given the range of sentences utilized, became nearly impossible. Rather, we examined fine levels and jail terms across, as well as within, the four courts.

Fine levels varied, in their central tendency and distributions, across the courts. Austin exhibited the most uniformly high fines, followed by Columbus. Fines in the smaller communities of Mankato and Tacoma were typically lower, but a significant percentage of very high fines--especially in Mankato--raised the overall average considerably. The composition of the courts' dockets was one factor accounting for these differences. The substantial minor traffic caseload in Mankato and especially Tacoma partially accounted for the generally lower fines in these courts.

The differential use of other sanctions was also a confounding factor. Fines in drunk driving cases in Columbus, for example, were relatively low compared with Mankato or Tacoma, but short jail terms were much more frequently imposed in these cases in Columbus (usually, by mandate of state law). Thus, it is difficult to conclude which (if any) of the four courts are tougher in drunk driving cases, let alone in the full range of cases that these courts handle. Rather, such an evaluation depends upon societal and defendant evaluations of the harshness of particular sanctions.

Within the four courts, the sources of sanctions in fine levels paralleled those in the choice of sanctions. The type of offense was a strong predictor of fines. In each court, DWI cases received the highest fines, often by a wide margin; in

several courts, minor traffic cases received substantially the lowest fines. The individual judge, too, accounted for some differences in fine levels, notably in the Tacoma and Columbus courts. Thus, our findings with respect to sentence severity--at least, severity of fines--are quite similar to those in Chapter 3 regarding the choice of sanctions.

Drunk driving cases provided a special opportunity to blend quantitative with qualitative data. The resultant picture highlighted some remarkable differences in the role and amount of plea bargaining, the influence of individual attorneys, and judicial sentencing philosophies. The four courts have developed quite distinctive approaches to the adjudication of drunk driving cases. Yet some patterns do emerge. Perhaps most significant is the typical intertwining of charge bargaining, attorney representation and reduced sentences (as to fines and/or jail).

This chapter brings to a close our description and analysis of sentencing practices inside the courtroom. Some of the variation within each of the four courts has been explained by reference to the type of offense, secondarily by reference to the individual sentencing judge, and marginally to an assortment of other case-related characteristics. This is so both for the choice of sanction imposed and for its severity. But the Omega^2 and R^2 measures were often quite small, indicating much variation remains to be explained.

Likewise, variations <u>across</u> the four courts have yet to be satisfactorily explained. The differing mix of each court's docket accounts for some of this variation, but much remains. Also, there are striking similarities across the four courts, such as the prevalent use of fines, not readily accounted for by the types of factors we have thus far examined. In order to reach a comparative-based explanation, we need to move beyond the courtroom to the communities in which these courts are located. More particularly, we turn to the political and economic environments within which the lower courts sentence their defendants. This neglected arena of inquiry provides, we think, the basis for better understanding of why criminal courts do what they do.

NOTES

[1] Fines refer to "net" fines, subtracting any amount suspended. Thus, the figure represents what defendants are required to pay.

[2] The presence of a defense attorney is not really a variable in Austin or Columbus, where virtually all defendants are represented.

[3] It was because of small numbers that jury and bench trials were combined in the multivariate analysis, even though their fine levels are usually quite different.

[4] Indeed, Judge D--who is the only judge to contribute to varying fine levels when other factors are controlled--recognizes that he typically gives higher fines, but qualifies his severity by saying "Unfortunately, I seem to get the lost causes." Also, unlike in the other courts the casemix of the judges for the period under study did vary significantly. One of the judges who gave lower fines, Judge C, also had many more traffic cases and fewer drunk driving cases than the other judges, for example.

[5] Or perhaps sensitivity to a wider range of variables not measured here. For example, prior record may exert a disproportionate influence on the level of fines imposed in Columbus and Austin. Regrettably, data on prior record were not readily available and, therefore, were not collected. This is one example of the limitations of studies utilizing secondary data analysis. Refer to Appendix A for further details.

[6] Our case file data encompass the years immediately preceding this prosecutor's tenure. Nevertheless, a number of judges attributed a similar policy to his predecessor.

[7] Substantial, but lower costs, were also frequently imposed in minor traffic cases.

[8] Conviction at trial in drunk driving cases occurs in excess of 80%, higher than for any other type of case in Columbus.

[9] It is possible, for example, that defendants with poorer prior records or in aggravated incidences (e.g., higher blood alcohol count or injuries to a victim) opted for bench and jury trials in drunk driving cases, thereby accounting for higher fines upon conviction. Parenthetically, most of these trial convictions also resulted in jail terms, often long ones.

[10] Presumably, 100% of such defendants should have been incarcerated, but there are still some alternatives to jail, such as <u>confinement</u> in a residential treatment program for alcohol/drunk driving.

[11] According to Judge E in Austin, defendants convicted twice for drunk driving within a relatively short span of time can expect to serve some jail fine, "about 8 days." Our case file data corroborate part of this, in that the approximately 20% of Austin drunk driving defendants who served some jail time averaged 8.5 days. Whether most or all of these defendants had a prior record, we do not know.

PART III

SENTENCING: COMMUNITY INFLUENCES

Chapter 5

COMMUNITY ATTITUDES TOWARD CRIME AND PUNISHMENT

Social scientists have long viewed the community setting as a key factor in differentiating crime rates (Shaw and McKay, 1931), social mores (Friedman, 1964), and the law enforcement apparatus (Scull, 1977). In this chapter, we examine one aspect of community--its political culture as measured through citizen attitudes toward crime and justice—and its effects on sentencing in four locales. In particular, we seek to discover the amount and types of congruence[1] between local community attitudes toward punishment and lower court sentences in these communities. Though surveys of public opinion on crime and punishment have been undertaken (see, e.g., Blumstein and Cohen, 1980; Thomas et al., 1976; Rossi et al., 1974; Gibbons, 1969), ours is one of the few instances where attitudes and court sentences from the same local jurisdictions have been compared (see also, Grindstaff, 1974).

We tapped community attitudes through a questionnaire mailed, in early 1982, to a random sample of households in the four counties whose courts we have previously described. The response rate to the survey was remarkable by almost any standards. More than 50% of the households in three of the four communities responded—65% in Mankato, 55% in Columbus, 51% in Austin. Only in Tacoma did the response fall below half, 43% (see Appendix A, Table A-2). These response rates compare well with surveys of judges and other public figures reported in the literature (see, e.g., Ryan et al., 1980). Furthermore, they are generally much higher than the aforementioned mail surveys of citizens. Blumstein and Cohen (1980), for example, received a mere 24% response from a survey of public attitudes toward punishment in Alleghany county (Pittsburgh), Pennsylvania. Grindstaff (1974) reported a 45% response from a similar survey of household heads in London, Ontario, and Thomas et al. (1976) received a 46% response from a "southeastern SMSA." Equally important, the respondents to our survey appear to be quite repre-entative of their communities. We compared our 1982 respondents with 1980 Census data, and the results indicate generally similar characteristics between county residents as a whole and our respondents (see Table A-3). Accordingly, the responses appear worthy of the serious attention we devote to them in this chapter.

Attitudes toward Misdemeanor Offenses: Do They Differ across the Four Communities?

One section of the citizen survey was directed to the offenses most common to misdemeanor courts. In particular, we queried citizens as to which type of sanction or sanctions they would impose upon convicted defendants in drunk driving, speeding, shoplifting, and minor assault cases. Respondents were given a choice of six possible types of sanctions for each offense, including jail, probation, fine, and volunteer community work. In addition, options specific to a particular offense such as suspension of driver's license and alcohol treatment for drunk driving, or victim restitution for shoplifting and assault were also provided.

We did not ask how much of a particular sanction should be imposed—e.g., how large a fine in dollars, or how many hours of volunteer community work, etc. Meaningful responses to that type of detailed inquiry would almost certainly have required much more information about the actual offense and the offender. Rather, we chose to focus on the types of sanctions to be utilized, because there are a broad range of them available to misdemeanor courts and because of the value choices underlying them. The responses reveal something about citizen preferences for "rehabilitative" versus "punitive" approaches to punishment in the lower courts. Counseling and treatment programs, volunteer community work, and probation represent rehabilitative approaches, whereas jail and fines emphasize punitive sanctions.

Table 5.1 presents the percentage of citizens in each community who would impose a particular sanction in traffic cases, specifically in drunk driving cases and in minor traffic cases such as speeding. Broadly speaking, citizens in each of the communities sharply differentiate between speeding and drunk driving, as we would expect. In speeding cases, most citizens would simply fine convicted defendants. Some would impose (usually, in addition to a fine) a driver improvement program. A small but significant percentage would suspend the driver's license of speeders, but only a few would give probation or jail. Differences in citizen attitudes toward speeding across the four communities are generally negligible.

In drunk driving cases, by contrast, citizens in all four communities would "throw the book" at defendants. This also should not be surprising, given the amount of media attention focused on drunk driving in recent years (including several segments on the popular CBS television show, "60 Minutes"). Citizens most often chose the more punitive sanctions--suspending the driver's license, fines, and jail terms—often in combination with one another.[2] Some citizens favor an alcohol treatment program, with lesser support for the use of probation or community

Table 5.1 Community Attitudes toward the Choice of Sanctions in Traffic Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Drunk Driving				
Fine	62.5%	61.6%	60.1%	57.9%
Suspend License	72.5	75.5	77.4	69.2
Alcohol Treatment	47.5	45.7	55.4	51.4
Community Service	27.5	23.8	26.2	34.6
Probation	21.7	14.6	17.9	17.8
Jail	35.8	34.4	27.4	37.4
Speeding				
Fine	84.2%	88.0%	77.8%	84.1%
Suspend License	14.2	20.7	15.6	24.3
Driver Improvement	35.8**	20.0**	32.3**	39.3**
Community Service	20.0*	9.3*	21.0*	18.7*
Probation	9.2	7.3	10.2	6.5
Jail	0.8	4.0	1.8	6.5

*Significant at .05.
**Significant at .01.
***Significant at .001.

service. Interestingly, though, there are no statistically significant differences in the choice of any one sanction (or combination of sanctions) across the four communities. Citizen attitudes toward the punishment of drunk drivers are consistently tough, favoring an eclectic array of predominantly punitive sanctions.

Table 5.2 presents the percentage of citizens in each community who would impose a particular sanction in minor criminal cases, specifically shoplifting ("less than $50 worth of merchandise") and assault ("as in a fight between neighbors").[3] Attitudes toward these two types of criminal cases and their appropriate sanctions are broadly similar. There is widespread, near-universal support for restitution in both types of cases--to pay back the store in shoplifting cases and to pay for the victim's injuries in assault cases. Otherwise, citizens are divided between fines and counseling programs, with some support for probation and community work. Jail is typically the least popular sanction for shoplifting and assault cases.

As with traffic cases, there are few statistically significant differences in preferences across the four communities. In shoplifting cases, there is more support in Austin for counseling programs and less support in both Austin and Columbus for community service. In assault cases, Austin and Columbus residents are more likely to jail their neighbors, a difference possibly attributable to the greater anonymity of urban life. In the most rural community, Mankato, there is the least support for the use of jail in assault cases. Otherwise, though, preferences in assault and shoplifting cases are similar from one community to another.

In sum, community attitudes toward crime and appropriate punishments in the lower courts are not particularly distinctive. When we examine preferences for sanctions, or combinations of sanctions, on a case-by-case basis, few differences appear. The "political culture" or, perhaps more accurately, "moral climate" of each community looks very much like the other, notwithstanding the very real differences of size, scale and geographic region among these four communities.[4]

Court Sanctions in the Four Communities: A Brief Summary

As we described in earlier chapters, fines are the predominant mode of punishment in all four courts. But the frequency with which jail, probation, and community service are used varies rather sharply across the courts. Tables 5.3 and 5.4 summarize the proportion of defendants receiving each type of sanction in the four courts.

In speeding cases, all courts use fines predominantly and virtually to the

Table 5.2 Community Attitudes toward the Choice of Sanctions in Criminal Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Shoplifting				
Fine	43.3%	51.4%	43.0%	50.0%
Restitution	77.5	74.3	76.4	81.7
Counseling	57.5**	39.9**	41.2**	38.5**
Community Service	22.5***	16.9***	35.2***	34.6***
Probation	26.7	21.6	24.2	31.7
Jail	10.8	18.9	10.9	10.6
Assault				
Fine	43.7%	42.5%	38.8%	39.6%
Restitution	84.9	80.8	82.4	88.1
Counseling	42.0	33.6	41.8	32.7
Community Service	18.5	13.7	23.0	23.8
Probation	27.7	27.4	21.8	21.8
Jail	24.4***	26.0***	9.1***	15.8***

*Significant at .05.
**Significant at .01.
***Significant at .001.

Table 5.3 Court Use of Sanctions in Traffic Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Drunk Driving				
Fine	94.2%	91.3%	84.0%	57.7%
Suspend License	NA	43.2	*	14.3
Alcohol Treatment	NA	26.9	31.5	47.4
Community Service	0.0	0.0	2.1	3.2
Probation	70.6	NA	19.3	16.3
Jail	21.0	43.9	10.5	11.5
Speeding**				
Fine	**	79.5%	88.5%	86.7%
Suspend License	**	5.9	0.0	0.0
Driver Improvement	**	NA	8.0	20.0
Community Service	**	0.0	1.2	0.0
Probation	**	NA	0.0	0.0
Jail	**	4.5	0.0	0.0

*Conviction of drunk driving leads to automatic 30 day suspension of driver's license per Minnesota statute. Work permits enabling convicted defendants to commute to work may be obtained from the courts.

**No data for Austin are presented, because there was an insufficient number of cases for analysis. Of the small number of speeding cases (n = 31), fully 96% were dismissed. By comparison, dismissals were much less common in the other sites.

Table 5.4 Court Use of Sanctions in Criminal Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Theft				
Fine	68.4%	83.2%	11.2%	50.0%
Restitution	NA	NA	NA	NA
Counseling	NA	NA	17.5%	NA
Community Service	0.0	0.0	21.2	6.3
Probation	63.6	NA	31.9	18.8
Jail	26.2	32.7	53.7	18.8
Assault				
Fine	90.9%	70.9%	8.3%	75.0%*
Restitution	NA	NA	NA	NA
Counseling	NA	NA	25.0	NA
Community Service	0.0	0.0	8.3	25.0*
Probation	40.9	NA	18.2	50.0*
Jail	31.8	30.9	58.3	50.0*

*Less than 10 cases.

exclusion of other sanctions. A few defendants in Mankato and Tacoma are assigned to driver improvement programs, and a few in Columbus have their license suspended or even go to jail. Basically, though, the courts treat defendants in speeding cases quite similarly.

The four courts are much more sharply differentiated in their treatment of drunk driving cases. Again, fines predominate in all of the courts, but the use of other sanctions varies considerably. Jail is imposed in nearly half the cases in Columbus, where state statute mandates a three day jail term for defendants unable to get a drunk driving charge reduced. By contrast, only about one defendant in ten goes to jail for any length of time in Mankato and Tacoma. License suspensions range from nearly 100% in Mankato, where state statute provides for an automatic 30-day suspension, to slightly less than half in Columbus, to a mere 14% in Tacoma.[5] The use of probation, too, varies in drunk driving cases from a high of 70% in Austin, where probation is routinely employed for all types of offenses, to less than 20% in Mankato and Tacoma. All four courts do utilize programs and clinics for drunk drivers, which focus on problems associated with alcohol. The programs themselves vary from driving clinics to residential confinement and typically include educational and counseling components.

Fines predominate also in theft and assault cases. Only in Mankato are fines infrequently used in these criminal cases. There, jail is imposed much more frequently than in any of the other courts. More than half of Mankato defendants convicted either of theft or assault serve some jail time. Probation is actively used in Austin, but typically much less so in Mankato and Tacoma. In these latter communities, community service is used, in which anywhere from 20 to 100 hours or more of work may be required to be performed for a non-profit agency. Our information on counseling and restitution is too sketchy to permit any comparisons, though we have some indication that most of the courts at least occasionally require restitution to a victim in assault or theft cases.

In sum, the four courts make quite different use of sanctions beyond the prevalent fine. The use of jail and probation, in particular, stand out as highly variable. But how, if at all, are these variations associated with the relatively similar community attitudes toward sanctions we have earlier described? We now turn directly to this question.

Congruences and Disparities between Court Sanctions and Community Attitudes

The strongest congruences between what courts do and what citizens think

they should do occur in the minor traffic offense area—speeding. 80% or more of all speeders are fined in each of the courts, and roughly 80% or more of citizens in each of the communities think speeders should be fined. Equally compelling, neither courts nor citizens believe in the frequent application of other sanctions in speeding cases. Strongest citizen support emerges for driver improvement programs, and it is these that are typically most likely to accompany fines in the few instances where courts employ more than one sanction.

Significant disparities occur between courts and citizens in drunk driving cases. In general terms, citizens in our four communities would "throw the book" at drunk drivers, imposing upon them an array of sanctions. Courts, by contrast, are more selective in their actual use of sanctions. The sharpest differences appear in the utilization of fines and jail terms (Figure 5.1). In all four courts, nearly every defendant receives some (usually a substantial) fine, but only about two-thirds or slightly fewer citizens would fine defendants. A significant minority of the populace in each community would, instead, suspend the license of convicted drunk drivers and send them to treatment programs. Correlatively, though, a significant minority—also about one-third—of each community would send drunk drivers to jail. Yet two of the courts--Mankato and Tacoma--rarely jail drunk drivers, and Austin does so only slightly more often. Only in Columbus does the percentage of defendants jailed for drunk driving equal the percentage of citizens who would send drunk drivers to jail.

The case of shoplifting presents perhaps the most interesting set of differences between citizen attitudes and court actions (Figure 5.2). In the most general terms, courts impose predominantly punitive sanctions—fine and jail—whereas the citizenry favors much greater use of restitution to the victim (store), counseling for defendants, and community service work. The latter is used by the Mankato and Tacoma courts in theft cases[6] but not nearly with the frequency the citizenry favors, and community service is not at all utilized in theft cases in Columbus or Austin. Likewise, there is strong citizen support for counseling but apparently little use by the courts.

Within this general portrait, however, there are significant cross-site differences. The Austin and Columbus courts utilize both fines and jail terms to a greater degree than citizens favor. In Tacoma, citizen preferences and court use of fine and jail parallel one another quite closely. But in Mankato, citizen preferences and court sanctions are flip-flopped. Fines are used rarely by the Mankato court, far less than citizens believe appropriate; by contrast, jail terms

Figure 5.1 Comparison of Court Sanctions and Citizen Attitudes in Drunk Driving Cases

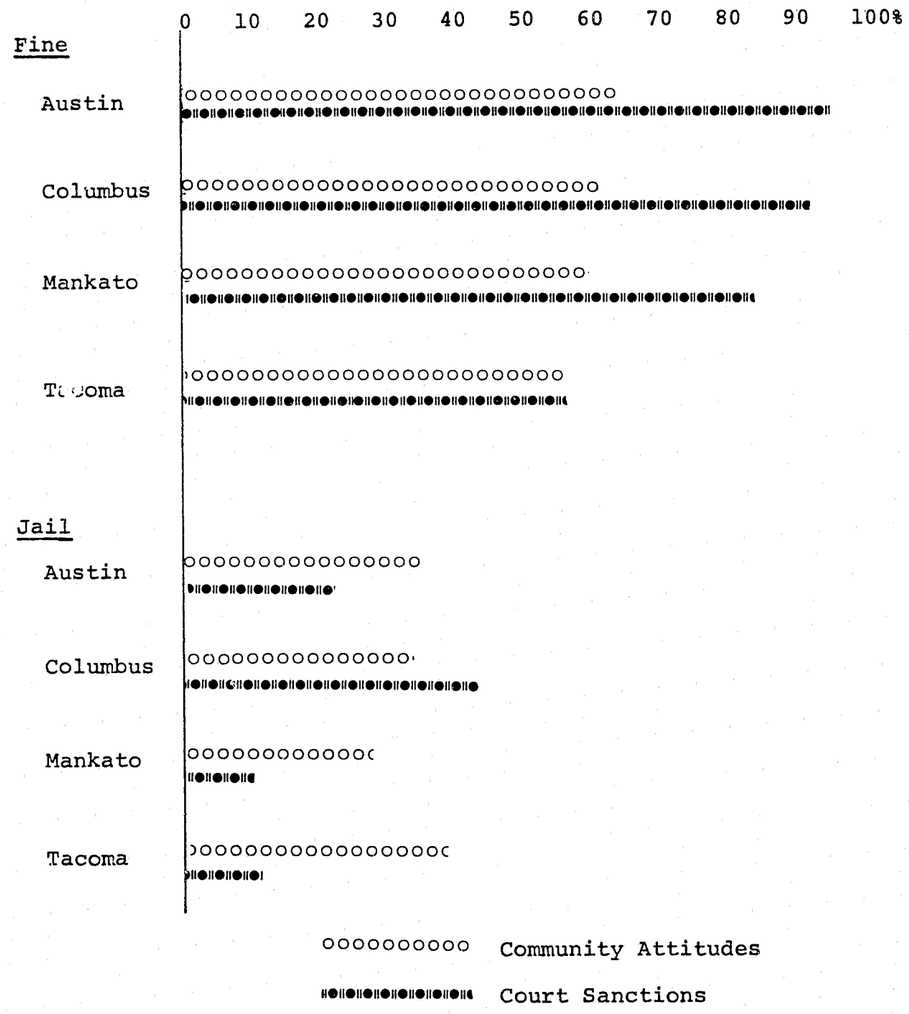
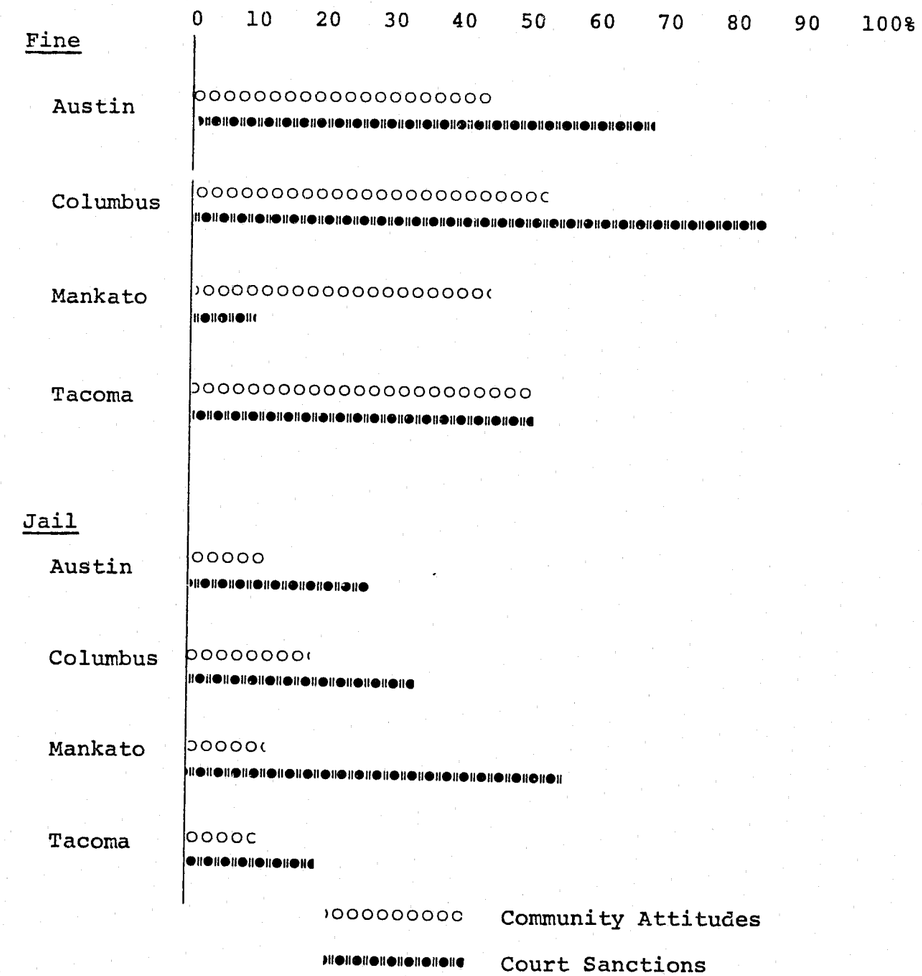


Figure 5.2 Comparison of Court Sanctions and Citizen Attitudes in Theft (Shoplifting) Cases



are used much more often by the court than what citizens suggest. Indeed, more than half of all defendants convicted of theft (54%) go to jail in Mankato. This is no accident, according to the present prosecutor:

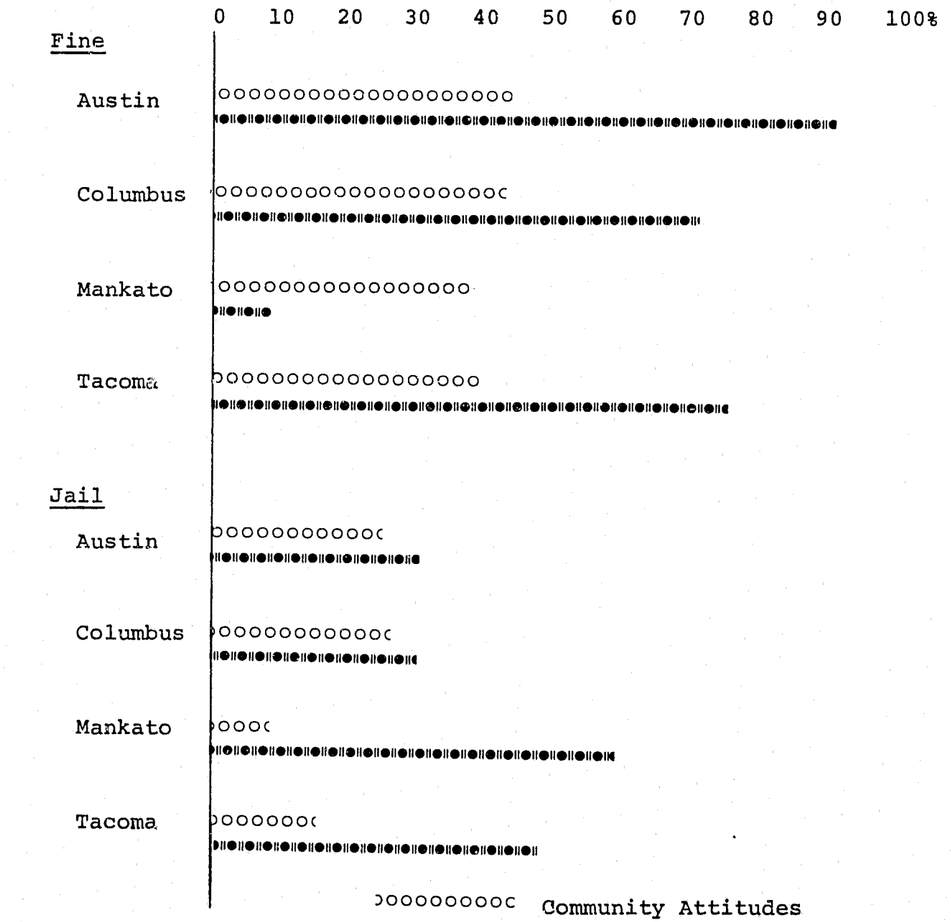
> Take shoplifting . . . there is one particular judge who feels shoplifters should not be accorded any type of lenient treatment. Now, I have a view of a first-time shoplifter who has been charged with taking something that is worth maybe a couple of dollars . . . maybe he should be treated a little bit differently than the way shoplifters were traditionally treated in this county, which was, if you got caught with it—stealing a stick of bubble gum—you were sent to jail. No questions asked. There used to be a judge here who used to do that. There is a judge here now who still feels that it is appropriate to sentence somebody to jail . . . I don't particularly agree with that, but where he's coming from, I think, and what he's reflecting, is the community's attitudes about shoplifters (emphasis added).

It is clear that there has been, and still is, strong sentiment within the Mankato court--amongst the judges--to send shoplifters to jail. (Actually, our case data indicate that all three judges currently on the bench send defendants convicted in theft cases to jail with considerable frequency). What seems equally clear, though, is that community attitudes do not support such a punitive approach. No more than one Mankato resident in ten supports jail for shoplifters. Either community attitudes have become more tolerant over time or judges simply misperceive what the community, as a whole,[7] believes appropriate in minor theft cases.

Disparities in assault cases generally parallel those in shoplifting cases. Except in Mankato, the courts fine defendants much more frequently than would the citizenry. Likewise, the courts generally jail defendants in assault cases more often than citizens would, especially in Mankato (Figure 5.3). Indeed, in one of the few statistically significant differences among community attitudes, citizens in Mankato and Tacoma would send assault defendants to jail less often than citizens in Columbus and Austin. Yet it is precisely in Mankato and Tacoma where assault defendants are most likely to go to jail. One Tacoma judge may have echoed the sentiments of his colleagues regarding assault cases, when he remarked:

> Well, I consider certain assaults more serious. The thing that always used to get to me was the attitude that . . . a husband had a right to beat his wife. Just because a man breaks his wife's nose is no less a crime than if he breaks some guy's nose in a tavern when he suddenly falls off the bar stool . . . I think your assault cases where there are aggressors and abused people . . . there is no sense to it. In my opinion, I think you have got to let them know that the

Figure 5.3 Comparison of Court Sanctions and Citizen Attitudes in Assault Cases



court isn't going to tolerate it. I think you have to look at the nature of the crime, but I consider assault cases serious.

One significant caveat is in order with respect to the disparities between the courts and citizenry in assault cases. Assault is a heterogeneous label for a variety of actions, even at the misdemeanor level. We chose only one type of possible assault case ("a fight between neighbors") as an example in our survey, and we have no way of knowing precisely what types of assaults comprise the cases before each court. Had we chosen a domestic violence incident ("a fight between spouses"), for example, or a fight between strangers, citizen attitudes might have been less tolerant--perhaps more closely conforming to the courts' more frequent use of jail.

Use of Sanctions: A General Summary

Thus far, we have examined the use of sanctions by courts and citizen attitudes toward sanctions on a case-by-case basis. With the exception of speeding cases, there appears to be little agreement between courts and the community on the appropriateness of particular sanctions. In this section, we examine citizen attitudes toward sanctions across the variety of cases and compare them with courts' use of sanctions across the full range of cases. The results provide a more explicitly comparative, and slightly different, view of congruence between community and court.

For each of five types of sanctions--fine, jail, probation, community service, and treatment programs--we created a scale measuring a citizen's predisposition to prefer that sanction. The scale was a simple summation of the responses to the four types of cases about which we queried--drunk driving, speeding, shoplifting, and assault. Thus, scale scores could, in theory, range from 0 to 4.

The scale for the use of fines was the most evenly distributed in statistical terms. Some citizens never favored the use of fines, some favored their occasional use, and some always favored the use of fines as punishment regardless of the type of case. There were no significant differences on this scale by community: citizens in Columbus, for example, were no more nor less likely to favor fines as general practice than citizens elsewhere. But there were strong differences based upon demographic factors. Across the four communities, the younger, the better-educated, renters and those not living in outlying areas of their county were significantly more likely to favor fines. Correspondingly, the older, the less well-educated, homeowners, and people living in rural areas were significantly less likely to favor the use of fines. Also, retired people, housewives, and the self-

employed were much less likely to favor fines, suggesting that accessibility to a regular income--regardless of the actual amount[8]--appears to predispose citizens in all four communities toward fines.

The scale for the use of jail was severely skewed toward the low end--most citizens either never or infrequently favored the use of jail. Thus, the variation to be explained is itself quite small. Within this framework, it is significant to note that the only discriminating variable proved to be community. Citizens in Columbus were significantly more likely to favor jail across the range of cases, whereas citizens in Mankato were the least likely. Table 5.5 compares the mean scale scores for each community with the actual proportion of defendants sent to jail in each community.

There is a striking, if not perfect, rank order correspondence between citizen attitudes and the use of jail across the four communities. Citizens are most likely to favor jail in the community in which jail is most frequently utilized in the lower courts (Columbus). Where citizens are least disposed towards jail (Mankato), jail is in fact less frequently utilized than anywhere else except Tacoma. Austin falls in-between, both with respect to citizen attitudes and court usage of jail.

The scale for the use of treatment programs was relatively evenly distributed, similar to the fine scale except tilted slightly toward the low rather than the high end of the continuum. The majority of citizens favored use of treatment programs in some but not all cases. Relatively few demographic factors accounted for any of the variation, however. Women and better-educated citizens generally preferred greater use of treatment programs, but otherwise there were no differences. There were statistically significant differences by community. Citizens in Columbus were less likely to favor treatment programs than in the other three communities. In fact, Columbus residents ranked near or at the bottom in preferences for treatment programs in all four types of cases examined (refer to Tables 5.1 and 5.2).

Our matching information on court use of treatment programs is unfortunately sketchy (see Tables 5.3 and 5.4). We do know that the Mankato court utilizes counseling programs in a substantial percentage of theft and assault cases. We also know that the Columbus court utilizes alcohol treatment programs in a smaller percentage of cases than any other court for which we have data (Tacoma, Mankato). Otherwise, we know little more due to the sketchy nature of court records. Thus, though there is some indication that the Columbus court parallels its citizens with regard to the relatively infrequent utilization of treatment

Table 5.5 The Correspondence of Community Attitudes toward Jail with its Actual Use in Four Communities

	Community Attitudes toward Jail*	Actual Use of Jail**
Columbus, Ohio	.84	34.7%
Austin, Texas	.72	27.0%
Tacoma, Washington	.69	9.4%
Mankato, Minnesota	.49	17.4%
	F = 4.261 Sig = .005	X^2 = 168 (df = 3) Sig = .001

*Mean scale score, ranging from 0 (never use jail) to 4 (use jail in all four types of cases).

**Percentage of convicted defendants given jail time by the court.

programs, we can go no further with the available data.

The scales for the use of probation and community work were both highly skewed toward the low end. For the majority of citizens, no type of case was appropriate for either probation or community work. Likewise, there was little explanation to be found for the small variation. No factors accounted for differences in citizens' preferences toward probation. Only one variable--the community--explained a small portion of the variation in preferences toward community work. Again, citizens in Columbus were the least likely to favor community work. Here, there is some congruence with actual court use of community work. Columbus does not use community work, whereas Mankato and Tacoma--where there is greater citizen support for the use of community work--did use community work in a small percentage of their cases (roughly 5%). Thus, as for the jail sanction there is a modest rank-order correspondence between citizen preferences for community work and actual court usage.

In sum, Columbus citizens are the most distinctive in their attitudes toward the range of sanctions available to lower courts. Columbus residents are the most likely, in our sample of four communities, to favor the use of punitive sanctions (notably, jail) in misdemeanor cases. Correlatively, they are the least likely to favor rehabilitation-oriented sanctions, such as alcohol or counseling/treatment programs or community service. Interestingly, the Columbus lower court mirrors these community attitudes, at least compared with the lower courts in Austin, Tacoma, and Mankato. A defendant is most likely to be sent to jail and least likely to be sentenced to rehabilitation or community service programs in Columbus than in any of the other courts.

To the extent that there is some congruence, particularly in Columbus, between community and court, what exactly is the basis--or cause--of it? At least two explanations are plausible. One is that community attitudes, at the margins, do influence court sentencing outcomes. But another explanation also consistent with our data would attribute the congruence to community information about what lower courts actually do. That is, community attitudes may mirror, rather than influence, court sentencing practices.

We have some data, although far from definitive, to bring to bear on this question. If citizens feel as they do regarding the use of particular sanctions because they are aware of their actual use, then we would expect that the attitudes of better-informed citizens would more closely parallel court sentencing. When we attempt such analysis utilizing a simple information scale,[9] however, we

do not find confirmation of the hypothesis. For example, though better-informed citizens are more likely to favor jail in Columbus (where jail is used frequently), the better-informed are also more likely to favor jail in Tacoma and Mankato where jail is infrequently used. Similarly, the better-informed are not any more likely to favor community work in those communities actually utilizing it (Mankato and Tacoma). Thus, we find little evidence to suggest that citizens are merely reflecting—in their choices—the sanctions that are already available or in widespread use in their particular community. Conversely, we have little direct evidence to support the hypothesis that community attitudes do influence court sentencing practices.

Summary

We began this part of our study with the hypothesis that the environment of the community influences, encourages, and constrains sentencing choices made by local court actors. One part of that environment is the political culture of the community, in this instance defined as the collective attitudes of the populace regarding crime and punishment. We first identified current attitudes toward lower court crimes and punishment in four communities, based upon the responses of more than 500 citizens. We then compared those attitudes with the types of sentences courts in those four communities actually imposed in the recent past.[10]

Relatively little congruence between citizen attitudes and court sentences emerged from our data analysis. In absolute terms, the percentage of citizens who would fine, jail, or impose other sanctions upon convicted defendants in drunk driving, shoplifting, and assault cases varies sharply from the sentences that the court in a particular community actually imposes. Only for the minor traffic offense, speeding, is there widespread agreement as to the type of sentence that should be given (fine). In drunk driving and minor criminal cases, there is much disagreement particularly in the use of jail. Citizens would "get tough" with drunk drivers, whereas their courts actually "get tough" with shoplifters and assaulters.

In comparative terms, there is evidence for some relationship between community attitudes and court sanctions. The most punitive citizenry appears to be Columbus, oriented more to jail and less to treatment programs and community service. Likewise, the court most likely to send a defendant to jail is the Columbus one. By contrast, Mankato citizens seem to be the least supportive of jail and more supportive of treatment programs and community work. Similarly, the Mankato court generally employs treatment programs more often and jail less

often than the other courts. Nevertheless, the number of cases in this comparison is small (n = 4), the differences are generally not large, and information about the use of sanctions by courts is sometimes sketchy. Furthermore, the aggregate preferences of citizens regarding the use of such sanctions as jail mask differences on a case basis that are not consistent with court use of these sanctions.

More generally, there are both similarities and differences in court sentencing practices across the four courts that cannot be explained by the highly similar moral climate of the four communities. With the few exceptions already noted, citizens in Austin, Columbus, Mankato, and Tacoma generally feel much the same about which types of sanctions should be used in punishing lower court defendants. But the courts themselves vary rather widely, within the framework of a near-universal inclination to use fines. Reasons for the widespread use of fines as well as for the selective and varying use of probation and jail are explored from an economic perspective in the following chapters.

NOTES

[1] We use the term "congruence" rather than "effects" to denote the essentially cross-sectional character of our data. See note 10 below.

[2] 20% to 25% of each sample, for example, favor both a fine and jail term for drunk drivers. The number of different combinations selected precludes presentation in tabular form, but we occasionally note popular choices of combinations of sanctions.

[3] The specific examples of shoplifting and assault that we chose were intended to reflect prototypical misdemeanor court offenses. The assault example is the more problematic, since there are a variety of types of assaults even at the misdemeanor level (e.g., domestic violence, bar room fights, etc.).

[4] Community attitudes toward punishment of particular crimes generally do not vary by demographic factors such as age, education, or income. Thus, we find not only general consensus across, but also within, the four communities. For a similar finding in a study emphasizing more serious offenses, see Thomas et al. (1976:116).

[5] In Austin, recent changes in statutory provisions followed by changes in local practice make it difficult even to estimate the percentage of defendants whose licenses might have been suspended. Such data were not available in court records.

[6] Note that our court-level data refer to theft cases generally, of which "shoplifting less than $50 worth of merchandise" comprise perhaps the majority but not all such cases.

[7] It is, of course, possible that judges have more contact with citizens (e.g., business proprietors) who might be more favorably disposed toward sending shoplifters to jail.

[8] Family income showed no relationship with the scale for fines.

[9] The scale is based upon a question asking citizens to assess their own level of information about their local courts, ranging from 1 (well-informed) to 5 (not at all informed). For the exact wording, refer to the survey instrument in Appendix C. It is interesting to note that while the scale is a simple one, it is highly correlated with experiences in court. The more different types of experiences citizens have in court (as witness, juror, victim, defendant or plaintiff), the more informed they believe they are. This suggests some face validity to the information question.

[10] Citizen attitudes measured in early 1982 are being compared with court sentences from the late 1970s (1977-79, depending upon the site). Though not identical in time, we believe the data are sufficiently proximate to justify the analysis presented. For example, we generally found little evidence from our field interviews conducted in 1981 and 1982 that there had been major changes in sentencing patterns from the late 1970s.

Chapter 6

ECONOMIC AND FISCAL CONCERNS OF LOCAL COMMUNITIES

The focus of this chapter is the local economic environment and how it impacts on local court sentencing. Increasingly, fiscal constraints at the local level have programmatic impacts (Levine et al., 1981). The local justice system, in most states, depends upon local financing for most or all of its livelihood (Baar, 1975). Though the judicial system, as a separate branch of government, holds a special, constitutional status, local courts--like other local public agencies--have found that they must compete for increasingly scarce public dollars. As a result, a new type of accountability for courts has emerged, and new relationships--not always favorable to courts--are being created between local county officials and local judiciaries.

This chapter explores these issues in some detail based on extensive qualitative data derived from interviews with key court and community actors (for details, see Appendix A). In particular, we examine for each of three[1] sites--Tacoma, Austin, and Mankato--the nature and extent of local fiscal crises, the responses to these pressures by county-level officials (county boards, administrators) as they impact upon the lower courts, and the courts' and judges' own responses, including the implications of fiscal constraints for sentencing.

Tacoma

Background: "Dead in the Water"[2]

By 1982, the economic climate facing the county commissioners in Pierce County was one of near-catastrophe. Throughout the late 1970s, the county's fiscal picture was poor. A deteriorating industrial base coupled with changing patterns of federalism accounted for much of the problem. A new attitude in local government reflected this concern with the county's fiscal woes. According to one judge, the new attitude was:

> . . . more business-like in approach. They look at it (the court) as more of a business than they do a service . . . money is very important to them. There is a real problem with finances. The county has very serious financial problems.

Of course, Tacoma and Pierce county Washington are not alone in feeling

economically strapped. Local government fiscal problems are part of a broader national pattern of changing federal-state-local relations. As inflation spiraled in the late 1970s, the federal government sought to reduce inflation by slowing the growth of expenditures for social welfare programs. This put additional fiscal pressures on states, and inevitably counties came to feel pressures from the state. The state of Washington exerted several kinds of pressure that had a direct bearing upon local (county) courts, including the district courts in Tacoma.

First, the state legislature sought to redefine the jurisdictional limits of the district courts by expanding the upper limit of monetary stakes that could be litigated.[3] This would have the effect of removing some minor civil cases from superior courts, which are financed substantially by the state, to district courts, which depend more heavily upon local financing. Reflecting on local ramifications in Tacoma, one judge remarked:

> . . . The legislature meets and puts added obligations (on the District Court) that were formally handled by the Superior Court judges. There is a bill right now called the Uniform Court Congestion Act . . . no one could be against court delay and congestion, until you realize the county's problem because the county has to pick up the tab.

The court administrator echoed these sentiments, noting that the county tries (albeit not too successfully) to keep the state legislature aware of fiscal implications flowing from policy changes:

> The county commission works hard at trying to get the word to the legislature that you can't keep changing the rules and not provide any money to support it. But like anything else, they make changes without providing the funding.

Secondly, the state uses court fines as a building-block for the imposition of assessments to fund state criminal justice programs. Defendants provide a captive, and popular, audience for the state of Washington's fiscal needs. Again, in the words of the Tacoma court administrator:

> In the state of Washington, the legislature will set a basic fine. They may set a basic fine of $25, but then the legislature has made various assessments. Criminal justice training will get $10. Traffic safety education will get $5. So that the penalty the individual actually pays will become $40. The whole bail schedule is broken down that way. There are various assessments that are added to any penalty to fund various other functions . . . It's almost double now, because of the assessments that are added on . . . all these other things (criminal justice training, traffic safety) are living off, or at least partially living off, the court.

In sum, local resentment builds when local courts must tax local defendants to support state programs.

County Responses

Pierce county used a two-fold strategy for coping with fiscal problems as they related to the funding of local courts. The first, and most comprehensive, was to pressure the district courts to raise still more revenue. Several judges complained, in the interviews, of direct and increasing pressure from the county board to raise fines, fees, and bail schedules. One judge remarked how direct pressures to raise revenue could be:

> . . . it is not subtle at all. It's very direct and very pointed. If revenues are down, then (they ask) why are your revenues down, can you increase your fines. There is nothing subtle about it at all . . . We are made very much aware of the fact that we are a revenue producing part of the county. It comes up all the time . . .

Another judge candidly summarized the primary value of a district court to local government:

> I know that last year as a matter of course, we (the court) paid more than our own way . . . As far as the county goes. we're a revenue generator. If we didn't generate revenue, I don't think that the county would really want a district court. They would just as soon have the state take it over, but since we do more than pay our own way, they kind of like us.

These judicial perceptions of pressure to raise more revenue seem well-supported by the views of the county budget director, the staff person who reports directly to the county commissioners. Regarding funding of Tacoma's District Court No. 1, the budget director remarked:

> Lately, the county has subsidized (the district court). The fines and forfeitures have not been adequate to pay for the expenses of all these services . . . I say (to the court), hey, your expenses are 20% more than your revenues are. How come you're spending so much and you're not doing as much work, in my opinion?

Specifically, the budget director criticized the small level of some fees and the common judicial practice of permitting payments of fines on the installment plan (e.g., $25 per week). The latter, he believed, contributed to revenue fall-off because follow-up by the court (clerk's office) was "not adequate."

In sum, revenue generation and finding ways to increase it are a primary

theme of the county's relationship with the district courts. Of course, the county recognizes the "larger" purpose for which its lower courts exist (to do justice in the disposition of traffic and minor criminal offenses). Correspondingly, though, the county insists upon a high degree of fiscal accountability and, most importantly, fiscal self-sufficiency in the operation of its lower courts.

Secondarily, the county has employed cost-control techniques for the district courts. This approach has been most visibly and vigorously applied to the probation department. Of this, one judge remarked:

> The probation department is constantly facing cutbacks and he (the Probation Director) has lost people every year since I've been here . . . We don't seem to be alone in Pierce County, that seems to be happening everywhere . . . It seems like when the commissioners cut, that's one of the first places they cut . . . They (the probation department) are really being undermined substantially by the lack of funding . . . They are under the commissioners and not directly under the court, but I have always considered the probation department as part of the court's function and so its budgetary problems are our budgetary problems.

The county budget director acknowledged that probation is both costly and one of the first targets for cutting:

> The services area—the probation department or the public defender--that is what is costing us a lot of money. I haven't cut anything yet . . . but I am coming to the point where I'm going to tell them that they are going to have to give up some of these services. A primary example is the probation service. (emphasis added).

Ironically, at the same time probation services were being, or about to be, trimmed, new personnel were assigned to the court as warrant servers for the purpose of retrieving lost revenue.

Judicial Responses and Sentencing Implications

Given Tacoma's bleak fiscal environment and the county-level pressures to raise revenue and control costs, how did Tacoma judges respond? Did they resist, accommodate, or actively embrace the not-so-subtle economic pressures placed upon them?

One area ripe for examination is the use of fines and court costs. Like our other three courts, fines were the staple punishment in Tacoma. Fines alone accounted for more than half of all convicted defendants (Table 2.8), and the level of fines was typically comparable or higher than in the other courts (Table 4.3).

But as we noted in the analysis of drunk driving cases for Tacoma (Chapter 4), defendants were often assessed substantial court costs in addition to, and in lieu of, fines. The imposition of court costs on top of fines is clearly understandable as additional revenue to the county to help offset the real costs of processing court cases. But why court costs—however large—in lieu of fines? Judges cited either penological reasons (punishment without conviction--e.g., for first-time offenders) or refused to comment at all. One knowledgeable source inside the courts added an economic perspective:

> Judges are very keenly aware of the assessments imposed by the state. For instance, in alcohol-related cases, rather than fining the person $250 and then having the (state) take their cut out of that, they may fine the person $100 and assess $150 in court costs because the (court) costs go straight to the county . . . The money stays local, rather than all of the assessments bleeding off the money to the state.

This perception of large court costs is supported both by our case data and by the judges themselves. Recall that the average (mean) court costs imposed in drunk driving cases where no fine is given was a whopping $188 (Table 4.8). This figure much more closely approximates the mean fine level for drunk driving cases than the "real" costs of court processing of drunk driving cases. And one judge confirmed that court costs ". . . go from $50 to $150, usually." Finally, though we do not know precisely when these practices began, we do know from our case data that they became more frequent over time. In 1977, only 28% of all drunk driving cases received some court costs, but for 1978 the figure rose to fully 65%. At the same time, the percentage of drunk driving cases where some fine was imposed declined from 68% in 1977 to 50% in 1978.

Ironically, though, this particular judicial response to fiscal pressures[4] has few direct consequences for sentencing, since the total economic sanction ($) imposed upon defendants did not materially change. Regardless of whether defendants paid a fine, court costs, or both, the total amount--at least for drunk driving cases was about the same. Other judicial responses to fiscal pressures did impact directly upon defendants, however. One example was the use of community service work.

Community service was introduced as an alternative sentencing option in the Tacoma court in 1977. Part of a broader set of reforms designed to bring the community and the court into closer contact, community service was established with an eye toward enhancing the rehabilitation of misdemeanor offenders (Rubin,

1981:62). In actual practice, though, community service came to be used almost exclusively for indigent defendants, who could not pay a fine or court costs. Three Tacoma judges could not be more explicit regarding the types of offenders for whom community service was reserved:

> Yeah, I use it. I use community service in most cases where I feel that jail time is not appropriate, yet there should be some monetary penalty. If they can't afford to pay the money, then that's unfair because the county doesn't have the money and you would have to consider jail and yet there should be something. So, that's why I like community service.
>
> . . .
>
> The people I use for CSR are the people who can't pay. It's an alternative way of paying a fine.
>
> . . .
>
> I use community service when a person can't afford to get fined and there is no reason, basically, to send them to jail.

Even a fourth judge, who asserted that he did not use community service exclusively for indigents, sounded quite sensitive to such charges:

> I think the CSR program--I can't speak for the other judges--but I use it an awful lot. Now, I don't mean I only use it for indigents. Don't get me wrong on that. I had a retired Navy doctor here who was out for an annual Navy Reserve meeting. He had a few drinks with his buddies. He had a pretty good breathalyzer reading. Well, . . . what I did was put him in community service.

The use of community service primarily or exclusively for defendants unable to pay a fine was without doubt motivated by fiscal concerns on the part of the judges. Fines produce revenue for the county that cannot be sacrificed for penological reasons. One judge is quite clear about this:

> I'd like to be able to use it (community service) more as simply a sentence. Whether you can pay a fine or not, I think it would be good if you paid, but still did community service work as a sentence. I would like to go and use it more just as a straight sentence. I think it would really be an appealing kind of a sentence. There are other areas in the country that are experimenting with things like doing restitution. I would like to see a lot more of that kind of thing. I think it is a more meaningful type of sentence. It's not revenue producing. (emphasis added).

In sum, whereas the shuffling of fines and court costs had no direct

sentencing implications, judicial responses to the introduction of community service visibly did. Local fiscal pressures, applied directly by county officials, clearly precluded widespread court adoption of community service, no matter how highly viewed as a tool of offender rehabilitation by individual judges.

Finally, judges voiced concern about constraints emanating from certain cost-control techniques, notably in the area of probation. Everyone interviewed agreed that probation would be, and was in fact, the first area to be cut back substantially due to budgetary problems. For one judge, this meant fewer referrals to the probation department:

> We get our statements from the probation department as to how many people are referred over to the probation department and I used to put a lot of people on probation—active probation. The last report, I think Judge _____ and myself had the fewest referrals of any of the four judges. I don't know if I do it consciously or unconsciously, but I know I'm doing fewer—a lot fewer I'm sending over. (emphasis added).

But a second judge recognized that such a response may be potentially self-defeating, because caseloads and authorized personnel are inextricably interlinked. As probation caseloads decline in response to overload, reductions in personnel may seem apropriate to budget-cutters. This judge added:

> At the beginning of the year, I cut way back on referrals. Then we were asked by the Probation Director to increase the number of referrals, which I did. I probably have more referrals to probation now than the other judges do because I took him seriously. There has to be a realistic approach. There has to be some showing of need or justification. It is almost a political process. If you cut way back in response to the cutbacks, then the caseload drops and then you have no demonstrative need other than the sort of nebulous one of 'I would like to send more people to probation.'

Of course, when heavy caseloads returned, without additional personnel, the probation department had no recourse but to use much more unsupervised probation. This resulted in a diminution of the value of probation as a rehabilitative tool, in the eyes of the judges. One judge was quite blunt about the impact of this state of affairs on defendants. Greater use of jail would be the likely result:[5]

> So, what will happen if we have no viable probation department would be that more people will go to jail. You would give the guy, instead of putting him on probation for a year, you would give the guy 30 days in jail . . . and have him serve out the 30 days and then you would have bench probation for the rest of the year but you wouldn't have any

> active reports, so you wouldn't have any follow-up on the person. A lot of these people and especially some of these people with alcohol problems that we get on a driving while intoxicated charge, they need the one year or in some cases two years probation. They need something active in their life to keep them on the straight and narrow. If you don't have a probation department to do that for you, you are going to have to throw the guy in jail and let him sit awhile and turn him loose and hope for the best.

Another judge also expressed these sentiments, remarking quite simply: "without probation, you're into the punishment mode."

In the late 1970s and into the early 1980s, judges in Tacoma's lower criminal court were confronted with a severe local fiscal crisis. As a part of the local political system, these elected judges responded. Their accommodations to local fiscal problems, and their apparent lack of substantial or active resistance, should be understood within this context.

Austin

Background: "It's Not Good Now, but Just Wait 'Till Next Year"

Austin, Texas is one of the most rapidly-growing areas of the United States. Its local economy, unlike moribund Tacoma, is thriving. Unemployment has been well-below the national average. Despite this rosy economic picture, however, Austin and Travis county began to face significant fiscal problems in the early 1980s. The prime cause seemed to be an unstretched tax base. Much more than in Tacoma, Austin relied on federal money for the funding of a number of their programs. As federal monies for these types of programs were whacked away by a new (Reagan) administration in Washington, concern was suddenly and significantly heightened. One county commissioner described the likely impact on the county's general revenue fund:

> We are facing probably tremendous budget cuts this year. The Reagan Administration has proposed some cuts which I think will be adopted by Congress. We feel right now that we will lose somewhere around $1.2 million to $1.4 million--and that will have a tremendous impact on our overall budget. This year we were able to sell some county property that we won't be able to sell next year. That generated about one million dollars, so we are already looking at being a million short. With what the Reagan administration proposed, well that's $2 million (short). So, we are talking about a big increase in our taxes.

Beyond this generalized reduction in federal funding, the Austin courts

themselves were directly dependent upon the federal government--specifically, LEAA--for funding certain program innovations. In particular, a professional court administration system adopted in the late 1970s in the Austin courts fell victim to reduced, and then eliminated, federal funds.

County Responses

The county's "bottom-line" response to the reduction of federal monies to the courts was to cover most but not all of the difference. The court administrator remarked of a budget crisis in progress:

> At this point, we've just been told that the budget will be cut . . . What they told us is that they were going to cut our budget request by $22,000 . . . It's mainly projects that we have received an LEAA grant for in past years.

There seemed, though, to be a territorial dispute as to who should determine the nature of any cutbacks in the courts or court-related operations. Judges and their representative in budgetary hearings--the court administrator--felt that this was within the court's discretion. In the words of the court administrator:

> It's our prerogative, I feel, to determine where the cutbacks will occur within the budget of the county courts. I have not wanted the funders to have that decision. I want them to take the proper exercise of their authority. If they want to cut the budget, that's one thing. Us, deciding how to live with it, is our area.

The commissioners, however, did not seem to agree. Line-item scrutiny of the court's budget appeared to be the common practice, as the following remarks by one commissioner indicate:

> I think we have a commitment . . . to support it (court administration) . . . I feel that even though there has been some talk of our commissioners about doing away with the system, that that is more political rhetoric than it is something that will actually happen. I feel that the votes are there to support the system at a reduced level.

The issue of territoriality is further complicated by the composition of the Travis county commission. It is a five member commission, with four members elected by precinct and a fifth--called "county judge"--elected county wide. This county judge, who is a lawyer,[7] does not sit on the misdemeanor courts we studied. But he does hear some cases that ordinarily are part of a judicial system (e.g., probate). Thus, the county judge serves as a potential intermediary between lower court judges and the other county commissioners in the politics of budgetary

struggles.

Personnel reductions provided the primary strategy through which the county commission attempted to cope with budgetary deficits. At the time of our research, two areas were targeted: the court administrator himself and the probation department. The position of court administrator was new (1975) and resulted from a political coup carried off by the prior chief judge. The incumbent administrator apparently lacked political constituencies of his own and/or widespread judicial support. As a result, the county opted to downgrade the position to "Court Coordinator," reduce the salary accordingly, and hire someone already on the court administration staff. These moves were projected to be sufficient to meet the expected $22,000 deficit. Perhaps not incidentally, this move by the county also had the potential to block the development of a single fiscal voice on behalf of the courts, thereby leaving the courts truly "disorganized"--not in an administrative but rather in a political sense.

The probation department was the larger target, but primarily because it had been "fattened" by LEAA grants that were no longer available. In particular, the innovative "team concept"--two probation officers of a different race and/or gender working together on a caseload--had been funded through LEAA monies. Without those monies or subsequent county support for them, 28 assistant probation officers were terminated. The probation director lamented the demise of this program:

> We used to work in a team concept, which consisted of an assistant probation officer and a probation officer . . . the officer and the assistant could not be of the same sex or the same race. The team would be racially and sexually balanced. And the advantage of that would be great in that you always had the caseload covered. One of the team was always in the office . . . Officers have to go to court but he can't be in court and in the field, whereas with a team concept, if something is happening in court and they say we need you in court now and the officer has a whole day scheduled to see people, well, that's all right. The assistant is there to handle it. Okay, now when that happens, it just causes problems.[8]

Since caseloads were reported to be approximately 200 per team, now the lone remaining probation officer from each team had an individual caseload of 200. The obvious result was reduced supervision.

What the county did not do, however, was place direct pressure on its judges to raise revenue. Commissioners disavowed such a strategy, with one saying:

> We believe in a real separation of judicial and legislative power and I haven't ever--since I have been in Travis County which has been since 1972--nine years—I have never seen the commissioners step in and say, you need to really tighten up on DWI's. You could be getting $250 in fines . . . It's not our prerogative to be meddling in judicial affairs.

Judges, too, rarely spoke of pressures to generate additional revenue despite budget deficits. Judges typically responded that they did not feel pressure to increase fines, for example, noting that the fine amount--in any event--was usually decided between prosecutor and defense attorney in plea negotiations (Chapter 3). As one judge remarked:

> We are aware that we generate a lot of revenue for the county . . . We are aware of it, but we don't get any heat from the commissioners to jack up fines.

Ironically, judges did appear to be receiving some "heat" from the probation office to help in its revenue-generation program. Subsequent to legislative authorization, the Travis county probation department began assessing user fees for its probation services. A $15 monthly fee was imposed upon defendants, most of which stayed with the county probation department. But this fee had to be imposed and enforced by judges, upon sentencing a convicted defendant to probation. Several judges complained of pressure and the accompanying constraints on their discretion. One judge said:

> We're continually getting pressure from the probation department not to waive these fees. We have the right to waive these fees or reduce these fees . . . They're putting the pressure on us. They were forced to release a vast number of probation officers and assistants earlier this year for funding reasons so they're trying to get us to make sure that people pay the money and the commissioners want them to pay. If we only had richer defendants, the system would work great.

A second judge complained of the resultant reduced discretion in waiving the probation fees for indigents or the nearly-indigent. A third judge acknowledged that, in practice, this fee is usually waived only upon recommendation by the prosecutor, and then only for second or third charges against the same defendant. This judge asserted: "Almost every probationer pays the supervisory fee."

What we see in Austin, then, is a probation department quite separated from, and sometimes at odds with, the court. Unlike in Tacoma where probation is a step-child of the court, in Austin probation is a separate fiefdom vying with the court and other public agencies for budgetary support from the county com-

mission. Judges expressed much less concern in Austin about deterioration of probation as a sentencing alternative, perhaps because fully two-thirds of Austin defendants already were being sentenced to probation (Table 2.8).

Judicial Responses and Sentencing Implications

Judges in Austin, unlike Tacoma, did not adopt any single or series of approaches to local fiscal problems. For one thing, the "problems" in Austin surfaced more suddenly and more recently. Indeed, the fiscal crisis in Austin was more in progress during the time of our research than in Tacoma, where years of fiscal problems had accumulated. Also, county responses to the impending budget deficits in Austin were much less threatening to the judges. The court administrator position was not universally supported by the judges at the time of its establishment nor universally respected at the time of the budget controversy. Likewise, the probation department cutbacks provoked no outcry of sympathy from the judges, partly because the department was something of a rival fiefdom competing with the court for resources, partly because the lost personnel were initially hired pursuant to a federal grant. Finally, the Austin judges were not institutionally capable of a unified response, even if they wished to do something. Historically, the individual judges themselves have run their courts as their private places with little or no administrative or informational coordination. The advent of a court administrator made dents in, but did not entirely break down, this fragmented structure.

The impact of the fiscal crisis on sentencing in Austin is also more nebulous. For one thing, judges are curiously insulated from most sentencing decisions by the prevalence of sentence negotiations and agreements between prosecutor and defense, which we discussed in Chapter 3. Consider the following response of an Austin judge to a question regarding the possible impact of pressures to raise revenue:

> Q. Are you under any pressure . . . as to how many fines you are supposed to collect?
>
> A. No.
>
> Q. How do you decide how much fine to impose?
>
> A. Well, generally what happens is the county attorney's office usually--in most plea negotiations, they have already bargained out, you know, how much they are going to agree to. If the state recommends a certain fine, it's almost pointless for the judge to say, well, I think that's dumb . . .

Thus, because attorneys dominate sentencing in Austin, pressures upon judges to raise revenue would probably have little effect anyway. Correlatively, pressures upon the prosecutor's office to help the system raise more money would probably be equally fruitless, since the actual sentencing decisions are decentralized within the office and diffused across a private defense bar (there is no public defender's office in Austin). In sum, both the structure and local customs of the criminal justice system in Austin facilitate--if coincidentally--a separation of fiscal concerns and sentencing decisions.

Mankato

Background: "We're Just Beginning to Feel the Pinch"

The economic and fiscal climates of Mankato and Blue Earth county were substantially healthier than Tacoma and at least modestly better than Austin. Local government in Mankato had a history of frugality, reflecting local skepticism about the expansion of credit in society at-large and, in particular, of borrowing by units of government. As the county administrator noted:

> The overall picture is not one of a bad climate in terms of Blue Earth County, since we've had accounting systems and stuff in place for the last 10 years. We've been able to forecast and have been able to do a good job of that whole process. So we're really sitting pretty good.

One of the judges concurred in this general assessment, remarking:

> I think it's (the county) financially healthy . . . I think the county is in sound financial shape, but it is dependent upon state and federal funding that may not be coming in the future. It could be a problem in the future.

Many court actors, however, did feel that the "future" referred to above might not be too far off. Concern was frequently expressed that the fiscal problems of the 1980s confronting federal, and necessarily state, government would ultimately jeopardize the solvency of county government. One county board member expressed these sentiments well:

> The state of Minnesota in terms of economics is not in a very good financial picture. The counties, on the other hand, are feeling the pinch between state and federal mandates. The state and federal governments mandate types of service delivery, and guidelines to those delivery services, and they also control the dollars that we use. That's difficult . . . We're beginning to feel the pinch.

County Responses

The county developed both short-term and long-term strategies to deal with potential fiscal crises that suddenly loomed quite possible. On a short-term basis, the county imposed a hiring freeze across-the-board for all departments. Regarding the impact of such a freeze on the courts, the court administrator observed:

> I think now the biggest things we (the county) are seeing is that the county board has put a hiring freeze on all departments. If we lose anybody, we don't get to replace them because of the federal cutbacks and the state cutbacks, and that could have a dramatic impact on us. It has had an impact already on a lot of other departments. We have just been very lucky. We haven't lost anybody yet. I know we are really going to be hurting, if we start (losing people).

A second part of the short-term strategy was to control county expenditures. County commissioners closely scrutinized the bills they were asked to pay, almost like that of an individual householder. As the chairman of the county board described this process:

> Q. What are the special duties of a chairman?
>
> A. Well, the okaying of the bills and the responsibility of seeing that the checks get out and the minutes get printed properly . . . As a board, we meet in special meetings every Tuesday and it usually lasts all day. Then at every second meeting of the month is when we okay the bills. That is on a Tuesday, and before Friday then, the chairman has to go over the bills and approve them on a computer print-out. We stamp the bill and approve the computer print-out. It is done by two people--one of the clerks and myself.

Thus, it is not surprising that large bills generated from the decisions of local judges also drew close scrutiny and concern. One particular type of expenditure--sentencing juveniles to rehabilitative institutions elsewhere in the state--drew fire from the commissioners, one of whom remarked:

> We found out that the courts were costing us a hell of a lot more money than we thought, because they were sentencing and committing out of the county. In the last couple of years that has gotten to be exorbitant in costs--it's up now . . . we pay anywhere from $90.00 to $110.00 a day for people committed--especially juveniles--committed to various institutions throughout the state.

This commissioner went on to describe a process of education, negotiation, and persuasion on the part of the county board vis-a-vis the three judges, in which the Board encouraged greater use of county facilities (i.e., the county's Department of Human Services). Judges reportedly acquiesced, but only after some political conflicts between the judges and the Director of the Human Services Department were worked out to the judges' satisfaction. (In particular, judges wanted and gained more control over probation and corrections, which had earlier been placed directly in the Human Services Department).

In addition to the county board's efforts to control costs and save money, the court itself--through its administrative staff--had a long history of anticipating non-projected expenditures and in responding with its own cost-control strategies. This was the case in jury expenses, witness fees, and particularly indigent defense representation.

For many years, Mankato operated with as assigned counsel system of indigent defense representation in its misdemeanor courts. Individual members of the private bar were assigned cases and then submitted bills for their hours. As the number of indigents grew and the definition of indigency expanded through the 1960s and 1970s, the resultant bills (which the court forwarded to the county for payment) grew enormously. As the court administrator described it:

> My assistant noticed that all of a sudden that the amount of money we were spending for court-appointed attorneys just went wild. It went from an annual expenditure of about $26,000 to what would have been $80,000 for all of 1979, if we had kept on that same path.

In order to save money, then, the county shortly thereafter moved to a public defender system (three peson, part-time) for its misdemeanor court, albeit not without initial skepticism and resistance from the local bar.

In sum, a series of short-term and one-shot maneuvers helped keep Mankato and Blue Earth county in good fiscal health. Cost consciousness, frugality, structural changes, and most recently a hiring freeze served to forestall the scenarios of economic gloom that engulfed Tacoma and threatened Austin. Nevertheless, some county officials were simultaneously looking to the long term.

Revenue generation was the center of attention among those who believed that future economic contingencies--particularly federal and state cutbacks in

funding—would impinge sharply upon local county governments in Minnesota. As one member of the county board noted:

> . . . There is a whole lot of economic pushing at the federal level and state level and here to redefine the roles of government, and judges are not going to be by-passed in that redefinition . . . I don't think that they have been brought into it yet because most of this has happened in the last year. But in that redefining of roles, the judges are going to have to be part of that. If they are not part of that, it will be done for them.

One area of potential revenue generation within Mankato courts lies in court costs, routinely imposed in our other three courts but not in Mankato. Only partial reimbursement for use of the public defender is requested by the Mankato court; no other costs are assessed against defendants. The county board, however, saw the imposition of court costs as a possible source of new, and needed/available, revenue. One board member--the leader of this effort--describes the board's request and the judicial response:

> We sat down here not long ago and said that we think you should be imposing some of these costs. There was an immediate freezing up because this is where you are crossing that line, as defined by the judges . . . You are now telling them what to do and they guard against that. They guard against that to a level of almost paranoia. At least that's the perception that I have. They are not willing--and I can say that with no ambiguity whatsoever--they are not willing to discuss that. They are not willing even informally to discuss that.

Still, the prevailing elite opinion in Mankato about the court's role in revenue generation--for the time being, at least--was more restrained than the views of several board members. The county administrator, who is directly accountable to the Board, stated:

> We do not expect and I don't believe the county board expects the courts to be paying for themselves . . . Courts are so basic that we are going to fund those systems regardless of the amount of revenues they bring in.

Likewise, the judges concurred that the Board was generally restrained with respect to the issue of revenue generation. One judge said:

> I don't think they (the county board) have ever viewed us as a revenue raiser, although we do produce revenue. I don't think any of their people would ever knock on my door and say, "We need some more money in the county coffers. Why don't you up the fines?"

Yet another judge acknowledged that the Board was aware of, and not indifferent to, revenue production by the court:

> . . . the County Board certainly sees the court's critical role not only in parking tickets but in the fines that are generated as well. We're not talking nickles and dimes. We're talking about a lot of money.

In sum, long-term planning by the county board threatened to challenge the traditional relationship between the Board and the county's judges. To the extent that additional sources and amounts of revenue were eyed by the county, judges were confronted with new--but not wholly unanticipated--challenges.

Judicial Responses and Sentencing Implications

Mankato judges were--by far--the most resistant to pressures, however subtle, to raise additional revenue. This is the perception of the county board, one of whose members remarked (above) that "they are not even willing to discuss it (revenue generation)." It is, similarly, the perception of the judges themselves. One judge summed up the feelings of the judges generally:

> We (the judges) don't feel that we are or should be revenue raisers . . . That is something we prefer not to be involved in . . . I don't think the court should be relied on as a revenue raiser. I think that prostitutes the court. If we were here to raise $180,000 for the county, you're not going to get justice. You are going to get $180,000 first, and then maybe some justice.

Even in the more sensitive area of expenditures, Mankato judges "hung tough." In one sense, they appeared to acquiesce to county board concerns about utilizing too much of rehabilitative services outside the county. But from another viewpoint, the judges may well have been using the threat of continued high costs to the county for outside services as a subtle bargaining chip to gain more administrative control over the probation department and corrections services. Ultimately, the judges accomplished this through the county's reorganization (a separate department of corrections, including probation, was created). Additionally, judges continued to use outside rehabilitative services to some degree in spite of the extra costs that accrued to the county.

To date, sentencing in Mankato appears generally unaffected by fiscal concerns or fiscal constraints. Judges are not under pressure to raise the level of fines, though they periodically have done so to retain the relative value of the punishment over time. Judges are not under pressure, or if they were, would resist

pressures, to impose fines on every conceivable defendant who might be able to pay. Rather, judges percieve and utilize a variety of possible sentencing options, especially counseling and rehabilitation-oriented approaches, relatively unimpeded by broader economic concerns. In the words of one judge:

> I have no real gripe . . . We have a lot of programs available and we have alternative service and all sorts of counseling—psychological, chemical abuse. We have employment-type services and counseling. I think the judges are pretty happy about the services we have available. We don't feel all that frustrated.

The only expressed concern by the judges focused, perhaps not surprisingly in light of our other sites, on the availability of probation. There were only two full-time probation officers, reflecting the frugal staffing patterns of the county generally. Their time was fragmented among supervision, presentence investigations, and alcohol assessments. As a result, time for supervision was minimal, and judges responded by using a sentence of probation sparingly. A local defense attorney confirmed the lack of supervision typical of most probation sentences when he remarked: "Probation in Mankato means not getting in trouble again, nothing more . . ." Yet this state of affairs did not seem to greatly trouble Mankato judges who, unlike their counterparts in Tacoma, did not see "meaningful probation" as a frequently-needed sentence.

Perhaps the seemingly wide array of other rehabilitative-type options accounted for the Mankato judges' relative lack of concern about probation. Yet not all of these options may continue to be viable in the future, as one judge himself acknowledged upon reflection:

> We had some constraints when we haven't had a coordinator available to coordinate the alternative services . . . It may be a problem in the future. We have an alternative service coordinator, I think, that is paid through federal funds (CETA) and I would anticipate that we might have trouble keeping the funding for that position. That could be a problem in the future if we don't have the option of alternative service because there's no one to coordinate it.

Nevertheless, the future is still just that in Mankato—the future. At the time of our research, judges felt confident that both sentencing and the broader mission of the misdemeanor court could be, and were being fulfilled within the economic, fiscal and resource parameters of Blue Earth county.

Summary

We began this chapter with a general concern for how economic and fiscal contingencies affected local court sentencing practices. Our comparative analysis of Tacoma (Pierce county), Austin (Travis county) and Mankato (Blue Earth county) yielded some rich insights about this relationship and about the influence of local politics as well.

The depth, and development, of the fiscal crisis varied sharply among our three sites. The crisis was full-blown and severe in Tacoma, by all accounts. It had been a problem and continued to be, with little prospect for dramatic improvement into the 1980s. The crisis, by contrast, was new to more-thriving Austin, of uncertain depth depending upon subsequent tax increases, and of uncertain duration (though certainly federal assistance, upon which Austin seemed to rely quite heavily, does not have bright prospects). And in Mankato, no fiscal crisis had yet surfaced at the level of county government, partly due to a long history of frugality and conservative fiscal and borrowing practices. Nevertheless, Mankato actors were highly sensitive to the potential impact of soon-to-be implemented federal cutbacks on the state of Minnesota.

County responses to fiscal concerns also varied sharply among the three sites, in part feuled or tempered by the depths and likely duration of fiscal problems. In Tacoma, where the problems were the most severe, the responses by the county--vis-a-vis the courts--were the most drastic and heavy-handed. Direct, unabashed requests to raise more money, impose more fines, and raise the level of fines were reported by judges and acknowledged by county officials. The separation between fiscal concerns of the local executive and legislative branches on the one hand and aggregate sentencing practices by judges was thin indeed. By contrast, Austin county officials were more sensitive to the issue of separation of powers but they could perhaps afford to be, since the fiscal crisis was new and the budget shortfall could be remedied by less drastic measures. Finally, in Mankato county officials were generally the most circumspect about their relations with county judges. Still, the prospects of "feeling the pinch" sometime in the (possibly near) future concerned local actors sufficiently so as to be thinking about long-term economic strategies and the role of the local courts therein. Hints of redefining the relationship between the county board and the judges regarding economic issues were in the air.

Judicial responses to county strategies of coping with fiscal problems also varied markedly, again consistent with the depths of the crisis and the level of response by the county. Judges in Tacoma felt engulfed by these economic

concerns, to the point of actively assisting the county in gaining more revenue by shifting fines and court costs. Judges in Austin were the most insulated from sentencing decisions, by the prosecutor—dominated local justice system, and thus also insulated from the effects of some county actions. Further, judges may have found some of the cutbacks to be to their political benefit, such as the downgrading of the professional court administrator position to a "court coordinator." Judges in Mankato most visibly challenged the county board to keep its distance, though the overtures from the board appeared slight and subtle by contrast to Tacoma.

In sum, there does seem to be a predictable relationship among fiscal crisis, county responses, and judicial responses, at least based upon our three case studies. The more severe and long-term the fiscal crisis, the more county officials try to sensitize judges to economic implications of sentencing (or break down the separation of powers, depending upon one's point of view). In turn, sensitization to fiscal concerns appears most likely to succeed with local judges when the fiscal crisis is large and unyielding. Local judges appear to recognize both the reach and the limits of their political/judicial power, which, in turn, expands and contracts much as local economies do.

This is, nevertheless, a highly preliminary mapping of these relationships. For one thing, we have data on economic and fiscal concerns for our sites only at one point in time, not over any significant period of time (e.g., 10 or 20 years). Secondly, because of that we do not know whether our sites varied in the depths of their crisis or the stage of their crisis. Austin, even Mankato, could conceivably look more like gloomy Tacoma in the years to come. Finally, we did not consider in this chapter the fiscal crisis as it applied to county jails and their role in sentencing. Problems of county jails have their roots both in local politics and local economics, and thus to some extent blend the concerns of Chapters 5 and 6. We turn to the jails in the next chapter.

NOTES

[1] Limited budgetary resources of our own regrettably precluded the study of fiscal and economic issues in Columbus, Ohio.

[2] The phrase of one respondent describing the fiscal situation in Spokane, Washington. Given Tacoma's picture, he might just as well be describing Tacoma and Pierce county.

[3] In 1982, the upper limit was $5,000. It was subsequently raised by the legislature to $10,000. One respondent attributed the legislative actions to "the Superior Court lobby," which sought to reduce its own workload, especially of very minor personal injury cases.

[4] We do not know whether or not judges were directly requested to shift fines into court costs. We have no evidence of such direct requests, but cannot exclude the possibility.

[5] But, for problems in the use of jail as a sentencing option in Tacoma, see Chapter 7.

[6] The "county judge" is a historical feature of the American south, with vestiges still remaining today. Once, the county judge was the all-powerful legislative, executive and judicial figure in local government and politics in southern communities.

[7] Most "county judges" in Texas are not lawyers.

[8] It is interesting to note that the probation director's lament has more to do with the "manpower" loss than with the demise of affirmative action, whereas presumably the federal government grant from LEAA was more concerned with gender and racial balance in the probation department.

Chapter 7

JAILS

Jails are an important component of local criminal justice systems. Increasingly, county jails have come under attack across the country for overcrowding and underfunding. As felony crime rises and sentences of incarceration increase, more pressure is placed upon the local county jails, once reserved primarily for town drunks, skid-row inhabitants and local eccentrics.

This chapter explores the state of conditions within the county jails of three of our sites--Austin, Tacoma, and Mankato.[1] We describe the background of these conditions, county responses to the problems, and then try to link jail conditions with sentencing practices in these communities' lower courts. To do so, we draw upon our case file data introduced in earlier chapters, interviews with key court and administrative actors, government data on the actual conditions of county jails, and citizen perceptions of jails from our mail survey reported in Chapter 5.

Austin (Travis County Jail)

Background: Even Arthur Young Thinks It's the Pits

Poor jail conditions have historically plagued Travis County. In mid-1974, the United States District Court, Western District of Texas, issued a federal court order finding that the Travis County Jail was in non-compliance with several Texas statutes setting minimum standards for jails. A civil rights suit brought as a class action by and on behalf of the inmates of Travis County Jail pursuant to 42 U.S.C. 1983 (see Musgrove v. Frank Civil Action #A-72-CA-166, United States District Court, Western District of Texas, Austin Division 1974) resulted in a finding that the conditions in Travis County Jail also violated inmates' rights under the federal constitution. Specifically, the District Court found that inmates confined in Travis County had their First, Sixth, Eighth, and Fourteenth Amendment rights violated. The thrust of the opinion was directed toward a combination of conditions, which when taken together subjected the inmates to cruel and unusual punishment (see Musgrove v. Frank Civil Action #A-72-CA-166; also see Pena, 1975). Of special concern to the court were the poor sanitary conditions within the jail, inadequate lighting, dangerous electrical wiring, insufficient space, inadequate staffing, and the lack of recreational facilities.

In December of 1974, Travis County Commissioners contracted with the consulting firm of Arthur Young and Company to conduct an evaluation of the jail. In addition to the deficiencies noted in the federal court order, the Jail Planning Study (Arthur Young and Co., 1975) itemized numerous other deficiencies in the facility: (1) visiting areas were extremely inadequate; (2) all functional areas were undersized, resulting in excessive congestion; (3) inmate housing areas did not meet minimum standards as they relate to space and sanitation facilities; (4) the construction of the jail resulted in a forced mixture of inmates, new arrestees, staff, visitors, attorneys, and the general public; (5) inmates, with the exception of trustees, were not issued jail clothing; (6) administrative office space was totally inadequate; (7) there were no rehabilitation programs; (8) security was minimal; (9) booking facilities were inadequate; and (10) medical facilities were inadequate.

Through the middle and late 1970s, some of these conditions in the Austin jail were slowly attended to and improved (Pena, 1975). But sheer overcrowding--i.e., inmates in excess of institutional capacity--persisted, even grew worse. In 1978, for example, inmate populations--though heavy--were typically below full capacity (Table 7.1). By 1981, the county jail typically exceeded its capacity, leading to another federal lawsuit regarding overcrowding. One judge remarked to us in 1981: "We have more people then beds . . . the Texas law says we can only have so many . . . and we are over that." The court administrator agreed: "We are locking at an overcrowded jail now."

County Responses

By the beginning of the 1980s, Travis County was clearly confronted with a crisis in its county jail, one that could not be ameliorated with more soap or better clothing for inmates. There was an institutional capacity problem. As the county commissioners struggled for long-term solutions, their short-term response was perhaps predictable. Pressure was placed on the courts to make minimal use of the jail. As one judge in the Austin misdemeanor court remarked:

> . . . there's constant pressure to keep the jail population down. The Commissioners are really concerned about that . . . about what steps are being taken to keep the jail population down.

The long-term solution pointed in the direction of renovating and enlarging the present jail or building a new jail. Given that the Travis county jail was built in 1930 (three-fourths of Texas county jails have been built more recently), discussions gravitated toward constructing a new and larger county jail. By 1978, there

Table 7.1 Inmate Population of County Jails in 1978*

	Austin Texas	Mankato Minnesota	Tacoma Washington
Rated Capacity	275	56	190
Inmate Population as of February 15, 1978	218	13	155
Inmate Status			
Awaiting Trial	171	0	60
Awaiting Sentence	15	4	0
Misdemeanor conviction	15	8	25
Probation/parole violations	17	0	70
Other	—	1	—
Average Annual Inmate Population:			
Weekday	216	15	173
Weekend	222	20	200

*Source: Census of Jails, 1978, Vols. II, III, IV. U. S. Department of Justice, Bureau of Justice Statistics, August, 1981.

were "plans" to build a new jail according to the Census of Jails, 1978 (Table 7.2). By the early 1980s, there were still plans to build a new jail according to the judges we interviewed. But as of early 1983, no ground had yet been broken.

Judicial Responses and Sentencing Implications

One area in which jail overcrowding affected judges was in pretrial release decisions. Instead of setting bonds which some defendants would not be able to make, personal recognizance was widely utilized. This alternative was not always the first preference of judges, though, as one judge noted:

> We have a practice of personal bond--of being released on your own recognizance, and 90% of the people are released and I release an awful lot of them. I release people--if it's a non-violent type of crime and they've been in town for about two weeks, I will release them on personal bond knowing full well that the chance is that they'll never show back up. Part of this is the pressure of the jail overcrowding situation. You take more of a risk now. I mean, if we had a real nice jail, you might let them stay in jail for a couple of days, whereas now, you let them go.

In fact, most inmates in Austin's county jail were awaiting trial or other disposition of their case (see Table 7.1). But these were almost without exception defendants in felony, not misdemeanor, cases.

Judges were more ambivalent about how jail overcrowding affected their sentencing decisions. One judge spoke about the infrequency with which convicted defendants were sent to jail:

> Q. Are you under any pressure not to send people to jail because of overcrowding?
>
> A. You really have to work to get yourself into jail on the misdemeanor level. I mean, you get deferred adjudication[2] and probation most times. The view around here has always been that you were entitled . . . had a right to probation. It had to be the second or third time you've done the same thing that you would go to jail. I would say that we're the most lenient jurisdiction in the state in giving probation. There is just a vast, vast bulk of people who get probation. Unless you were Charles Manson, you would probably get probation.

The Census of Jails, 1978 confirmed the low number of defendants in Austin's county jail due to a misdemeanor conviction and sentence. On the day of the census, only 15 such defendants were incarcerated, accounting for less than 10% of

Table 7.2 Conditions of County Jails: Plant Facilities and Staffing in 1978*

	Austin Texas	Mankato Minnesota	Tacoma Washington
Year Jail Built	1930	1972	1959
Plans to Renovate?	No	No	Yes
Plans to Build New Jail?	Yes	No	No**
Number of Custodial Officers	48	9	18
Ratio of Inmate Population (average, weekend) to Custodial Officers	4.6:1	2.2:1	11.1:1
Number of Service Personnel***			
Full-time	8	0	1
Part-time	5	6	1

*Source: Census of Jails, 1978. Vols. II, III, IV. U.S. Department of Justice, Bureau of Justice Statistics, August, 1981.

**Some Tacoma judges in interviews contradicted this, stating that a new jail would be built in the early to middle 1980s.

***Service personnel include doctors, nurses, teachers, ministers, etc.

the jail's inmate population (Table 7.1).

Though judges may not directly associate the leniency of the Austin court with jail overcrowding, prosecutors do. The chief prosecutor of the misdemeanor division observed:

> We don't have an official policy on it (making jail recommendations because of the conditions within the jail); however, it does enter into the back of our minds. I know it does enter into my mind. I better have a pretty good reason to send someone to jail because of that situation.

Recall further, from our discussions in Chapter 3, the enormous influence of the prosecutor upon sentence recommendations and sentencing in Austin. Because judges, for a variety of reasons, viewed themselves as essentially bound by the plea agreement presented to them, the views of prosecutors on the impact of jail overcrowding become all the more important.

Jails, Economics, and Politics

The deterioration of Austin's county jail reflects quite well the intersection of economic problems and politics. For example, the federal court in Musgrove v. Frank (1974) makes clear that the jail problems did not stem from inhumane or technically incompetent jail administrators. Rather, the court found:

> . . . the Sheriff and his personnel have been trying to improve conditions in the jail as well as the services provided to prisoners . . . (but) the County Commissioners have failed to meet their responsibilities in providing a safe and suitable jail for Travis County.

Blame was attributed to the county commissioners' failure to allocate sufficient funds for the jail. Though inadequate funding was at the root of the problem, Pena (1975:21) also cites local politics and state funding priorities as contributory:

> . . . local control has meant involvement in local politics . . . The county commissioners are responsible for approving a budget for the county jail. The money allocated to the county jail is the minimum necessary to maintain inmates. The minimum tax base coupled with the political consequences of raising taxes contribute to the funding decision. The strained relationship between the Sherif's Department and the county commissioners is also a factor. The end result is that the inadequate funding of Travis County Jail serves to discourage even the most rudimentary programs . . . the lack of state contributions towards the operation of local county jails places an inequitable financial burden on the counties.

Pena's findings are particularly important for a number of reasons. First, they suggest that conditions within the Travis County Jail were not solely a product of economic considerations, but rather of the interaction between political and economic forces. Secondly, his findings highlight that these forces are not restricted to local county politics, but also involve the political and economic relations between Travis County and the Texas state legislature. Pena (1975:22-23) continues:

> State purposes, in fact, are served by the county jail. Perhaps the paramount state purpose served is the jail's function as an intake unit for the state correctional system. Heretofore, the state of Texas has assumed financial responsibility for a felon offender only after he had been adjudicated, sentenced, and taken to a major state correctional institution. The state of Texas thus contends that it is not financially responsible for a felon offender while that offender is on pretrial, or awaiting appeal status at a local county jail . . . The county dilemma can be stated simply. Although the felon is held for the state in county jail throughout the criminal proceedings, the state denounces financial responsibility for this care. As a result, the local county jail, which has insufficient resources to provide appropriate services to begin with, must foot the bill for persons who are part of the state process.

In sum, the criminal justice system in Austin—as elsewhere—does not operate in a vacuum. It is part of a larger community environment. Its attempts to punish and rehabilitate, at least at the misdemeanor level, are tempered by economic and political conditions. The forces influencing the use or non-use of county jail parallel those described in the previous chapter for fines and other non-jail sanctions.

Tacoma (Pierce County Jail)

Background: "The Number One Topic"

Tacoma's Pierce County Jail suffered from extreme overcrowding in the late 1970s and into the early 1980s. Every judge whom we interviewed gave this assessment. The following comments are illustrative:

> The jail is awfully crowded. We've overcrowded it, and it's just a real, real problem.
>
> . . .
>
> The jail is overcrowded there, and some of the facilities are not the greatest.
>
> . . .

> It (jail space shortage) continues to be a problem . . . The jail is always about 100 people over its full capacity . . . The jail's been cleaned up quite a bit, but it's still pretty greasy.

And as one judge noted, Tacoma's jail problem is a reflection of a problem throughout the state of Washington:

> Jails are probably the number one topic in the state of Washington right now. It has gotten so now that felons are taking up 80 some percent of the space.

Table 7.1 documents, at least for 1978, these perceptions of overcrowding talked about by the judges in 1981 interviews. Indeed, the problem of overcrowding was actually worse in Tacoma than in Austin. The average weekday inmate population in Tacoma was 173, or 91% of full capacity; on the weekends, the average actually exceeded full capacity by 5%. One judge explained the source of additional pressures on the jail on weekends:

> The jail tends to fill up on weekends, because you may get picked up on Friday or Saturday night and then there is no court until Monday morning.

Jail overcrowding, while the most visible problem, is exacerbated in Tacoma by deteriorating facilities and very limited staffing. Though the jail facility is much newer in Tacoma (1959) than in Austin (1930), it still leaves much to be desired--"pretty greasy" are the words of one judge cited above. Further, staffing of the Tacoma jail is very thin, in both absolute and comparative terms. The Census of Jails, 1978 reports only 18 custodial officers (guards) for the Tacoma jail, compared with 48 such officers to guard a roughly similar jail population in Austin. The resultant ratio of inmates to guards typically hovered about 11:1 in Tacoma, compared to less than 5:1 in Austin (Table 7.2). The number of "service personnel" (including doctors, nurses, teachers, ministers, librarians, etc.) is even thinner in the Tacoma jail—only 2 such individuals, one of whom was part-time (Table 7.2). This contrasts with 13 service personnel in Austin's jail, a jail not widely praised for its resources or rehabilitative programs. In sum, Tacoma's Pierce County Jail was also at a crisis point, albeit absent the lawsuits riddling Austin's county jail.

County Responses

The short-term response in Tacoma, directed by jail officials themselves, was

to pressure judges to limit the frequency and duration of jail sentences in the misdemeanor arena. As one judge remarked:

> The first pressure was don't put people in jail on weekends any more . . . We have a mandatory one-day term for drunk driving in this state, and I have had my one-day people turned away, even in the middle of the week. I get a little letter saying that the jail is over-capacity . . . As far as flat sentence people, people you would want to put in jail for a period of time, there is a lot of pressure not to do that.

Additionally, judges noted that they were, on occasion, asked to "commute" the (short) sentences they had imposed on misdemeanor defendants. In the words of one judge:

> They (the jail) have urged us to reconsider jail time that is given . . . We get reports from the jail asking that, essentially, we reconsider the sentence after some time has been served.

Meanwhile, long-term solutions were being debated by Tacoma county officials. At one time, there were plans to renovate the county jail (Census of Jails, 1978). But, as one judge observed, a new county jail was eventually approved by the county commissioners:

> They are going to build a new jail and that's all been approved, but that can't be done until 1984 or something like that. They'll start construction next year, in 1982.

Judicial Responses and Sentencing Implications

Tacoma judges were ambivalent and frustrated, but not always in agreement with one another about the impact of an overcrowded jail on their sentencing practices. One judge initially professed little impact, but then qualified:

> If I think somebody should go to jail, I don't think 'well, should I really put him into jail because the jail is really overcrowded?' It doesn't affect me at all. I don't ever consider it. I think sometimes, when I put people into jail, about the conditions. It may or may not affect the amount of time, but I do think about it in a conscious sort of way.

A second judge, irked by the inconveniences overcrowding inflicts upon working citizens, remarked:

> If a man takes a day off work and surrenders himself and arranges for another fellow to take his 2 or 3 days of work and they (the jail) won't let him in—I want to know that. My

> next thing would be, if you can't take them in, tell me and I'll send them for community service restitution or something else . . . Justice is not being served by making him take five different days off from his job to find out when he can actually serve his time.

A third judge was more pointed still about the impact that jail overcrowding has wrought on his sentencing practices:

> I haven't put anybody in for weekends for 6 months at least, maybe 8 months. I can't remember the last one I put in for weekends.

What all judges did agree upon was that they were frustrated by the jail situation, especially in light of the recently legislated (in 1980) mandatory one day jail term for drunk driving. Judges were not happy to find out that their sentences would not always be carried out by jail administrators. As one judge sarcastically observed:

> When we sentence, we feel it should be followed out. If I give a person a jail sentence, I'm not doing it just to hear my vocal cords operate.

Another judge lamented that this legislative-executive-judicial tug-of-war over jail served to undermine public confidence in the administration of justice. This judge remarked:

> Everything is blamed on the judicial system because we're not tough enough. What I hear all over the state is that judges don't want to put people in jail. But it's the Sheriff who lets them out.

Jails, Economics, and Politics

Like Austin, Tacoma's controversies surrounding its county jail reflect a mixture of economic and political forces. The severe economic and fiscal crises facing Pierce county, described in the previous chapter, certainly account for some of the jail's problems, particularly the shortage of custodial officers and service personnel (see Table 7.2). Yet there was also a political struggle, born of economic troubles, between the state correctional system and local county jails. As one judge remarked:

> What the state is doing is leaving convicted felons who are supposed to be going to the state, stay in the county. They don't transport them. That overcrowds our jails, so we have felons down there where we should have misdemeanants. We don't have any room for the misdemeanants because the

> state can't afford to pick up the felons. Now we've even lost our work release because the sheriff and jailer don't have enough manpower . . . Ultimately, it gets down to economics.

Several Tacoma judges noted that more than 80% of the inmates in the county jail were there on felony proceedings, and many of these were awaiting transport to state correctional facilities. This is not inconsistent with data from the Census of Jails, 1978 that show less than 20% of the inmates of Tacoma's jail in 1978 were there because of misdemeanor convictions and sentences (Table 7.1).

In sum, state economic troubles and overcrowding of Washington state correctional facilities have spilled over into all the counties of Washington. Pierce county, with its shrinking industrial base and fiscal problems, is particularly ill-suited to accommodate this spillover. Similarly, the dimensions of serious (felony) crime have spilled over into sentencing alternatives that misdemeanor court judges once thought they freely possessed.

Mankato (Blue Earth County Jail)

Background: The Number One Jail

Conditions within Mankato's Blue Earth County jail contrasted sharply with those in Austin and Tacoma. First, there was no problem with overcrowding. The 56 person capacity in the Mankato jail was never approached during the year for which precise data are available. The Census of Jails, 1978 reports that the average inmate population hovered between 15 (on weekdays) and 20 (on weekends), far short of the capacity (Table 7.1). Secondly, the plant facilities and support personnel were considerably better than in Austin or Tacoma. Mankato's jail was constructed in 1972 as part of a new law enforcement center. Level of support personnel was substantial. There was almost one guard for every inmate, and only a few less service personnel (Table 7.2).

Perhaps not surprisingly, then, the Blue Earth County jail was recognized as the best facility in the state of Minnesota. It houses not only Mankato inmates but individuals from adjacent counties as well. An editor of the leading Mankato area newspaper informed us in 1982 that:

> The jail here, within the last few months, received a state award for being the top county jail in the state . . . as far as people being aware of that, anyone who reads the newspapers or watches the news would have been aware of it. It got an awful lot of coverage.

Indeed, our survey confirmed that public perceptions of the Mankato jail were

unusually positive. Nearly one-third of the respondents characterized the jail's performance as "excellent," compared with only minute percentages of Austin and Tacoma residents. Likewise, the proportion rating their local jail "poor" or close to poor was far higher in Austin and Tacoma (Table 7.3).

In sum, by all available standards—government data, newspaper reports, and citizen perceptions--the Mankato jail was a superior facility that operated with substantial personnel at a level far short of full capacity. What, then, did this mean for misdemeanor court sentencing in Mankato?

Judicial Responses and Sentencing Implications

One might expect the Mankato judges to make greater use of the facility. In fact, most of the few inmates incarcerated were there because of misdemeanor convictions and sentences (Table 7.1). Still, the actual numbers are very small. And, as our sentencing data in previous chapters indicated, Mankato judges rarely incarcerated defendants in most types of cases. Judges acknowledged that there was plenty of room to incarcerate, if they chose:

> We've never had the (space) problem, frankly, in Blue Earth County. In fact, our jail houses prisoners for other counties. We probably have the largest facility in the area. They (the inmates) are not all from this county, but at least they have not told us that they are crowded.

But most often, judges chose not to incarcerate defendants (the overall rate was lower than in any other site). Instead, the Mankato court--and community--believed in utilizing rehabilitative approaches. More counseling programs and greater use of alcohol/drunk driver programs characterized Mankato. Also, sentencing was more personalized and situation-specific in the less-harried Mankato court, as the following vignette recounted by one judge illustrates:

> The process of sentencing is a process whereby I cannot utilize too many minds. I will use every possible resource at my command within the time limits that I have to arrive at a just result in that particular case. I will use professional members of the community. For example--where people have a minor "fender-bender." Usually, it's the old man and mama sitting in the front row . . . I ask the old man now, when was the last time you had your eyes examined and back there, out of the corner of my eye, I can see mama. She's sitting there nodding and kind of smiling as though she's been trying to get this guy to go to the optometrist for a long time and he won't go. Well, then I'll say I think I'll defer sentencing and what I would like you to do is go see your optometrist and we'll give you six weeks here to do

Table 7.3 Public Perceptions of County Jails: Survey Responses in 1982

	Austin Texas	Mankato Minnesota	Tacoma Washington
Jail Performance Rating*			
Excellent (1)	1.8%	29.1%	5.4%
(2)	17.3	37.2	14.0
(3)	41.8	29.7	38.6
(4)	27.3	2.0	28.0
Poor (5)	11.8	2.0	14.0
N	(110)	(148)	(93)

*Respondents were asked to rate the performance of their local jail(s) along a scale from (1) excellent to (5) poor. For exact question wording, see the survey instrument in Appendix C.

> that and then I want a note back from him as to how your eyesight is and, if it needs correction, I think you ought to get yourself a new set of glasses. Well, by and large, here they come, six weeks from now, and mama has got a big smile on her face and he's proud as a peacock because he's got his new glasses and here's a note from the optometrist saying To Whom It May Concern--'I have substituted glasses so his vision is more corrected and so he can drive.' Well, that's just an example of it. I think that the more sophistication we can work into the sentencing process--the more the person goes away from the court, thinking that justice may have been done.

In sum, jail is reserved in Mankato for the few people charged and convicted in theft or assault cases. In the broad range of other criminal, drunk driving, and traffic cases, jail was infrequently utilized notwithstanding available space in the shiny, new Mankato county jail. Judges sought out alternative sentences and alternative rehabilitative programs, freed in Mankato from the moderate-to-intense concerns about fiscal integrity that plagued Tacoma and jolted Austin.

Summary

Jail conditions, a reflection of the economic and political environment of the surrounding community, played a significant role in sentencing decisions in the lower courts. Where fiscal problems surfaced, problems with overcrowded or low-quality county jails were never far behind. This was the case both in Tacoma with the Pierce county jail and in Austin with the Travis county jail. By contrast, in economically placid Mankato there were no problems with the county jail. Furthermore, once economic problems emerged, political struggles also developed, usually between state and local officials who both sought control over the number and types of inmates to be confined in county jails.

The impact of these problems on sentencing, particularly judicial options, appeared considerable.[4] Judges in Tacoma were constrained from utilizing jail as a frequent option, sometimes even prevented from sending defendants to jail where state law mandated that. Judges in Austin were less perturbed by the implications of county jail overcrowding, but prosecutors--who largely control sentencing in Austin--acknowledged the constraints. Only in Mankato were judges free to use jail as often as they wished, and there they chose not to do so often at all.

The use of jail--like fines and other sanctions--is responsive to larger economic and political forces. The lower courts and accompanying criminal justice systems operate within community-wide constraints. Though public opinion, as we saw in Chapter 5, may offer few constraints, the local and state fiscal climate

(Chapter 6) move courts away from costly sanctions in favor of revenue-producing sanctions. Likewise, the conditions of county jails--as demonstrated in this chapter--frequently move courts away from the use of jail as a form of punishment.

NOTES

[1]Limited budgetary resources of our own regrettably precluded the study of jails and jail conditions in Columbus, Ohio.

[2]Deferred adjudication was adopted on a wide scale in Austin after 1980, in response to a legislative change that would have required suspension of the driver's license in drunk driving convictions. Under the terms of deferred adjudication, a person pleads guilty in exchange for one year's probation. community service work, and at the end of the year, dismissal of the case; the driver's license is not suspended.

[3]In 1980, after our case file data were collected for Tacoma, the state legislature imposed a mandatory one-day jail term for conviction of drunk driving.

[4]For a recent discussion of the impact of judicial discretion on jail overcrowding, see Price et al. (1983). They conclude that "in the short run . . . sentencing behavior of the courts can affect significantly the ability of the Sheriff's Department to comply with the inmate population limit" (1983:274). It is evident from the above quotation that the problem of jail overcrowding can be viewed from several perspectives, including not only limits on judicial discretion but also on correctional officials' discretion. In this view, judges come to be seen as "contributing culprits" rather than "passive victims."

PART IV

CONCLUSIONS

Chapter 8

SUMMARY AND IMPLICATIONS

We have presented a multi-faceted view of the sentencing process in four minor criminal courts, stretching from the shores of Tacoma, Washington to the streets of Columbus, Ohio. The question of why one defendant is sentenced in a particular way and another defendant differently is tackled first. We analyze sentencing practices within four courts, emphasizing the role of legal and, to a lesser extent, extra-legal factors. Then, we address why defendants as a whole are sentenced in particular ways in one community but quite differently in others. This leads to a structural, or macro-level, perspective, in which we examine the influence of the political and economic environments surrounding these four courts. The dual approach to studying sentencing yields a more satisfactory response to questions of both differences and similarities across the four lower courts examined.

After Feeley completed his quantitative analysis of defendant sentencing in the lower criminal court of New Haven, Connecticut, he concluded (1979:146-47):

> Although some people receive harsher sentences than others, and there is considerable variation in the seriousness of the charges, there is no convenient explanation for this variation. Observed differences in sentences are not attributable to the seriousness of the charge, the defendant's record, race, sex, or age. Nor are they attributable to the practice of plea bargaining . . . . The variables tested above are relatively crude, and capture neither the subtleties of individual cases nor the peculiarities of particular personalities.

We concluded our micro-level analysis somewhat less pessimistically. One explanation accounting for a significant portion of the variance in the type and severity of sanctions imposed is both convenient and straightforward. The offense with which the defendant is charged has much to do with the eventual sentence (see also Ryan, 1980).[1] This phenomenon is particularly marked in the three courts with relatively small benches--Austin, Mankato, and Tacoma.

Traffic cases nearly always resulted in a fine, a smaller fine for minor traffic offenses such as speeding and a much larger fine for drunk driving. With the latter cases, probation or jail was often also imposed depending upon the mandates of state law or local custom. Criminal cases, though sometimes receiving a fine,

were more likely to result in jail or probation. The range of petty theft, shoplifting, assault, vandalism, and assorted other offenses were much less likely to elicit money from convicted defendants for a variety of practical as well as penological-based reasons. Offenders in these areas were more likely to be viewed by court participants to be in need of ongoing supervision or temporary restraint. Furthermore, many of these defendants could not easily open their checkbook to pay a substantial fine.

The identity of the judge also emerged as a significant explanatory factor in the Tacoma and Columbus courts.[2] The thirteen Columbus judges, in particular, espoused and practiced a variety of sentencing philosophies. These ranged from the relatively lenient to the quite severe, with one judge far above his colleagues in the use of jail and the size of his fines. We attribute this greater variety among judges in Columbus to the sheer size of the bench and to the greater politicization of judgeships in the Columbus area. In Columbus, judicial elections to the lower court are frequently contested, even when incumbents seek re-election. Furthermore, the bar, local interest and civic groups, and subsequently the newspapers, become involved in judicial elections, lending a sharper ideological thrust to contests. Debates over hardworkingness, legal qualifications, efficiency and speed, and law-and-order have been common in Columbus judicial elections during the 1970s.

Finally, we also find—unlike Feeley (1979:140)—some evidence for the significance of the seriousness of the offense. In our data, this effect is partially masked because it is distributed through several intervening variables—notably, the number of charges, the number of convictions, and the presence of a defense attorney. Nevertheless, more serious cases—i.e., those with multiple charges, multiple convictions, and a defense attorney present at disposition--result in more severe punishment, particularly in the level of fines.[3]

Despite our ability to explain some, and occasionally much, of the variation within these four courts, we share with Feeley some uneasiness about the completeness or relevance of a quantitative analysis of individual defendant sentences. Feeley's response was to utilize a qualitative approach to describe the process by which defendants came to be adjudicated and sentenced within the New Haven court. Our response, likewise, was to adopt (primarily) a qualitative approach but to direct our efforts beyond the courtroom, to the larger community in which these courts function. There is ample evidence for the hypothesis that the community influences courts and the administration of justice (see, e.g., Baar,

1975; Levin, 1977; Eisenstein and Jacob, 1977; Kritzer, 1979; Ryan et al., 1980), though little systematic testing has been done to date.

Part of the problem in the discussion and use of community influences has been the failure to operationalize key concepts and terms. Kritzer (1979:162) notes this problem with "political culture:"

> We believe that the evidence presented . . . persuasively shows that political culture should be considered at the beginning stages of research on the judiciary and should not be saved as something to be used at the end of the research process to explain the unexplainable.

Accordingly, we operationalized political culture in a clear—if narrow—way, to test potential influences on lower court sentencing. Specifically, we examined community attitudes—attitudes of everyday citizens—toward crimes and punishments in the lower courts.

Community attitudes proved to be remarkably similar in the four locales we studied. Despite differences of geography and demography, citizens in Austin, Texas; Columbus, Ohio; Mankato, Minnesota; and Tacoma, Washington expressed much the same sentiments about which type or types of punishment were appropriate for particular offenses under the jurisdiction of the lower courts. But these similarities stood in marked contrast to the sharp differences in the actual use of punishments from one court to another. Furthermore, when examined on a case-by-case basis, citizen preferences and court outcomes were often quite divergent—especially for drunk driving, shoplifting, and assault cases. Citizens were typically more likely than the courts to favor jail for drunk drivers, whereas courts were usually more likely to favor jail for shoplifters and assaulters. The use of rehabilitative-oriented punishments--such as community work, restitution to victim, or counseling and treatment programs—was less common in courts than what citizens would prefer.

Finding little evidence for the influence of community attitudes about crime on lower court sentencing, we turned to the economic environment of the communities. Here, we struck the proverbial "pay dirt." Though our analysis rests on interview data, not on actual numbers related to the fiscal or budgetary climate, we believe the convergence of perceptions among a variety of court and administrative actors lends strong credence to our argument and conclusions.

Quantitative analyses in Chapters 3 and 4 revealed heavy reliance on the use of fines in all four courts. We believe this is no accident or coincidence. Nor do we see this phenomenon to be the result of lofty penological considerations or a

response to community values. Instead, we interpret the prevalent use of fines to reflect "economic realities"--that is, taking advantage of the opportunity to raise revenue for local (county) government. Fines can be seen as another local tax—in this instance, on minor illegal behavior. Local county boards impose this tax, which is politically acceptable to the populace (see Tables C-7, C-8 in Appendix C) because the amount is relatively small and the principle is "user-based."

Revenue generation takes place within quite different political and economic contexts, however. For one thing, the locales themselves vary in how dependent they are—or choose to be—on court-imposed fines, fees, and costs. Economic conditions, themselves, may not be comparable. Tacoma's county government, for example, was mired in a financial crisis far deeper than Austin or Mankato's. Correspondingly, expectations about the courts being "self-sustaining" in Tacoma contrasted with more modest visions of revenue-capability in Austin and Mankato. The source of pressures, however direct or subtle, also varied. The county board provided the (heavy) pressure in Tacoma and the (mild) pressure in Mankato. But in Austin pressure came from the probation department, because the judicially-imposed monthly assessment ($15) accompanying probation went directly to the probation department rather than to the county general fund.

Judicial responses to these varying pressures differed from locale to locale. Judges in Tacoma acquiesced; indeed, they actively shuffled fines and court costs so as to improve the economic position of the county (and indirectly, the court) vis-a-vis the state. Austin judges, too, generally acquiesced to these pressures, albeit somewhat more reluctantly and less consistently. At times, they waived the probation fee (typically, for poor or nearly-indigent defendants), much to the chagrin of the probation department. By contrast, Mankato judges consistently resisted pressures to raise additional revenue. They rejected, for example, the suggestion of adopting court costs.

Counties were not the only level of government strapped for funds. States, too, were far from fiscal security, further jeopardizing the economic viability of their local governments. Interestingly, states sometimes used local courts as sources of generating revenue for other, criminal justice-related programs. The state of Washington was particularly active in this regard. Assessments in five and ten dollar lumps were piled on top of defendant fines to help pay for statewide programs for traffic safety education and police training, among other things. In Texas, this took a slightly different twist. There, the state imposed assessments on fines in the local courts to help raise the money to pay for state matches to federal

grants awarded to local courts. In Minnesota, the legislature was debating, but had not yet passed, a measure similar to Washington-style assessments for police training and victim assistance programs.

The other side of revenue generation is cost control. Reducing expenditures, to bring them into line with available revenue, has become a common theme at all levels of government—federal, state and local—and throughout the private economy. Courts, too, have not escaped from cost-control techniques and budgetary cutbacks. Probation departments, in particular, have been the targets of personnel cutbacks. Austin and Tacoma were hit particularly severely; in Austin, more than two dozen probation officers were laid off.

The withdrawal of federal programs and funds has also affected these courts. The demise of the Law Enforcement Assistance Administration (LEAA) and the emaciation of the Comprehensive Employment Training Act (CETA) have been largely responsible for the diminution of federal government contributions. The Austin court was especially reliant on LEAA in a number of programmatic areas, including court administration, forensic services, and probation. The result for court administration, we noted earlier, was an elimination of the professional-level court administration position in favor of an upgrading of clerical personnel. For probation, the result was severe cutbacks in staff along with the elimination of the Austin court's innovative "team" concept. The Mankato and Tacoma courts have utilized CETA personnel to varying degrees. Their elimination in Mankato could threaten the court's currently-extensive use of community service work, because in the past CETA personnel and/or volunteers have administered that program. Perhaps surprisingly, Tacoma seems to have anticipated the decline of CETA by developing strategies to incorporate either the tasks they performed or the personnel themselves into the mainstream of the bureaucracy. Still, the severe pressures on local government in Tacoma could lead to further cutbacks in the Tacoma court support staff.

Having recounted the various economic impacts, to date, on sentencing in these courts, we now turn to a brief look at the future. Three implications for misdemeanor court sentencing and the administration of justice appear on the horizon, generalizing from the economic realities of these three communities.

First, the treatment-rehabilitation ethic--so widely prevalent in American penology--appears to be in jeopardy in the nation's lower criminal courts. At a time when money is tight, priorities are being re-examined. Policy-makers see little in the way of political constituencies behind rehabilitation programs, though

the public itself is not uniformly skeptical.[4] Furthermore, criminal justice research has found less than resounding evidence of the success of rehabilitative approaches (see, e.g., Martinson, 1975). Probation, in particular, appears on the verge of being dismantled in misdemeanor courts, and community service restitution may be crushed in its infancy. Treatment programs, such as for drug or alcohol-related offenses, may survive only if user costs are greatly increased or if existing local welfare and human service bureaucracies absorb criminal justice system defendants.

Secondly, the use of jail for convicted misdemeanants may become a luxury of the past. Except where state law mandates short-term incarceration (as increasingly appears to be the case with drunk drivers), the discretionary use of jail may be rare indeed. If our locales are at all representative, many local jails are teeming with felony defendants who either have been sentenced or are in custody awaiting the disposition of their case.[5] With serious crime on the increase and measures to limit bail opportunities widespread in the states, we can only expect the pressures from felony defendants on county jails to grow worse. In hard ecomonic times, and especially in places whose jails are already overcrowded, misdemeanor defendants are likely to be the beneficiaries.[6] If defendants cannot be jailed and treatment programs diminish, fines will become the staple of punishment in the lower courts to a degree even greater than the current situation. This may not necessarily lead to much more revenue, however. Rather, difficulties in collection from poor and transient defendants are more likely (see Hillsman et al, 1982).

Criminal court proceedings have often been likened to morality plays (Erikson, 1966; Bennett and Feldman, 1981). But we have found that the proceedings are played before a backdrop of politics and economics, in which judicial discretion in sentencing will be increasingly curtailed. Legislative and jurisprudential activities as well as the allocation of scarce budgetary resources are becoming major contributing factors to this process. Federal court decisions limit the use of overcrowded or unsafe jails, the incarceration of defendants unable to pay fines, and the incarceration of defendants without counsel. All of these court decisions are particularly relevant to misdemeanor court sentencing. At the state level, legislators are becoming increasingly restive over the public outrage at drunk driving. The result probably will be tougher statutes that (like Ohio's and, more recently, Washington's) mandate incarceration--even if for a short period--of defendants convicted of drunk driving. Though charge reductions will always be

potentially available to circumscribe legislative intent, this too may be more difficult to accomplish under the glare of increased visibility. Scarce budgetary resources at the federal, state, and local levels are, as we have already noted, likely to impair the use of treatment programs and other costly-to-administer sentencing options such as community work. In short, judges in the lower courts--for better or worse--will find it increasingly difficult to do what they would really like to do with the defendants who come before them.

More generally, what is threatened is the quality of judicial independence, long revered as the hallmark of American justice. The Constitution's idea of separation of powers seems, with little doubt, violated by pressures upon the courts from legislative sources to raise more money and from executive sources to forego the professional, technical, and support staff needed to implement alternative sentencing options. Most judges in these courts believed this, as did some other court participants. On the other hand, there may be only a fine line between judicial independence and judicial hegemony. Political theorists and commentators have long argued and continue to argue (Abraham, 1981) that the legislature's "power of the purse" is one of its few effective checks against an unresponsive or overbearing judiciary. Whether the courts should be treated at budget time like every other agency or in a special category reflective of their status as a separate branch of government is a question being hotly debated in local communities these days. The lack of consensus on this issue among policy-makers only parallels the lack of consensus in the polity at large (see Table C-5 in Appendix C).

Implications for Research

Our findings and conclusions have implications for several bodies of research. For sentencing research, we would suggest a closer scrutiny of the variables comprising standard quantitative analyses. The research that we have reported here strongly indicates that contextual factors qualify or alter the meaning of variables. This is particularly true with respect to sanctions. For example, fines have typically been used to connote the economic penalty imposed upon convicted defendants. But we have found the increasing import of court costs, especially in Tacoma where they are often being used in lieu of fines. The meaning of probation is also changing, as departments move increasingly to unsupervised probation in the wake of personnel cutbacks. Jail terms, too, become ambiguous when there is no certainty, as in Tacoma, that they can or will be enforced. These are but a few of many examples that emerge from our comparative field-based research. For every

effort we made to insure comparability from site to site in the meaning of key variables, we found disturbing loose ends that could not readily be tied together. Future research, even case-studies, should pay closer attention to what sentencing and related variables actually mean. In particular, qualitative methods should be used to supplement quantitative analyses wherever possible (see also Feeley, 1979; Mather, 1979).

Much research has taken place during the past decade on the influence of legal versus extra-legal factors on sentencing. Those interested in extra-legal influences have examined such offender characteristics as age, race, gender, and socio-economic status to determine whether disparities in treatment exist between classes of defendants. The research in this area has yielded some important findings, but not without much (perhaps inevitable) methodological debate (Spohn et al., 1981). Thus, we think that some resources should be redirected toward the study of macro-level, extra-legal influences. Our research indicates that cross-community variations in sentencing are not well-explained either by differences in legal factors such as the type or seriousness of offense or differences in the demographic backgrounds of defendants. Rather, sentencing variations are responsive to extra-legal environmental conditions. The economy is but one of several possible areas of research, and ours is but one of the first words on economic factors. The potential for theoretical contributions to our understanding of justice seems much greater, at this point in time, by moving systematic empirical inquiry beyond the courtroom.

Finally, our research speaks in a limited way to the community/political culture literatures of sociology and political science. Communities may not be so distinctive in their political cultures--in their values and attitudes about politics and public policies (like crime)--as previously supposed. It has been commonplace to attribute unexplained or peculiar differences in sentencing to the--usually unknown--normative climates of communities (see, e.g., Levin, 1977; Wheeler et al., 1982). But our research points, if in a tentative and preliminary way, to consensual attitudes about crime and punishment across four communities quite disparate in their demography and geography. Attitudes about drunk driving, shoplifting, assault, and speeding--the relative seriousness of these offenses as well as the most appropriate punishments--are almost invariant from one community to another.

Policy Implications

Our research also has a range of policy implications, some of which are

implicit in earlier remarks. Rather than making policy recommendations about the operation of the lower criminal courts, we instead map out implications for several not-so-obvious policy areas.

The first concerns research and implementation of sentencing guidelines. In an effort to reduce wide judicial differences in sentencing at the felony level, formal quantitative guidelines were developed, tested, and implemented in several federal district courts (see Kress, 1980). The purpose of the guidelines was to establish a precise range of acceptable sentences for different categories of offenders and offenses, usually probation or months/years in prison. The sentences were developed from penological considerations--rehabilitation, punishment and deterrence in some combination. Likewise, some states have recently begun to develop and implement guidelines for their felony, and occasionally, lower courts (see Criminal Courts Technical Assistance Project, 1980). Guidelines serve a useful purpose in the sentencing process, even if their use is only voluntary or selective. But such guidelines will need to become increasingly sensitive to the implications of economic realities, if they are to be at all viable. Judges do not sentence defendants to jail or prison merely, as one put it, to "hear their vocal cords operate." Resource availability at the state and local levels especially will have to be factored into the equations that develop what kinds and how much of sentences will be imposed. In particular, input from county commissioners and administrators as well as sheriffs and corrections officials will be essential.

A second area of policy implications focuses on the methods for court financing. As a response to reform pressures for the unification of state courts, local financing of courts has been urged to give way to state-level financing (see, e.g., Berkson and Carbon, 1978). Baar (1975:116-17) observed a small trend toward increased state financing of courts in the early 1970s. What would be the implications for political and economic considerations, if such a trend were to continue or accelerate?

Many reformers regard locally-financed courts akin to political cesspools in which judicial independence is severely compromised. Shifting the budgetary battleground to the state level, however, would seem to do little more than shift the arena--but not particularly the amount or intensity--of politics. In fact, we know sufficiently little about these political processes that only sheer speculation is possible. But we do know that state financing is no panacea for the woes of interest group pluralism or the complexities of federalism. Local county board members would lose control not only of expenditures (which they might gladly

yield) but also of revenue. As one consequence, locales whose courts are effective at revenue-generating might find themselves helping to fund poor counties in other parts of their state, if some kind of per capita factor were to prevail in the state allocation process. Indeed, the uncertainties of interest group politics at the state level are such that substantial resistance to state financing can be expected. Thus, perhaps local politics will continue to flourish in most states, where courts remain primarily financed from local treasuries.

Concluding Note

Our study of sentencing in four lower criminal courts accomplishes several important goals. It is the first comparative study of what can accurately be called "America's most neglected courts" (President's Commission on Law Enforcement and the Administration of Justice, 1967). The four courts we studied are quite different in many aspects of their sentencing practices. These differences—identified earlier in some detail--indicate the value of multi-site studies and, thus, the limitations of case studies. Furthermore, in some instances patterns to these differences emerged, especially ones linking size of community with the sentencing process. Another key goal was to expand the object of analysis beyond the confines of the courtroom or the courthouse. We examine community influences--both political and economic—on the aggregate sentencing features of each court. Yet more remains to be done. Much of our research was necessarily exploratory and limited. We hope to have laid some groundwork for future studies of lower criminal courts and to provide alternative directions for analyses of the adjudication and sentencing processes.

NOTES

[1] Feeley (1977:128) classified his offenses only by a generic label (person, property, morals, order, and justice), perhaps accounting for some of his negative findings and conclusions.

[2] Note also that Feeley (1979:128) did not use the identity of the judge, but only the political party affiliation of the judge, as a potential explanatory variable. For the importance of the judge in sentencing in felony courts, see Eisenstein and Jacob (1977).

[3] Feeley's (1979) analysis is limited, because his "sentence severity" scale has only five points on it, and fines are distinguished only by being over or under $50.

[4] Our survey data reveal that citizens would sooner reduce clerical and administrative staff in courts than treatment or probation programs or staff. See Table C-6 in Appendix C.

[5] Price et al. (1983) comment on how widespread the jail overcrowding problem is nationally, noting that "the forces that lead to jail overcrowding tend to be general and to cut across the unique characteristics of particular jurisdictions" (1983:223).

[6] Not all misdemeanor defendants are likely to benefit equally. The limited jail space available for convicted misdemeanants will probably be reserved for the poor or frequent recidivists, or both. At present, community service stands as an alternative to incarceration for the poor (see Grau and Kahn, 1980), but if personnel cutbacks continue, these programs will be in immediate jeopardy.

APPENDIX A

METHODS

Appendix A

METHODS

We utilized a combination of quantitative and qualitative methods to develop the data reported in this study. In significant part, we built upon existing data for these four courts which had been collected as part of a previous study of misdemeanor courts by the American Judicature Society and the Institute for Court Management (Grant No. 78-NI-AX-0072 from the National Institute of Justice). For the results of this research, see Alfini (1980) and Rubin (1981).

Quantitative: Case Files

Our samples of cases from the four courts are highly comparable, though they were collected as part of the earlier-mentioned study (see Alfini, 1980; also, Ryan, 1980). All cases were adjudicated in the late 1970s, somewhere between 1977 and 1979. All cases were of the post-arraignment character; that is, they were disposed sometime after the defendant's initial appearance (cases disposed at arraignment were next-to-impossible to locate in court files, if indeed any files existed for them). And all cases either were randomly sampled from larger pools or, in the instances of Columbus and Mankato, represented the universe of cases disposed during the sampling time frame.[1] Table A-1 summarizes these sampling details.

Quantitative: Citizen Survey

We utilized a mail questionnaire to measure citizen attitudes about crime, punishment, and the criminal justice system. A pre-test was undertaken in Columbus to determine the viability of such a survey. The response rate was surprisingly high (well over 50%), and the questions were generally answered consistent with the instructions. After a few modifications, we sent the survey to a sample of 300 citizens in each of the four communities.

The samples were based upon telephone listings. We collected the current telephone books for all of the cities in each of the four counties. A series of random numbers were generated to draw the 300 telephone numbers and households associated with them. Where more than one telephone book existed for a given county, we stratified the sample to reflect the proportion of residential names and

numbers in the several books.

Utilizing a short cover letter to accompany the survey instrument, we addressed the surveys to the households drawn, last name only.[2] This procedure facilitated responses from a variety of household members—both spouses, adult or student sons and daughters, etc.--rather than only from the heads of households. Greater demographic diversification—by age and gender—resulted. One follow-up mailing with a new cover letter and another copy of the questionnaire was administered two to four weeks after the initial mailing.

The response rate was substantial (see Table A-2). More than 50% of the citizens surveyed responded in three of the four communities; in Mankato, nearly two-thirds responded. In Tacoma, the response rate was significantly lower (43%). Response rates were calculated once questionnaires returned by the post office as undeliverable were subtracted. These "undeliverables" were highest in Austin, where the bulk of the students at the University of Texas have their own telephone listing. Despite this, the current telephone books provided rather accurate, up-to-date names and addresses in all four sites.

Our survey respondents appear highly representative of their communities, based upon a comparison of demographic characteristics (see Table A-3). There is a strong similarity in place of residence (city v. suburban or outlying), and nearly as much for ownership of residence and proportion of senior citizens. The Austin and Columbus samples are particularly representative here; in Mankato and Tacoma, older residents and homeowners are modestly overrepresented. Conversely, women and blacks are modestly underrepresented in Columbus and Austin. Some of these slight deviations may result more from the biases of telephone book listings than from systematic differences between respondents and non-respondents to our survey.

Qualitative: Observations

In each of the four courts, we observed arraignments, pretrial proceedings, and bench trials. These observations were not conducted randomly or systematically, but as part of our field visits to collect systematic data from case files and to interview participants. As such, we utilized our observations for background information and for supplementing or verifying data collected from other sources.

Qualitative: Field Interviews

The bulk of our qualitative approach consisted of interviewing a wide variety

of courtroom participants as well as key political and budgetary actors in each of the locales. We conducted interviews with judges, prosecutors, defense attorneys, probation supervisors and officers, court administrators, court specialists (e.g., scheduling), police-court liaison officers, county board members, and financial-budgetary specialists. In all, more than 50 interviews were conducted (see Table A-4 for details).

The interviews were semi-structured, but open-ended. By this, we mean that we had a series of questions and areas of inquiry, but responses were not structured by predetermined categories. Rather, we allowed interviewees to talk freely, even in a rambling fashion, to answer a given question. This approach was consistent both with our own view of the value of different types of interview techniques as well as with the exploratory nature of the community/environmental part of the study.

Interviews were tape-recorded wherever possible and transcribed verbatim. In all, more than half of the interviews were recorded. Subsequent to transcription, we developed coding categories--approximately forty—to arrange the wealth of interview material into discrete, topical areas. This facilitated retrieval and analysis of the data.

The interviews in Austin, Mankato, and Tacoma were all conducted during 1981, somewhere between April and November. In Columbus, the interviews were conducted during the 1979-80 period, as part of the earlier study on misdemeanor courts. (Limited budgetary resources precluded follow-up or additional interviews in Columbus).[3] Thus, there is a small time difference between our case file data and our interview data, ranging from one year in Columbus to three years in the other locales. Occasionally, some sentencing practices (or personnel) changed during that time lag, and we note these where appropriate. Nevertheless, this is not a longitudinal study of sentencing in four courts. It is a cross-sectional study, at essentially one point in time.

Finally, we guaranteed anonymity to our interviewees; thus, we identify them in the text only with a reference to their generic position (judge, prosecutor, administrator, county board member, etc.). We have done our best to preserve that promise of anonymity, without at the same time jeopardizing the meaning or value of our interview data.

NOTES

[1] The decision to utilize universes in Columbus and Mankato was dictated by the particular needs of the earlier study.

[2] Thanks to Wes Skogan for this suggestion.

[3] This is the reason that Columbus is excluded from the economic analyses presented in Chapters 6 and 7.

Table A-1 The Four Courts: Key Characteristics of the Case File Samples

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Number of Cases	1,867	2,764	1,060	1,198
Time Period	January, 1977 to December, 1978	March to May of 1978	April, 1978 to March, 1979	January, 1977 to December, 1978
Method of Sampling	Systematic Random	Universe	Universe	Systematic Random
Stage	Post-Arraignment*	Post-Arraignment	Post-Arraignment	Post-Arraignment

*Note that in Austin very few cases are disposed at initial appearance (see Chapter 2), unlike the other three courts.

Table A-2 Citizen Mail Survey: Response Rates in the Four Communities

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Qs sent	300	300	300	300
Qs returned by Post Office*	66	22	41	51
Qs delivered and received	234	278	259	249
Number of responses	120	152	169	107
Response Rate**	51.3%	54.7%	65.3%	43.0%

*Insufficient address; moved, no forwarding address; or otherwise undeliverable.

**Based upon number of questionnaires "delivered and received."

Table A-3 Citizen Mail Survey: Indicators of Response Representativeness in the Four Communities

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Percent Female				
1980 Census	50.3%	51.8%	51.3%	49.6%
Sample	39.5	46.0	44.0	51.4
Percent Black				
1980 Census	10.7	15.1	0.4	6.1
Sample	3.4	6.7	0.0	0.0
Percent 65 Years or Older				
1980 Census	7.3	8.7	11.5	9.4
Sample	8.8	10.7	16.8	21.8
Median Family Income				
1980 Census	20,514	20,970	19,453	20,311
Sample	15-25K	15-25K	15-25K	15-25K
Percent Owner-Occupied Housing				
1980 Census	59.6	57.0	66.0	65.6
Sample	58.5	59.7	80.0	77.4
Percent Living in City				
1980 Census	82.7	65.0	54.8	32.6
Sample	75.4	62.9	60.9	33.6

Table A-4 The Four Courts: Key Information about the Interviews Conducted

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington	TOTAL
Judges	3	4	3	5	15
Prosecutor	2	2	1	2	7
Supervisor	(1)	(1)	(1)	(1)	(4)
Assistants	(1)	(1)	—	(1)	(3)
Public Defender	—	1	1	0	2
Supervisor		(1)	(1)		(2)
Assistants		(0)	(0)		(0)
Private Defense	2	1	2	1	6
Probation	2	1	4	4	11
Supervisors	(1)	(1)	(2)	(1)	(5)
Officers	(1)	(0)	(2)	(3)	(6)
Court Administrator	2	1	1	1	5
Court Specialists	0	1	1	0	2
County Board Members	1	0	2	0	3
County Fiscal Specialists	0	0	1	1	2
Other	1	1	1	0	3
TOTAL	13	12	17	14	56

APPENDIX B

DEMOGRAPHIC CHARACTERISTICS OF THE FOUR COMMUNITIES

CONTINUED

2 OF 3

Table B-1 The Four Communities: Demographic Characteristics*

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
County Population	419,573	869,132	52,314	485,643
City Population	345,496	564,871	28,651	158,501
City as % of County	82.7%	65.0%	54.8%	32.6%
Proportion of Population, Black	10.7%	15.1%	0.4%	6.1%
Proportion of Population, 65 Years or Older	7.3%	8.7%	11.5%	9.4%
Median Age	26.6	28.2	26.4	28.0
Median Family Income	$20,514	$20,970	$19,453	$20,311
Proportion of Population Below Poverty Level	14.4%	12.3%	13.0%	10.6%
Proportion, Owner-Occupied Housing	59.6%	57.0%	66.0%	65.6%

*Source: 1980 Census of Population & Housing, U.S. Department of Commerce, Bureau of the Census. All figures reflect the year 1980 and are based on counties, except as indicated.

APPENDIX C

CITIZEN SURVEY:
SAMPLE COPY AND SELECTED TABLES

American Judicature Society ajs to promote the effective administration of justice

1. Rate the performance of all of the following local government services in Mankato from excellent (1) to poor (5).

	Excellent				Poor
Courts...	1	2	3	4	5
Parks ...	1	2	3	4	5
Jails ...	1	2	3	4	5
Schools..	1	2	3	4	5
Roads ...	1	2	3	4	5
Police ..	1	2	3	4	5

2. In your opinion, are the courts in Mankato doing ...

( ) a good job
( ) an adequate job
( ) a poor job
( ) don't know

3. In most cases, which punishment or combination of punishments should be given to...

a. people who drive when they are drunk?

( ) no punishment
( ) fine ($)
( ) suspension of driver's license
( ) alcohol treatment program
( ) volunteer community work
( ) probation
( ) jail
( ) don't know

b. minor traffic offenders, such as speeders?

( ) no punishment
( ) fine ($)
( ) suspension of driver's license
( ) driver improvement program
( ) volunteer community work
( ) probation
( ) jail
( ) don't know

c. shoplifters who steal less than $50 worth of merchandise?

( ) no punishment
( ) fine ($)
( ) pay back the store
( ) counselling program
( ) volunteer community work
( ) probation
( ) jail
( ) don't know

d. people convicted of assault, as in a fight between neighbors?

( ) no punishment
( ) fine ($)
( ) pay victim's injuries
( ) counselling program
( ) volunteer community work
( ) probation
( ) jail
( ) don't know

4. Please rank order all the following crimes--from most serious (1) to least serious (5):

	Most Serious				Least Serious
Assault	1	2	3	4	5
Speeding	1	2	3	4	5
Shoplifting....	1	2	3	4	5
Vandalism	1	2	3	4	5
Drunk driving..	1	2	3	4	5

5. In your opinion, how tough are the courts in Mankato on people convicted of the following crimes?

	Too Tough	About Right	Not Tough Enough	No Opinion
Assault	( )	( )	( )	( )
Speeding	( )	( )	( )	( )
Shoplifting...	( )	( )	( )	( )
Vandalism	( )	( )	( )	( )
Drunk driving.	( )	( )	( )	( )

6. How closely do you think the courts in Mankato reflect your opinions about punishments for crimes?

( ) very closely
( ) somewhat closely
( ) not at all closely

7. Local governments across the country are having to cut back on their programs. If this also happens in Mankato, how much should the local court's budget be reduced?

( ) more than other local govt. agencies
( ) the same as other local govt. agencies
( ) less than other local govt. agencies

8. If local government services were to be cut back in Mankato, in what order would you reduce the following?

	First Reduced				Last Reduced
Courts ...	1	2	3	4	5	6
Parks ...	1	2	3	4	5	6
Jails ...	1	2	3	4	5	6
Schools..	1	2	3	4	5	6
Roads ...	1	2	3	4	5	6
Police ..	1	2	3	4	5	6

9. If the local courts were to be cut back, in what order would you reduce the following?

	First Reduced			Last Reduced
Probation officers..	1	2	3	4	5
Treatment programs..	1	2	3	4	5
Court managers	1	2	3	4	5
Clerical staff	1	2	3	4	5
Number of judges....	1	2	3	4	5

10. Should the local courts raise the level of their fines ($), so that those people convicted of crimes would be helping to pay more of the cost of running the courts?

( ) yes
( ) no
( ) no opinion

11. Should the local courts raise the filing fees in divorce cases, so that those people using the courts would be helping to pay more of the cost of running the courts?

( ) yes
( ) no
( ) no opinion

OVER ---------->

12. Have you been the victim of a crime within the past 12 months?

( ) yes
( ) no

a. What crime were you a victim of?

_____

b. Did you report this crime to the police?

( ) yes
( ) no

13. Have you ever appeared in court as a ...

	Yes	No
a. witness	( )	( )
b. victim	( )	( )
c. defendant	( )	( )
d. plaintiff	( )	( )
e. juror	( )	( )
f. other (_____)	( )	( )

14 Have you ever appeared in court for any of the following reasons?

	Yes	No
a. divorce	( )	( )
b. traffic offense	( )	( )
c. auto accident	( )	( )
d. criminal offense	( )	( )
e. other (_____)	( )	( )

15. How well informed do you consider yourself about the courts in Mankato?

Well Informed 1 2 3 4 5 Not at all Informed

16. For each of the following statements, do you agree or disagree?

	Agree	Disagree
a. Criminal courts have become too concerned with the rights of defendants.	( )	( )
b. Unions have taken too much power from management.	( )	( )
c. Our country is not concerned enough with poor people.	( )	( )
d. The federal government does too many things that local governments could do better.	( )	( )

17. How would you describe your political viewpoint?

( ) very liberal
( ) liberal
( ) moderate
( ) conservative
( ) very conservative
( ) don't know

18. Do you consider yourself a ...

( ) Democrat
( ) Republican
( ) Independent
( ) Other (what?_____)

19. Do you rent or own your home?

( ) rent
( ) own

20 Do you live in ...

( ) the city of Mankato
( ) another town in Blue Earth county
( ) other (where? _____)

21. What is the highest grade in school that you completed?

( ) 8th grade or less
( ) some high school
( ) high school degree
( ) some college
( ) college degree
( ) post-college degree

22. What is your occupation?

_____

_____

23. What was your total family income, before taxes, in 1981?

( ) less than $10,000
( ) $10,000 - $14,999
( ) $15,000 - $24,999
( ) $25,000 - $34,999
( ) $35,000 - $49,999
( ) $50,000 or more

24. How old are you?

( ) under 21
( ) 21-29
( ) 30-39
( ) 40-49
( ) 50-59
( ) 60-69
( ) 70 or older

25. Are you ...

( ) White
( ) Black
( ) Hispanic
( ) Asian
( ) American Indian
( ) Other (_____)

26. Are you ...

( ) male
( ) female

THANKS VERY MUCH.

Table C-1 Citizen Survey Responses: Demographic Characteristics of the Four Samples

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
RACE				
White	87.2%	91.3%	97.6%	98.2%
Black	3.4	6.7	—	—
Hispanic	7.7	.7	1.2	.9
Other	1.7	1.3	1.2	.9
N	(117)	(149)	(166)	(106)
GENDER				
Male	60.5%	54.0%	56.0%	48.6%
Female	39.5	46.0	44.0	51.4
N	(119)	(150)	(166)	(105)
AGE				
Under 21	4.2%	2.0%	1.8%	1.8%
21-29	31.9	33.1	21.6	17.0
30-39	26.1	18.5	21.6	17.9
40-49	14.3	13.2	15.6	19.8
50-59	12.6	17.9	16.2	12.3
60-69	4.2	9.3	13.1	18.9
70 or older	6.7	6.0	10.1	12.3
N	(119)	(151)	(167)	(106)

Table C-2 Citizen Survey Responses: Social Class Indicators in the Four Samples

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
EDUCATION				
8th Grade or Less	—	1.3%	4.8%	1.9%
Some High School	2.5	7.9	6.5	6.5
High School Grad.	11.8	25.2	22.6	27.1
Some College	31.1	29.8	26.8	39.3
College Grad.	32.8	24.5	23.8	14.0
Post-College	21.8	11.3	15.5	11.2
N	(119)	(151)	(168)	(107)
INCOME*				
Less than $10,000	14.2%	17.8%	17.2%	17.0%
$10,000 - 14,999	8.8	14.4	14.7	11.0
$15,000 - 24,999	28.4	24.7	27.6	26.0
$25,000 - 34,999	17.7	15.1	17.8	26.0
$35,000 - 49,999	15.0	17.8	12.3	12.0
$50,000 or more	15.9	10.3	10.4	8.0
N	(113)	(146)	(163)	(100)

*Family income, before taxes, in 1981.

Table C-3 Citizen Survey Responses: Residential Characteristics of the Four Samples

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
HOME OWNERSHIP				
Own	58.5%	59.7%	80.0%	77.4%
Rent	41.5	40.3	20.0	22.6
N	(118)	(149)	(165)	(106)
RESIDENTIAL LOCATION IN COUNTY				
City	78.1%	65.6%	60.9%	36.0%
Suburbs	14.1	32.4	15.4	35.0
Rural or Outlying	7.8	2.0	23.7	29.0
N	(114)	(145)	(169)	(100)

Table C-4 Citizen Survey Responses: Political Characteristics of the Four Samples

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
PARTY IDENTIFICATION				
Democrat	41.9%	29.9%	25.5%	30.1%
Republican	21.4	40.3	32.1	30.1
Independent	33.3	27.1	41.8	39.8
Other	3.4	2.8	.6	--
N	(117)	(144)	(165)	(103)
POLITICAL IDEOLOGY				
Very Liberal	6.3%	4.4%	1.8%	1.0%
Liberal	18.8	14.1	12.9	15.0
Moderate	36.9	53.4	50.9	57.0
Conservative	34.2	24.4	31.9	25.0
Very Conservative	3.6	3.7	2.5	2.0
N	(111)	(135)	(163)	(100)

Table C-5 Citizen Survey Responses: Preferred Cutback of Courts Vis-a-Vis Other Agencies

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
More Than Other Agencies	1.8%	4.1%	2.5%	3.0%
About the Same As Other Agencies	41.2	59.2	65.2	50.5
Less Than Other Agencies	57.0	36.7	32.3	46.5
N	(114)	(147)	(161)	(101)

Table C-6 Citizen Survey Responses: Rand Ordering of Budgetary Priorities within Court Services

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
(1) First to be Reduced	Clerical	Clerical	Clerical	Clerical
(2)	Managers	Managers	Managers	Managers
(3)	Probation	Treatment	Judges	Treatment
(4)	Treatment	Probation	Probation	Probation
(5) Last to be Reduced	Judges	Judges	Treatment	Judges

Table C-7 Citizen Survey Responses: Attitudes toward Revenue Generation from Fines in Criminal Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Yes	79.5%	88.6%	89.0%	84.8%
No	20.5	11.4	11.0	15.2
N	(112)	(140)	(154)	(92)

Table C-8 Citizen Survey Responses: Attitudes toward Revenue Generation from Fees in Civil Cases

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Yes	71.7%	75.0%	79.9%	71.9%
No	28.3	25.0	20.1	28.1
N	(106)	(136)	(149)	(89)

REFERENCES

ABRAHAM, Henry J. (1981) "Limiting Federal Court Jurisdiction: A Self-Inflicted Wound?" 65 Judicature 178.

Administrative Office of the U. S. Courts (1972) Federal Offenders in the U.S. District Courts, 1970. Washington, D.C.: Government Printing Office.

ALFINI, James J. (1980) "Understanding Misdemeanor Courts: A Review of the Literature and Recent Case Law," in James J. Alfini (ed.) Misdemeanor Courts: Policy Concerns and Research Perspectives. Washington, D.C.: National Institute of Justice.

BAAR, Carl (1975) Separate but Subservient: Court Budgeting in the American States. Lexington, Mass.: Lexington Books.

BARONE, Michael and Grant UJIFUSA (1982) The Almanac of American Politics. Washington, D.C.: Barone & Co.

BARONE, Michael et al. (1980) The Almanac of American Politics. New York: E.P. Dutton.

BENNETT, W. Lance and Martha S. FELDMAN (1981) Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture. New Brunswick, N.J.: Rutgers University Press.

BERKSON, Larry and Susan CARBON (1978) Court Unification: History, Politics and Implementation. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice.

BLUMBERG, Abraham S. (1967) Criminal Justice. Chicago: Quadrangle.

BLUMSTEIN, Alfred and Jacqueline COHEN (1980) "Sentencing of Convicted Offenders: An Analysis of the Public's View," 14 Law & Society Review 223.

BROWN, Michael K. (1981) Working the Street: Police Discretion and the Dilemmas of Reform. New York: Russell Sage.

CASPER, Jonathan D. (1972) American Criminal Justice: The Defendant's Perspective. Englewood Cliffs, N.J.: Prentice-Hall.

CHAMBLISS, William (1969) Crime and the Legal Process. New York: McGraw-Hill.

CHIRICOS, Theodore G. and Gordon P. WALDO (1975) "Socioeconomic Status and Criminal Sentencing: An Empirical Assessment of a Conflict Proposition," 40 American Sociological Review 753.

Criminal Courts Technical Assistance Project (1980) Overview of State and Local Sentencing Guidelines and Sentencing Research Activity. Washington, D.C.: American University.

DOLBEARE, Kenneth M. (1967) Trial Courts in Urban Politics. New York: John Wiley.

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

ERIKSON, Kai T. (1966) Wayward Puritans. New York: John Wiley.

FEELEY, Malcolm M. (1979) The Process Is the Punishment: Handling Cases in a Lower Criminal Court. New York: Russell Sage.

FRIEDMAN, Wolfgang (1964) Law in a Changing Society. Harmondsworth, England: Penguin Books.

FRIEDSON, Elliot (1968) "Disability as Social Deviance," in E. Rubington and M.S. Weinberg (eds.), Deviance: The Interactionist Perspective. New York: Macmillan.

GIBBONS, Don C. (1969) "Crime and Punishment: A Study in Social Attitudes," 47 Social Forces 391.

GRAU, Charles W. (1981) "The Limits of Planned Charge in Courts," 6 Justice System Journal 84.

GRAU, Charles W. and Jane KAHN (1980) "Working the Damned, the Dumb and the Destitute: The Politics of Community Service Restitution," a paper presented at the Law and Society Association Annual Meetings, Madison, Wisconsin.

GRINDSTAFF, Carl F. (1974) "Public Attitudes and Court Dispositions: A Comparative Analysis," 58 Sociology and Social Research 417.

HAGAN, John (1974) "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint, 8 Law & Society Review 357.

HARRIES, Keith D. (1974) The Geography of Crime and Justice. New York: McGraw-Hill.

HEUMANN, Milton (1977) Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys. Chicago: University of Chicago Press.

HILLSMAN, Sally T. et al. (1982) "The Fine as a Criminal Sanction," a paper presented at the Law and Society Association Annual Meetings, Toronto.

JACOB, Herbert (1982) "Keeping Pace: Court Resources and Crime in Ten U.S. Cities," 66 Judicature 73.

KAPLAN, John (1973) Criminal Justice. Mineola, N.Y.: Foundation Press.

KRESS, Jack (1980) Prescription for Justice: Theory and Practice of Sentencing Guidelines. New York: Ballinger.

KRITZER, Herbert M. (1979) "Political Cultures, Trial Courts, and Criminal Cases," in Peter F. Nardulli (ed.), The Study of Criminal Courts. Cambridge, Mass.: Ballinger.

LEVIN, Martin (1977) Urban Politics and the Criminal Courts. Chicago: University of Chicago Press.

LEVINE, Charles H. et al., The Politics of Retrenchment: How Local Governments Manage Fiscal Stress. Beverly Hills and London: Sage Publications.

LIZOTTE, Alan J. (1978) "Extra-Legal Factors in Chicago's Criminal Courts: Testing the Conflict Model of Criminal Justice," 25 Social Problems 564.

LOTZ, David and William HEWITT (1977) "The Influence of Legally Irrelevant Factors on Felony Sentencing," 47 Sociological Inquiry 39.

MARTINSON, Robert (1975) "What Works? Questions and Answers about Prison Reform," in John A. Gardiner and Michael A. Mulkey (eds.), Crime and Criminal Justice. Lexington, Mass.: Lexington Books.

MATHER, Lynn M. (1979) Plea Bargaining or Trial? Lexington, Mass.: Lexington Books.

MILESKI, Maureen (1971) "Courtroom Encounters: An Observation Study of a Lower Criminal Court," 5 Law & Society Review 473.

NEUBAUER, David W. (1979) America's Courts and the Criminal Justice System. North Scituate, Mass.: Duxbury.

Newsweek (1982) "The War on Drunk Driving: Getting Tough With the Killers of 26,000 Americans a Year," September 13.

O'CONNOR, James (1973) The Fiscal Crisis of the State. New York: St. Martin's Press.

PENA, Richard (1975) "The Viability of the Locally Run Jail in a Modern Criminal Justice System," unpublished paper.

President's Commission on Law Enforcement and the Administration of Justice (1967) Courts. Washington, D.C.: Government Printing Office.

PRICE, Albert C. et al. (1983) "Judicial Discretion and Jail Overcrowding," 8 Justice System Journal 222.

QUINNEY, Richard (1974) Criminal Justice in America: A Critical Understanding. Boston: Little, Brown.

RAGONA, Anthony J. (1981) "On the Ideology and Economics of Delinquency Prevention: Dick Tracy Crime Stopper #37," paper presented at the Midwest Sociological Association Annual Meetings, Minneapolis.

ROSE, Arnold M. and Arthur E. PRELL (1955) "Does the Punishment Fit the Crime? A Study in Social Valuation," 61 American Journal of Sociology 247.

ROSSI, Peter H. et al. (1974) "The Seriousness of Crime: Normative Structure and Individual Differences," 39 American Sociological Review 224.

RUBIN, H. Ted, ed. (1981) Misdemeanor Courts: Designs for Change. Washington, D.C.: National Institute of Justice.

RYAN, John Paul (1980) "Adjudication and Sentencing in a Misdemeanor Court: The Outcome Is the Punishment," 15 Law & Society Review 79.

RYAN, John Paul et al. (1980) American Trial Judges: Their Work Styles and Performance. New York: Free Press.

SAARI, David J. (1967) "New Ideas for Trial Court Administration," 51 Judicature 82.

SARAT, Austin (1977), "Studying American Legal Culture: An Assessment of Survey Evidence," 11 Law & Society Review 427.

SCULL, Andrew (1977) Decarceration: Community Treatment and the Deviant, A Radical View. Englewood Cliffs, N.J.: Prentice-Hall.

SHAW, Clifford R. and Henry D. MAC KAY (1931) Social Factors in Juvenile Delinquency, National Commission on Law Observance and Enforcement: Report on the Causes of Crime, Vol. II, Washington, D.C.: Government Printing Office.

SPOHN, Cassia et al. (1981) "The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question," 16 Law & Society Review 71.

THOMAS, Charles W. et al. (1976) "Public Opinion on Criminal Law and Legal Sanctions: An Examination of Two Conceptual Models," 67 Journal of Criminal Law and Criminology 110.

THORNBERRY, Terence P. (1973) "Race, Socioeconomic Status and Sentencing in the Juvenile Justice System," 64 Journal of Criminal Law, Criminology and Police Science 90.

UHLMAN, Thomas M. (1979) Racial Justice. Lexington, Mass.: Lexington Books.

Uniform Crime Reports (1975) Crime in the U.S. Washington, D.C.: Government Printing Office.

U.S. Bureau of the Census (1977) County and City Data Book, 1977. Washington, D.C.: Government Printing Office.

U.S. Department of Justice (1975) "Prisoners in State and Federal Institutions on December 31, 1972, and 1973," National Prisoners Statistics Bulletin (May), 8.

WHEELER, Stanton et al. (1982) "Sentencing the White Collar Offender," 47 American Sociological Review 641.

WICE, Paul (1978) Criminal Lawyers. Beverly Hills and London: Sage Publications.

WILSON, James Q. (1968) Varieties of Police Behavior. Cambridge, Mass.: Harvard University Press.

YOUNG, Arthur & Co. (1975) Interim Report on the Travis County Jail Planning Study. April.

CASES

Argersinger v. Hamlin, 407 U.S. 25 (1972).

Musgrove v. Frank, Civil Action #A-72-CA-166.

END