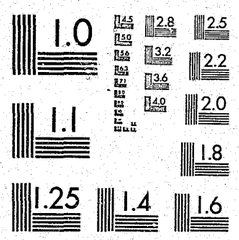

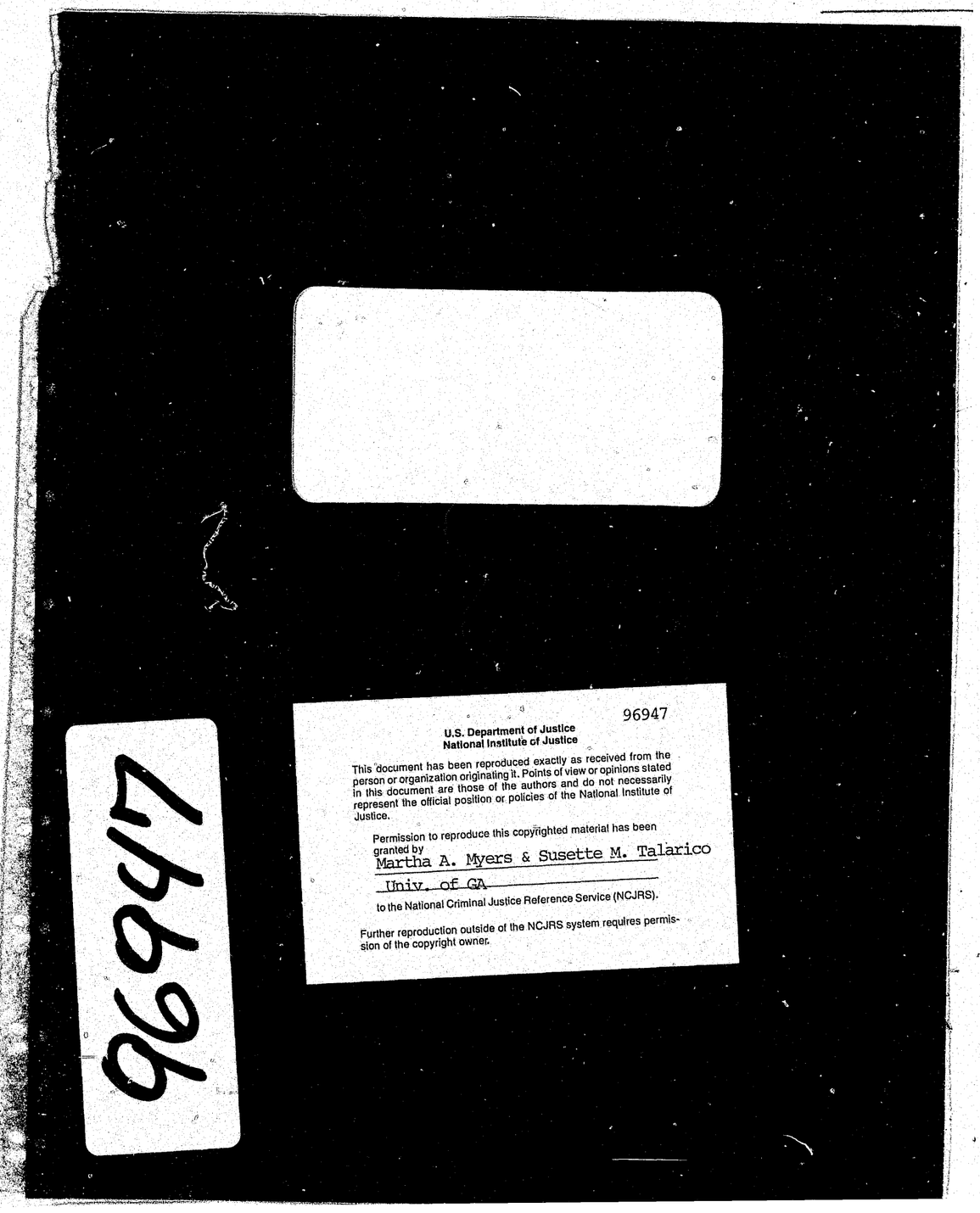

DISPARITY AND DISCRIMINATION IN SENTENCING:

The Case of Georgia

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EXECUTIVE SUMMARY

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ABSTRACT

This study examines the extent and sources of disparity and differential treatment in Georgia's Superior Courts from 1976 through June 1982. Building on earlier studies, it asks three central questions. First, what effects do case attributes, both social background and legally relevant, have on sentencing outcomes? Second, to what extent are sentencing decisions affected by dimensions of the court and county where the offender is sentenced? Third, to what extent do these court and county contexts determine the relevance of case attributes, that is, determine the magnitude and direction of disparate and differential treatment?

Analysis focused on five sentencing decisions: (1) type of sentence, whether probation or prison; (2) length of probation; (3) total sentence length (probation and prison) for offenders receiving split sentences; (4) the proportion of the split sentence for which imprisonment was mandated; and (5) length of prison terms, for offenders receiving only incarceration. Case, court, and county variables, derived from a variety of sources, were used to predict these decisions. Case attributes were based on a sample of over 18,000 convicted felons, drawn from files of the Department of Offender Rehabilitation, the Fulton County Superior Court, and the DeKalb County District Attorney. Court data were obtained from the annual reports of the Administrative Office of the Courts, the State Crime Commission, and the Georgia Official and Statistical Register. County variables were drawn from Census materials, Uniform Crime Reports, and the Georgia Department of State. We also content-analyzed newspapers in selected circuits and interviewed judges, district attorneys, and other criminal justice authorities in 11 of the state's 42 circuits.

Information gleaned from site visits directed statistical analyses and provided interpretations for some findings. Statistical analyses constituted the heart of the study, however. Depending on the dependent variable, weighted or ordinary least squares regression procedures were used. Corrections for selection bias in truncated samples (e.g., probationers) entailed a two-stage estimation procedure described by Berk and Ray (1982).

Analysis produced a number of important findings. We found that, while legally relevant factors more strongly and consistently affect sentences than do social background factors, the magnitude and direction of their effects depend on characteristics of the sentencing court and the surrounding community. Similarly, the nature of differential treatment based on social background (e.g., race) depends on selected features of the court and county. In general, no one group of offenders is consistently treated more harshly or more leniently. Thus, court and county characteristics affect sentences both directly and indirectly, by determining the way judges use information about

the offender and his offense during sentencing.

The theoretical expectations that guided our choice of variables met with limited support. Court bureaucratization does not consistently reduce differential treatment. Indeed, it intensifies harsher treatment of both socially advantaged and disadvantaged offenders. Similarities between the judge and the offender are either irrelevant or do not generate the expected lenience. Contrary to conventional wisdom and some research literature, judges from local or rural backgrounds do not appear more particularistic than those from more cosmopolitan or urban backgrounds. Similarly, professional activism does not generate more even-handed treatment of offenders. Established judges are more lenient than their electorally vulnerable counterparts, but this is the case only for some sentencing decisions. Finally, judges who are locally involved are not invariably more punitive toward threatening or dangerous offenders than are their counterparts.

When considering dimensions of the county, we found that, as was the case for bureaucratization, urbanization tends to exacerbate differential treatment of both socially advantaged and disadvantaged offenders. Economic inequality also intensifies differential treatment. It too places no single group at a consistent advantage or disadvantage. Sentences are not consistently more severe in politically conservative or crime-ridden counties. However, more threatening offenders are at a particular disadvantage if sentenced in counties experiencing serious crime problems. Finally, sentences tend to be more punitive where press coverage of crime is extensive, prominent, or focuses on local crime. In contrast, they tend to be more lenient where the press focuses on violent crime. In neither instance did we find evidence that press coverage consistently intensifies harsher treatment of more dangerous offenders.

These results have implications for research, theory, and sentencing policy. Our efforts to control for sample selection bias and our contextualization of sentencing decisions raise questions about the accuracy of prior research. They illustrate as well the importance of developing alternative strategies to investigate issues of discrimination and disparity. Our results demonstrate the complexity of sentencing. As a result, they underscore the poverty of theories that focus on single determinants, whether of sentences or of discrimination during sentencing. The policy relevance of our findings derives from the light they shed on internal inconsistencies within the substantive criminal law, the symbolic dimensions of political behavior, recent attempts to limit judicial discretion, and appellate court decisions about systemic discrimination.

INTRODUCTION

The decision to punish criminal offenders is an issue of considerable importance to law, criminal justice, and society. Contemporary concern with sentencing practices and purposes centers on the extent of disparity and discriminatory treatment.[1] In this study, we are concerned with determining the extent and identifying the sources of disparity and differential treatment in the State of Georgia between 1976 and 1982. We base our research on the premise that the decentralized character of our criminal justice systems makes some disparity inevitable. Variation in sentencing may simply reflect, then, differences in cases, courts, and communities. Thus, this study embeds sentencing decisions in their larger social contexts. It thereby seeks to provide a solid empirical foundation for both the development of adequate theories of criminal punishment and the reform of existing policies and practices.

PREVIOUS LITERATURE ON SENTENCING

Our effort to contextualize sentencing builds on and extends previous research. Early empirical work focused almost exclusively on offender attributes, satisfying "itself with observing in various ways bivariate relationships between attributes like race and sentencing outcomes" (Hagan and Bumiller, 1983). Limited by narrow jurisdictional foci and methodological defects (Hindelang, 1965; Hagan, 1974), this research offered no conclusive evidence about the extent of differential treatment based on social background characteristics (e.g., sex, age, race, socioeconomic status).

Recent work, conducted with greater methodological and conceptual sophistication, sheds more light on the issues of disparity and differential treatment. For example, it suggests that race may affect

some, but not all, aspects of the sentencing decision (Spohn et al., 1981-82). Further, race may be confounded with other factors such as victim characteristics (Radelet, 1981), aggravating circumstances of the case (Kleck, 1981), or legally relevant variables (Petersilia, 1983). Indeed, conceptions of race and, by extension, its effects on sentencing may change over time (Peterson and Hagan, 1984).

In recognizing the complexity of the sentencing process, researchers have begun to expand their focus beyond the offender to consider the court and surrounding community. Initially, researchers (e.g., Hogarth, 1971) focused on sentencing judges, particularly their background, roles, and attitudes. Later analysts (e.g., Eisenstein and Jacob, 1977) examined workgroup dynamics and court organization. In general, these studies have shown the value of conceptualizing courts in bureaucratic and organizational terms. More concretely, they have shown that sentencing decisions are affected, often strongly, by previous organizational decisions and outcomes [e.g., plea (Uhlman and Walker, 1979), type of counsel and bail status (e.g., Lieberman et al., 1972), presentence recommendations (e.g., Myers, 1979; Talarico, 1979), and other pretrial decisions (Bernstein et al., 1977)].

Finally, researchers have begun to extend their contextual focus to include the community in which the court functions. While some work has isolated a single community dimension such as urbanization (e.g., Hagan, 1977; Austin, 1981), other qualitative research has provided descriptions of a limited number of jurisdictions (e.g., Ragona and Ryan, 1983).

THE PRESENT STUDY

Our study extends previous research on sentencing by seeking answers to three major questions. First, what effect do case attributes, both

social background and legally relevant, have on sentencing outcomes in Georgia? Second, to what extent are sentencing decisions affected by dimensions of the court and the county where the offender is sentenced? Third, to what extent do these court and county contexts determine the relevance of case attributes, that is, the magnitude and direction of disparity and differential treatment?

For several reasons, Georgia a particularly fruitful subject for a state-wide study of felony sentencing. First, there is considerable variation in the sentences imposed, both within and across crime categories. Second, Georgia maintains an indefinite sentencing structure that permits significant judicial discretion. Although judges must impose a specific sentence within a legislatively determined range, minimum and maximum terms are broadly defined. Furthermore, judges may impose probation as an alternative to prison.

Third, the criminal code endorses several sanction philosophies, both explicitly (for deterrence and restitution) and implicitly (for rehabilitation and retribution). For example, treatment-based sentencing alternatives (e.g., Youthful Offender Act), the general indefinite sentencing structure, and the institutions of parole, probation, and juvenile justice implicitly address rehabilitative concerns. On the other hand, mandatory minimums for armed robbery, habitual burglary, and some drug offenses were passed with deterrence and retribution in mind. The absence of legislatively determined consensus in sanction philosophy intensifies judicial discretion. It thus enhances opportunities for case, court, and community contexts to affect sentencing.

Fourth, there are forty-two judicial circuits in the State. They respect county boundaries, and encompass between one and eight of Georgia's

159 counties. The counties themselves vary markedly in demographic, political, economic, and social composition. Moreover, they are consequential political entities during prosecution. Judicial circuits have no centralized couthouses. Rather, judges preside in the county where the offender allegedly committed the offense.

Finally, Georgia reportedly has a harsh criminal justice system (Pollock, 1983), with high rates of incarceration, a disproportionate number of capital sentences, and evidence of racial discrimination (Baldus et al., 1983). Thus, sentencing in Georgia has serious implications not only for the offenders being punished but also more generally, for policy issues of justice and fairness.

CONCEPTUAL MODEL AND EXPECTATIONS

We begin with an assumption central to traditional and contemporary theories of law (e.g., Durkheim, 1933, 1973; Pound, 1943; Parsons, 1962; Turk, 1969, 1976; Quinney, 1974; Black, 1976), namely, that law reflects the social organization of the society in which it is embedded and must operate. Both previous theorizing and research guided our choice of case, court, and county attributes.

Our concern with disparity and discrimination led us to consider two broad categories of case characteristics: the social background of the offender (e.g., sex, age, race, social class) and legally relevant aspects of the offense and the offender (e.g., offense seriousness, prior record).

We were concerned with five conceptually distinct aspects of court organization and composition. The first consisted of selected dimensions of bureaucratization along which courts varied: court size, caseload pressure, and specialization. Recent research (e.g., Hagan, 1977), as well as Weberian and conflict theory (Chambliss and Seidman, 1971) led us to

expect that court bureaucratization would have implications for differential treatment based on social background. Analysis examined whether bureaucratization generates more even-handed treatment of minorities or whether it exacerbates discrimination against the disadvantaged.

The second court context encompassed several aspects of the prosecution: its caseload pressure, modes of disposition, and electoral vulnerability. In general, we expected more lenient sentencing where plea bargaining was used with greater frequency. We also expected that electoral vulnerability would result in more punitive sentences, particularly against offenders who appear more threatening to the community.

The third aspect of the court was judicial composition, which consisted of both demographic and background attributes. Our only explicit expectation here, based on an extension of conflict theory, was that judges would sentence more leniently offenders who were similar to themselves, and would sentence more harshly those who were dissimilar (e.g., younger).

Judicial activism in professional associations, as well as previous experience, constituted the fourth category of court attributes. In general, we thought that professional activism and previous judicial experience would generate more even-handed treatment of offenders. In contrast, we expected judges with previous district attorney experience to be more punitive, particularly toward more threatening or dangerous offenders.

The final category of court context was judicial electoral vulnerability and local involvement. We expected electorally vulnerable and locally involved judges to be more punitive than their counterparts,

and to single out for harsher treatment offenders who appear more threatening to the community.

Turning to consider county contexts, we examined five dimensions: (1) urbanization; (2) economic inequality; (3) political characteristics; (4) crime characteristics; and (5) press coverage of crime.

Based on previous research and theorizing (Durkheim, 1933; Pope, 1976; Hagan, 1977; Austin, 1981), we anticipated harsher punishment and greater disparities in rural than in urban counties. Moreover, we anticipated differential treatment by status in rural but not urban courts. Our concern with economic inequality derived from both the conventional individual-level and the more recent structural interpretations of conflict theory (e.g., Bailey, 1981; Jacobs, 1978, 1979; Loftin et al, 1981; Williams and Timberlake, 1984). We expected the punishment of property offenders to be more severe in economically more stratified jurisdictions. We also explored the degree to which economic inequality conditioned the importance of offender status and power. We expected differential treatment based on status to be more pronounced in more unequal counties.

In considering the political characteristics of counties, we focused attention on voter participation and on the degree of political conservatism or liberalism. We expected sentencing to be more punitive, particularly toward offenders who pose serious threats to the community, in conservative counties. We expected greater lenience in more liberal counties.

Crime characteristics tapped several dimensions of the crime problem in the community. In general, we expected harsher treatment, particularly of more threatening or dangerous offenders, in counties experiencing serious crime problems. We expected similar effects in counties where

press coverage of crime was extensive, prominent, and focused on violent or local crime.

METHODS: QUANTITATIVE ANALYSIS

VARIABLES

We considered five sentencing outcomes for the period 1976 to June 1982: (1) the type of sentence, whether probation or imprisonment; (2) the length of probation, in years, for offenders receiving only probation; (3) the total sentence length (probation and prison) for offenders receiving a split sentence; (4) the proportion of the split sentence for which imprisonment was mandated; and (5) length of prison terms, in years, for offenders receiving only incarceration. Preliminary analysis indicated that despite the perceptions of those interviewed, the use of split sentences has remained fairly constant. Also, and partly in response to prison overcrowding, prison has been used less often, with both the proportion of split sentences mandating incarceration and the length of prison terms declining over time. In contrast, probationary supervision has been used with greater frequency and probation sentences have become longer.

Our choice of case attributes was restricted by the nature and quality of data previously collected by the Department of Offender Rehabilitation (DOR). Analysis for two dependent variables (type of sentence and probation sentence length) lacked prior record and social class information. For two counties (Fulton and DeKalb), we collected data not available through DOR and hence could consider prior record information for these offenders. For the first two dependent variables, then, case attributes included offender sex, age, race, as well as offense seriousness and type. For analyses involving split and straight prison sentences, we

obtained information on offender sex, age, race, marital status, employment status, rural-urban background, state of birth, prior arrests and incarceration. We also had data on offense type and seriousness.

Turning to court characteristics, the three dimensions of bureaucratization (caseload pressure, court size, and specialization) were indicated by felony filings per judge, the number of probation officers, the number of judges, and the extent to which lower courts assumed responsibility for misdemeanor and traffic cases. Prosecution characteristics included caseload (felony filings per prosecutor), percent guilty pleas, number of times elected, and whether facing reelection or opposition in primaries (prosecutors are virtually unopposed in elections).

Judicial composition included sex, age, marital status, rural-urban background, and whether born in the Circuit, Georgia, or in the South. Additional attributes (e.g., race, religion, training) lacked sufficient variation for consideration. Because the sample did not specify the sentencing judge, we aggregated judicial information on a circuit and yearly basis. Separate analyses were conducted for multiple-judge courts, where this aggregation procedure was necessary, and for courts whose judges sentence alone.

Judicial activism and experience was indicated by the number of Bar and attorney memberships, years previous experience in other judicial capacities, and years previous experience as district attorney. Judicial electoral vulnerability was indicated by the number of times elected, and whether facing reelection or opposition in primaries (judges are virtually unopposed in elections). Finally, three measures tapped the local involvement of judges: membership in community organizations, years in local government, and years in state government.

Turning to consider measures for county variables, urbanization was a weighted linear composite consisting of county population in the year of offender's conviction, population per square mile (1980), and percent urban (1980). Economic inequality was indicated by the Gini Index and by the percent black in the county.

Political characteristics of the county consisted of voter participation (a weighted linear composite of voting behavior between 1974 and 1980), and by the percents voting for (1) Kennedy in the 1980 Presidential primary; (2) Wallace in the 1976 Democratic primary; and (3) Reagan in the 1980 Presidential election.

Several variables measured crime characteristics as of 1979: the Index crime rate; and the percents of stranger-stranger Index crimes, Index crimes occurring at night, residential Index crimes, Index crimes involving weapons, black arrestees, and young arrestees (18-24 years old). Finally, press coverage of crime was indicated by the extensiveness of coverage about crime and criminal justice (articles per issue); the prominence of coverage; the extent to which coverage focused on local crime, and the extent to which it focused on violent crime.

DATA SOURCES

From data made available by the Department of Offender Rehabilitation, we drew a stratified[2] random sample of 16,798 felons convicted between 1976 and June 1982. This data set was augmented by a comparable sample collected in Fulton and DeKalb Counties (N=1,685).

We collected information about courts and counties from several sources. Among them were the Georgia Official and Statistical Register, Administrative Office of the Courts, Georgia Bureau of Investigation, the Secretary of State, and the 1970 and 1980 Censuses. These data were

matched with the case sample on a circuit or county, and where possible, yearly basis. We also collected information on press coverage of crime by content-analyzing all county newspapers (N=41) available in the University of Georgia library (1974-1980).[3]

ANALYTIC PROCEDURES

Analysis used two different procedures, depending on the dependent variable under consideration. Since type of sentence, the first dependent variable, is dichotomous, we used a weighted least squares procedure. Estimates were computed by weighting or transforming each observation of the dependent and independent variable and using ordinary least squares regression on these transformed values. The resulting estimates are linear, unbiased, and best among a set of unbiased linear estimators (Hanushek and Jackson, 1977).

The remaining dependent variables were based on a truncated sample of the population, in which some observations had been excluded in a systematic manner. For example, the analysis of prison sentence length by definition excluded all offenders sentenced to probation. The use of ordinary least squares in this instance would produce biased regression estimates that either overstate or understate true causal effects (Berk and Ray, 1982; Berk, 1983).

Our correction for sample selection bias was a two-stage estimation procedure, in which we first estimated a "selection" equation and then the equation of substantive interest (Berk and Ray, 1982; Berk, 1983). In the first stage, we estimated a logit model including all relevant variables for the total sample of convicted felons. The dependent variable in this selection equation was binary, coded 0 if the observation was included in the substantive equation and 1 if the observation was excluded.

The logit model produced for each case its predicted probability of being excluded from the sample of substantive interest. This hazard rate controls for the source of biased estimates in the substantive equation, that is, for the effects of non-random selection. Inclusion of the hazard rates thus produces consistent parameter estimates.

In the second stage of analysis, we used ordinary least squares regression to estimate a linear probability model that included all relevant variables and the hazard rate instrument.[4] The size of our models dictated that we be sensitive to collinearity and its tendency to inflate standard errors and produce statistically insignificant estimates. We therefore chose a regression procedure that provides a collinearity diagnostic, described by Belsley and his colleagues (1980). This diagnostic identifies collinear variables and provides information useful in determining whether estimates and their variances are affected by intercorrelations. Where collinearity appeared harmful,[5] we (1) constructed weighted linear composites of intercorrelated variables; (2) deleted one or more of the less essential variables; and/or (3) relaxed the statistical criterion and examined the finding for substantive significance.

Using the appropriate technique, analysis was conducted in three stages. In the first, we were interested in estimating the effects of case context variables. The concern here was to determine the relative weight judges attached to social background and legally relevant factors.

The next two stages of analysis, one for court context and another for county context, addressed two questions: (1) Does the context of sentencing directly affect sentences; and (2) Does it shape the relevance of case context variables.

In the second stage of analysis, we estimated the direct effects of court contexts by adding these variables as a set to the case attribute model. We noted the following: increases in the percent of variance explained; substantively significant coefficients (those statistically significant at $p \leq .01$ that exceeded +.10); the effect of adding court variables on the strength and direction of case attribute effects; and the relative importance of court and case attributes.

To answer the second question, whether court contexts shape the relevance of case variables, we constructed a set of interaction terms between each court variable and each case attribute. For example, when analyzing sentence type, felony filings per judge was associated with six interaction terms [one each for offender age, sex, race, type of crime I (violent v. victimless), type of crime II (violent v. property), and the seriousness of the offense]. We considered separately the five sets of conceptually similar variables: Bureaucratization, Prosecution Characteristics, Judicial Composition, Judicial Activism and Experience, and Judicial Electoral Vulnerability and Local Involvement.

To test for significant interaction, we compared the proportion of explained variance (R^2) obtained from two regression models: (1) an interactive model that included all independent variables and one set of interaction terms (e.g., those involving bureaucratization); and (2) an additive model (no interaction terms), consisting of all independent variables except those court variables (e.g., bureaucratization) associated with the interaction terms included in the first model.

Where the increase in R^2 met our statistical criteria ($p \leq .001$ and over one-third of all interaction terms significant at $p \leq .01$), we concluded that the effects case attributes have on sentencing are not

invariant across court contexts, but rather vary. Where this was the case, we examined in detail the substantive nature of significant interactions. Briefly, we used the metric coefficients in the interactive model to compute predicted outcomes at the extreme values of the contextual variable (e.g., least and most urbanized counties) for each group of offenders (e.g., blacks, whites). We then compared these predicted outcomes to determine the differential effect of the court or county context. Our concern typically centered on whether the context reduced or exacerbated differential treatment.

The procedure outlined above was followed for the third stage of analysis: determining whether county characteristics directly affect sentences and whether they shape the relevance of case attributes. Here we had five sets of interaction terms and five separate comparisons of explained variance: Urbanization, Economic Inequality, Political Characteristics, Crime Characteristics, and Press Coverage of Crime.

METHODS: QUALITATIVE ANALYSIS

Most of our information was based on quantitative analysis. However, we also visited 11 of the state's 42 judicial circuits for more qualitative information. We chose circuits that provided adequate representation across (1) geographical regions of the state (e.g., costal, north, south, north central); (2) degree of urbanization; (3) court size (e.g., number of judges); and (4) circuit size (single or multiple counties).

For two to three days, the project team observed court processes and interviewed court and county personnel (e.g., judges, district attorneys, public defenders, selected private attorneys, probation officers, law enforcement authorities, city and county leaders, and newspaper editors and reporters). The team sought information on (1) punishment philosophy; (2)

perceptions of court processes in general and sentencing in particular; and (3) idiosyncratic factors, whether of court authorities or of the surrounding community, that could affect sentencing.

Information from site visits directed quantitative analyses. For example, it guided our operationalization of split sentences, and helped us put statistical results in perspective.

RESULTS

OVERVIEW

Our most consistent finding was that variation across courts and counties affects the way judges use information about the offender and the offense to inform their sentencing decisions. To some extent, then, the additive effects we found for court and county variables are uninformative or misleading. They do not, and can not, elucidate the more pronounced indirect role these characteristics play during sentencing. Court and county variables generate both disparities and differential treatment based on social background and legally relevant case factors.

Similarly, the simple additive effects we found for case characteristics such as offender race to some extent misrepresent the actual role these variables play during sentencing. No offender or offense characteristic has one single effect that is invariant across all courts and all counties. Rather, the magnitude and direction of their effects varies as a function of selected aspects of the court and county in which offenders are sentenced. Thus, additive effects often mask a wide range of differential treatment. They also obscure changes in differential treatment that accompany court and county changes, and exceptions to a general pattern of differential treatment.

CASE ATTRIBUTES

In general, legally relevant factors, particularly offense seriousness and type, consistently affect sentencing decisions. Yet even these factors are not immune to variations in the sentencing context.

Offense seriousness affects all sentencing outcomes and, with the exception of probation sentence length, is usually the strongest predictor among case attributes. Typically, it generates harsher outcomes. Yet despite the consistency of its effects, we found that the differential treatment of more and less serious offenders varies considerably. For example, the two groups of offenders face similar imprisonment risks when sentenced in courts whose prosecutors rely heavily on guilty pleas and whose judges have district attorney experience. In contrast, their risk of imprisonment differs markedly when they are sentenced in multiple-judge courts composed of non-Georgians.

Contextual analysis also revealed relatively rare exceptions to the general pattern of greater harshness toward more serious offenders. For example, less serious offenders receive longer split sentences in predominantly black counties and in courts whose judges have urban backgrounds. Their split sentences tend to be more severe in courts whose judges are older.

While not usually as strong a predictor, offense type is nearly as consistent in its effect on sentencing decisions. While additive analysis typically shows harsher outcomes for violent rather than non-violent offenders, contextual analysis uncovers variation in differential treatment. For example, differences in the risk of imprisonment range from 2% in courts with small probation departments to 60% in courts whose judges sentence alone and have district attorney experience. Differences in the

prison sentences imposed on violent and non-violent offenders range from .9 years in courts consisting solely of married judges to 14 years in counties with strong Wallace support.

Furthermore, in some contexts non-violent offenders are treated as, if not more, severely than violent offenders. For example, in counties experiencing more Index crimes at night, victimless offenders are more likely than violent offenders to be imprisoned. In courts composed of local judges, their prison sentences tend to be longer than those of violent offenders.

Similarly, we found situations where property offenders are also more harshly treated than violent offenders. For example, they face the greater risk of imprisonment when sentenced in counties experiencing more residential or nighttime Index crime. Both their split and prison sentences are longer in counties where Reagan support in 1980 was strong. Finally, property offenders receive more severe split sentences in predominantly black counties.

For two of the five sentencing outcomes, we had prior record information only for offenders sentenced in Fulton and DeKalb Counties. These counties and their courts are too similar to examine contextual effects. Thus, for type of sentence and probation sentence length we could not determine the contextual sensitivity of prior record. Additive analysis reveals that at least for Atlanta, prior record does not significantly affect probation sentences. It tends to increase the risk of imprisonment. However, controlling for prior record does not drastically attenuate the effects of social background factors. We can therefore have some confidence in the findings for the sample as a whole, where prior record data were missing.

For the remaining sentencing decisions, we measured prior arrests and prior incarceration. Additive analysis indicates that prior record has no significant effect on the lengths of split and straight prison sentences. It produces only modest increases in the severity of split sentences.

A consideration of contextual effects suggests that it would be erroneous to conclude that prior record is irrelevant during sentencing. In some circumstances, it generates sharp differences in treatment. Previously arrested offenders experience much longer split sentences than their counterparts in counties where Reagan support in 1980 was strong. Similarly, previously-incarcerated offenders experience much longer split sentences in courts consisting of older judges. Their prison sentences are longer than those imposed on the never-incarcerated in counties where the press focuses on violent crime.

A consideration of contextual effects also reveals instances where offenders <u>without</u> prior records receive harsher sentences. For example, never-arrested offenders receive longer split sentences in predominantly black counties. Never-incarcerated offenders tend to receive longer prison sentences, with harsher treatment being particularly pronounced in courts whose judges have urban backgrounds.

In comparison with legally relevant factors, social background factors typically have weaker additive effects on sentencing. But in varying degrees, all social background factors are contextually responsive. As a result, the overall lack of strong or significant additive effects masks sharp differences in treatment that occur in some circumstances. It also masks exceptions to trends indicated by both additive and interactive analyses.

We found no evidence that in all circumstances more dangerous or disadvantaged offenders are more harshly treated. Rather, the extent of discrimination, whether against female, black, young, unemployed or violent offenders, is a function of certain aspects of the court and the county where punishment is imposed. Thus, we turn our attention to these contexts and their implications for differential treatment.

COURT CONTEXTS

Bureaucratization

Our primary interest centered on the implications of bureaucratization for differential treatment. Here, we found that differential treatment, whether based on social background or on legally relevant factors, varies with all three dimensions of court bureaucratization (caseload, court size, specialization). With the exception of prison sentences, bureaucratization tends to exacerbate differential treatment based on social background and to reduce differential treatment based on legally relevant factors.

In situations where bureaucratization exacerbates differential treatment, harsher treatment of disadvantaged offenders usually increases. For example, bureaucratization widens differences in the sentences imposed on offenders who are younger (greater imprisonment risk, longer split sentences), unmarried (longer split sentences), and unemployed (longer and more severe split sentences).

In a substantial minority of instances, however, bureaucratization exacerbates harsher treatment of less threatening or relatively advantaged offenders. For example, it increases the difference in outcomes experienced by offenders who are white (longer probation sentences), older (greater imprisonment risk, longer split sentences), employed (more severe split sentences), and married (longer split and prison sentences).

Finally, we found numerous instances where bureaucratization reduces differential treatment of the disadvantaged, in particular, black (imprisonment risk, prison sentence) and unemployed offenders (split and prison sentences).

In short, as predicted by conflict theory, bureaucratization exacerbates harsher treatment of the disadvantaged. However, it does not do so consistently across all sentencing decisions or for all groups of disadvantaged offenders. Moreover, bureaucratization sometimes generates more even-handed treatment, particularly when we consider differences based on legally relevant factors. Finally, where bureaucratization reduces differential treatment based on social background, it does so for both disadvantaged and advantaged offenders.

Thus, the extent and direction of differential treatment are complex functions of the sentencing decision, offender attribute, and dimension of bureaucratization under consideration. Our evidence supports both expectations, and hence permits no resolution of the differences between conflict and Weberian-based perspectives.

Prosecution Characteristics

Analysis focused on three aspects of the prosecution, namely, its caseload pressure, reliance on guilty pleas, and electoral vulnerability. As was the case for court caseload, we expected prosecutor caseload to affect differential treatment based on offender social background. We had theoretical grounds for expecting it would either exacerbate differential treatment of disadvantaged offenders or generate more even-handed treatment. We expected more lenient sentencing where guilty pleas were heavily relied on. Finally, we reasoned that electoral vulnerability would

increase pressure for harsher sentences in general and for more threatening offenders in particular.

More often than not, caseload pressure exacerbates rather than reduces harsher treatment of disadvantaged (e.g., unmarried, younger, unemployed) and more threatening offenders (e.g., more serious, violent, previously arrested or incarcerated). However, there are two interesting counterexamples to these trends.

First, as prosecutor caseload increases, violent and non-violent offenders experience increasingly similar risks of imprisonment and split sentences. Second, in multiple-judge courts, caseload pressure exacerbates the differential, harsher treatment white and married offenders experience. This occurs because black and unmarried offenders experience greater reductions in the severity of their split sentences than do white and married offenders. Thus, we found limited instances where caseload pressure either reduces differential treatment or increases harsher treatment of relatively advantaged offenders.

Although we expected more lenient sentences where plea bargaining was common, we found that this is the case for only one sentencing decision, the severity of split sentences. More commonly, the use of guilty pleas selectively increases the length of probation, split and straight prison sentences. Moreover, advantaged or less dangerous offenders are just as likely as their more disadvantaged or threatening counterparts to be singled out for greater harshness.

Similarly, we expected but did not consistently find lenience where prosecutors are established and therefore less likely to press judges for severe sentences. This is the case only for the type of sentence and the length of probation terms. When considering other outcomes, courts whose

prosecutors are established are selectively harsher toward both less and more threatening offenders. For example, as prosecutors become more established, white and married as well as young offenders experience larger increases than their counterparts in the length and severity of split sentences.

Finally, we expected but did not consistently find severity where the prosecutor is electorally vulnerable and hence likely to adopt a more punitive stance toward the sentencing of offenders who may appear especially threatening to the community. This is the case for two of the five sentencing outcomes studied. We found that as prosecutors become more vulnerable, the probation sentences, particularly of black, more serious, and violent offenders, increase. Similarly, vulnerability generates larger increases in the prison sentences imposed on younger, unmarried, unemployed, violent, and previously arrested offenders.

However, when considering split sentencing, we found lenience where we least expected it. For example, as prosecutors become more vulnerable, male, black, and violent offenders experience more pronounced reductions in the severity of their split sentences.

In short, judges whose prosecutors are established are not invariably more lenient. Judges whose prosecutors are electorally vulnerable are not invariably harsher. Rather, the degree of harshness (or lenience) depends on the sentencing decision being made. Also, harshness is not invariably reserved for more threatening or dangerous offenders. Nor is lenience reserved for less threatening or more advantaged offenders.

In many circuits prosecutors were regarded as punitive and vengeful. As one judge observed, "...the DA drinks a pint of blood for breakfast." Mindful of this characterization, we assumed that prosecutors would be

uniformly harsh and that electoral vulnerability would simply intensify this tendency. Thus, the findings for probation and prison sentences did not come as a surprise. Many district attorneys commented that short probation terms were hardly punitive and that some offenders simply had to be "put away." It is interesting to note, though, that this pattern did not apply to sentence type or split sentence terms where judges may be more concerned with prison overcrowding than with prosecutor pressure for severity.

Judicial Characteristics

Contrary to expectation, we found that similarity between the judge and offender is usually irrelevant during sentencing. And, where relevant, it does not consistently generate more lenient outcomes.

Two findings support our expectation. First, harsher treatment of females (in the form of longer prison terms) increases as the bench becomes male in composition. Second, harsher treatment of older offenders (in the form of greater risk of imprisonment) declines as the bench becomes older. This is so largely because older judges appear more intolerant of younger offenders than do their younger colleagues.

In contrast, most results fail to support our expectation. For example, courts consisting of married judges exhibit more pronounced lenience (less severe split sentences, shorter prison terms) toward unmarried rather than married offenders. And, as courts become more urban in composition, harsher treatment of urban offenders (viz., longer and more severe split sentences) increases, rather than declines.

Although we found little support for our expectation of lenience where judges and offenders share some similarity, we discovered that judicial demographic characteristics affect differential treatment based on other

social background and legally relevant factors. For example, analysis indicated that several groups of offenders (viz., married, violent, never-arrested) are at a double disadvantage if sentenced by older judges. They experience more pronounced increases in both the length and severity of their split sentences. But it is important to note that older judges are not uniformly more intolerant of certain groups of offenders (e.g., blacks). Rather, the extent of their harshness depends on the sentencing decision being reached. For example, when determing the length of probation and prison sentences, blacks are at an advantage when sentenced by older judges. They experience greater reductions in sentence lengths than do their white counterparts. Similarly, as courts become older, blacks experience smaller increases than do whites in the length of their split sentences. In contrast, however, blacks who receive split sentences are at a disadvantage when compared with their white counterparts. As judges become older, blacks experience larger increases than whites in the severity of their split sentences.

In comparing the background of judges, we found no evidence of a more particularistic orientation by judges with rural backgrounds. Indeed, these judges appear more attentive to offense characteristics and less concerned with offender attributes. They draw sharper distinctions based on offense seriousness and type than do their urban counterparts.

True, differential treatment exists in courts composed of rural judges. Importantly, however, it does not decline as courts become more urban in composition. Rather, differential and harsher treatment, particularly of black and employed offenders, is more pronounced in urban than in rural courts.

Similarly, judges with local backgrounds (e.g., born in the circuit, in Georgia or in the South) exhibit no greater particularism than their non-local counterparts. Local judges appear more attentive to the offense and to the sex of the offender. When determining the length of split sentences, for example, they exhibit more intolerance than their non-local counterparts of male, less serious, and violent offenders. When determining the length of prison sentences, they exhibit greater intolerance of female, victimless, and previously-arrested offenders.

Non-local judges, in contrast, appear more attentive to the offender's race, employment and marital statuses. During split sentencing, they exhibit more pronounced harshness toward black and employed offenders. When determining the length of prison sentences, they draw sharp distinctions that operate against white, unemployed, and unmarried offenders.

While site visit information pertains to many of the findings reported in this section, it is interesting to focus on the most surprising conclusion, namely, that rural judges are not more particularistic than their urban counterparts in criminal sentencing. Interviews helped us to anticipate this anomaly because it quickly became obvious that rural judges could not be uniformly categorized according to a single philosophical or ideological perspective. The two judges most enthusiastic about rehabilitation, for example, presided over rural courts. While one might argue that a rehabilitative orientation could lead to particularistic sentencing, in the rural courts visited it appeared that such was not the case. The judges in question expressed their commitment to the rehabilitative ethic by frequent use of probation and infrequent reliance

on incarceration. When they did sentence to prison, their sentences were typically short.

Urban judges were less immune to particularistic judgments in sentencing because they functioned in courts with considerable anonymity and diffused responsibility. Several urban judges commented that the public had no idea about their job performances and that the nature of the circuit helped to diffuse responsibility among them. According to some respondents, judges were singled out for attention very infrequently and only in sensational (e.g., Wayne Williams' trial) cases. It is conceivable, then, that this condition of urban courts may account for the unexpected findings of particularistic sentencing.

Equally surprising were the findings related to judicial sympathy for youthful offenders. In site visits, it was obvious that rural judges identified with young defendants in a manner that possibly contributed to the mixed patterns of punitiveness for young offenders observed in statistical analysis. In contrast to their urban counterparts who occasionally expressed little patience for the youthful offenders before their courts, rural judges emphasized that they themselves tested the law's limits as "young bucks." This rural sympathy for young defendants and the aforementioned findings of urban particularism contrast with images generated in the popular press and in some of the literature. They suggest that rural and urban judges can not be tightly and unequivocally categorized as punitive and lenient, respectively.

Judicial Activism and Experience

As expected, professional activism tends to foster more lenient sentences. However, it does not result in any tendency for judges to reserve this lenience for less threatening or dangerous offenders. For

example, activism produces larger reductions in the length of split sentences imposed on black, male, unemployed, and violent offenders. In contrast, it produces larger reductions in the length of prison terms imposed on white, older, and married offenders.

Recall that we expected activism to generate more even-handed treatment, particularly of disadvantaged offenders. We found limited evidence that differential treatment (e.g., of black and unemployed offenders) declines with professional activism. But it is more often the case that involvement in Bar and attorney organizations exacerbates differential treatment. It intensifies discrimination against disadvantaged or more threatening (e.g., unemployed, younger, unmarried) as well as more advantaged or less threatening offenders (e.g., white, married, female, victimless).

There is limited support for our expectation that district attorney experience fosters harsher punishment, particularly against more threatening offenders. For example, judges with more district attorney experience impose longer split sentences, particularly on violent and previously-incarcerated offenders. However, two trends are more pronounced.

The first is greater lenience toward less threatening or more advantaged offenders. For example, district attorney experience generates larger reductions in the severity of split sentences imposed on white and never-arrested offenders than on black and previously arrested offenders. The second counterintuitive trend is greater lenience toward more dangerous or disadvantaged offenders. For example, as judges have more district attorney experience, black and violent offenders experience larger reductions in their probation sentences than do white and non-violent

offenders; violent and unemployed offenders experience greater lenience in split sentences; and male, younger, and unemployed offenders experience larger reductions in the length of their prison terms than do female, older, and employed offenders.

While interpretations remain speculative at this point, the reluctance to use probation may reflect skepticism about the rehabilitative value of this disposition for black and violent offenders. The reluctance to imprison certain offenders for longer periods of time could reflect the greater sensitivity of judges with district attorney experience to the consequences of imprisonment for these offenders and for the system as a whole (e.g., overcrowding, an increase of violence within prison).

Certainly, these concerns were repeated by many court authorities in site visit interviews. While most respondents acknowledged that probation was not an effective deterrent, they emphasized that high caseloads, overworked probation officers, and little community support contributed to that result. Additionally, many respondents emphasized that probation was simply the only alternative they had to incarceration. Several judges were reluctant to incarcerate because the Department of Offender Rehabilitation routinely wrote to keep the state's judges informed of prison populations and to complain about prison overcrowding. In those communications, DOR specifically advised judges to imprison for shorter periods of time and to use probation. Additionally, many judges questioned the merit and purpose of incarceration itself.

Judicial Electoral Vulnerability and Local Involvement

We expected vulnerability and local involvement to increase the harshness of punishment, particularly of those offenders who may appear threatening to the community. Conversely, we expected more lenience from

judges who are established and less vulnerable to public pressure for severity. We found partial support for these expectations.

As judges become more established, they are selectively more lenient than their counterparts when making some sentencing decisions (probation sentence length, the severity of split sentences, the length of prison terms). However, we found no clear tendency for less dangerous or threatening offenders to benefit more from this lenience than their counterparts. For example, as judges become more established, younger as well as female offenders receive larger reductions in their probation sentences. Similarly, the reductions in prison sentences that accompany a history of successful reelection is greater for black and unemployed, as well as for non-violent and never-incarcerated, offenders.

For two sentencing decisions (type of sentence, split sentence length), judicial electoral history selectively increases severity. Again, however, we found no clear tendency for disadvantaged or more dangerous offenders to be at a greater disadvantage than their counterparts. For example, as judges become more established, increases in split sentences are larger not only for male, unemployed, and violent offenders, but also for offenders who are white, married, less serious, and never-incarcerated.

In short, established judges are more lenient than their less established counterparts for some but not all sentencing decisions. And, although they are selectively lenient, they do not consistently single out certain groups of offenders (e.g., less threatening, more advantaged) for preferential treatment.

As expected, the electoral vulnerability of judges increases the severity of probation and split sentences. Moreover, these increases are usually more pronounced for more threatening or dangerous offenders (e.g.,

young, male, black, violent in the case of probation sentences; male, unmarried, unemployed, and previously arrested in the case of split sentencing). But for sentencing decisions that involve imprisonment, electoral vulnerability does not operate as expected. Rather it fosters lenience, and does so where we least expected it, namely, against offenders who are disadvantaged (e.g., black, unemployed) or more dangerous (viz., violent).

For some sentencing decisions, then, the electoral vulnerability of judges does indeed result in harsher treatment particularly of threatening offenders. For other sentencing outcomes, however, it affords these offenders preferential, more lenient treatment.

We found little evidence that membership in community organizations fosters more pronounced harshness toward more threatening or dangerous offenders. True, it selectively increases the use of imprisonment, reserving it more often for violent offenders (in multiple-judge courts) and for male, black, and younger offenders (in single-judge courts). However, for the remaining sentencing decisions, membership in community organizations fosters selective lenience. Surprisingly, it is usually (but not always) more threatening or disadvantaged offenders that benefit more than their counterparts from this lenience. For example, for judges who sentence alone, community activism generates more lenience (less severe split sentences) toward black, unmarried, more serious and previously arrested offenders. These findings suggest that either judges contravene public opinion, or that communities are less punitive toward these offenders than we originally assumed.

The results for government involvement provide the strongest support for expectations. It selectively increases the risk of imprisonment, as

well as the length of probation, split, and prison sentences. With few exceptions, government involvement generates increases in severity that are larger for more disadvantaged or threatening offenders (e.g., male, black, younger, violent) than they are for their more advantaged or less dangerous counterparts.

The tendency of electorally vulnerable judges to sentence convicted felons to long terms of probation and to rely on sentences that combine both probation and incarceration illustrated the symbolic dimensions of criminal justice. In interviews, several respondents emphasized that judges relied on severe probation terms when they feared public backlash or reaction. While they admitted that probation was, in actuality, a lenient penalty they hoped that the more crime control-oriented of their constituents would be appeased by the length of the term. Similarly, several respondents indicated that they emphasized the total term of probation and incarceration in split sentencing and hoped that that image would be conveyed to the public. The fact that total terms were frequently featured in press accounts indicates that some of these efforts were successful.

COUNTY CONTEXTS

Urbanization

Urbanization selectively increases the harshness of some sentences (e.g., severity of split sentence, imprisonment risk), and fosters selective lenience in others (split and probation sentence lengths). Further, disadvantaged offenders do not always experience harsher punishment. Nor is lenience reserved for less more advantaged offenders. Thus, there is no evidence that urbanization consistently puts certain offenders at a greater advantage (or disadvantage).

Urbanization does not uniformly result in more even-handed treatment. Indeed, though often not markedly, it tends to exacerbate, rather than reduce, differential treatment. Furthermore, urbanization increases differential treatment of both disadvantaged and advantaged, dangerous and less dangerous offenders. For example, it increases the differential and harsher treatment (in the form of longer prison terms) experienced by younger and unmarried, as well as by employed and female offenders.

In a minority of instances, limited to determinations of split sentence length, differential treatment declines with urbanization. Offenders that are more harshly treated in rural counties (e.g., male, unemployed, violent, previously arrested) are slightly more leniently treated in urban counties.

It was not surprising to find that black, previously incarcerated males received more punitive sentences at the hands of urban judges. Commenting that he simply did not know what to do, one urban judge indicated that he had little sympathy with such offenders. Additionally, he commented that the individuals in question had probably committed more crimes than their "rap sheets" listed. Similarly, it was not surprising to find that judges in urban courts did not rely on long probation or split sentence terms. The symbolic importance of these sentencing options appeared to be confined to rural areas where judges were more visible and, perhaps, anxious about public opinion. As one judge stressed, urban judges were clothed in anonymity. Rarely did their constituents know much about any of their judicial decisions.

Economic Inequality

Contrary to expectation, we found no evidence of more pronounced harshness toward property offenders in counties with greater inequality.

Indeed, in only one instance (split sentence length) does inequality exacerbate discrimination against property offenders. Here, however, differential treatment increases not because the sentences of property offenders becomes more severe. Rather, as counties become predominantly black, violent offenders experience more lenience than do property offenders.

Our second expectation about inequality was that it would exacerbate discrimination against the disadvantaged. We found that, almost invariably, inequality increases differential treatment based on social background factors. However, it is just as likely to exacerbate harsher treatment of the disadvantaged (e.g., black, young, unemployed), as it is of the relatively advantaged (e.g., white, older, employed).

Thus, inequality places no group at a consistent advantage or disadvantage during sentencing. Rather, the extent and direction of differential treatment depends on the sentencing decision, the indicator of inequality, and the specific aspect of social background being considered. For example, as counties become predominantly black, differential and harsher treatment of blacks increase as judges consider the length of probation, split, and prison sentences. In contrast, as counties face greater income inequality, harsher treatment of <u>whites</u> increases as judges consider the length of probation and split sentences.

The general patterns observed in quantitative analysis were borne out in field work. In interviews, several respondents emphasized the importance of the county's racial composition. Critics of the court system (e.g., newspaper reporters and some defense attorneys) stressed that race featured in court decisions if there were a very large number of blacks in a given county. Implicitly arguing a conflict proposition, these

respondents emphasized that major governmental positions were typically held by white citizens, even in predominantly black counties. Consciously or unconsciously concerned about the threat, political or otherwise, posed by the black majority, these court authorities saw that the law "came down heavy" on black defendants.

<u>Political Characteristics</u>

Contrary to expectation, political conservatism does not invariably generate more severe sentencing outcomes. Rather, as conservatism increases, probation and split sentences become longer for some offenders. In contrast, split sentences become less severe and prison sentences shorter. Thus, where imprisonment is a possibility (and hence, by extension, where tax expenditures to support prisons increase) judges become more lenient if they are sentencing in conservative counties.

However, both lenience and severity is selective. Lenience is not reserved for relatively advantaged or less serious offenders. Indeed, it is more often the case that, as counties become more conservative, disadvantaged or more serious offenders receive greater lenience than do their counterparts. For example, the reductions in split sentence severity that accompany strong Wallace support are larger for black, unemployed, unmarried, more serious, violent, and previously-incarcerated offenders than they are for their counterparts.

In contrast, severity is often but not always more pronounced for more disadvantaged or threatening offenders. For example, the increases in split sentences that accompany strong Wallace support are larger for male, younger, unemployed, unmarried, and previously-arrested offenders.

In general, then, conservatism places no group at a consistent advantage or disadvantage during sentencing. Blacks are more harshly

treated than whites when considering probation sentences, but more leniently treated than whites when considering the severity of split and prison sentences. Similarly, unmarried offenders experience larger increases in the length of split sentences than do their counterparts. Yet when the severity of split and prison sentences are considered, they experience more lenience than do their counterparts.

We could consider political liberalism for only two of the five sentencing decisions (type of sentence, probation sentence length). For the rest, our indicator of liberalism (percent Kennedy vote in 1980) was too confounded with urbanization to disentangle its unique effect. It was therefore included as part of the weighted linear composite measure of urbanization.

We found that liberalism results in both selective lenience and severity. For example, it generates larger reductions in the risk of imprisonment faced by female and white offenders than for male and black offenders. Further, it decreases the probation sentences imposed on white and property offenders, while increasing the probation sentences imposed on black and violent offenders. Taken together, these results suggest that, contrary to expectation, liberalism operates to the advantage of white, rather than black, offenders.

Some of these results relate to the previous discussion of the symbolic uses of particular types of sentences. Specifically, the fact that judges in politically conservative counties were more likely to sentence offenders to longer terms of probation and split sentences indicates that conservative concerns may be addressed by actions that are largely intangible. Since it is unlikely that the length of probation terms and the related length of the total split sentences have any tangible

effect on crime, more conservative crime control concerns would have to be eased by symbolic action. This point was stressed repeatedly in interviews and informal conversations, and illustrates the ramifications of our contextual understanding of the political process of criminal sentencing.

Crime Characteristics

Despite our expectations, we found that sentencing is not uniformly more severe in counties facing serious crime problems. Nor do judges consistently single out more threatening offenders for more severe punishment. Rather, county crime problems have divergent effects that depend on the sentencing decision being considered. Though there are exceptions, more serious crime problems tend to increase the use of imprisonment and the length of split sentences. In contrast, they produce no clear trend toward longer probation sentences, more severe split sentences, or longer prison terms. For some offenders, this may be the case. For others, more serious crime problems may result in shorter probation terms, and less severe split and prison sentences.

Thus, we cannot conclude that each dimension of the crime problem affects sentencing or conditions differential treatment in the same way. For example, split and prison terms become less severe for some offenders as counties experience more stranger-stranger and residential Index crime. However, increases in stranger-stranger crime generate larger reductions in split sentence severity for female than for male offenders. In contrast, increases in residential Index crime generate larger reductions in split sentence severity for male offenders. Similarly, as Index crimes involving strangers become more common, black offenders experience larger reductions than whites in their split sentences. In contrast, as residential Index crimes become more common, they experience larger increases than do whites.

Despite this diversity, when taken together the findings suggest that in the majority of instances, more serious crime problems operate to the disadvantage of more threatening offenders, in particular, those who are male, black, young, unemployed, unmarried, and previously arrested. This trend is the result of three patterns of differential treatment: (1) more pronounced harshness toward these offenders; (2) more lenience toward their counterparts (viz., female, white, older, employed, married, never-arrested); or (3) harsher treatment, in conjunction with lenient treatment of their counterparts.

This trend is weaker when considering the remaining legally relevant variables (offense seriousness and type, prior incarceration). Here, some dimensions of crime put more threatening offenders at an advantage. For example, as counties face more residential and nighttime Index crime, violent offenders obtain larger reductions in prison sentences than do non-violent offenders. Similarly, an increase in nighttime Index crime increases the imprisonment risk faced by victimless offenders, but decreases that risk for violent offenders.

The mixed patterns noted in analyses involving objective measures of crime appeared to reflect some substantial skepticism about the validity of formal measures of crime. Many respondents in interviews questioned the accuracy of the Uniform Crime Reports and stressed that police departments could manipulate crime measures for a variety of reasons. While no respondent specifically accused any department of deliberate distortion, several explained that there was substantial disagreement about what constituted a crime, when an arrest took place, and when a complaint was serious. Disagreements on these points inevitably contributed to unreliable estimates of the actual crime problem of given jurisdictions.

A related but distinct attitude was commonly expressed in the quote "there are lies, damn lies, and statistics." Respondents expressing this opinion were simply skeptical about the value of any statistical evidence and appeared to rely on their own estimates and perceptions in measuring the extent of crime in their counties. Both of these attitudes, however, may help to explain why there was no direct and consistent association between criminal sentencing and objective measures of crime.

Press Coverage of Crime

Although there are exceptions, sentences tend to become more severe where press coverage of crime is extensive, prominent, and local in focus. In contrast, sentences tend to become more lenient where the press focuses on violent crime. However, we found no evidence that disadvantaged or more threatening offenders are consistently singled out for harsher treatment. Nor did we discover that advantaged or less threatening offenders are singled out for greater lenience. As crime problems portrayed by the press become more serious, certain offenders (viz., black, younger, unmarried, previously arrested) tend to experience more pronounced harshness or less lenience than their counterparts. However, press coverage also works consistently to the disadvantage of less threatening offenders as well (viz., female, employed, less serious, non-violent). For example, as crime problems portrayed in the press become more serious, females experience larger increases in their probation and prison sentences than do males.

Judges and other court authorities were particularly critical of the way newspapers reported crime and criminal court processes. Charging that the press focused on sensational cases and infrequently offered more than a cursory explanation of complex litigation, these respondents argued that press descriptions and stories should be discounted in guaging the

seriousness of the crime problem in given counties. Especially critical of the press' tendency to focus on violent offenses, court authorities complained that newspapers ignored the fact that violent crimes are typically committed by family or friends on "kin or acquaintances." While many judges argued against punitive sentences for such offenders because of the inapplicability of deterrence, others stressed that these "junk cases" shouldn't even be brought to court. Tired, as one judge put it, of "supervising barroom brawls," many judges were reluctant to advocate severe sentences for violent offenders other than those who victimized strangers and/or those who were particularly brutal.

Less threatening but more common offenses (e.g., burglary) also highlighted in press coverage were frequently described as serious by judges and district attorneys. In these instances, press coverage appeared to reflect judicial perspectives and, perhaps, public concerns. When outlining typical sentences for such offenders, several judges observed that they imposed severe terms with deterrent objectives. In one circuit, for example, where first-time burglary defendants were routinely incarcerated for three years or more, the district attorney observed that "...criminals thought twice before committing property offenses in (his) circuit."

These insights help illuminate the contradictory patterns observed in the analysis of press coverage and sentence severity. Particular attitudes toward violent offenders and specific skepticism about the press' coverage of related crimes help to account for the lenient sentences observed in those circuits where the press focuses on violent crimes. The severe sentencing that correlated with extensive, prominent, and local press

coverage may simply reflect judicial objectives in sentencing and judicial ranking of offense severity.

POLICY IMPLICATIONS

This study of the social contexts of criminal sentencing yielded three basic findings: (1) some sentencing decisions (e.g., split sentence v. simple probation) are easier to understand than others; (2) sentencing decisions are sharply conditioned by court and county contexts; and (3) not all established hypotheses (e.g., violent offenders receive more punitive sentences) are empirically supported. These results carry substantial implications for public policy. Specifically, they speak to issues central to substantive criminal law, to trial court processes, to sentencing reform, to appellate decision-making, and to the symbolic dimensions of political behavior. Additionally, they illustrate some of the tensions in the relationship between science and law.

This analysis illuminated three issues central to substantive criminal law. These include the purposes of the criminal sanction, questions about the proportionality of punishment, and the range and extensiveness of discretionary authority specified by statute.

Questions of sanction purpose are directly relevant to felony sentencing. Our results speak to this association for they demonstrate that a singular justification leads to greater uniformity and consistency in case processing. Consider the analysis of straight prison terms. This decision was the most "rational," i.e., the sentence outcome with the largest explained variance (R^2) and most affected by the legally relevant variable of offense seriousness. Site visits suggested that judges were generally agreed that in sentencing an offender to prison, they were interested in protecting society from people who did a fair amount of harm.

In contrast, sentencing decisions that lent themselves to more diverse justifications, for example, probation and split sentences, were more difficult to explain. Analysis yielded lower R^2's, and small effects for legally relevant variables. These results suggest that a lack of clarity about the purposes of criminal law manifests itself in less patterned and less consistent decision-making. They imply that efforts to resolve the tensions of sanction purpose are likely to pay off in more regularized and patterned decision-making. Our findings also suggest that philosophical questions carry profound day-to-day implications.

As noted earlier in this summary, crimes that could be regarded as the most serious, that is, violent offenses, were not always coupled with the most severe penalties. Furthermore, our study demonstrated that offense seriousness played a critical role in most phases of the sentencing decision. A comparison of these two findings tells us that the criminal code is not internally consistent. Specifically, offense severity does not conform to severity of crime type. If it did, we would see similar if not identical effects for the two variables. The fact that victimless and property offenders received longer prison terms than violent offenders bears witness to this lack of proportionality. This absence of proportional punishment will continue to exacerbate sentencing variations and to intensify the likelihood of disparity. Admittedly, it is difficult to rank order criminal offenses in a manner that addresses every concern and every value, but some ranking is clearly necessary. Many circuit authorities implicitly acknowledged this problem when they argued that statutory definitions frequently bore little resemblance to actual behavior. Our study underscores the need for substantial revision of the penal code that would address this problem.

As noted earlier, the state criminal code gives courts substantial discretion in sentencing. For example, a variety of contradictory purposes are ascribed for criminal law, ranges in penalties are substantial, and few directives guide sentencing decisions. While courts were not uniformly sentencing defendants of particular social classes more punitively, in some contexts there were striking ranges of disparate treatment based on social attributes. These disparities suggest that criminal codes need to be more carefully and thoughtfully drawn and more precise directives given. Specifically, the wide range of disparities observed in some instances suggest that minimum and maximum terms must be restricted. Some discretion is necessary, to be sure, but the virtual ambiguity of current terms gives courts little direction. Additionally, courts need legislative guidance in the use of incarceration. If prison overcrowding continues to affect sentencing and if concern for crime continues, legislatures have to make some judgment on the extensiveness and condition of incarceration in defining criminal penalties. Even if we forsake any interest in achieving a substantive goal (e.g., rehabilitation, deterrence) and direct all our energies to procedural regularity, penal codes must offer courts more in the way of direction.

In addition to implications for substantive law, our study sheds light on trial court processes. It suggests that there is little uniformity in sentencing. We found no evidence of systemic bias or prejudice, no evidence that all sentencing decisions are guided by the same rationale, and no evidence that would conclusively rule out the significance of personality and individual predispositions. Although portions of the sentencing process are easier to understand and particularly susceptible to

legal interpretation, we have no grounds for concluding that uniform patterns, whether salutary or unacceptable, exist.

Our results suggest, then, that there may be little potential in definite sentencing. Given the contextual dependence of sentencing and the decentralized nature of our legal system (a direct consequence of a cardinal constitutional principle, the division of powers), it is likely that efforts to institute definite sentencing with no discretionary authority will at the least be resisted and at the worst circumvented at earlier stages (e.g., arrest, charging).

Our results speak also to the viability of other sentencing reform proposals. Take, for example, guideline and presumptive reform schemes. Guidelines have been introduced in some courts and touted as the best way to eliminate the undesirable consequences of disparate sentencing. Many proponents argue that they are advantageous because they require no revision of the penal code, because sentencing terms build on previous patterns, and because both the severity of the offense and the risk of recidivism are entered into the decision calculus. Furthermore, proponents argue that they give courts the opportunity to take individual characteristics into consideration and in the process to build a case law that will gradually set standards for exceptional cases. Presumptive sentencing systems are directed to the same ends as guideline reforms. They differ, however, in that they require large scale revision of the penal code, do not build in recidivism predictions, and may or may not be based on past practices.

Both guidelines and presumptive sentencing, however, are not designed to take other potentially consequential factors into consideration (see Ragona and Ryan, 1983). Take, for example, the concern with prison

overcrowding that we found in many circuits during site visits. Regardless of the restrictions and limited discretion guidelines and presumptive sentencing given courts, how will organizational factors be taken into consideration? While one might contend, as did one judge, that determinations of space are the responsibility of the corrections department, it is foolish to think that such hard realities will not affect decisions, especially if judges continue to consider themselves "realists."

Guidelines and presumptive sentencing schemes may be undesirable if they are designed in a way that penalties are based on previous sentences, especially if those sentences are in any way biased. Even if there is no evidence of systemic bias in sentencing, our study dramatically demonstrates that interactive effects may well reveal inequitable practices and processes. More extensive scrutiny of past decisions is necessary, then, if guideline or presumptive terms are to be based on them.

Providing guidelines for non-incarcerative penalties poses even more substantial problems than their use in imprisonment decision-making. Our study implies that non-incarcerative sentencing decisions are more elusive and, perhaps, more susceptible to individual, particularistic, or even idiosyncratic factors. Furthermore, the penal code gives courts no direction in specifying less traditional penalties. Given the problem of prison overcrowding and the lack of clarity in setting objectives for non-incarcerative penalties, this is a serious omission. One could argue that non-incarcerative penalties are not consequential enough to worry about disparate treatment, but probation, fines, and other alternatives to incarceration can severely restrict the liberty of offenders and substantively matter to victims as well.

Our research calls into question the viability of an emphasis on uniformity in sentencing. To be sure, judicial discretion needs to be directed and statutory ranges of penalties restricted, but the contextual character of sentencing suggests that uniformity is not likely. While this certainly flies in the face of any deterrent objective for criminal law and may even affect respect for the basic sanction, it must be recognized, especially when we structure our expectations for criminal law and our standards for justice. While we do not call only for an emphasis on procedural regularity, it is possible that concerns about uniformity of process and the equal application of law may make the achievement of substantive goals very difficult.

Additionally and relatedly our results caution against exaggerated and expansive purposes for criminal law. Given the variation in actual and potential impact of contextual forces, we may be asking too much to set myriad objectives for a law that is applied in very disparate and deliberately localized settings. We need, then, to rethink our expectations for criminal law and the price we would be willing to pay for both uniformity and efficiency. These are critical in any consideration of sentencing reform.

One less obvious rejoinder that springs from this analysis is the need to make sure that the law is administered by good people. While we appreciate that people have varying notions of what "good" means, it is important to emphasize that the degree to which sentencing decisions are affected by idiosyncratic or personality factors is the degree to which the power to sentence should be carefully given. The selection, whether by election or appointment, of virtuous people is not the answer to general

dissatisfaction with sentencing, but it might help achieve the ends of justice in specific contexts.

Of particular consequence are the implications of this study for appellate decision-making. In some federal circuits, criminal defendants have raised issues of fairness that relate directly to this inquiry. Take, for example, the current deliberations over capital punishment and the charges that state sentencing processes are unconstitutional. The McCleskey case (Civ. A. No. C81-2434A, U.S. District Court, N.D. Georgia: Atlanta Division, February 1, 1984) is a good example. In this case, the federal district court was asked to reverse a capital sentence on a variety of grounds. Though the court did mandate a new sentencing hearing, the federal judge responded only to allegations of procedural error. In the process, Judge Owen Forrester flatly rejected the defendant's argument that sentencing in Georgia's capital cases was discriminatory. The defense based its empirical argument, and implicitly its 14th Amendment claim, on a study by Baldus and associates (1983).

Our results potentially affect appeals of other sentences in Georgia and raise broader questions of judicial decision-making. The Baldus study found empirical evidence of indirect racial discrimination, specifically, that the race of the victim featured in the decision to sentence to death and thereby generated a constitutionally suspect penalty. Our analyses indicated that in the absence of any evidence of systemic bias, discrimination can exist and the range of disparate treatment can be substantial. Related questions that appellate courts have to deal with are fairly substantial. To what extent will they only consider evidence of systemic discrimination in handling individual appeals? Can the defendant merely demonstrate that contextual analysis reveals situations or contexts

in which disparate treatment occurs and that he/she was sentenced in that situation? For example, if one studied our research evidence, it would be fair to conclude that there are counties, specifically those with a strong black population, where race does feature in some sentencing decisions. Would a defendant have the basis to plead discrimination if he simply referred to that finding and favorably compared his situation to the context in question? In short, how will appellate courts deal not only with evidence on the systemic character of sentencing processes, but also with empirical results that direct attention to particular circumstances within a jurisdiction? The district court in McCleskey rejected the defense's empirical contention and set forth a rather rigorous standard of scientific validity. The issue, however, will likely reappear, especially as social science refines its understanding of the sentencing process and as it offers more precise and reliable estimates of the circumstances in which social attributes are likely to enter into the decision calculus.

Two final, related implications fall from this investigation. Briefly, our analysis of split sentencing demonstrates the potential significance of symbolic objectives and agendas in criminal law. As our research demonstrated, many judges appeared to use that sentencing option to "look tough" but to deal with either mitigating circumstances, prison overcrowding, or personal preferences. In considering any reform for criminal court processes, then, symbolic objectives must be recognized because resistance to change may depend as much on the intangible benefits of certain procedures as on substantive effects. Scheingold (1984) certainly demonstrates this for both criminal justice in general and sentencing in particular.

The final implication hinges on the relationship between law and science. As this research illustrates, science is basically a tentative enterprise. Results are described in terms of probability and qualified by the nature of the method, the quality of the data, the rigor of the analytical techniques, and the representativeness of the sample. Scientific results do not offer hard and fast standards against which specific recommendations for change can be conclusively endorsed or rejected. Thus, while scientific evidence can be compelling, it is never complete. As the previous discussion of appellate court decision-making implies, the standards of science are quite distinct from those of law. Law, by its very nature, is not interested in ambiguity. While there is a fair amount of ambiguity in law, particularly the criminal law, legal decisions do not allow for qualifications. Defendants are either guilty or innocent, convicted felons are either sentenced to prison or not, sentences to prison are short or long, depending on one's position and perspective.

Our study offers some compelling evidence on the importance of contextual effects. It demonstrates that sentencing is, indeed, a complex process. It does not, however, have the last word. Nor does it have an unequivocal word. We deal with the legal subjects, issues, and processes in a scientific manner. We must, if we are to address the empirical questions upon which the definition and application of law depend. But our method for addressing these questions, namely, the scientific tradition, does not make marriage between law and science one of convenience, much less love.

NOTES

1. Disparity refers to within-group (e.g., white) differences in treatment. Differential treatment or discrimination refers to between-group (e.g., black vs. white) differences in treatment.
2. The sample was stratified to ensure adequate representation of all counties. Sampling percentages (1,5,10,25,50 and 100) were based on the number of offenders sentenced in the county, and decreased as the population of convicted offenders increased.
3. Newspaper content analysis had already been completed when the Department of Offender Rehabilitation offered us access to data from July 1980 through June 1982.
4. Regression, rather than logistic, procedures were used for several reasons: similarity of results between the two alternatives during preliminary analysis; substantially greater expense of using maximum likelihood estimation procedures on large samples; and greater ease of interpreting interactions obtained by regression analysis.
5. Following Belsley et al. (1980), we considered collinearity potentially harmful if three criteria were met: (1) the condition index approached or exceeded 20; (2) the variance-decomposition proportions for two or more coefficients exceeded .5; and (3) one or more variables implicated in collinearity failed to reach the statistical criterion for discussion.

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