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REVIEW ARTICLE:

Fathers and "Femininity" in Daughters: A Review of the Research

Miriam M. Johnson ..... 1

RESEARCH ARTICLES:

Social Context of Deterrence  
Joseph H. Rankin and L. Edward Wells ..... 18

Record and Court Processes: The Role of Latent  
in Criminology Research  
Jack M. Horan, Martha A. Myers and  
Margaret Farnworth ..... 40

Prevalence of Juvenile Shoplifting  
W. Klemke ..... 59

Reaction to Labels: An Experiment and an  
Laboratory Study  
Morash ..... 76

REVIEWS:

Erath III, E.G. Armstrong, G. Turkel, J.H.  
J. Caston, B.M. Berger, R.A. Stebbins, B.R.  
J. Clarke, J.D. Orcutt, A. Eppy, S.H. Armitage,  
and P. Adler ..... 89

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86037

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## PRIOR RECORD AND COURT PROCESSES: THE ROLE OF LATENT THEORY IN CRIMINOLOGY RESEARCH\*

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## ABSTRACT

This paper critically examines two latent theoretical assumptions underlying contemporary research on court processes: (1) that legal and social factors in criminal justice processes are empirically and conceptually separable; and (2) that such factors operate in a uniform fashion throughout criminal processing. We focus on the defendant's prior criminal record as an important example of a factor traditionally conceptualized as "legal" and distinguished from social factors. We use a covariance analysis of the effects of prior record on several court processes to examine the interplay between prior record and defendant's social background. Our analysis demonstrates that prior record operates to condition the impact of social factors on criminal justice processes. Thus, social and legal factors are not as readily separable as is typically assumed. Moreover, we find considerable variation in the determinants of courts processing from one stage to the next, suggesting that the choice of stage for analysis may condition findings. We conclude with a consideration of the implications of our findings for research aimed at evaluating major theoretical models of the criminal justice process, and for research within alternative frameworks.

The study of criminal justice processes is widely recognized as an important focus for empirical research. Despite extensive study, however, central issues about the nature of these processes remain unresolved. Inconclusive or contradictory results have led some critics (e.g., Hagan, 1974, 1975b; Burke and Turk, 1975; Chiricos and Waldo, 1975, Bernstein, *et al.*, 1977; Gibson, 1978; Thomson and Zingraff, 1981) to question the adequacy of either the statistical methods or the theory used in research. Other researchers have begun to search for substantive explanations for inconclusive findings, suggesting that criminal processes may be so random as to preclude the discovery of empirical regularities (e.g., Lizotte, 1978) or that inconsistent

\*The data for this study were collected by Martha A. Myers in research funded by Law Enforcement Assistance Administration grant 76-N1-99-0071.

## THE SOCIAL CONTEXT OF DETERRENCE

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1973 "Moral appeal, sanction threat, and deviance: an experimental test." *Social Problems* 20(Spring): 488-498.
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1964 "Is punishment necessary?" *Journal of Criminal Law, Criminology and Police Science* 55(September): 332-337.

## PRIOR RECORD AND COURT PROCESSES

findings may be due to variations in individual decision-making (e.g., Bottomley, 1973; Gibson, 1978).

We consider such extreme conclusions premature. Diverse empirical findings may not reflect actual "randomness" in the process. Rather they may reflect "slippage" among three separate elements of the research process itself. Two of these elements are widely recognized in the criminal justice literature. They are (1) the theoretical model that identifies concepts and proposes hypotheses amenable to empirical inquiry; and (2) the research findings resulting from analyses of empirical data. The third element plays a crucial, intervening role between these two. This element, referred to here as latent theory, is the set of theoretical assumptions embedded in the measurement of concepts and the design of empirical analyses that are not acknowledged by the theoretical model. These premises are theoretical because, while they do not derive from empirical evidence, they shape our conceptions of criminal justice processes and condition our empirical inquiries into those processes. They are latent in the sense that they rarely receive explicit attention with the major theoretical models of criminal justice processing.

In most social science research, the analysis design will not be totally determined by the explicit theoretical framework invoked by the researcher. In some cases, this is so because the manifest theory simply does not provide guidance on the areas of substantive decision-making that empirical research requires. In other cases, methodological applications are adapted without recognizing the theoretical content embedded in those applications. In both situations, the connection between manifest theory and interpretations of research findings is loosened because elements of latent theory play a crucial intervening role.

This paper examines the role of such latent theoretical elements in contemporary criminal justice research. We focus on two assumptions underlying this research, namely, the separability of social and legal factors in criminal justice processing and the uniformity of criminal justice processes across different stages of processing. Our focus on these assumptions allows us to examine the role of latent theory in the design and interpretation of empirical research. It also allows us to examine the links between latent theory and ongoing theoretical controversies in the literature.

### Latent Theory in Criminology Research

Most research assumes that the effects of legal and social factors during criminal processing are readily separable. The conventional approach to separation is to group variables into two conceptual categories prior to analysis. Factors in processing that derive from, or are legitimated by, criminal law are designated as "legal" or procedural, while other factors such as defendant characteristics are designated as "extralegal" or social. Most research also presumes that each component, whether legal or extralegal, operates in a similar fashion at all stages of processing. This assumption is apparent in the tendency to generalize about the nature of processing on the basis of findings from a single stage such as sentencing (as in Chiricos and Waldo, 1975 or Kleck, 1981). Recent work has called into question the adequacy of both assumptions, suggesting that legal and social factors may not be as clearly separable as typically assumed (e.g., Farrell and Swigert, 1978; Feeley, 1979), and

that criminal justice processes may exhibit substantial variations in form between different stages (e.g., Hagan, 1975b; Bernstein et al., 1977; Farnworth and Haran, 1980).

#### Prior Record as a Legal Factor

Several variables have been interpreted as legal factors within criminal justice processing. Typically these include the charges against the defendant and/or information about the defendant's prior criminal record. In this analysis, we use prior record to address the issues of the separability of legal and social background factors, and the uniformity of their effects across stages of criminal processing. To do so we ask: First, are the determinants of outcomes of criminal justice processes comparable for persons with prior records and persons without prior records? Second, are these determinants relevant at early as well as later stages of processing?

Since it is commonly assumed that prior record represents a legal factor in processing, we must first consider the conceptual and empirical bases of this assumption. Prior record does indeed represent a prior outcome of criminal justice processes and, in this sense, is a "legal" factor, however, its use during subsequent criminal justice processing may occur either on legally-stipulated or discretionary grounds. As an example of the former, criminal statutes commonly specify different procedures for defendants designated as first, as opposed to habitual, offenders. Similarly, prior record is legally recognized as an impediment to probation, bail, and parole (Newman, 1966; Dawson, 1969). On the other hand, there is evidence that prior record is commonly used in a discretionary manner at several stages of processing, including charge reduction, presentencing reports, and sentencing. In short, the designation of prior record as a legal factor cannot be derived from the way this information actually is used in criminal justice processing.

In addition, the question of the *meaning* of prior record in criminal processing depends not only on how prior record information is used but also on what prior record indicates about the defendant. This latter issue, in turn, is directly related to fundamental theoretical controversies that underlie most research on criminal justice processing. Hence, to address the question about the meaning of prior record, we must look more carefully at the literature on criminal justice processing.

Our empirical information about criminal justice processes derives largely from analyses that seek to evaluate two competing theoretical models. The "responses to behavior" model (see, e.g., Hindelang, 1978) proposes that differences in criminal justice outcomes are due to differences in the behavior of individuals accused of committing crimes, differences that are reflected in the responses of officials within the criminal justice system. The competing "response to defendant" model suggests that differences in criminal justice outcomes are due in part to differences in defendant social characteristics and the responses of authorities to those characteristics, rather than simply to differences in alleged behavior. This general model encompasses most variants of conflict (Turk, 1969; Quinney, 1970; Chambliss and Seidman, 1971) and interactionist (e.g., Becker, 1963; Schur, 1971) theories.<sup>1</sup>

There are important theoretical differences between these two models, differences in basic conceptions of the relationship between the individual and social institutions. However, efforts to evaluate the competing models empirically must necessarily focus on concrete comparisons. One common comparison has emphasized the distinction between legal and social background factors as determinants of criminal justice outcomes. In this view, legal factors reflect defendant behaviors, while social background characteristics reflect defendant placement within the social order. Thus, most evaluations of competing theories have taken the form of estimating the relative importance of social background vs. legal factors for outcomes, and using such findings to argue for one theoretical model or the other.

Rather than pursue this line of inquiry, our analysis addresses two fundamental assumptions underlying this research literature. Specifically, we examine the assumption that legal and social background variables operate in an additive fashion so that their relative effects are readily separable. We also examine the assumption that their mode of operation is uniform across various stages. To appreciate the centrality of these assumptions for interpretations of research findings and evaluations of competing theories, we must consider the various research designs used in the literature.

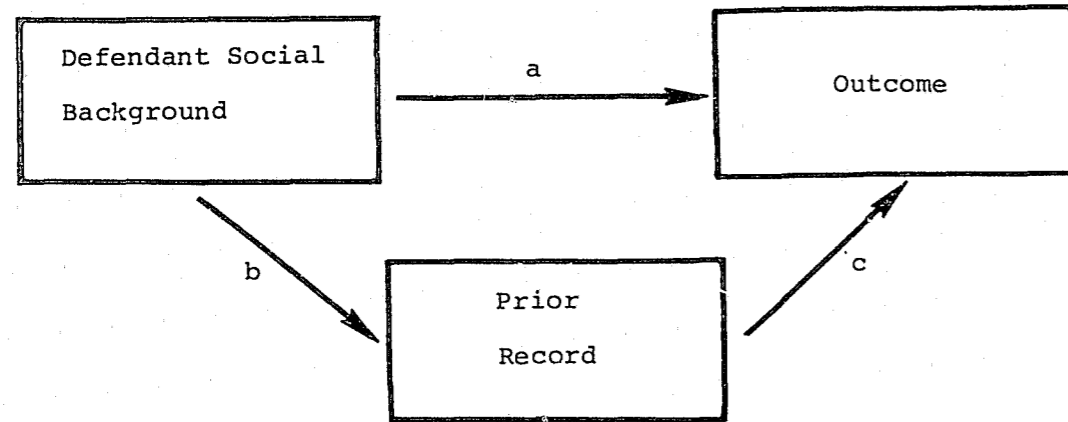
#### Traditional Research Designs

The simplest multivariate design for separating and estimating social and legal effects is analogous to Blalock's (1959) "inventory of causes." It involves simultaneously estimating the net effects of a set of independent variables on a single dependent variable. In effect, this approach assumes that all independent variables are causally equivalent, and it tests for the existence of social background effects that are net of "legal" factors such as prior record. One problem with this approach is that the relatively strong correlation between social background and prior record complicates the empirical separation of the two, and the inventory of causes designed is not well suited to determining the relative importance among members of a set of highly intercorrelated variables (Gordon, 1968). A second problem with this approach involves the conceptualization of prior record as a legal variable. This conceptualization requires the latent theoretical assumption that a defendant's prior record simply reflects his/her prior criminal behavior. But just as official crime rates reflect both the behavior of alleged criminals and the behavior of law enforcement officials (Kitsuse and Cicourel, 1963), so too may a defendant's prior record reflect both the defendant's prior behavior and the prior responses of officials to the defendant (Farrell and Swigert, 1978). The fact that prior record combines the prior behavior of defendants and official agents further complicates interpretation of the relationship between prior record and social background characteristics.

More recent work (e.g., Hagan, 1975b; Hewitt, 1977; Farrell and Swigert, 1978) has abandoned the "inventory of causes" design for the causal chain design depicted in Figure 1. Here, prior record is represented as intervening between social background factors and outcomes. Although this approach avoids some problems inherent in the earlier design, it fails to solve the problem of how to interpret prior record. Instead, it generates a dispute as to which pattern of social background effects is interpretable as differential treatment on the basis of social characteristics. For some

researchers (Hewitt, 1977; Lotz and Hewitt, 1977; Kleck, 1981), differential treatment exists only if social background factors affect outcomes directly. Here, "a" in Figure 1 is that appropriate measure of social background effects. This strategy denies the relevance of background effects on outcomes that are mediated by prior record (i.e., the indirect effect "b x c"). For this denial to be legitimate, however, one must assume that the relationship between social background and prior record is due not to differential past treatment of social groups but to the differential past criminal behavior of these groups.

FIGURE I  
Causal Chain Design



Other researchers using this causal model design (Farrell and Swigert, 1978) interpret results differently. For them, differential treatment involves not only direct effects of social factors net of prior record, but also indirect social background effects mediated by prior record. In this view, the proper measure of differential treatment is  $a + b \times c$ . This interpretation is equally extreme, because it implies that prior record is little more than an instrument of social discrimination. That is, the relationship between social background and prior record is attributed solely to past differences in the treatment of social groups.

There remain, then, important questions about how to separate social background effects from the effects of prior record. Our analysis uses a covariance design to decompose the interrelationships among prior record, social background factors, and outcomes of criminal justice processes. This decomposition is simplest in the case of individuals with no prior record. There, we can estimate social background effects on outcomes that are "uncontaminated" by prior differential treatment. A comparison of social background effects, estimated separately for defendants with and without records, provides information on the interplay between social background and prior record. If those background effects are not equivalent for both groups, then we have evidence for an interactive relationship between social background and prior record in determining processing outcomes. Where this occurs,

the effects of prior record and of social background factors cannot be separated into additive components, and the use of models that provide such an additive decomposition is both illegitimate and potentially misleading.

ANALYSIS

Sample

Data were obtained from a random sample of 980 defendants charged with a felony involving a victim in Marion County (Indianapolis, Indiana).<sup>2</sup> All cases were disposed between January 1974 and June 1976. The primary data source was the file folder of the trial deputy. This folder included police teletyped narratives of the criminal event and the defendant's arrest, a summary sheet of the evidence, the prosecutor's information or grand jury indictment, and the deputy's notes for case presentation at trial. Information from these files was supplemented by data from court and police arrest records, and by telephone interviews with victims. In addition, extended discussions with prosecutors and court personnel and observations were conducted during the eight-month period of data collection.

Variables

Table 1 presents the variables, their coding and frequencies for the total sample of defendants. In the course of our analysis, we will distinguish among three groups of variables: independent, intervening and outcome. The group of independent variables consists of factors that are exogenous to the criminal justice process. That is, they may have some impact on the process, but are not themselves contemporaneously affected by the process. This group includes defendant social characteristics and prior record, as well as characteristics of the victim and the offense. The group of intervening variables involves actions or decisions by officials or defendants that may affect later criminal justice outcomes and the affected by the independent variables. Finally, the group of outcome variables consists of important dispositions in the criminal justice process.

*Independent Variables.* Most previous research (see Hagan, 1974; Kleck, 1981 for reviews) has identified the defendant's sex, race, age and occupation as factors likely to affect outcome. In this analysis, we include the defendant's sex, age and employment status. Since the effect of defendant's race may depend on the race of the victim (see Garfinkel, 1949; Wolfgang and Riedel, 1973; Myers, 1979; Radelet, 1981), we define two variables to represent this relationship. The first, Racial Composition 1, dichotomizes racial composition as (1) black defendant-white victim (BW) and (0) other events. The second, Racial Composition 2, is defined as (1) white defendant-white victims (WW) and (0) other events. The black defendant-black victim events will be coded zero on both variables, and thus will be the omitted category or comparison point when the coefficients for both are significant. As in other studies (Garfinkel, 1949; Green, 1964), the number of white defendant-black victim events is small ( $n = 11$ ), and these have been excluded from analysis.



TABLE 1  
SCALE AND DISTRIBUTION OF VARIABLES

Variable	Scale	Proportions or Means (N = 980)
<u>Independent Variables</u>		
Defendant Prior Record	0 No arrests 1 Arrest(s)	27.3 (268) 72.7 (712)
Defendant Sex	0 Female 1 Male	3.5 ( 34) 96.5 (946)
Defendant Age	Interval	$\bar{X}$ = 25.4
Defendant Employment Status	0 Unemployed 1 Employed 2 Self-employed	47.3 (384) 48.9 (397) 3.8 ( 31)
Racial Composition 1	0 White defendant, White victim 0 Black defendant, Black victim 1 Black defendant, White victim	47.3 (445) 23.8 (224) 28.8 (271)
Racial Composition 2	0 Black defendant, White victim 0 Black defendant, Black victim 1 White defendant, White victim	28.8 (271) 23.8 (224) 47.3 (445)
<u>Independent Variables</u>		
Victim Sex	0 Female 1 Male	36.9 (362) 63.1 (618)
Victim Age	Interval	$\bar{X}$ = 36.7
Victim Employment Status	0 Unemployed 1 Employed 2 Self-employed	16.4 (134) 55.2 (450) 28.3 (231)
Victim Prior Record	0 No arrests 1 Arrest(s)	82.6 (803) 17.4 (169)
Weapon	1 None 2 Hand, fists, feet 3 Blunt instrument 4 Sharp instrument 5 Firearm 6 Firearm & other weapon	53.7 (526) 6.2 ( 61) 2.2 ( 22) 5.3 ( 52) 32.0 (314) .5 ( 5)
<u>Intervening Variables</u>		
Prosecution Charge	Interval	$\bar{X}$ = 15.2
Counsel	0 No counsel 1 Court-appointed 2 Privately retained	1.3 ( 11) 48.5 (475) 50.4 (494)
Pretrial Release Status	0 In jail 1 Out on bond 2 Never held in custody	66.3 (650) 32.7 (320) 1.0 ( 10)
Conviction Charge	Interval	$\bar{X}$ = 11.5
Probation Officer Recommendation 1	0 No recommendation 1 Some recommendation	47.4 (322) 52.6 (358)
Probation Officer Recommendation 2	0 Other sanction 1 Prison Sentence recommendation	33.0 (118) 67.0 (240)
Method of Conviction	0 Pled guilty 1 Convicted at trial	69.3 (471) 30.7 (209)

TABLE 1. (Continued)

Variable	Scale	Proportion or Means (N = 980)
<u>Dependent Variables</u>		
Bond	Interval	$\bar{X}$ = \$10,277
Dismissal	0 Dismissed 1 Not dismissed	19.6 (192) 80.4 (788)
Plea	0 Pled guilty 1 Proceeded to trial	59.8 (471) 40.2 (317)
Trial Verdict	0 Not guilty 1 Guilty	29.2 ( 86) 70.8 (209)
Type of Sentence	0 Other sanction 1 Prison sentence	27.1 (184) 72.9 (496)

To avoid spurious findings attributable to other victim characteristics (see Williams, 1976; Myers, 1979), we include the victim's sex, age, employment status and prior record. The final independent variable is type of weapon used by the defendant. This is generally seen as a characteristic of the offense (e.g., Hewitt, 1977) and will be treated as such here.

Prior record has been measured in a variety of ways in the existing literature. Some researchers have used dichotomies indicating the presence or absence of prior arrests (Chiricos and Waldo, 1975; Clarke and Koch, 1976; Lizotte, 1978), prior convictions (Nagel, 1969; Gibson, 1978), or prior incarcerations (Burke and Turk, 1975; Thomson and Zingraff, 1981). Others measure prior record as an interval scale of arrests (Hagan, 1975b; Unnever et al., 1980) or convictions (Chiricos and Waldo, 1975; Hagan 1975a; Farrell and Swigert, 1978; Hagen et al., 1980). In our analysis, prior record is coded as a dichotomy between no prior arrests (0) and one or more prior arrests (1). This specification has conservative implications for our tests of prior record effects during criminal justice processing. To the extent that prior conviction has a different legal import than prior arrest without conviction, a dichotomy that focuses only on the presence or absence of a prior conviction could increase the likelihood and the magnitude of prior record effects.

*Intervening Variables.* For purposes of our analysis, variables designed as intervening include: (1) the prosecution charge; (2) counsel, whether private or court-appointed; (3) defendant pretrial release status; (4) conviction charge; and (5) for convicted defendants, the probation officer's presentencing recommendation.

The importance of counsel has been suggested by Newman (1966) and more recently by Hagan (1975b), Hewitt (1977), and Swigert and Farrell (1977). Past research (e.g., Ares et al., 1963; Roballo et al., 1974) has also reported that whether or not the defendant was detained in jail pending trial affects later outcomes. Since both counsel and pretrial release may depend on the defendant's resources and on the nature of the charged offense, analysis was conducted to identify variables that significantly affect these outcomes. Prosecution and conviction charges have typically been defined as "legally relevant" variables. Both, however, are decisions reached not only on the basis of suspected criminal behavior, but also as a result of

informal charge negotiation (Newman, 1966). Thus, we estimate the effects of the independent variables on these two charges. Analysis includes the most serious prosecution charge and, where applicable, the most serious conviction charge. Seriousness is measured as an ordinal rank based on the prison sentence stipulated by law.<sup>3</sup>

The presentencing recommendations of probation officers have been found to influence sentences (Hagan, 1975a; Myers, 1979; Unnever et al., 1980). In fact, the work of Hagan (1975a) and Myers (1979) suggests that social background factors have their strongest effects on sentences indirectly, through the recommendations they elicit. Thus, our analysis estimates the effects of independent variables on probation officer's recommendation. This variable is dummy coded to draw two distinctions: (1) between cases having no recommendation and those with some recommendation; and (2) for cases having some recommendation, between recommendations for a prison sentence and recommendations for a more lenient sanction.

*Outcome Variables.* Many previous studies interested in social background effects have focused exclusively on sentencing (Chiricos and Waldo, 1975; Hewitt, 1977) or postsentence adjudication (Chiricos et al., 1972; Carroll and Mondrick, 1976). Hagan (1975a, 1975b) and others (e.g., Emerson and Messinger, 1977) have suggested that earlier outcomes could prove to be the locus of more extensive differential treatment. To evaluate this proposal our analysis includes a range of decisions that occur once formal charges have been filed by the prosecutor. They are: Bond: the amount of final bond imposed on the defendant; Dismissal: the prosecutor's decision to dismiss the case or to proceed with prosecution; Plea:<sup>4</sup> the decision to plead guilty or go to trial; Trial Verdict: a finding of guilty or not guilty at trial; and Type of Sentence: the sentence imposed on the defendant, whether a prison term or other sanction such as a fine or suspended sentence.<sup>5</sup>

Analysis

Our analysis addresses two distinct questions. First, are defendants without prior records treated differently from defendants with prior records? If the answer is "No", then there is no need to be concerned about separating the two groups for estimating the effects of social background factors. If the answer is "Yes", then we ask a second question: How do social background and offense-related factors affect the experiences of defendants with and without a prior record? In answering this question, we will obtain estimates of the effects of social background and other variables that are "uncontaminated" by prior record.

Our analysis applies a series of multiple regression analyses to the intervening and outcome variables. Each outcome is the dependent variable in a model that includes the independent and temporally prior intervening variables. To test for differences between the "record" and "no record" groups, we then repeat each analysis, adding prior record and a set of interaction terms between each of the included variables and the binary prior record variable (prior record = 1; no prior record = 0). A Chow test on the increment to explained variance is used to test for differences between procedures for defendants with and without a prior record. In cases where

this overall test is significant at the .05 level, we report record-specific effects for all variables that exhibit significant ( $p < .05$ ) between-group differences. To facilitate the widest range of comparisons with other studies using different sample sizes and significance levels, we use a less conservative criterion ( $p < .10$ ) for identifying coefficients as significantly different from zero. Readers who prefer the .05 criterion may concentrate on coefficients marked with a double asterisk.<sup>6</sup>

FINDINGS

Intervening Variables

The first part of our analysis estimates the effects of social background, prior record and other independent variables on the intervening variables. Table 2 presents the results of analysis for four intervening variables where prior record has no direct or conditioning effects. These findings do not directly contradict the findings of research (e.g., Hagan, 1975a) that uses comparable measures of prior record. Defendant's social background has some effects, but these tend to be modest in magnitude. In general, the intervening variables affect one another in largely predictable ways, and the findings are consistent with results reported in past research conducted at these early stages (see, e.g., Farrell and Swigert, 1978; Hagan et al., 1979).

TABLE 2  
INTERVENING VARIABLES: SIGNIFICANT STANDARDIZED REGRESSION COEFFICIENTS FOR ADDITIVE MODELS

VARIABLES	PROSECUTION CHARGE	COUNSEL	PRETRIAL RELEASE STATUS	CONVICTION CHARGE
Defendant Age	-.102**			-.111**
Defendant Employment Status		.112**	.111**	
Racial Composition 1		-.089**		.151**
Racial Composition 2	-.095**		.102**	.140**
Victim Sex	-.122**			
Victim Age	.055*			
Victim Employment Status	-.131**			.094**
Weapon	.572**	.097**		.089**
Prosecution Charge			-.101**	.518**
Counsel			.390**	-.093**
Pretrial Release Status		.440**		
Method of Conviction				-.112**
Bond			-.199**	
	N = 639	N = 639	N = 639	N = 309
	R <sup>2</sup> = .415	R <sup>2</sup> = .258	R <sup>2</sup> = .311	R <sup>2</sup> = .467

\*Significant at  $p \leq .10$

\*\*Significant at  $p \leq .05$

In contrast with the other intervening variables, the probation officer's recommendation shows substantial conditioning effects of prior record.<sup>7</sup> Table 3 shows that, regardless of prior record, probation officers are more likely to recommend a prison sentence if the defendant is male or in jail pending trial, or if the victim was unemployed. All other effects are record-specific. For defendants with no prior

record, crimes involving a white defendant (i.e., a white intraracial crime) or a victim with a prior record reduce the probability that a prison sentence will be recommended, while the use of a dangerous weapon increases that probability. For defendants with a prior record, neither the victim's prior record nor the use of a dangerous weapon affects the probation officer's recommendation. Important factors for these defendants are counsel, where private counsel decreases the probability that a prison sentence will be recommended and conviction charge, where serious charges increase the probability of such a recommendation. Note that the effect of racial composition for defendants with a prior record is exactly the opposite of the result for defendants with no prior record. White defendants with prior records are more likely to have prison recommended.

TABLE 3

PROBATION OFFICER RECOMMENDATION 2:  
SIGNIFICANT STANDARDIZED REGRESSION COEFFICIENTS FOR INTERACTIVE MODEL

Variable	Common Effects	Record-specific Effects	
		No Prior Record	Prior Record
Defendant Sex	.306**		
Racial Composition 2		-.327**	.149*
Victim Employment Status	-.281**		
Victim Prior Record		-.268**	.002
Weapon		.366**	.035
Counsel		.096	-.140**
Pretrial Release Status	-.443**		
Conviction Charge		-.014	.221**

N = 284  
R<sup>2</sup> = .467

\*Significant at p ≤ .10  
\*\*Significant at p ≤ .05

Outcome Variables

We have identified five outcomes of the criminal justice process as of special interest here, and have categorized these as outcome variables. The analyses for four of these are discussed below. The regression for the fifth, Dismissal, was not statistically significant and will not be presented.

Table 4 presents the results of the analysis for Bond, Plea and Trial Verdict. For Bond, two variables, the prosecution charge and counsel, have effects that obtain regardless of the record of the defendant: bond is higher for defendants with serious prosecution charges and lower for those with private counsel. Prior record conditions the remaining effects. Unemployed defendants with no prior record tend to have higher bond amounts levied, while unemployed defendants with prior records can expect lower bond amounts. The use of a dangerous weapon in the commission of the offense does not affect bond amounts for defendants with no prior record. But for defendants with a prior record, use of a dangerous weapon increases bond amounts.

TABLE 4

DEPENDENT VARIABLES: SIGNIFICANT STANDARDIZED REGRESSION COEFFICIENTS FOR INTERACTIVE MODELS

Variables	Common Effects	BOND		PLEA		TRIAL VERDICT	
		Record-specific Effects		Record-specific Effects		Common Effects	Record-specific Effects
		No Prior	Prior	No Prior	Prior		
Intercept <sup>a</sup>				.523	-.713		
Defendant Employment Status		-.150*	.077*				
Racial Composition 1						-.661**	.112
Racial Composition 2						-.678*	.023
Victim Age				.085	-.079	.350**	-.091
Victim Employment Status						-.401*	.035
Weapon		-.035	.250**	.395**	.071		
Prosecution Charge	.307**			-.236**	.063	-.523*	
Counsel	-.118*						
Pretrial Release Status				.174**	-.056	.538**	.068
		N = 639		N = 639		N = 200	
		R <sup>2</sup> = .260		R <sup>2</sup> = .149		R <sup>2</sup> = .184	

<sup>a</sup>Intercept estimates are computed prior to standardization.  
\*Significant at p ≤ .10  
\*\*Significant at p ≤ .05

Prior record conditions all effects for Plea. Those defendants with no prior record who used a dangerous weapon, had less serious charges filed against them, or obtained pretrial release are more likely to stand trial than plead guilty. Defendants with a prior record are much more likely to plead guilty, and no other factor affects this likelihood.

Turning our attention to Trial Verdict, for all defendants, the more serious the prosecution charge, the less likely is the finding of a guilty verdict. This reluctance to convict where the effects of conviction (viz., punishment) are serious has been noted by Kalven and Zeisel (1966) and, in experimental studies, by Vidmar (1972) and



Hester and Smith (1973). All other variables affecting verdict operate only for defendants with no prior record. For such defendants, a guilty verdict is more likely if the victim is older or unemployed. Contrary to prior research, defendants with no prior record involved in black intraracial crimes are more likely to be found guilty than those involved in either black defendant-white victim or white intraracial crimes. A guilty verdict is less likely for defendants detained in jail pending trial. While this result is consistent with Bernstein et al. (1977) finding of leniency for defendants detained prior to trial, it suggests that such leniency is reserved only for those defendants with no prior involvement in the criminal justice system.

Table 5 presents the results of analysis for Type of Sentence which, unlike analyses for the other dependent variables, shows no conditioning effects for prior record. Recall, however, that the major determinant of sentence type, the probation officer's recommendation, does exhibit some important record-specific effects in its own determination (see Table 3). This suggests that the conditioning effects of prior record on type of sentence are indirect, being mediated by the probation officer's recommendation for a prison sentence. Regardless of the defendant's prior record, prison sentences are more likely if counsel was appointed, the conviction charge was serious, the probation officer expressed doubt about the appropriate sanction (that is, made no recommendation), the probation officer recommended prison, and the defendant was convicted at trial.

TABLE 5  
TYPE OF SENTENCE:  
SIGNIFICANT STANDARDIZED REGRESSION  
COEFFICIENTS FOR ADDITIVE MODEL

Variable	$\beta$
Counsel	-.071*
Conviction Charge	.098**
Probation Officer Recommendation 1	-.227**
Probation Officer Recommendation 2	.502**
Method of Conviction	.073*
	N = 509
	R <sup>2</sup> = .379

\*Significant at  $p < .10$

\*\*Significant at  $p < .05$

DISCUSSION

What, then, can we conclude from these empirical results about the relationship between prior record and the criminal justice process? The diversity of specific findings resists easy summary and interpretation within any established model of uniformity in criminal justice processing. Rather than attach detailed substantive interpretations to each estimated coefficient, we will turn to the basic regularities exhibited here and discuss their implications for theory and research on the criminal justice system.

This analysis was designed with two goals in mind: 1) to test the general hypothesis that defendants with prior records are treated differently than those who have no record; and 2) to examine the uniformity of criminal justice processing across stages. The results provide relatively clear general conclusions about both issues. First, the presence or absence of a prior record typically conditions the process experienced by defendants at the various stages. That is, at three of the four stages considered here, the process faced by the defendant depends at least in part on his/her prior record. Second, although the conditioning effects of prior record are apparent across stages, the specific nature and direction of these effects vary from one stage to the next. As a consequence, a comparison of processes across the four stages provides little evidence of interstage uniformity.

Prior Record Effects

The results of our analysis provide striking support for the general hypothesis of differential treatment for defendants *without* prior records. At each stage of criminal prosecution, defendants who are experiencing the process for the first time are treated in a manner that differs in important ways from that for defendants with a prior record. In three of the four outcomes the presence or absence of a prior record conditioned the role other variables play in determining that outcome. The major determinant of the fourth outcome (type of sentence) is itself determined in a record-specific fashion.

In our earlier discussion, we noted the possibility that social background effects might be more pronounced for defendants with no prior record. We can summarize our findings on this issue by noting that, while background effects never dominate decision making, they typically are more pronounced for defendants with no prior record. Moreover, our analysis of intervening outcomes suggests that social background effects operate in a subtle fashion through intervening outcomes, such as pre-trial release status or prosecution charges, that incorporate earlier differential treatment. These findings about the impact of social factors on so-called legal factors re-emphasize the general problems noted earlier in separating social and legal factors, particularly when such empirical separation is attempted for the late stages of criminal processing.

*Nonuniformity in Processing.* As in other analyses that have used covariance designs (Farnworth and Horan, 1980; Myers, 1980), our findings document the complex character of criminal justice processing. One dimension of this complexity relates to the organization of processing within each stage—an organization in which

the effects of some factors are conditioned by other factors such as prior record. Another dimension of the complexity relates to variations in the organization of processing between stages.

Our analysis documents the existence of considerable variation in processing from one stage to the next. For the middle stages, plea and trial verdict, outcomes were affected by social background characteristics, offense-related factors, or intervening outcomes, but only for those defendants with no prior record. In contrast, the existence of a prior record appeared to preclude from consideration many of these characteristics during these middle stages. For the setting of bond and for the presentence investigation, prior record operated to condition the effects of other factors for both groups of defendants. In two instances, prior record operated to reverse the effects of social background factors: defendant employment status (on bond) and race composition (on probation officer recommendation).

CONCLUSION

After questioning the assumption that "legal" variables are interpretable as straightforward measures of criminal behavior, we have shown that one such legal variable, prior record, conditions the impact of other variables within the criminal justice process and does so with considerable diversity across stages of the process. These results are inconsistent with the latent theoretical assumptions underlying much contemporary research, assumptions about the conceptual and empirical separability of social and legal factors, as well as assumptions about the appropriateness of drawing general conclusions from research based on late stages of the process (e.g., sentencing). As a consequence, the findings would seem to raise serious questions about the validity of interpretations based on that research. That is, they suggest that attempts to choose empirically between alternative theories of criminal justice processes by comparing the relative important of "legal" and social background variables at late processing stages may lead to serious empirical misspecification and substantive misinterpretation of criminal justice processes.

It is difficult to respond to these shortcomings of contemporary research precisely because such latent theoretical elements lack an explicit statement and theoretical rationale. To a large extent, issues of separability of effects and uniformity appear to fall beyond the scope of more familiar theoretical models that attempt to explain criminal justice processes. One possible response to our findings is to direct attention to theories of criminal justice processing that explicitly address such issues. For example, the loose coupling approach (see Hagan et al., 1979) rejects the conventional representation of criminal justice processing as an integrated, uniform whole, and replaces this conventional model with an image of processing as a composite or concatenation of separate but interrelated elements. This approach emphasizes both the theoretical and empirical importance of couplings that link basic elements within the organization (Glassman, 1973; Weick, 1973).

The development of a coherent theoretical framework for analyzing criminal justice processing as a loosely coupled system is currently more promise than reality (see Hagan et al., 1979; Hagan et al., 1980). Still, the loose coupling approach provides a research framework that includes official symbolic procedures and actual

processes, and it allows for interstage variability in criminal justice processes. It also suggests new directions for data collection and research on the symbolic content of daily activities within the criminal justice system. In this sense, a shift to the loose coupling framework promises an improvement in our research capabilities. It provides a conceptualization that makes explicit, and hence empirically researchable, some important elements of the latent theory underlying past research.

Such a theoretical shift is not without potential costs, however. The same theoretical shift that adds an explicit focus on between-stage differences in criminal justice processing also eliminates the explicit focus on the relationship between the individual and the criminal justice system. This relationship is the major theoretical element distinguishing the response-to-behavior and response-to-defendant models, a theoretical controversy that has been the major driving force behind much of the research on criminal justice processing. We feel that these issues are too important to simply abandon as researchable problems, especially in the face of continued applications of invalid analysis designs whose findings are used to draw sweeping substantive conclusions (Kleck, 1981). The best alternative seems to lie in longitudinal analyses that include early as well as late stages in processing, and that recognize the connections between today's legal variables and yesterday's criminal justice processes. However, as the analysis here demonstrates, the price we must pay for the increased empirical validity this analysis design provides may well be, at least in the short run, an increased complexity in the facts for which theories of criminal justice processing must account.

FOOTNOTES

<sup>1</sup>In grouping these theories we do not imply that there are no important theoretical differences between the conflict and labelling theories. These theories differ in both levels of analysis and interpretive frameworks. Yet, for purposes of this analysis, they are comparable because both lead us to expect differential treatment during criminal justice processing on the basis of social characteristics of the defendant.

<sup>2</sup>Since the offenses included here are neither minor nor victimless, official discretion may be constrained (Neubauer, 1974; Chiricos and Waldo, 1975). By focusing on felonies with victims, our analysis provides conservative estimates of social background effects.

<sup>3</sup>Seriousness of the prosecution and conviction charges refers to the rank of the most serious charge of which the defendant was accused or convicted. Rank is based on the prison term stipulated by law or, where the penalty is given as a range of years (e.g. 5 to 20 years), by mean prison sentence.

<sup>4</sup>The decision to plead guilty differs from other outcomes because it is a joint decision reached by the prosecuting attorney, defense counsel, and the defendant. Despite this difference, it depends on many of the same factors as do other dispositions analyzed here (see, Eisenstein and Jacob, 1977; Nardulli, 1978; Myers and Hagan, 1979). Thus, we analyze its determinants and its effects on later outcomes.

<sup>5</sup>We focus on sentence type because the discretionary power of judges lies primarily in deciding between a prison sentence and a less serious sanction, such as probation. Judges can determine the length of sentence for only a limited number of offenses (e.g., armed rape).

<sup>6</sup>Recall that all record-specific coefficients represent between-group differences statistically significant at the .05 level. The .10/.05 distinction for tests on these coefficients refers only to

## SOCIOLOGY AND SOCIAL RESEARCH

whether the coefficients differ significantly from zero. It is possible to have record-specific effects that differ significantly from one another, but do not differ significantly from zero.

<sup>7</sup>The regression equation for Probation Officer Recommendation 1 was not statistically significant and will not be reported or interpreted.

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