A STUDY IN THE SOCIOLOGY OF CRIMINAL LAW: LEGAL AND NON-LEGAL FACTORS AFFECTING THE LENGTH OF PRISON SENTENCE

by

Thomas A. Leggette

Thesis submitted to the Graduate Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE

in

Sociology

APPROVED:

Dr. David L. Klemmack, Chairman

Dr. Lawrence S. Mayer

Dr. Steven K. Paulson

June 1973

Blacksburg, Virginia

ACKNOWLEDGEMENTS

In effectuating this thesis, encomiums should be bestowed on several individuals. Initially, I would like to acknowledge for, his friendship palliated the effects of formal education. Without his assistance, I could never have completed the program. In addition, I extend thanks to David Klemmack. From our many interactions, I have come to believe that teachers who refuse to employ the power and authority granted by the educational system, will have considerably more influence upon students. I would also like to thank the other members of my committee, Steven Paulson and Lawrence Mayer, for their criticisms, suggestions, patience, and understanding. Finally, I would like to extend my appreciation to for the valuable insights he has given me throughout my graduate education.

I am also grateful for the cooperation given to me by the staff of the Division of Corrections and the Bureau of Research and Reporting. Without their assistance this thesis could not have materialized. Additionally, my thanks are extended to my confidant, for the typing of this thesis.

Table of Contents

List of Tables

CHAPTER I

INTRODUCTION

Many studies examining the judicial administration of criminal law have focused on whether or not the judicial system and its officers have lived up to the stated goal of equal justice under the law for all men. Some of these studies, however, have implicitly assumed that our society is consensual in nature and have expected the judicial administrators of criminal law to be both impartial and representative (Johnson, 1941). When a discrepancy arose between the activities of the judicial administrators and their stated goal, it was blamed on the human factor that must enter into any legal decision. On the other hand, if one views the legal process from a conflict perspective, one no longer expects to find an impartially administered judicial system. Rather, one would view criminal law as being formulated and administered within an interest structure. "Law is the agent of those in political power; it is the product of those powerful enough to define right and wrong and to have that definition legitimized by 'law.' This is not to say that 'might makes right,' but it is to say that Might makes Law" (Knight, 1970: 8-9). Thus, "law does not represent the compromise of the diverse interests in society, but supports some interests at the expense of others" (Quinney, 1969: 25). This point becomes obvious when one examines those who deviate substantially in

economic status or culture from the white middle-class norm (Anderson, 1970). For, "not only are these people arrested and prosecuted under laws they had no hand in making, but they are also tried by judicial institutions which exclude them both from structural mechanisms and from personnel roles" (Knowles and Prewitt, 1969: 58). Hence, one would not only expect to find certain groups having higher arrest rates than other groups, but also one would expect to find differences in the administration of the judicial process.

The theoretical perspective utilized in this study can best be viewed as an extension of the conflict approach. This perspective assumes an interdependence between the process of production, the relations of production, and the social superstructure of institutions and ideologies. The ideologies of the political, religious, and the legal superstructure are seen as the legitimators of the existing economic order. This approach, then, argues that power originates in the economic substructure; "that the main wielder of social power are social classes" (Olsen, 1970: 70), and that the political, religious, and legal institutions are 'essentially' servants of the dominant social class. Employing this perspective, one would expect to discover that the formulation and enforcement of law would reflect and maintain the interests of the economic substructure. Thus, one would anticipate finding that criminal courts reflect the ideology of the substructure, the result of which would be the discriminatory administration of justice.

Given the fundamental importance of asserting equality before the law, the literature has amassed an extensive number of studies which attempt to test the impartiality of the judicial system. Yet, despite the scope and range of these studies, a crucial aspect of the judicial system - the judicial sentencing process - has been largely ignored. This study endeavors to fill this dearth. Specifically, it attempts to identify some of the legal and non-legal factors which are related to receiving long prison sentences.

Conceptual and Applied Issues

Before proceeding with this endeavor, a brief comment on those few studies which have previously examined the judicial sentencing process is in order. These studies have attempted to show that the deliberations which take place during this sentencing process are "unduly" influenced by non-legal considerations (cf. Johnson, 1941; Garfinkle, 1949; Newsom, 1956; Bullock, 1961; Partington, 1965; and The Southern Regional Council, 1969). Most, in fact, have simply claimed that blacks are discriminated against because they receive longer sentences than whites. To arrive at this charge of discrimination, they have implicitly assumed that persons convicted of the same crime should receive similar sentences. However, lawyers who have attempted to utilize this type of evidence in hopes of overturning convictions or obtaining more lenient sentences, have met with little success. The present rulings of both Federal and state courts do not accept this argument of disparity of

sentence as evidence of a denial of equal protection. The reasons for this seem twofold. First, modern judicial thinking advocates that the "punishment should be designed to fit the individual, not the crime" (Partington, 1965: 58). Thus, the courts disagree with the assumption that persons who commit similar crimes should receive similar sentences. Second, to establish a prima facie case for denial of equal protection, it is necessary to show that disparity of sentence is at least a county-wide, if not a state-wide policy (cf. Partington, 1965). The studies done to date, the court feels, fall short of establishing this as a fact. Thus, it can be seen that studies which simply attempt to identify disparities in sentence are of limited utility in terms of their applicability.

Because of this problem, neither a set of specific propositions, nor a simple analysis of the variables sampled, is presented. Rather, this study strives to be applied in nature.[1] It presents a model of

---

[1]The theoretical perspective employed dictates that all empirical research is an abstraction from reality, thus it can never be strictly applied without considering the ability of the variables to interact with other variables in the particular context in which it is being utilized. Moreover, it must be realized that this exploratory investigation is meant to be more of an illustrative example of the approach being advocated, rather than a directly applicable study (see limitations in Chapter V). In other words, its main purpose is to advocate the development of a decision making model. That is, it argues that lawyers should be provided with the knowledge of the differential risks of receiving long sentences associated with the type of crime, race, age, plea, and so forth, "just as life insurance actuaries compute the differential risk of dying at a certain age" (MacIver, 1964: 85). Thus, this study is not a theoretical investigation for it is not concerned with causation; rather, it is a practical investigation for it limits itself to simply seeking a way to manipulate and to direct the phenomena under study (MacIver, 1964: 162).

a decision-making process which is based on those factors found to be significantly related to receiving long sentences. That is, it attempts to provide the lawyer with alternative courses of action which he can select, based on their selected outcomes. These courses of action, if utilized, should on the average lead to the most lenient sentence possible for one's clients. It is hoped that this model will be employed by lawyers in seeking lenient sentences.[2]

---

[2]This study is done from the lawyer's perspective because both prosecutors and judges seem to have a greater stake in the status quo of the system (Lefcourt, 1971: 28). That is, because the prosecutor is elected, he needs to insure his continual return to office. This is often accomplished by playing up his conviction rate in election campaigns. Thus, "his stake in the status quo leads him to view defendants as criminals who should be punished if they are even slightly implicated (Lefcourt, 1971: 28)". Likewise, the judges also have a similar stake; for, "they are chosen by professional politicians, after nomination by the Democratic and/or Republican Parties, or appointed according to the patronage of local, state, or federal executives" (Lefcourt, 1971: 29). Moreover, since for the most part judges are made up of former members of the prosecutors' office, they come to the bench conditioned to think like prosecutors" (Lefcourt, 1971: 29).

CHAPTER II

METHODS

The data for this study were procured from two divisions of the Department of Welfare and Institutions of the State of Virginia: (1) the Bureau of Research and Reporting and (2) the Division of Corrections. Because the theoretical perspective utilized dictates that it is the propertied who make the laws, and because "the history of law in the United States is the history of its property relations" (Cloke, 1971: 73), it seemed that disparities in sentencing would be most apparent if one examined crimes against property. But, due to a time limitation imposed on the data collection period by the Division of Corrections, a random sample was taken only of those property crimes which at least fifteen males were sentenced to the state penal system during the one year period from July 1, 1971 to June 30, 1972. Using this selection procedure, information was obtained on 391 individuals who had been convicted of committing one of the following seven types of crimes: burglary, statutory burglary, breaking and entering, grand larceny, grand larceny of auto, unauthorized use of auto, and forgery and uttering. The information consisted of seven non-legal independent, seven legal independent variables, and one dependent variable.[3] The seven

[3] These variables were selected because they were found by earlier studies to be significantly related to judicial decision

non-legal factors were: (1) age, (2) race, (3) level of education, (4) socio-economic status,[4] (5) economic level, (6) court where convicted, and (7) marital status. The seven legal factors were: (1) type of plea, (2) type of trial, (3) number of counts convicted on in the most recent trial, (4) number of previous instate felony convictions, (5) number of previous out of state felony convictions, (6) presence or absence of juvenile record, and (7) the number of misdemeanor convictions for those who had not committed a previous felony. And finally, the dependent variable was length of prison sentence.

The data were collected in this fashion because earlier studies had found that type of crime is related to length of sentence, and also that it specifies many of the relationships between length of sentence and the other variables. For example, Bullock (1961) found that type of crime specifies the relationship between race and length of sentence; that is, the sign and strength of the relationship between race and length of sentence varies depending on what type of crime he considered. After procuring the

---

making (See Appendix B). The distinction used to categorize them into legal and non-legal variables becomes unclear at times. This is especially true when judges utilize presentence reports in imposing sentences. The distinction I have employed is borrowed from Green (1960).

[4]The education level is based on an achievement test which is administered to each felon when he enters the penal system; the socio-economic status score is obtained by using Duncan's Socio-economic index (cf. Reiss, 1961).

data, this variable was immediately examined to substantiate this finding. Obviously, the judge or jury can not impose just any sentence on a person convicted of a particular type of crime; rather they must sentence within the guidelines of Title 18 of the Code of Virginia (Appendix A contains a summary of these statutes). To determine if the average sentence imposed was different for each type of crime, a simple analysis of variance was computed (Table 1). The F value of 2.35, with 6 and 384 degrees of freedom, is statistically significant at the .05 level; hence, one can conclude that there is a significant difference between the mean length of sentence for the crimes studied. Examining this table, one notices that those convicted of burglary receive the longest sentences while those convicted of unauthorized use of auto receive the shortest sentences. Although these two findings seem to agree with a statutory ranking of the severity of crimes based on the maximum permissable penalties, this conclusion is invalidated when one examines the other types of crime. Nevertheless, we may conclude that the type of crime one is convicted of does have an effect on the length of sentence one receives. However, the strength of this relationship is shown, by the E^2 value of .035, to be very slight. Based on this evidence, it was decided to analyze the data in crime specific terms.[5]

---

[5]In addition, an analysis of covariance was computed to test the hypothesis that the within-class slopes were equal. That is, a test was made to determine if the slopes for the regression of the number of previous instate felony convictions on the length of

TABLE 1. Mean length of prison sentence by type of crime.

TYPE OF CRIME	$\bar{X}$	N
burglary	5.316	34
statutory burglary	4.310	167
breaking and entering	4.390	41
grand larceny	3.925	73
grand larceny of auto	3.413	23
unauthorized use of auto	2.479	12
forgery and uttering	3.841	41
	Total N =	391

Test of Significance

	degrees of freedom	mean squares
Between Groups	6	17.7028
Within Groups	384	7.5388
Total	390	

$$F_{6,384} = 2.3482^{*}$$

$$\text{Eta}^2 = \frac{\text{Between}}{\text{Total}} = \frac{106.2166}{3001.1016} = .0354$$

*statistically significant at the .05 level.

To analyze the relationships of the fourteen independent variables to the dependent variable for each type of crime, stepwise multiple regression was chosen as the appropriate statistical technique,[6] because it allows for a simple inventory of effects of the independent variables on the dependent variable (Blalock, 1969: 35). Stepwise multiple regression chooses the best predictors of the independent variables, one at a time. This means that the variable which has the highest zero order correlation with the dependent variable, provided that it is statistically significant, is initially added to the regression formula. This initial variable is then controlled for, and the variable with the highest first order correlation with the dependent variable, provided it is significant, is added to the regression equation. Next, the first two variables are controlled, and the variable with the highest second order correlation with the dependent variable, provided that it is significant, is then added. This method continues until a variable is selected which

---

prison sentence for each type of crime were equal. An F value of 2.89449 with 6 and 377 degrees of freedom was found to be significant at the .05 level. Since the relationship between length of sentence and number of previous instate felony convictions differed according to the type of crime, it was decided to analyze the variables separately within each category of crime (cf. Blalock, 1972: 368).

[6] For a discussion of the assumptions that underlie regression and what happens when they are violated, see Bohrnstedt and Carter (1971).

does not have a statistically significant partial correlation. Furthermore, as each variable was added to the regression equation, it was checked to see if it could be explained by another or series of other variables. Finally, each equation was checked for interaction effects.[7] It is important to note that:

> There is no guarantee that the method described above (stepwise multiple regression) for obtaining a set of independent variables will always obtain the most predictive set. This is because the method selects variables one at a time. It is possible that one could obtain a more predictive set of variables by trying all possible combinations of variables... In practice, however, this method usually does pick the most predictive set of variables. In those instances where some other combination of variables is more predictive than the set chosen by the method, the difference usually is small. Also, since more advantage is taken of chance by trying variables in all possible combinations than by the method described above, the latter tends to shrink less when larger numbers of persons are studied. (Nunnally, 1967: 170-171)[8]

---

[7] Ordinarily, the term 'interaction' refers to nonadditivity which may take many different forms. However, I am considering only one particular type of nonadditivity: namely, multiplicative relationships. When using the regression approach, this type of interaction is handled merely by adding terms standing for this interaction to the additive model. It is this approach which I followed. "Briefly, a first-order interaction of two independent variables X_1 and X_2 on a dependent variable Y occurs when the relationship between either of the X's and Y (as measured by the slope b_{yx}) is not constant for all values of the other independent variable" (Blalock, 1965: 374-375).

[8] The problem of chance in stepwise multiple regression is discussed by Forsythe et al. (1973).

The raw regression coefficients obtained by using stepwise multiple regression "can be interpreted as the hypothetical change that would occur in the dependent variable if one of the independent variables were to change by one unit and if the other independent variables were to remain constant" (Blalock, 1972: 452). Hence, it is a measure of the direct effect of an independent variable on the dependent variable.[9]

---

[9]For one to have a measure of the total effect (direct + indirect), it is necessary to identify the causal connections between all the variables whichmare related to length of sentence. For example, if two independent variables were related to length of sentence and the first was a cause of the second, then a change in this first variable would also produce a change in the second, so that there could be an indirect effect through the second variable as well as the direct effect (Blalock, 1972: 452).

CHAPTER III

FINDINGS

In this chapter an analysis of the independent variables as they are regressed on the length of prison sentence for each of the seven types of crimes is presented. The regression equations will be examined in the order of increasing number of variables.[10]

Burglary

For the crime of burglary only one of the independent variables, number of previous instate felony convictions, is related to the length of prison sentence (Table 2).[11] Hypothetically then, for each unit increase in the number of previous felonies, the direct effect would be an increase in length of sentence of 2.8 years. One important question that arises here is whether or not type of trial would act as a specifying variable. That is, since the jury is not apprised of the criminal record of an accused who is a multiple offender, would this relationship between length of sentence and number of previous instate felony convictions remain the same when one considers only those tried by jury? The answer

---

[10] Since it was impossible to obtain information on all the variables in all instances, those cases with missing values were deleted in the computation of the regression equations.

[11] Throughout this study the calculated F was compared to the tabled F at the .05 level of significance with the appropriate number of degrees of freedom.

TABLE 2. Burglary

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)
prvfel*		2.809	2.809
(constant)		4.99	4.99
R^2		.16	.16

N = 31

*Throughout this study the following abbreviations are used in the tables:

senten = the length of prison sentence

ses = socio-economic status

mrtlst = marital status

educat = education level

econ = economic level

court = court where convicted

counts = number of counts convicted on in the most recent trial

prvfel = number of previous instate felony convictions

juvrec = presence or absence of juvenile record

to this question is unavailable because of the insufficient size of the sample, for, there were only two cases where a person convicted of a burglary was tried by a jury. But, substantively it seems that the jury's non-apprisal of previous record could be employed by the defense attorney as a bargaining point for obtaining a more lenient sentence.

However, in examining the evidence and conclusions, one must remember that the number of previous instate felony convictions explains only 16% of the variance in the dependent variable.[12]

Unauthorized Use Of Auto

Table 3 contains the regression equations of the independent variables on length of sentence for the crime of unauthorized use of auto. Here, it can be seen that only race and the area where convicted are significantly related to the length of prison sentence.[13] Examining race, blacks are found to receive a prison sentence of 1.65 years longer than whites when area where convicted (court) is partialed out. In addition, when race is partialed out, persons who were convicted in city courts are found to receive a sentence of

[12] Because of the interaction terms which appear in several of the regression equations, it was decided not to calculate confidence intervals for the true regression coefficients for each variable. Moreover, a confidence interval for the actual sentence of a single individual was not calculated. It must be realized that given the small sample sizes for some of the types of crime this may be a very wide confidence interval (cf. Hays, 1963: 522-523). Thus, one should particularly question the estimates of the regression coefficients and the estimate of the actual sentence for those crimes with small sample sizes.

[13] The categories for the non-continuous variables are: race - (1) white, (2) black; marital status - (1) not married, (2) married;

TABLE 3. Unauthorized use of auto.

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)
race	1.652		1.652
court	1.304		1.304
(constant)	-1.837		-1.837
R^2	.74598		.74598

N = 11

1.3 years longer than those who were convicted in county courts. Taken together, these two variables explain 74.6% of the variance in the dependent variable. Thus, it would seem advantageous for the lawyer defending his client in a city court, to obtain a change of venue to a county court.

However, it is important to note that there were only 27 males convicted of this crime during the one year period studied, and only 11 of them were contained in my sample. Furthermore, every individual sampled was tried by a judge and none had been convicted of a previous out of state felony. Thus, neither of these last two variables could have had an effect on the regression equation.

Breaking and Entering

In analyzing the regression of the non-legal variables on the length of prison sentence (Table 4, column 1), not one of the variables is found to be significant. However, if the legal and non-legal variables are regressed on length of sentence, the number of counts convicted on is found to be positively related. When this variable is then controlled, race is found to explain a significant amount of variance in the dependent variable. In

---

economic level - (1) non-indigent, (2) indigent; court where tried - (1) county, (2) city; education level - (1) illiterate to 4.9 years of education, (2) 5.0 to 8.9 years of education, (3) 9.0 to 11.9 years of education; type of plea - (1) guilty, (2) not guilty; and type of trial - (1) jury, (2) judge. Thus for example, if race is found to be positively related to length of sentence, one can conclude that blacks are receiving longer sentences than whites.

TABLE 4. Breaking and Entering

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)
counts		.468	.466
race			1.937
prvfel		1.094	
juvrec			1.65
(constant)		2.808	-2.24
R^2		.414	.491

N = 35

other words, race does not have a significant zero order correlation with length of sentence, because the number of counts convicted on suppresses or hides this relationship. But, when this variable is controlled, race emerges as a significant variable. Thus, if the other significant independent variables are partialed out, blacks are seen to receive an approximately two year longer sentence than whites.

By examining Table 4, columns 2 and 3, one notices that when only legal variables are regressed, the number of previous felony convictions is entered on the second step. But, when both legal and non-legal variables are regressed, this variable is no longer entered into the equation. The reason is that this variable is correlated with race, and race has a higher first order correlation with sentence. Thus, race is entered into the equation, and it explains much of the variation that number of previous instate felony convictions initially had with length of sentence. In fact, if one controls for race, the first order partial correlation between number of previous instate felony convictions and length of sentence of .32 becomes a second order partial correlation of .17.

Finally, persons who had prior juvenile records tended to get longer prison sentences than those who did not. This finding again raises the question as to the advantage of having one's client tried by a jury since this body is not informed of the defendant's prior record. However, once again the sample size for trial by jury is insufficient to attempt an answer to this question. In summary,

by considering both legal and non-legal variables, we can explain 49% of the variance in length of prison sentence.

Forgery and Uttering

The regression equations for the crimes of forgery and uttering are contained in Table 5. By examining this table, we see that when only non-legal variables are regressed, there are no significant relationships with length of prison sentence. However, when both legal and non-legal variables are regressed, race becomes a significant variable after the type of trial and juvenile record are controlled. That is, blacks are found to receive longer sentences than whites.

When the legal variables are regressed by themselves, or when they are regressed with the non-legal variables, the same two variables are found to be significant. Persons who are tried by a jury receive a prison sentence of 4.2 years longer than those tried by judge, provided that the other significant variables are held constant. While if one controls for trial and race, persons who have a juvenile record receive a prison sentence of 1.3 years longer than those who do not. But, since the type of trial has a much more significant effect on length of sentence than juvenile record, it would make little sense for the lawyer to have his client tried by a jury.

Grand Larceny

For the crime of grand larceny the non-legal variables by themselves do not explain any significant amount of variance (see

TABLE 5. Forgery and uttering

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)
trial		-4.1266	-4.2088
juvrec		1.479	1.32655
race			1.2987
(constant)		9.4078	7.7709
R^2		.2637	.3419

N = 35

Table 6, column 1). But, the legal variables alone are able to explain 41.6% of the variance of the dependent variable. Since these legal variables are the same as those in the regression equation for both legal and non-legal factors, they will be discussed only in the latter context.[14]

Column 3 of Table 6 shows that when both legal and non-legal variables are regressed, four variables are significantly related to length of sentence: number of previous instate felony convictions, number of counts convicted on, plea, and education level. The relationship of this last variable with length of sentence was originally suppressed by the three legal variables. Moreover, when a search for interactions was made, another variable, a second-order interaction between number of counts convicted on, plea, and education level, was found to be significant. When this new variable was added to the regression equation, a number of unexpected things occurred (compare columns 3 and 4); namely, a reversal of the sign for the main effect of each variable composing the interaction term. It is important to note that from this point on it no longer makes sense to simply examine the raw regression weight for any of these three variables. For example, one can no longer say, that persons who plead guilty, hypothetically, receive a 1.5 year longer sentence than those who plead not guilty,

---

[14] It is important to realize that if the race of a defendant is not found to be significantly related to length of prison sentence, this does not mean that there is or is not any racial bias in sentencing (See Chapter IV for a discussion of the problems in defining a fair sentence).

TABLE 6. The regression equations and examples for grand larceny.

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)	Total with Interaction (4)
prvfel		2.14	2.369	1.967
counts		1.03	1.02	-2.530
plea		1.87	2.27	-1.503
educat			1.03	-1.623
counts*plea*educat				1.549
(constant)				6.6519
R^2		.416		.608
N = 67				

Senten = 6.6519 + 1.967 prvfel - 2.530 counts - 1.503 plea
-1.623 educat + 1.549 (counts*plea*educat)

2.59091 = 6.6519 + 1.967 (0) - 2.530 (1) - 1.503 (2) -
1.623 (1) + 1.549 (1*2*1) (1)

2.54476 = 6.6519 + 1.967 (0) - 2.530 (1) - 1.503 (1) -
1.623 (1) + 1.549 (1*1*1) (2)

controlling for the other significant factors. This is because the interaction term is a function of that variable, and thus it cannot be controlled.

How then can the lawyer use the regression equation to his advantage? The answer lies in examining the whole equation. Let us suppose that a lawyer had a client who had no previous felony convictions, was of a low education level and was being tried on one count of grand larceny. If the lawyer felt his client was going to be convicted, should he have his client plead guilty or not guilty? Equation (1) shows the predicted length of sentence if the defendant pleads not guilty, while equation (2) shows the predicted length of sentence if the defendant pleads guilty. By examining this table, a lawyer would notice that the difference in having this particular client plead guilty or not is only about a one-half month sentence. Realizing this, the lawyer should use any information which is beyond the scope of the fourteen variables of this study in deciding how his client should plead. But, one must realize that these remarks are only applicable to clients with the same characteristics. For a client with different background information, the lawyer must again solve the entire regression equation; but now he must use the new information to obtain a new decision tool which would assist him in obtaining the most lenient sentence for his client.

In summary, for those variables which the interaction term is a function of, one must remember to examine the entire regression

equation when attempting to ascertain the effect of these variables on the length of sentence.

Grand Larceny of Auto

When the non-legal variables are regressed on the dependent variable for the crime of grand larceny of auto, only one variable, marital status, is found to be significant (Table 7, column 1). Similarly, when the legal variables are regressed, only one variable, number of counts convicted on, is found to be significant. However, when both legal and non-legal variables are regressed, a third variable, race, is added to the equation. The relationship of race to the dependent variable was originally suppressed or hidden by the legal variable, number of counts convicted on. Moreover, significant interactions are observed between number of counts convicted on and marital status, and race and marital status.

Thus, one can not simply examine the regression weights of number of counts convicted on, marital status, or race, to ascertain their direct effect on the dependent variable. Rather, once again the entire regression equation must be examined. Table 7 also contains two examples of how this regression equation can be applied. Equation (3) presents the predicted sentence for non-married white males who have been convicted on one count of grand larceny of auto, while equation (4) presents the predicted sentence for non-married black males who have been convicted of the same offense. Comparing these two equations, we see that the white defendant would receive a

TABLE 7. The regression equations and examples for grand larceny of auto.

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)	Total with Interaction (4)
counts		1.04372	.95146	1.059
mrtlst	-3.00		-1.08852	-2.7370
race			-.8743	-2.5056
counts*mrtlst				- .4861
mrtlst*race				2.1150
(constant)	- .50	1.17029	1.1714	4.893
R^2	.263	.84586	.916	.9715

N = 21

Senten = 4.893 + 1.059 counts - 2.7370 mrtlst - 2.5056 race - .4861 (counts*mrtlst) + 2.1150 (mrtlst*race)

2.3383 = 4.893 + 1.059 (1) - 2.7370 (1) - 2.5056 (1) - .4861 (1*1) + 2.1150 (1*1) (3)

1.9477 = 4.893 + 1.059 (1) - 2.7370 (1) - 2.5056 (2) -.4861 (1*1) + 2.1150 (1*2) (4)

1.2303 = 4.893 + 1.059 (1) - 2.7370 (2) - 2.5056 (1) - .4861 (1*2) + 2.1150 (2*1) (5)

2.9546 = 4.893 + 1.059 (1) - 2.7370 (2) - 2.5056 (2) - .4861 (1*2) + 2.1150 (2*2) (6)

longer sentence than the black in this instance. However, if one compares blacks and whites who are married, and have been convicted on one count, we find that the black (equation 6) receives a longer sentence than the white (equation 5) in this case.

In summary, the importance of examining the entire equation is again evident. Moreover, since this regression equation is able to explain 97.1% of the variance in length of sentence, there seems to be little reason to pursue the effect of trial by judge versus trial by jury on the sentence.

Statutory Burglary

Finally, Table 8 reports the regression coefficients for each of the significant independent variables when the crime of statutory burglary is considered. Column 1 contains the regression weights when only non-legal variables are being regressed. Here, it is seen that one's socio-economic ranking is positively related to length of sentence. This finding is further validated in that those individuals who declared themselves indigent received a shorter sentence than those who did not. In addition, age was found to have a positive relationship with severity of sentence. However, all three of these significant non-legal variables only explained 9.0% of the variance in the dependent variable.

Column 2 of Table 8 reveals the regression weights for those variables that are significant when only the legal variables are regressed. Taken by themselves, the legal variables are able to

TABLE 8. The regression equations and examples for statutory burglary.

Independent Variable	Raw Score Regression Coefficient Non-legal (1)	Legal (2)	Total (3)	Total with Interaction (4)
trial		-2.835	-2.511	-2.1789
counts		.460	.443	.4559
prvfel		.608	.708	1.8448
ses	.0611	1.002	.058	.29989
econ	-1.044		-.945	
plea			.941	
age				
ses*trial*econ				-.06753
ses*prvfel				-.33214
trial*ses*prvfel*plea				-.06929
(constant)	3.9606	7.34406	8.006	6.8198
R^2	.0949	.1977	.2511	.3763

N = 147

Senten = 6.8198 - 2.1789 trial + .45590 counts + 1.84477 prvfel + .2999 ses - .06753 (ses*trial*econ) - .33214 (ses*prvfel) + .06929 (trial*ses*prvfel*plea)

6.76922 = 6.8198 - 2.1789 (1) + .45590 (1) + 1.8447 (1) + .29989(6) -.06753 (6*1*2) - .33214 (6*1) + ,06929 (1*6*1*2) (7)

4.61147 = 6.8198 - 2.1789 (2) + .45590 (1) + 1.8447 (1) + .29989 (6) -.06753 (6*2*2) - .33214 (6*1) + .06929 (2*6*1*2) (8)

3.77999 = 6.8198 - 2.1789 (2) + .45590 (1) + 1.8447 (1) + .29989 (6) -.06753 (6*2*2) - .33214 (6*1) + .06929 (2*6*1*1) (9)

explain only 19.7% of the variance in length of sentence.

When both the legal and non-legal variables are regressed, two interesting things happen. First, the initial relation between age and severity of sentence disappears. An examination was made to ascertain why this occurred, and it was found that the zero order correlation between age and length of sentence of .18 could be explained by controlling for socio-economic status and number of previous instate felony convictions, the second order partial of .08 being statistically insignificant. Thus, since these two variables had already been added to the regression equation, age was found to be insignificant. Second, significant interactions were observed between the legal and non-legal variables. That is, three new variables were added to the equation (see column 4). By examining the variables which constitute these interaction terms, one can see that only number of counts convicted on can be analyzed by looking at the regression weight. Here, an increase of one in the number of counts convicted on is found to increase the length of prison sentence, hypothetically, by six months, when all the other variables are partialed out. For all the other independent variables, it makes no sense to examine only their regression weights, since these variables are also contained in the interaction terms.

Table 8 also contains two heuristic examples of how this regression equation can be applied. Equation (7) presupposes that the lawyer's client was being tried by a jury. This particular client was being tried on one count of statutory burglary, had

one previous instate felony conviction, and was employed as a common laborer. He claimed that he could not afford council, and obviously, he pleaded not guilty. Equation (8) presupposes the same relevant background information, but this time the lawyer's client is being tried by a judge. By studying these equations, the lawyer can easily see that his client would, hypothetically, receive a more lenient sentence if he was tried by a judge, rather than by a jury, provided that he was convicted. Realizing this, the lawyer might wonder whether it would be advantageous to have his client plead guilty. Equation (9) would provide him with the appropriate decision making device. Comparing equation (8) to equation (9), the attorney would realize that, providing he believed the evidence sufficient for conviction, his client would obtain the more lenient sentence by pleading guilty. Similarly, this regression equation could be used as a decision rule for clients with other types of background information.

CHAPTER IV

DISCUSSION AND IMPLICATIONS

As previously stated, the court has not recognized disparity of sentence as an argument demonstrating denial of equal protection. Thus, the efforts of earlier studies to prove discrimination against blacks, by assuming that persons convicted of the same crime should be given similar sentences, are of limited utility in terms of their applicability. To circumvent this problem, this study has presented a model of a decision-making process based on those legal and non-legal variables which are found significantly related to receiving long sentences. This model is presented in the hope that it will be employed by a lawyer in seeking the most lenient sentence possible for his clients.[15]

At this point it is necessary to answer an important question: why should an attorney seek the most lenient sentence possible for his client? To answer this, it is essential for one to have an

---

[15]The approach advocated in this article is within the law, as long as the lawyer does not use its findings to deliberately suppress evidence or provide the court with false testimony. Moreover, it must be realized that this approach suggests only one of a variety of ethical systems that lawyers might hold concerning what is proper conduct within the legal system. Thus, this article is not arguing that this is the only approach or that any other approach is invalid. Furthermore, no attempt is made to evaluate other ethical systems, to develop standards for sentencing, or to advocate a theory of justice or equality. These would be questions for legal scholars and philosophers who are much more

understanding of the responsibilities the attorney has towards his client. Let us now consider some of the lawyer's duties. The American Bar Association states that it is the duty of an attorney in a criminal proceeding to be an advocate for, and not a judge of, his client. Neither the suspicion nor the knowledge of his client's guilt should alter the obligations which an attorney has towards his client (cf. American Bar Association's Canons of Professional Ethics). These obligations include: (1) presenting every defense that the law of the land permits in attempting to have his client acquitted (Canon Five of the American Bar Association's Canons of Professional Ethics), and (2) seeking the most lenient sentence possible for his client, "without regard for what is a just sentence (The Virginia State Bar, 1966: 7.3)". Furthermore, the attorney is supposed to provide his client with a candid opinion of the merits and probable results of his case (see Canon Eight of the American Bar Association's Canons of Professional Ethics). This implies not only that the attorney should advise his client

---

competent to undertake such a task. Rather, it is only an attempt to demonstrate one way in which the lawyer might be an advocate within the judicial system. But, there are also other ways to arrive at this position. For example, "radical lawyers" (cf. Kunstler, 1971) prescribe that the attorney should be a political organizer within the courtroom and take the trial one step beyond the legal approach. That is, the lawyer should confront the court with (what they feel is) its racism and repression (cf. Rosengart, 1972). While the author does not condemn this approach, he feels that it should be employed: (1) only if the lawyer believes this to be the proper conduct, and (2) only after he ascertains the consent of his client.

of his probability of being convicted, but also that the attorney should advise his client of the sentence he is most likely to receive.[16] To fulfill these requirements, the lawyer needs both an understanding of the options open to his client in the labyrinthine legal system and an understanding of those factors which are related to the sentencing process. It has been avered that although law schools do provide the attorney with some of the necessary knowledge with regard to the first task, they fail to provide him with the necessary knowledge to seek lenient sentences (cf. Rosengart, 1972). This oversight is seen to be extremely problematic when one realizes that statistics show "...the vast majority of persons accused of crime are subsequently convicted (The Virginia State Bar, 1966: 7.2)".

Thus, this study attempts to correct this apparent deficiency in the criminal lawyer's education by presenting an analysis which identifies some of the factors associated with receiving long prison sentences. Moreover, it presents a model of a decision making process which a lawyer can employ to develop strategies to

---

[16]The Virginia Bar states, "statistics show that the vast majority of persons accused of crime are subsequently convicted. In the usual case, therefore, you (the lawyer) should devote a substantial amount of your time to seeking a lenient sentence for your client" (1966: 7.2). This statement becomes even more important when one remembers that the prisons are filled with those who have low education and low socio-economic levels. Thus, one who attempts to apply these findings should remember that the data were collected from persons incarcerated in the penal system. And for example, the highest SES score sampled was only 49, and the highest education level was 11.9 years of schooling.

circumvent or at least to palliate the effects of the variables related to receiving long sentences.

Obviously, the attorney's expertness in developing these strategies will depend upon his ability to manipulate those variables found significant. Some variables, for example, the decision to have one's case tried by a judge or jury, are quite easy for the lawyer to manipulate directly. Other factors, for instance, the client's race or education level, the lawyer can only maneuver indirectly. That is, he can only develop strategies which attempt to circumvent or tone down the effects of the variable. For example, if education level was a significant factor, he could, if desired, circumvent the effect of this variable by having the case tried by a jury. And so, it is easily seen that the lawyer's talent in developing strategies will depend to some extent on his imaginativeness and judicial experience. But, because of the differing ability of the regression equations to predict length of sentence, the attorney's success in employing strategies can be expected to vary. Nevertheless, it generally seems that lawyers could effectively apply strategies that are based on these findings.

Since it is a duty of the lawyer to seek the most lenient sentence possible for his client without regard for what is a just sentence (The Virginia State Bar, 1966), it has not been necessary for this study to discuss what comprises a fair sentence. It was previously stated that earlier studies assumed that those convicted of similar crimes should receive similar sentences.

However, both the Federal and state courts have rejected this argument. Thus, disparity of sentence failed to prove discrimination. The question arises: how does one go about proving discrimination? But to answer this one must pursue the question beneath the surface that is really at issue: what comprises a fair sentence? Let us now discuss the various positions that underlie this concern.

In early criminal proceedings under common law, there could be no question of disparity of sentence; for, the punishment for most felonies was fixed. Those who committed similar crimes received similar sentences. Sociologists and criminologists who have done previous studies into the judicial sentencing process implicitly assumed that sentences should be imposed in this manner. But, those who advocate this ignore any effects that the environment of the individual might have on the probability of his being caught in the commission of a crime. Is it fair to give a person from a ghetto setting the same sentence as a person from a middle-class setting if the former, because of his environment, has a higher probability of being caught committing a crime?[17] Thus, even if the sentencing authority imposed egalitarian sentences based on the type of crime committed, the structural inequality and/or

---

[17]This criticism just barely touches on the legal system's assumption that the individual is responsible for his behavior. In other words, his behavior is in no way determined by his surroundings (class position, environment, etc...). For a discussion concerning this assumption, see Ford (1970).

institutional racism incorporated into the judicial system could cause these to be "unfair" sentences.

As modern ideas about punishment developed, however,

> questions of fact have come to play a more important role in the determination of the punishment a convicted individual is to receive. For example, the notion that, as an instrument of retribution or deterrence, punishment should fit the crime, and the notion that the character of a criminal act should be evaluated in light of the character of the individual defendant have informed the modern practice of allowing the sentencing judge to examine the facts of the case and to impose a punishment selected from a specified range of punishments varying in severity and kind. The emergent ideal of rehabilitation has encouraged much the same result. Conceived as an instrument of therapy, punishment must now be tailored to the needs of the individual upon whom it is imposed. (The Virginia Law Review, 1971: 1255)

The implicit assumption underlying modern sentencing is that "by selecting a proper 'punishment' the sentencing authority could favorably influence the defendant's conduct after his release" (The Virginia Law Review, 1971: 1257). That is, it is felt that a prisoner will be more receptive to rehabilitation, if he receives a sentence which he feels is fair. Fairness, in this case, is defined as taking into consideration the character of the individual defendant. Thus, there are at least two contradictory ideas of what fairness in sentencing entails.

Those who believe that punishment should fit the individual argue that sentencing should be consistent.[18] But, their idea is that the sentencing authority should be able to rely on a presentence report in deciding what is to be a fair sentence for the particular individual. This presentence report generally includes detailed information on such matters as the defendant's prior record, "his family history, his education and religious background, his interests and activities, his health, and his employment history and financial status (The Virginia Law Review, 1967: 978)." Yet, there are at least three problems in utilizing this report. First, judges receive no training in how to sentence (Frankel, 1972); that is, there are no recommendations as to 'which' factors in the presentence report are relevant. Since there are no standards, how can one determine whether a judge has been impartial? Second, in Virginia the jury trying the case imposes the sentence. But a presentence report is not provided to the jury; hence, they must simply rely on the evidence presented in the trial in determining the sentence they impose. Third, and most important, although no legislation is available to inform the judge 'how' the information in the presentence report is to be utilized, it seems as if judges interpret 'fairness' by imposing more lenient sentences on those persons, for example, with high economic and education levels.

---

[18] It should be realized that because of the indiscriminate use of the term "individualized sentencing" some might disapprove of relying on the presentence report (cf. The Virginia Law Review, 1971).

But, is it fair for the sentencing authority to use these factors which are at least to some extent accidents of birth, to penalize the individual? Moreover, since such factors as low financial status and low education levels are significantly related to being a member of the black race (Knowles and Prewitt, 1969), would it not be racist for a judge to give longer sentences to those individuals with these characteristics? For, do not economic and educational biases become racist when a greater proportion of black than of white defendants fall into the lower levels of these categories (cf. Knowles and Prewitt, 1969)?

On the other hand, there are others who argue just the opposite. That is, they would designate a more lenient sentence for those who are economically or culturally "deprived." This argument ignores not only the legal system's assumption of cultural homogeneity (cf. Lefcourt, 1971; Knowles and Prewitt, 1969) but also, the fact that those who differ economically and/or culturally have no say in determining what types of behavior will be labeled illegal (cf. Knowles and Prewitt, 1969: 69-77). In summary, this proposal for 'fair' sentencing based on factors in the presentence report breaks down, for those who differ substantially in economics or cultural from the white middle-class norm. Thus, this question as to what is a fair sentence is an extremely complex problem to which there seems to be no simple solution.

Even though there is this obfuscation in attempting to define what exactly is a 'fair' sentence, the problem remains. A

comment by Justice Stewart clarifies the concern over this issue: "Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives. Whether a sentence is fair can not, of course, be guaged simply by comparing it with the punishment imposed upon others for similar offenses. But that test, though imperfect, is hardly irrelevant" (Partington, 1965: 60). Unfortunately, Justice Stewart provides no answer as to how this information can be used relevantly. This study, while not answering the question as to what is a fair sentence, at least provides a method which the attorney can employ in seeking the most lenient sentence possible. Hopefully, the defendant will realize that there are some in the field of law who are concerned and are trying their best to help him.

CHAPTER V

SUMMARY AND CONCLUSIONS

The findings of this exploratory investigation into the effect of various legal and non-legal factors on the length of prison sentence can be summarized with two general conclusions. First, no two of the regression equations for predicting the length of sentence for the various types of crime were found to be the same. In fact, if one compares the variables that constituted the regression equations, he would find that the legally relevant variable, the number of counts convicted on, and the non-legal variable, race, are related to length of sentence more often than any other variables. But, each is contained in only four of the possible seven equations. Second, the ability of the regression equations to explain the variance in length of prison sentence fluctuated drastically, from a high of 97.1% to a low of 16.0%.

These conclusions seem not only to have raised more questions than they have answered, but also to point out that much more research needs to be undertaken. For, it must be realized that this study had certain limitations. First, due to restrictions of time and cost, this study has been unable to examine all the possible relevant factors. Thus, such factors as (1) the effect of the specific judge or jury, (2) the effect of the defendant's appearance, mannerisms, and behavior within the courtroom setting,

and (3) the effect on the judge or jury of the amount of evidence the Commonwealth Attorney has against the defendant, have been neglected.[19] Second, the findings of this study seem to indicate that one must develop separate regression equations for each type of crime. Thus, there are many types of crime that still need to be investigated. Third, the inadequate sample sizes for some of the crimes examined should make one skeptical of certain findings. Fourth, these sample sizes also prohibited an analysis which could have determined whether type of trial is a specifying variable. In other words, more analysis of cases that are tried by a jury is needed. Fifth, a theory is required to explain why for some types of crime, certain factors which are informally transmitted, seem to be employed more often (consciously or not) in deciding the severity of sentence. Yet, in other types of crime, such factors are not utilized. Finally, the entire question of what factors are related to a finding of guilty has been ignored. Hence, any lawyer who applies the findings of this study, must weigh the knowledge he acquires against his own opinions as to the chances of his client being convicted. In other words, if it is found that juries impose longer sentences than judges, the lawyer must weigh this evidence against his own experience of what are the chances of his client being acquitted before either. For example, if he feels that there

---

[19]The large amount of variance left unexplained by some of the regression equations implies that much has been omitted. Thus, it may be possible that there exist other variables not included in this study which are related to length of sentence.

is a good possibility his client will be acquitted by a jury, he should consider ignoring this finding on jury sentencing. However, his decision, as to whether he should employ a strategy which seeks the most lenient sentence of employ one which seeks the greatest probability of acquittal, should be arrived at only after extensive consultations with his client. Otherwise, the client might later claim that he was not adequately represented. Thus, this study represents only a beginning and much further research still needs to be carried out.

In parting, it should be noted that over the past few years a strong controversy has developed within the field of the sociology of law. Many sociologists (cf. Skolnick, 1969) do not feel that sociology should be completely value free, accepting the legal system as it is and proceeding to do research to help make it more efficient. This study suggests a way for social scientists who question the fairness of the legal system to do applied research which does not aid in the efficiency of that system.[20] Thus, it should be possible for lawyers to find sociologists and other social scientists who will assist them in procuring the necessary information.

---

[20]Lawyers who have analyzed the criminal justice system have stated that "as members of a bureaucratic system, defense attorneys become committed to rational, impersonal goals based on saving time, labor, and expense and on attaining maximum output for the system" (Blumberg, 1967: 18). This study argues against this idea of smooth functioning. Instead, it seeks to have the attorney identify above all with the interests of his client. Since this entails not only seeking acquittal for one's client, but also seeking the most lenient sentence possible for one's client, the author feels that this approach would not contribute to the status quo.

REFERENCES

Anderson, C.
1970 White Protestant Americans. Englewood Cliffs: Prentice-Hall.

Blalock, H.M., Jr.
1965 "Theory Building and the Statistical Concept of Interaction." American Sociological Review 30(June): 374-380.

1969 Theory Construction. Englewood Cliffs: Prentice-Hall.

1972 Social Statistics. New York: McGraw-Hill.

Blumberg, A.
1967 Criminal Justice. Chicago: Quadrangle.

Bohrnstedt, G.W. and T.M. Carter.
1971 "Robustness in Regression Analysis." Pp. 118-146 in H.L. Costner (ed.), Sociological Methodology. 1971. San Francisco: Jossey Bass.

Bullock, H.A.
1961 "Significance of the Racial Factor in the Length of Prison Sentences." Journal of Criminal Law, Criminology and Police Science 52(November-December): 411-417.

Burns, H.
1971 "Racism and American Law." Pp. 38-54 in Robert Lefcourt (ed.), Law Against the People. New York: Random House.

Cannavale, F.J., Jr.
1972 "Criminal Career Contingencies: The Exploration of Discriminatory Factors in the Process of Administering Criminal Justice." Dissertation Abstracts International (32) (January-February): 6142.

Cloke, K.
1971 "The Economic Basis of Law." Pp. 65-80 in Robert Lefcourt (ed.), Law Against the People. New York: Random House.

Davis, J.A.
1971 Elementary Survey Analysis. Englewood Cliffs: Prentice-Hall.

Ford, S.
1970 The American Legal System. St. Paul: West.

Forsythe, A.B., L. Engleman, R. Jennrich and P.R.A. May.
1973 "A Stopping Rule for Variable Selection in Multiple Regression." Journal of the American Statistical Association 68(March): 75-77.

Frankel, M.E.
1972 Criminal Sentences: Law Without Order. New York: Hill & Wang.

Garfinkle, H.
1949 "Research Note on Inter and Intra- Racial Homicides." Social Forces 27: 369-381.

Green, E.
1960 "Sentencing Practices of Judges." The Americal Journal of Corrections (July-August): 32-35.

1964 "Inter- and Intra- Racial Crime Relative to Sentencing." Journal of Criminal Law, Criminology and Police Science 55(September): 348-358.

Hays, W.
1963 Statistics. New York: Holt, Rinehart and Winston.

Hindelang, Michael J.
1969 "Equality Under the Law." Journal of Criminal Law, Criminology and Police Science 60(September): 306-313.

Jacobs, H.
1970 "Politics and Criminal Prosecution in New Orleans." Pp. 132-148 in J.R. Klonoski and R.I. Mendelsohn (eds.), The Politics of Local Justice. Boston: Little, Brown.

Johnson, G.B.
1941 "The Negro and Crime." The Annals of the American Academy of Political and Social Science 271(September): 93-104.

Kerbo, H.
1972 "The Sociology of Law: Past, Present, and Future." Unpublished manuscript.

Knight, E.
1970 Black Voices From Prison. New York: Pathfinder.

Knowles, L. and K. Prewitt.
1969 Institutional Racism in America. Englewood Cliffs: Prentice-Hall.

Lefcourt, R.
1971 Law Against the People. New York: Random House.

MacIver, R.
1964 Social Causation. New York: Harper and Row.

Nagel, S.S.
1966 "The Tipped Scales of American Justice." Trans-action (May-June): 4-9.

Newsom, L.H.
1956 "Court Treatment of Intra- and Inter-Racial Homicide in Saint Louis." Dissertation Abstracts 16(February-June): 1187-1188.

Nunnally, J.C.
1967 Psychometric Theory. New York: McGraw-Hill.

Olsen, M.
1970 Power in Societies. London: Macmillan.

Partington, D.W.
1965 "The Incidence of the Death Penalty for Rape in Virginia." Washington and Lee Law Review XXII: 43-75.

Quinney, R.
1969 Crime and Justice in Society. Boston: Little, Brown.

Reiss, A.J.
1961 Occupations and Social Status. Glencoe: The Free Press.

Rockwell, D.
1971 "The Education of the Capitalist Lawyer: The Law School." Pp. 90-104 in Robert Lefcourt (ed.), Law Against the People. New York: Random House.

Rosengart, O.
1972 Busted: A Handbook for Lawyers and Their Clients. New York: St. Martin's.

Schoenberg, R.
1972 "Strategies for Meaningful Comparison." Pp. 1-35 in H.L. Costner (ed.), Sociological Methodology 1972. San Francisco: Jossey-Bass.

Sellin, T.
1928 "The Negro Criminal." The Annals of the American Academy of Political and Social Sciences 140(November): 52-64.

1935 "Race Prejudice in the Administration of Justice." American Journal of Sociology 41(September): 212-217.

Skolnick, J.
1969 "Social Research on Legality: A Reply to Averback." Pp. 27-32 in L.M. Friedman and S. Macaulay (eds.), Law and the Behavioral Sciences. New York: Bobbs-Merrill.

Southern Regional Council.
1969 Race Makes the Difference. Atlanta: Southern Regional Council.

The Virginia Code Commission.
1960 The Code of Virginia. Charlottesville: Michie.

1972 Cumulative Supplement to The Code of Virginia. Charlottesville: Michie.

The Virginia State Bar and Virginia State Bar Association.
1966 The Virginia Lawyer: A Basic Practice Handbook. Charlottesville: Michie.

Tompkins, D.C.
1971 Sentencing the Offender - A Bibliography. Berkeley: University of California.

Virginia Law Review (ed.)
1967 "Jury Sentencing in Virginia." Virginia Law Review 53 (May): 968-1001.

1972 "Capital Punishment in Virginia." Virginia Law Review 58(April): 97-142.

APPENDIX A

Criminal Statutes of Virginia

Title 18 of the Code of Virginia specifies the following punishments for the crimes analyzed: (1) if a person be deemed guilty of burglary, he shall be punished with death, or, by confinement in the penitentiary for life or any term not less than five years; (2) if a person be deemed guilty of statutory burglary, he shall be punished by confinement in the penitentiary not less than one nor more than 20 years; (3) if a person be deemed guilty of breaking and entering, he shall be punished by confinement in the penitentiary not less than one nor more than ten years, or, by confinement in jail for not more than twelve months or by a fine of not more than 1,000 dollars, either or both; (4) if a person be deemed guilty of grand larceny or grand larceny of auto, he shall be punished by confinement in the penitentiary not less than one nor more than twenty years, or, by confinement in jail not exceeding twelve months or by a fine not exceeding 1,000 dollars, either or both; (5) if a person be deemed guilty of unauthorized use of auto, he shall be punished by confinement in the penitentiary not less than one nor more than five years, or, by confinement in jail not exceeding twelve months and fined not exceeding 500 dollars; (6) if a person be deemed guilty of forgery or uttering other writings, he shall be punished by confinement in the penitentiary not less than

two nor more than ten years, or, by confinement in jail not less than six months nor more than twelve months.

APPENDIX B

Selected Annotations

The purpose of these selected annotations is to provide the reader with a brief summary of the main findings of earlier studies into the judicial sentencing process. The major deficiencies of these earlier works lie in either their failure to incorporate other relevant legal and non-legal variables into their analyses, or their failure to report their findings in a manner that lawyers can use to develop legal strategies. However, their methods of collecting data on the judicial sentencing process and their evidence of both racial and economic discrimination are of some interest.

In 1928 Sellin, summarizing the findings of three earlier studies in Detroit, Alabama, and North Carolina, stated that "the Negro is not only convicted more frequently than whites, but he seems to receive heavier sentences (1928: 59)." In an attempt to further substantiate this conclusion, Sellin also analyzed data provided by the Bureau of the Census report on Prisoners in State and Federal Prisons and Reformatories in 1931-1932. He found that with regard to definite sentences, Negroes received longer sentences than native whites for rape, other sex offenses, and burglary. On the other hand, native whites received longer sentences than Negroes for liquor violations, homicides, robbery, assault, forgery, and larceny. However, in the case of indeterminate sentences, Negroes received longer sentences than native whites in "all these offenses except homicide" (Sellin, 1935: 216). Hence, he concluded that "equality before the law is a social fiction" (1935: 217).

Johnson (1941) tried to explain why the Bureau of the Census report showed that native whites got longer definite sentences than Negroes in six of the ten categories. He hypothesized that "differentials in the treatment of Negro offenders in southern courts do exist but are obscured by the fact that conventional crime statistics take into account only the race of the offender" (1941: 98). Hence, he used the following four categories: (1) Negro versus white (N-W), (2) white versus white (W-W),

(3) Negro versus Negro (N-N), (4) white versus Negro (W-N), in an attempt to eliminate this problem. Using data on murders collected between the years 1930 to 1940 in areas of Virginia, North Carolina, and Georgia, he tested his hypothesis. He found that the "conviction rates in the N-N groups are consistently lower than in the N-W groups. Perhaps the most striking thing ... is the tendency not to apply the death or life sentences in the N-N convictions" (1941: 99). However, the data from North Carolina was inconsistent for the N-N and W-W cases. Nevertheless, he concluded that the data seemed to confirm the fact that the severity of sentences decreased across the categories in the following order: N-W, W-W, N-N, W-N.

Using data on homicides collected from the records of ten counties in North Carolina, Garfinkle (1949) conducted a study similar to Johnson's. The main difference between the two studies was that Garfinkle classified homicide according to first degree murder, second degree murder, and manslaughter; and he examined these new variables in relation to indictments, charges, and convictions. He found that for those initially charged with first degree murder, 23.7% of the N-W. 37.6% of the W-W, and 74.6% of the N-N either initially pleaded guilty to a lesser charge or during the process of their trial by jury pleaded guilty to a lesser charge. Secondly, for those charged with first degree murder, 36.6% of the N-W, 10.9% of the W-W, and 4.0% of the N-N received the death penalty. Finally, for those convicted of first degree murder, 42.9% of the N-W, 18.6% of the W-W, and 6.7% of the N-N received the

death penalty. Based on this evidence, Garfinkle concluded that the severity of sentences decreased as one went down the categories from N-W to W-N.

Newsom (1956) also ran a similar test. Utilizing data on homocides collected in St. Louis from 1943 to 1947, he found that "...Negro intraracial and white intraracial offenders are treated approximately the same but that Negro inter-racial offenders are treated most severely of the four categories studied, while white inter-racial offenders suffered no punishment" (1956: 1188). In addition, he found as Johnson and Garfinkle had, that murder tended to be an intra-racial crime.

Based on evidence collected from the criminal court records in New Orleans during the years 1954, 1956, 1958, and 1960, Jacobs concluded that Negroes were discriminated against. He found, even when controlling for type of crime, that in the majority of cases, Negroes received longer sentences than whites. For example, in 1960, 27.4% of the Negroes convicted for burglary received a prison sentence of a year or more, compared with 20.7% of the whites. Furthermore, he discovered that fewer of the Negroes' cases were dismissed from court, and also fewer of the Negroes were able to win their freedom on bail.

Utilizing data provided by a 1958 survey of inmates of the Texas State Prison, Bullock (1961) attempted to test three hypotheses:

> 1. The length of prison sentence will be found significantly associated with non-racial characteristics of the offender, of both a legal and "extra-legal" nature.
>
> 2. Negro prisoners will be found to possess these non-racial characteristics in greater proportion to their number than will white prisoners.
>
> 3. Negro prisoners will be found to receive long sentences in greater proportion to their number than will white prisoners, even when the two groups are similar in other characteristics found to be associated with length of prison sentence (1961: 413).

His findings supporting the first two hypotheses were the following: (1) a substantial positive relationship between type of offense and length of sentence, (2) no significant relationship between number of previous convictions and length of sentence, (3) a negative relationship between pleading guilty and the length of the prison sentence, (4) a significant relationship between area and length of sentence, (5) and a positive relationship between being Negro and being committed for a type offense for which juries usually assess long sentences. Also, evidence was collected supporting the third hypothesis. Specifically, Bullock found that even when the above non-racial factors were controlled, the association between race and length of prison sentence was not reduced, and that Negroes who pleaded guilty received longer sentences in greater proportion than whites. Finally, he also examined the relationship between murder and length of prison sentence. Due to the fact that murder is an intra-racial crime, he expected to find Negroes receiving shorter sentences than whites. His expectations were fulfilled.

In summary, Bullock concluded that "certain factors other than those specified in the law were found significantly associated with the length of sentences imposed by a jury upon an offender" (1961: 417).

Nagel utilized data collected in 1962 by the American Bar Foundation and analyzed a number of factors to determine their relationship to the judicial process. Concerning economic class, Nagel found that the large majority of indigents, approximately 75%, were unable to raise bail and hence remained in jail waiting trial; the reverse was true for non-indigents. Indigents were also found guilty about 90% of the time, while non-indigents had an 80% conviction rate. Analyzing the data for race, Nagel concluded "the poor suffer even more discrimination than Negroes in criminal justice; and Negroes may suffer more from lack of money than from race" (1970: 121). However, he still found the Negro to be discriminated against in court proceedings, especially in regards to probation and suspended sentences. For example, "74% of guilty Negroes were imprisoned in state larceny cases, against only 49% of guilty whites" (1970: 121). This discrimination against the poor and the Negro was observed even when the criminal's prior record was held constant.

Partington (1965) studied the history of punishment for rape in Virginia. He found that the Virginia statutes for rape prior to 1866 did make a distinction between the penalty to be imposed on whites and blacks for the crime of rape: namely, blacks could

receive the death penalty, while whites could not. When the statutes were amended in 1866 to eliminate the distinction between whites and blacks, the death penalty became a means of punishment that could be imposed on members of either race. However, in the 56 year period from 1908 to 1964 which he examined, all 41 persons who were executed were members of the Negro race. He thus concluded that there was evidence of discrimination in the application of the death penalty for rape. However, he noted that there was "no apparent legal basis presently available ...which would persuade a court to reverse a conviction in a particular case" (1965: 63).

In 1967 the Southern Regional Council collected data from five southern states (Arkansas, Alabama, Georgia, Tennessee, and Virginia) for its project on crime and corrections. Although the degree of disparity differed by states, they found that in general blacks received a prison sentence 4.7 years longer than whites. In fact, after extensively analyzing their data, they concluded that there was "a significant absolute disparity between the sentences by black offenders and those received by white offenders, without regard to type of crime, length of prior record, type of counsel, or nature of plea" (1969: 14). However, it should be noted that in examining the type of crime, they only compared crimes against persons to crimes against property. No attempt was made to study the specific types of crimes that fall within these general categories.

However, it should be noted that there is one researcher whose findings disagree with those that have been presented thus far.

Green (1960) analyzed data collected from a non-jury court in Philadelphia and did not find any evidence of racial discrimination. Moreover, to further substantiate this initial finding, he reanalyzed part of his data in 1964 employing the four offender-victim categories used by Johnson (1941) and Garfinkle (1949). Specifically, he re-examined 118 cases of robbery and 291 cases of burglary. His purpose was to make sure that his earlier finding was not caused by the offsetting of the undue severity of sentence given to N-W cases, with the undue leniency given to N-N cases. Utilizing such factors as number of bills of indictment convicted on, prior criminal record, age, and sex, for control variables, he was unable to find evidence that this court differentiated "the seriousness of crimes according to the race of the offender relative to the race of the victim" (1964: 356). In other words, "variation in sentencing according to the race of the victim does exist, but it is a function of intrinsic differences between the races in patterns of criminal behavior" (1964: 358). Thus, he concluded that the sentencing practices of judges fell within the framework provided by the law. However, there are three points that should be realized about this study. First, a more recent study in Philadelphia by Cannavale (1972) found a significant difference between the lower and higher court's decision-making process. In fact this was most clearly seen in the treatment of white and non-whites. "Nonwhites for the higher court in a number disproportionate to the nonwhite composition in the population of arrestees. Although the higher court showed

no discriminatory practices in handling these cases, the very fact of being nonwhite increased the probability of a defendant's having a higher court trial" (1972: 6142). Second, he failed to realize that "even within the boundaries of the law there is opportunities for making decisions on the basis of extra-legal considerations" (Quinney, 1969: 17). That is, although sentencing operates within the law, "extra-legal or social factors play their parts in the decision-making process (Quinney, 1969: 17)". Finally, Green's findings merely showed that those few Philadelphia prison court judges were unprejudiced. However, he has failed to acknowledge those critics (cf. Knowles and Prewitt, 1969) who claim that the legal structures themselves are racist. Specifically, they claim that, "the very structures of the system, because they were created by whites, invariably operate to disadvantage the culturally different, regardless of who is in control (Knowles and Prewitt, 1969: 58)." In summary, it is seen that the vast majority of studies have found racial and economic discrimination in the judicial sentencing process.

The vita has been removed from the scanned document

A STUDY IN THE SOCIOLOGY OF CRIMINAL LAW: LEGAL AND NON-LEGAL FACTORS AFFECTING THE LENGTH OF PRISON SENTENCE

by

Thomas A. Leggette

(ABSTRACT)

This study presents an initial attempt to develop a model of a decision-making process which lawyers could employ in seeking the most lenient sentence possible for their clients. Regression equations depicting the direct effect of a number of legal and non-legal (social) factors on the length of prison sentence were constructed on the basis of data collected from the Division of Corrections and the Bureau of Research and Reporting of the State of Virginia.

Analysis of the data revealed that the type of crime one was convicted of, acted as a specifying variable; thus, the regression equations were developed in crime specific terms. Comparing the regression equations for the seven different types of crime sampled, it was found that no two of them were the same. Moreover, the ability of the regression equations to explain the variance in the

length of prison sentence was found to fluctuate drastically. Nevertheless, it was felt that the advocated model could be of some utility to lawyers.