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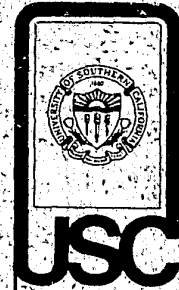
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SOUTHERN CALIFORNIA

social science research institute

EXECUTIVE SUMMARY

JURISDICTION SITE AND SENTENCE DISPARITY

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by

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Social Science Research Institute

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EXECUTIVE SUMMARY
Jurisdiction Site and Sentence Disparity

I. Introduction

Of the many problems confronting the administration of criminal justice none has been more persistent and troublesome than disparity in the sentencing of convicted offenders. There is general agreement that the interests of both justice and deterrence are best served by the imposition of uniform punishment's for offenses of equal seriousness committed by offenders of similar criminal history. While readily and clearly stated, the principle poses inordinate difficulty in its implementation.

As prescribed in criminal codes, the penalties to be imposed on convicted offenders for specific offenses or classes of offenses, while ranked in an order of their perceived seriousness, has typically always permitted the exercise of discretion on the part of the sentencing magistrate. While sharply restricted in recent years with the adoption in many jurisdictions of mandatory and determinate sentencing statutes, judicial discretion is still unavoidably exercised in determining the choice of prescribed penalty that corresponds to the offense and the offender in each case. In thus providing a place for judicial discretion in sentencing, statutory prescription implicitly acknowledges that legislative fiat cannot mechanically provide "equal justice" unaided by judicial consideration of

features of the offense and the offender. At the same time, the demand for uniformity in sentencing is no more feasibly met through the exercise of judicial discretion. For it is precisely the concern for the specific characteristics of the case, sufficiently varied to defeat the equivalence of any two cases, that hangs over discretionary sentencing, rendering problematic the best efforts to provide equal justice. These, then, are the stubborn facts against which the principle of equal justice in sentencing must contend.

For many decades prior to 1970 the sentence disparity problem, with a single significant exception, was given relatively little research attention. The widespread use of indeterminate sentencing had virtually removed from the judiciary the determination of sentence length apart from indicating its statutorily decreed minimum and maximum. These decisions were in effect transferred to parole boards, which determined the time of release on parole based on their judgment of the reformatory effect of imprisonment. Whatever its values may have been, the indeterminacy of sentence length induced a perception on the part of both the public and imprisoned offenders that highly unequal penalties had come to be imposed for offenses of equivalent seriousness. Added to this, by 1970, rising crime rates and growing concern about the crime control effectiveness of the criminal justice system during the post World War II period created a renewed focus on the issue of sentence disparity. The decade following 1970 witnessed efforts in many state

jurisdictions to reform sentencing policy. The aim of the movement was to reduce sentence disparity by eliminating as far as possible what has been characterized as "unfettered discretion," erroneously charged solely to the judiciary. The effort has taken a variety of forms, principally the enactment of mandatory minimum sentence and determinate sentence laws, but including as well attempts to abolish plea bargaining and to institute the use of sentencing guidelines.

The single exception to the disinterest in the sentence disparity problem during the era of indeterminate sentencing was an early and persisting concern with discriminatory sentencing. A specific type of sentence disparity, discriminatory sentencing focuses on the possible effect of prejudice. The earliest investigations examined the effects of race prejudice on sentence severity with particular reference to the imposition of the death penalty in capital cases and with a special focus on the Southern states. In more recent years such research studies have been extended to include the effects of social class prejudice as well. Over the years this line of research has been substantially improved in the sophistication of study design and statistical method. Essentially, the more competent recent studies have "controlled for," that is, have taken into account as the sole legitimate elements in sentencing decision the seriousness of offense and criminal history, as well as the race or social class of the convicted offender.

The most recent studies have found some evidence of racial prejudice in sentencing in some jurisdictional settings (rural), and with reference to some types of offenses (interracial rape and robbery), but no evidence of race discrimination generally in

large urban jurisdictionse findings strongly suggest that disparity in the severity of sentences imposed on convicted offenders of apparently equal culpability is most likely to be linked to a variety of "contextual elements." Included among these is the degree to which a jurisdiction contains large numbers of city dwellers, the notions judges may have regarding "deserved" sentences, the racial identity of offenders and their victims, and the influence of presentence recommendations. Suggested, then, is that factors of this type, constituting the setting or context in which sentence decisions are made, may operate as important determinants of sentence disparity both within and across jurisdictions. The present study was undertaken as a test of the effect on sentence disparity of jurisdiction as a basic contextual element.

Jurisdictions differ in a variety of ways. Among these are population size and heterogeneity, that is, the number of different kinds of cultural and occupational groups they contain; the complexity of their criminal justice systems; their economic structure; and public opinion respecting the kinds of offenses and offenders posing the most serious crime control problem. Most such differentiating features of jurisdictions vary in association with the degree to which they are urbanized. In

contrast to those that are typically rural, urbanized jurisdictions contain large populations with substantial proportions of ethnic minorities, a diverse economy based on an extensive division of labor and occupational specialization, a relatively high crime rate, and a complex and highly bureaucratized criminal justice system. Few local jurisdictions in modern societies are either totally urbanized or totally rural; most lie on a continuum between the two extremes.

To examine the relationship of jurisdictional context to sentence disparity two types of analyses were conducted, utilizing data based on county jurisdictions in California. Data from a single state provided a set of local jurisdictions functioning under a uniform criminal code; California was selected for the scope and relatively high level of reliability of its criminal justice data.

A first, preliminary, analysis examined variations across the 58 counties of the state in the disposition of cases of arrest on a felony charge, including the sentence severity of those convicted, in relation to level of urbanization as measured in a number of ways. A second and major analysis examined comparative patterns of sentence disparity in three county jurisdictions. The three counties were distinguished first by their differential location on an urbanization continuum, and further by differences with respect to concrete social and economic characteristics. The first analysis was based on summary data on case disposition. The second was based on data

respecting both the sentences accorded convicted felony offenders and the seriousness of the conviction offense at the individual case level. Included further in the second analysis were individual case data on criminal history and a set of personal and social characteristics.

At different levels of detail, both analyses attempt to assess the character and scope of sentence disparity as an effect of jurisdictional context.

II. Sentence Patterns and Urban Characteristics

Dispositions of convicted felony offenders in the state's county jurisdictions during 1979 were examined in relation to two measures of urbanization and two measures of increase in urban characteristics. Level of urbanization was measured by percent of population residing in incorporated towns and cities of over 2500 population and by percent of the labor force engaged in urban occupations. These included all occupations other than agriculture, forestry, fishing, and mining. Increase in urban characteristics was measured by percent growth in population over the preceding decade and, for the same period, percent growth in the proportion of the labor force in urban occupations. The use of the urban growth measure was designed to capture the effect, if any, of the rate of urbanization on sentencing patterns. Sentence dispositions included prison, jail, jail with probation, and straight probation.

The data thus consists of four independent urbanization variables and four dependent sentencing variables. The question addressed in data analysis was the relationship of each of the urbanization variables primarily to the use of the prison sentence, but also to the use of the alternative less severe sentences of jail and jail with probation. It is important to note that the base data consisted only of arrests based on a felony charge and thus provided some grounds for comparability across jurisdictions with respect to seriousness of offense, if only as defined initially by enforcement agencies.

The findings from the preliminary survey of sentence disparity in relation to the several measures of urbanization follow:

1. The higher the jurisdiction's rate of increase in the proportion of its labor force in urban occupations the less frequent is the use of the prison sentence (partial $r = -.35$, $p .05$). Of the four measures of urbanization, only a high rate of increase in the proportion of the labor force in urban occupations shows a significant inverse relationship to the use of the prison sentence. As seen in Table 1, neither the percent of population in incorporated places nor the percent population increase are related to a differential use of imprisonment. There is also a suggested inverse relationship between the proportion of the labor force in urban occupations without

Table 1. Simple and Partial Correlations, Urbanization Measures with Types of Incarceration, California, 1979¹

| Urbanization Measures | Types of Incarceration | | | | | | Total Incarceration ² | |
|---|------------------------|----------------|--------|----------------|---------------------|----------------|----------------------------------|----------------|
| | Prison | | Jail | | Probation with Jail | | R | R _p |
| | R | R _p | R | R _p | R | R _p | R | R _p |
| Percent Population in Incorporated Places, 1978 | -.04 | -.09 | -.40** | -.36* | .35* | .36* | .19 | .13 |
| Percent Labor Force in Urban Occupations, 1978 ³ | -.18 | -.19 | -.09 | -.05 | .13 | .10 | -.10 | -.10 |
| Percent Population Increase, 1970-1978 | -.06 | -.06 | .15 | -.03 | -.06 | .10 | -.17 | -.07 |
| Increase in Percent in Urban Occupations, 1970-1978 | -.32 | -.35* | .20 | .16 | .03 | .09 | .03 | .09 |

¹Source: California Finance Department Statistical Abstracts, 1970 and 1978

²Prison + Jail + Jail with Probation

³Included are manufacturing; wholesale, and retail trade; finance, insurance and real estate; and services. Data on government employment were available for 1978 but not for 1970; this category was excluded. The excluded non-urban occupations were agriculture, forestry, and fishing; mineral extraction, and contract construction.

* < .05
 ** < .01

respect to its rate of increase and the use of the prison sentence (partial $r = -.19$, N. S.). Taken together, these two measures would indicate that imprisonment on conviction of a felony offense declines as jurisdictions undergo rapid change in their economies, with the composition of their labor force acquiring a more definitive urban cast. It may be speculated that from the standpoint of the jurisdiction's crime control problem this development is likely to induce an escalation of its crime rate and a rise in the proportion of the more serious offenses, with an increase in the work load of the enforcement, prosecution, and adjudication agencies. Such change, in turn, is also likely to reduce marginally the attribution of seriousness to types of offenses that earlier evoked a sterner punitive response. The perception of the "seriousness" of particular types of offenses is, after all, relative to their volume. For example, an assault or burglary that occurs only occasionally is perceived as a greater threat to order than when they are merely an instance of a large number of such offenses.

2. The higher the proportion of a jurisdiction's population residing in towns and cities of over 2500 the less frequent is the use of jail sentences (partial $r = -.36$, $p .05$). This finding, as seen also in Table 1, again indicates, as in the use of the prison sentence, that the more urban the jurisdiction the less frequent is the resort to straight incarceration as represented by the jail sentence. This trend is accompanied, moreover, by an increased tendency in the more urbanized

jurisdictions to utilize the combined sentence of jail with probation. The finding is further supported by the data of Table 2 on the percentage distribution of the three types of sentence among jurisdictions of different population size. The proportion of prison sentences declines from 28.8 percent in jurisdictions under 100,000 population to 25.5 percent in those over 500,000. At the same time the highest proportion of jail sentences occurs in jurisdictions under 100,000 population (38.6 percent), and the lowest proportion in those over 500,000 (28.2 percent). And, it is in the latter, more urbanized jurisdictions that the relatively most frequent use is made of the jail with probation sentence (54.8 percent), with its least frequent use in jurisdictions under 100,000 population (40.2 percent). These findings indicate that the more urban a jurisdiction, as measured by population size, the less the use of the straight incarceration sentences of prison and jail on conviction for a felony offense, and the more frequent the jail with probation sentence. Suggested, then, is that the penalty on conviction of a felony offense in the smaller population, less urbanized, jurisdictions tends generally to be more severe in the sense that straight incarceration sentences are more frequently imposed, but less severe in that the sentences are more frequently served in local jails.

These findings must, however, take into account the likelihood that on the whole there is less crime and substantially fewer serious offenses in the smaller population jurisdictions, in particular those that are most rural. Although the sentence

Table 2. Percentage Distribution of Types of Incarceration on Conviction for Felony Offense by Three Categories of County Population Size, California, 1979

| <u>1978 Population of County Jurisdiction</u> | <u>Prison</u> | <u>Jail</u> | <u>Jail With Probation</u> | <u>Total Incarceration</u> |
|---|---------------|-------------|--------------------------------|--------------------------------|
| Over 500,000 | 25.5 | 28.2 | 54.8 | 82.6 |
| 100,000-499,999 | 28.6 | 31.4 | 49.1 | 80.0 |
| Under 100,000 | <u>28.8</u> | <u>38.6</u> | <u>40.2</u> | <u>78.3</u> |
| Total | 27.6 | 32.7 | 48.0 | 80.3 |

data in the survey were based on arrests for felony offenses, there was no opportunity to control statistically for the comparative seriousness of felony offense across jurisdictions differing in urbanization. Despite this shortcoming, data on charge reduction as cases moved from arrest to prosecution indicate, as seen in Table 3, that felony arrest charges are more frequently reduced to the misdemeanor level in the larger than in the smaller population jurisdictions. This suggests a reduction in plea bargaining in the latter jurisdictions, and an increased tendency there to obtain convictions on those arrested on a felony charge. The data for the smaller jurisdictions thus indicate that they include principally the more serious offenses, as additionally suggested by rates of imprisonment generally higher than those for the largest, metropolitan, jurisdictions. The curious fact remains, however, that the smaller population jurisdictions also more frequently use the local correctional facility of jail in incarcerating offenders convicted of felony level offenses. It could thus be the case that the less urban the jurisdiction the greater the certainty that a felony arrest will result in a felony conviction, but given the tendency to make heavy use of the local jail facility, the less severe overall will be the penalty.

Table 3. Percent of Felony Arrests Reduced to Misdemeanor Charges, by Population Size of Jurisdiction, California, 1979

| Over 250,000 | 50,000-250,000 | Under 50,000 |
|--------------|----------------|--------------|
| 35.7 | 29.0 | 25.4 |

III. Differential Sentencing in Three Jurisdictions

The findings of the survey were useful primarily in indicating that sentence patterns were highly likely to differ among jurisdictions in association with population size and other indicators of urbanization. To explore further the relationship of these and other elements of jurisdictional context to sentence disparity a detailed analysis of sentencing patterns was carried out in three jurisdictions. Each differed in population size, in the age and ethnic composition of their populations, and in their economic and social characteristics. As has been noted, the survey offered scant opportunity to examine the severity of sentences on conviction for felony offense with controls for offense seriousness. Thus, the observed tendency in the less urbanized jurisdictions to make somewhat heavier use of jail sentences in cases of felony offense conviction may well be accounted for by the less serious character of offenses in such jurisdictions.

The three jurisdictions whose sentencing patterns were subjected to detailed examination included the largest metropolitan county of the state (Los Angeles), a rural

jurisdiction (Imperial County), and a suburban jurisdiction (Marin County). They were selected in part because they encompassed a substantial proportion of the range on an urbanization continuum, and in part because comprehensive data were there accessible on offenses, offenders, and sentences. An expanded data set was obtained on 2100 male felony offenders convicted in 1980. Included in addition to the seriousness of the convicted offense and the criminal history of the offender were data on court processing variables (type of plea, pre-trial status, pre-trial custody time, the sentence recommendation of the probation department, and type of legal counsel); a set of personal and social variables (race/ethnicity, age, occupation, education, military history, marital status, and family type and number of children); and sentence imposed. A 100 percent sample was obtained only in Imperial County (N = 165). The Marin County data were based on a 65 percent random sample (N = 80). Because of the very large number of cases in Los Angeles County, a stratified random sample was there proportionally drawn to represent the distribution in the total group of race/ethnicity, age, and type of convicted offense (N = 1955).

Distinctive Features of the Three Jurisdictions

Apart from their marked differences in population size, the three jurisdictions differed in their demographic, socioeconomic, and political character (Table 4). The differences are most clearly seen in a comparison of their profiles with respect to

Table 4. Demographic, Socioeconomic, and Political Attributes, Three Test Jurisdictions, California, 1980¹

| | <u>Los Angeles</u> | <u>Imperial</u> | <u>Marin</u> |
|--|--------------------|--------------------|--------------|
| Population | 7,477,503 | 92,110 | 222,568 |
| Population Increase, 1970-80 | 6.3 | <u>Percentages</u> | |
| <u>Ethnicity</u> | | 23.7 | 8.0 |
| Black | 12.6 | 2.5 | 2.5 |
| Hispanic | 27.6 | 55.8 | 4.1 |
| <u>Age Distribution</u> | | | |
| Under 18 | 27.2 | 35.0 | 22.5 |
| 18-64 | 62.9 | 56.0 | 67.8 |
| 65 and over | 9.9 | 9.0 | 9.7 |
| <u>Labor Force Distribution</u> | | | |
| Managerial and Professional | 24.6 | 17.6 | 37.6 |
| Technical, Sales, and Adm. Support | 32.8 | 28.9 | 34.5 |
| Service Occupations | 11.8 | 13.6 | 11.7 |
| Farming, Forestry, Fishing | 0.1 | 14.6 | 0.2 |
| Craft and Repair | 12.2 | 10.4 | 9.0 |
| Operators and Laborers | 17.4 | 14.8 | 5.7 |
| Total | 98.9 | 99.9 | 100.0 |
| <u>Party Affiliation</u> ² | | | |
| Democratic | 60.5 | 58.3 | 51.0 |
| Republican | 32.2 | 33.3 | 35.4 |
| Independent | 6.2 | 7.2 | 12.3 |
| <u>Voter Behavior</u> | | | |
| Eligibles/Registered | 65.4 | 67.9 | 76.7 |
| Registered/Voted | 68.7 | 66.2 | 73.7 |
| <u>Median Income Rank, 1977</u> ³ | 11 | 56 | 1 |

1. Source: U.S. Census Reports, 1980.
2. General election, 1977. Statistical Abstract, California Department of Finance, 1979.
3. Statistical Abstract, California Department of Finance, 1979.

these features. Los Angeles and Imperial Counties are similar in the very high proportion of their population consisting of minority groups (40.2 and 58.3, respectively), contrasting sharply with the 6.6 percent in Marin County. Both also exceed Marin County in the percentage of the population under 18 years of age. The ethnic as well as the under 18 age percentages of a population are known to be related to the crime level of a community.

Beyond these distinctions, differences in level of urbanization among the three jurisdictions, also related to community crime levels, are more accurately reflected in the occupational distribution of the labor force. In both Los Angeles and Marin Counties a very high proportion is found in the occupational categories distinctive for urbanized communities: managerial, professional, technical, sales, and administrative support (57.4 and 72.1 percent, respectively). Less than half the labor force in Imperial County is found in these occupations (46.5 percent). In addition, the rural character of this jurisdiction is indicated by the relatively high proportion of its labor force in the rural occupations of farming, forestry, and fishing (14.6 percent), contrasting with their virtual absence in the other two jurisdictions.

The jurisdictions also differ sharply in socioeconomic status, a factor also related to the community crime level. Among the 58 counties of the state, Marin ranks first in median income rank, Los Angeles 11th, and Imperial 56th.

Finally, while there is little difference in political party affiliation between Los Angeles and Imperial Counties, Marin is distinctive in its relatively high proportion of independent voters (12.3 versus 7.2 and 6.2 in the other two jurisdictions). In addition, the proportion of el who register to vote and the proportion registered who actually vote is higher in Marin than in the other two counties.

The relevance of these differences among the three jurisdictions for differences in their sentencing practices must remain an open question at this point. We can assume only that there exists a chain of consequences linking the characterizing features of a jurisdiction first to the level and character of its crime problem, second, to prevailing ideas and sentiments respecting an "appropriate" response to the criminal offender and, finally, to their reflection in the practices and norms of their criminal justice agencies as they mete out justice. Some indication of the association between the demographic and socioeconomic characteristics of a jurisdiction on the one hand and its sentencing practices on the other is provided by the way in which criminal justice resources are distributed among its criminal justice agencies. Presumptively, all offenders convicted of the more serious felony offenses dealt with in the Superior Courts are at risk of a prison sentence. Reduction in the severity of sentence occurs principally in three ways: confinement in the local jail, probation, or the combined sentence of jail plus probation. The extent of such sentence

severity reductions is likely to be reflected in a higher proportion of expenditures devoted to jail maintenance and the support of the probation function.

However, since sentence severity may well be an effect of the gravity of a community's crime problem, before examining differences in the distribution of criminal justice resources among the three jurisdictions it is necessary to take into account differences in the seriousness of the crime problem in each. That the crime problem differs markedly among them is revealed by the comparative prominence of property and person crimes (Table 5). Crime in metropolitan Los Angeles is relatively heavily weighted on the side of person crimes in contrast to both Marin and Imperial. In both of the latter, property rather than person crimes are the more prominent type of offense, with Marin distinctive in its indexed property crime rate twice as large as its indexed person crime rate.

These differences in the character of their crime problems are to some extent reflected in the sentencing practices of the three jurisdictions (Table 6). Felony arrest cases which reach the Superior Court for disposition in both Los Angeles and Imperial Counties are sentenced to prison in higher proportions than in Marin County (35 and 32 percent, respectively). These two jurisdictions are higher in their person crime index values than Marin. Although straight jail sentences are rarely imposed on felony conviction in the Superior Courts in all three counties, this sentence is more frequent in rural Imperial

Table 5. Person and Property Crime Rates per 100,000 Population Standardized to Statewide Rates for Three Test Jurisdictions, 1979

| | <u>Crimes Against Persons</u> | <u>Index Value</u> | <u>Crimes Against Property</u> | <u>Index Value</u> |
|-------------|---------------------------------------|------------------------|--|------------------------|
| Statewide | 788.6 | 100.0 | 3764.4 | 100.0 |
| Los Angeles | 1218.6 | 154.5 | 4445.3 | 118.1 |
| Marin | 285.3 | 36.2 | 2877.7 | 76.4 |
| Imperial | 800.0 ¹ | 101.4 | 4000.0 ¹ | 106.3 |

1. Estimated from raw data

Source: California Bureau of Criminal Statistics. Crime and Delinquency in California, 1980 and Criminal Justice Profile by County, 1979.

Table 6. Felony Arrest Dispositions in the Superior Courts in Three Test Jurisdictions, California, 1979-1981

| | <u>Los Angeles</u> | <u>Marin</u> | <u>Imperial</u> |
|------------------------------|--------------------|--------------|-----------------|
| Cases Processed ¹ | 16,641 | 213 | 151 |
| Number Sentenced | 14,734 | 183 | 123 |
| Percentage Sentenced | 91.6 | 85.9 | 81.5 |
| <u>Sentence Rates</u> | | | |
| Prison ² | .349 | .273 | .317 |
| Jail | .032 | .011 | .065 |
| Probation and Jail | .475 | .585 | .398 |
| Probation | .127 | .093 | .179 |
| Fine | .002 | .000 | .000 |
| Other ³ | .012 | .038 | .049 |
| Total | .997 | 1.000 | 1.008 |

1. Three-year moving average
2. Includes commitments to California Youth Authority
3. Includes commitments to the State's medium security facility for the rehabilitation of addict offenders, and to the facility for mentally disordered sex offenders.

County. However, the striking fact remains that while the sentence of probation plus jail is highly favored in all three jurisdictions, it is most prominent in Marin County with its relatively heavy load of property offenders, accounting there for 59 percent of sentences. Comparable percentages are 48 in Los Angeles and 40 in Imperial. The preferential use of probation plus jail in Marin is further indicated by its comparatively low use of straight probation sentences (9 percent versus 13 and 18 in Los Angeles and Imperial). It is of course not possible to determine on the basis of these aggregate data what proportion of the probation plus jail sentence is served in jail.

Data on personnel and financial support distribution among the criminal justice agencies of the three jurisdictions throws some light on this question. As seen in Tables 7 and 8, both of the smaller jurisdictions devote a higher proportion of personnel and expenditures to both probation and jails than does metropolitan Los Angeles. Imperial is most distinctive in its high level of expenditure for jails (14.6 percent versus 4.4 and 6.8 in Marin and Los Angeles, respectively). Marin, on the other hand, is distinctive for its heavy investment in probation (15.6 percent versus 8.8 and 10.8 in Los Angeles and Imperial, respectively).

It thus appears that Los Angeles, confronted with the highest rate of person crimes, emphasizes in its sentencing of the more serious felony offenders the use of both prison and probation plus jail. With rates of person and property crimes

Table 7. Authorized Full-Time Personnel by System Function,
Three Test Jurisdictions, California, 1979

| | Los Angeles | | Marin | | Imperial | |
|----------------------|-------------|---------|---------|---------|----------|---------|
| | Number | Percent | Number | Percent | Number | Percent |
| Law Enforcement | 21,495 | 78.9 | 438 | 71.6 | 281 | 73.6 |
| Prosecution | 2,110 | 7.9 | 46 | 7.5 | 30 | 7.8 |
| Public Defense | 538 | 1.9 | 21 | 3.4 | 8 | 2.1 |
| Courts | 414 | 1.5 | 11 | 1.8 | 7 | 1.8 |
| Probation Department | 2,666 | 9.8 | 96 | 15.7 | 56 | 14.7 |
| Total | 27,223 | 100.0 | 612 | 100.0 | 382 | 1000 |
| 1980 Population | 7,477,503 | | 222,568 | | 92,110 | |
| Per 1,000 Population | 2.5 | | 3.3 | | 2.5 | |

Source: California Bureau of Criminal Statistics: Criminal Justice Profile, 1979.

Table 8. Criminal Justice Expenditures by Function,
Three Test Jurisdictions, California, 1979
(in millions)

| | Los Angeles | | Marin | | Imperial | |
|--------------------------|-------------|---------|----------|---------|----------|---------|
| | Cost | Percent | Cost | Percent | Cost | Percent |
| Law Enforcement | \$557,128 | 65.4 | \$10,826 | 57.6 | \$4,375 | 51.1 |
| Prosecution | 53,013 | 6.2 | 1,138 | 6.1 | 602 | 7.0 |
| Public Defense | 15,904 | 1.9 | 560 | 3.0 | 173 | 2.0 |
| Courts and Court-Related | 92,573 | 10.8 | 2,494 | 13.2 | 1,235 | 14.4 |
| Jails | 58,284 | 6.8 | 821 | 4.4 | 1,248 | 14.6 |
| Probation Department | 74,871 | 8.8 | 2,940 | 15.6 | 924 | 10.8 |
| Total | 851,773 | 99.9 | 18,779 | 99.9 | 8,557 | 99.9 |
| 1980 Population | 7,477,503 | | 222,568 | | 92,110 | |
| Per Capita Cost | \$114 | | \$84 | | \$93 | |

approximately equal, Imperial County is distinctive in its heavy use of straight jail sentences. Marin's pattern stands out in favoring probation plus jail, with the likelihood that these sentences are served principally on probation, given the heavy investment in probation services. In sum, two features of sentencing practices in the three quite different types of jurisdictions are noteworthy. First, in all three only two kinds of sentences account for the bulk of dispositions of offenders convicted of serious felony crime: prison or jail plus probation. In Los Angeles these two sentences include 82.4 percent of dispositions; in Marin, 85.8 percent; and in Imperial 71.5 percent. Second, the two non-metropolitan jurisdictions make differentially heavy use of the local correctional facilities of jail and probation, with Imperial emphasizing the use of straight jail and Marin the use of probation.

Whether these differences are simply a reflection of the more serious character of the crime problem in Los Angeles County with its very much higher person than property crime rate remains to be determined in the analysis of sampled felony convictions which follows. The analysis examines the severity of sentence imposed for convicted felony offenses of equivalent seriousness across the three jurisdictions. This may provide some indication whether, for example, conviction on the offenses of homicide or assault on the one hand, or first degree burglary on the other, elicits a response of similar punitive severity in Marin, in Imperial, and in Los Angeles Counties.

Sentence Disparity in the Sampled Population

To this point, sentencing practices among jurisdictions of different types have been shown to be consistently dissimilar. But it has been difficult to characterize such differences in sentencing patterns with confidence. In neither the survey of the entire set of jurisdictions in California, concerned with the

relationship between sentence pattern and urbanization, nor in the more focused examination of three representative jurisdictions on the urbanization continuum, was it possible to examine sentence disparity when conviction was obtained on offenses of equivalent seriousness. Restriction of the survey data to convictions in cases initiated by felony arrest charges offered only limited and inadequate controls for offense seriousness. Analysis of sentencing in the three jurisdictions based on aggregate data provided only a slightly improved procedure in controlling for offense seriousness by distinguishing between person and property conviction offenses. The assumption there was that in general person offenses are by statutory prescription of penalty more, and property offenses less, serious.

Analysis of the sampled population in the three jurisdictions offered an opportunity to examine sentences for felony offenses of similar levels of seriousness. Court records provided adequately detailed data on the character of the conviction offense on a case by case basis, furnishing grounds for an acceptable level of statistical control for offense

seriousness. With this, it became possible to examine in a concrete way both the extent of disparity in their sentencing practices and, to a more limited degree, those differences in the processing of offenders, including their criminal and personal background characteristics, that may have been related to sentence outcome.

In examining the relationship of offense and offender attributes to sentence outcome, two measurement innovations were introduced. It has been customary in sentence disparity research to measure offense seriousness on a scale in which the gravity of offenses were differentially weighted. For example, homicide might be given a weight five or ten or twenty times that of assault, which in turn may be given one-half or one-quarter the seriousness weight of rape, and so on down through offenses of comparatively lesser seriousness. Based on intuitive judgment, such weighting schemes cannot claim objective validity. Other weighting procedures have been based on public opinion polling in which respondents are invited to rank the relative seriousness of a set of offenses. The problem in this method is that the sample of respondents tends to be limited to particular localities or particular time periods, throwing into question the applicability of such judgments to different localities and time periods. The fact remains that the only defensible assumption that can be made is that some offenses are consensually perceived as more serious than others, although there exists no objective method for determining with precision how much more serious.

In the first of the measurement innovations introduced in the current analysis, the ten most commonly encountered felony conviction offenses were simply rank ordered in an equal interval scale of seriousness weights. Thus, homicide was given a weight of 10 with, in descending order, rape (9), robbery (8), assault (7), burglary (6), vehicle theft (5), theft (4), other theft (e.g., forgery, bad checks, etc) (3), other sex offenses (2), and drug offenses (1).

It has also been customary in sentence disparity research to treat the measurement of sentence severity as though it could be reduced to the equal interval quantities of months or years in jail or prison, either imposed or actually served. The problem in this procedure is that in a large proportion of cases, sometimes involving quite serious offenses or offenders, sentences are imposed that do not entail incarceration, consisting either of probation or, even more troublesome, combined sentences of jail and probation. Although efforts have been made to resolve the problems raised by this procedure*, there remains the further and virtually intactable problem of measuring with precision the relationship, whether separately or in combination, of the large set of determinants of sentence

*The full report of this study reviews an effort to cope with this problem by splitting the measurement of sentence severity into two components: incarceration versus no incarceration and, in the event of an incarceration sentence, months in jail or prison. The problems raised by this solution are reviewed in the full report.

severity other than offense seriousness. These include the array of court process variables such as pre-trial detention, type of plea, and the sentence recommendation of the court's probation officer, among others; the criminal history of the offender on which is based the court's judgment of the probability of re-offense; and the personal and social characteristics of the offender, similarly often regarded as predictive of future offense.

The solution adopted was to key the severity of sentence for specified types of conviction offenses to the penalties prescribed by statute. The second of the two measurement innovations, this procedure yielded an equal interval ordinal scale consisting of eight sentence severity levels. These ranged from prison with a maximum weight of eight to suspended sentence with a weight of one. Sentence severity scores based on these weights were then calculated for members of the sampled population falling into each of the four independent variables (offense seriousness, court process, criminal history, and personal and social attributes). The rank order of subgroups in each category of each independent variable was then determined by its median sentence severity score. For example, with respect to the independent variable of offense seriousness, 332 offenders in the sample were convicted of 27 types of offenses for whom the median sentence severity score was 7.51, ranking first. Lowest in offense seriousness rank were 270 offenders convicted of 20 types of offenses for whom the median sentence severity score was

3.47. Similarly, the independent variables of court process, criminal history, and personal attributes were equal interval rank ordered in relation to their sentence severity scores. For example, with respect to the court process variable of plea, the 232 cases of a not guilty plea were found to have a first rank median sentence severity score of 7.51 in contrast to the 1,991 cases of a guilty plea with a second rank median sentence severity score of 4.95. This procedure permitted an initial examination of the rank order correlation of offense seriousness with sentence severity in each of the three jurisdictions. Further, with the use of partial rank order correlation it became possible to examine the comparative contribution of court process, criminal history, and personal attribute variables to sentence severity in each jurisdiction, controlling for offense seriousness.

Most important in determining sentence severity is, of course, the factor of offense seriousness. The presumption exists that under a uniform criminal code offenses of equivalent gravity should be responded to by sentences of equal severity. But apparent in the data of Table 9 are striking differences among the three test jurisdictions in sentence severity at equivalent levels of offense seriousness. The correlation of .34 between offense seriousness and sentence severity in agribusiness Imperial County is twice that found in suburban Marin County (.17), with metropolitan Los Angeles County occupying an

Table 9. Partial Rank Order Correlations of Court Process, Criminal History, and Personal Attribute Variables with Sentence Severity, Controlling for Seriousness of Offense

(tau)

| Sentence Related Variables | Los Angeles (.27)* | | Imperial (.34)* | | Marin (.17)* | |
|----------------------------|--------------------|-----------------|-----------------|-----------------|--------------|-----------------|
| | Partial | With Sent. Sev. | Partial | With Sent. Sev. | Partial | With Sent. Sev. |
| <u>Court Process</u> | | | | | | |
| Prob. Recomm. | .54 | .60 | .54 | .63 | .13 | .14 |
| Pre-trial Status | .26 | .30 | .10 | .17 | .05 | .08 |
| Custody Time | .37 | .42 | .19 | .28 | .10 | .13 |
| Trial Type | .17 | .21 | .18 | .21 | .03 | .07 |
| Plea | .14 | .17 | .17 | .20 | .06 | .11 |
| Mean | .30 | .34 | .24 | .30 | .07 | .11 |
| <u>Criminal History</u> | | | | | | |
| Adult Arrests | .21 | .22 | .22 | .24 | .13 | .14 |
| Adult Corrections | .22 | .23 | .22 | .24 | .10 | .11 |
| Juvenile Arrests | .17 | .19 | .11 | .14 | .07 | .08 |
| Mean | .20 | .21 | .18 | .21 | .10 | .11 |
| <u>Personal Attributes</u> | | | | | | |
| Race | .12 | .13 | .23 | .25 | .09 | .07 |
| Education | .07 | .08 | .19 | .17 | .08 | .08 |
| Occupation | .06 | .07 | .10 | .10 | .07 | .07 |
| Marital Status | .05 | .05 | .06 | .06 | .07 | .05 |
| Mean | .08 | .08 | .15 | .15 | .08 | .07 |

*Rank order correlation of offense seriousness with sentence severity for jurisdiction

intermediate position (.27). These differences in punitive response underscores the fact that the single most significant determinant of sentence disparity is jurisdictional site itself. Implied is the notion that jurisdiction as a socially organized community and as an ecological and economic unit provides the context within which the nature of the threat posed by criminal offense and the appropriate defensive response are defined.

It is nonetheless important to ascertain the extent to which jurisdictional differences in punitive severity are accounted for both within and between jurisdictions by the variables of court process, criminal history, and personal attributes. Table 9 shows for the three jurisdictions the correlation of each of these variables to sentence severity and the partial correlation of the variable with offense seriousness controlled. Differences between the two correlations furnish an opportunity to determine the proportion of the correlation between each variable and sentence severity attributable solely to the seriousness of offense. For example, in Los Angeles County the mean rank order correlation of the five court process variables with sentence severity is .34. With offense seriousness controlled, the partial correlation of .30 indicates that the proportion of sentence severity attributable to court process variables is 11.8, expressed as a percentage. Similarly, criminal history variables in that jurisdiction account for only 4.8 percent of sentence severity, with personal attribute variables having on the average virtually no effect on sentence severity independently of offense seriousness.

As to effect differences of the three categories of variables on sentence severity, in all of the three jurisdictions the relationship of offense seriousness to sentence severity is most affected by court process variables, less affected by the variables of criminal history, and virtually unaffected by personal attribute variables. The jurisdictions differ, however, in the degree to which the elements of court process and criminal history modify the effect of offense seriousness on sentence severity. Seriousness of offense is least prominent in relation to court procedures in Los Angeles County as a determinant of sentence severity (11.8 percent), rises substantially in Imperial County (20.7 percent), and doubles again in Marin County to 40.0 percent.

On the other hand, the criminal history of convicted offenders seems more decisive for sentence severity than does offense seriousness in metropolitan Los Angeles than in either of the two smaller jurisdictions. The latter two appear oriented more to the seriousness of the convicted offense, with Imperial County attributing greatest weight to this factor. And, in none of the three jurisdictions do personal attribute variables appear on the average to affect sentence severity when offense seriousness is taken into account.

IV. Discussion and Conclusions

This study was undertaken to examine the problem of sentence disparity as affected by the context within which

criminal justice is administered. By context is meant the social and institutional settings in which cases are processed by the agencies of criminal justice. Features of social setting include the population composition of the jurisdiction, in particular its age and ethnicity distribution; the role of the jurisdiction in the ecology of the wider region of which it is a unit as this determines its dominant economic function; and the concrete outcome of these jurisdictional features in the distribution of political power and influence among the occupational and social class groups in the population. Features of institutional setting are those that characterize the criminal justice system of the jurisdiction, including most prominently its level of bureaucratization by virtue of the size and complexity of the organization required to process its volume of criminal cases; the balance of power and influence among the several agencies of criminal justice in decisions to arrest, prosecute, and bring to trial criminal suspects; and the predispositions of judges respecting the effectiveness of sentence severity as a crime control tool or as morally warranted retribution.

Elements of social setting are reflected in public opinion respecting the threat to local order posed by criminal offenses generally and by selected types of criminal offenses and offenders specifically, as effectively expressed by community influentials and opinion leaders. The context of sentencing formed by the social setting is thus a source of interjurisdictional variation in sentence severity.

Although related to the social setting, elements of the institutional setting are likely independently to affect sentencing practices. As system size increases so also will an emphasis on rules of agency procedure and, paradoxically, the scope of discretionary decision making, both having the general effect of a decline in attention to substantive justice. Thus, the smaller the system size the greater the likelihood of a strong relationship between seriousness and sentence severity. Conversely, the larger the system size the less salient will be offense seriousness as a determinant of sentence severity and the more prominent will be the effect of case processing variables, in particular those at the "front end" of the criminal justice process. Finally, varying across jurisdictions and forming yet additional features of institutional context are both the balance of community based power among enforcement, prosecution, and judicial agencies in the selection of criminal cases for further processing, and the predispositions of sentencing magistrates respecting "appropriate" sentences.

Treated in this study as unmeasured variables, all such contextual effects on sentencing require continuing investigation. Attention was here restricted initially to that aspect of the social setting represented by the jurisdiction's level of urbanization, supplemented by a detailed examination of differences in sentence severity among three jurisdictions. Differing in size, ecological function, and economic substructure, the three jurisdictions represented sharply divergent social structural contexts.

Because the statewide data did not permit adequate controls on offense seriousness the initial analysis of the relationship between urbanization and sentence severity yielded no more than suggestive findings. These were (a) that in cases initiated by arrest on a felony charge the more urbanized the jurisdiction the marginally less frequent the use of the prison sentence, substantially less frequent the imposition of straight jail sentences, but the more frequent the less severe sentence of jail plus probation; and (b) the less urbanized the jurisdiction the less frequent the use of jail plus probation and the more frequent the use of the straight jail sentence.

Since the data of the initial analysis were based on cases initiated by a felony arrest charge, it is possible that the comparatively less severe sentences imposed in the more urbanized, higher case volume jurisdictions reflect their heavier use of plea bargaining with resulting reductions in the conviction charge. The findings do, however, suggest a differential tendency for the less urbanized jurisdictions to favor the use of the local correctional facility when a straight incarceration sentence is imposed. This was particularly evident in sentences imposed for crimes against persons (homicide, rape, assault). The more urbanized the jurisdiction the more frequent the use of the prison sentence in these cases in contrast to the less urbanized jurisdictions, where straight jail sentences tended to be favored.

Offense seriousness was most adequately controlled in the

analysis of sentence data in the three test jurisdictions. The findings of that analysis thus provide better information about factors associated with similarities and differences in their sentencing practices. Despite differences in character, the three jurisdictions were found to be similar in the varying effects of court process, criminal history, and personal attribute variables on sentence severity, with offense seriousness controlled. Most important in modifying the seriousness-severity relationship were the court process variables. Criminal history variables had less effect, and the relationship was virtually unaffected by the personal attribute variables. Such uniformity suggests that despite site differences, jurisdictions under a common criminal code ascribe substantially similar importance weights to the three classes of variables as contingent factors modifying the primary importance of offense seriousness.

More to the point, however, were the disparities in sentencing practices among the three jurisdictions. Of these, the most significant were the net differences in sentence severity for conviction offenses of similar seriousness. The highest sentence severity level was found in agribusiness Imperial County. This jurisdiction is characterized by a "plantation" type economy, a very large proportion of its labor force in agricultural occupations, a high ratio of Hispanic ethnics, and a generally rural social climate. The proportion of its criminal justice resources devoted to jail maintenance was

higher in Imperial County than in either of the other two jurisdictions. In sharp contrast, suburban Marin County was lowest of the three jurisdictions in its sentence severity level. Characteristic of this jurisdiction is its ecological function as a residential enclave populated by a very high income group engaged almost entirely in urban occupations, whose members tend in relatively high proportions to be independent with respect to political party affiliation. As regards the distribution of criminal justice resources, Marin County devotes a higher proportion to the probation function than either of the other two jurisdictions. The two jurisdictions thus present the sharpest contrast in their levels of sentence severity.

These two jurisdictions simultaneously exhibit contrasts on a number of social structural characteristics. Besides varying widely in the preferential use of their criminal justice resources, the social setting of one is urban, of the other rural; one has the highest median family income in the state, the other the lowest; and regarding political coloration with associated ideologies regarding crime control, one is distinctively more "liberal," the other less so. Further, as relatively small population jurisdictions, both exhibit a preference for the use of local corrections. And, as noted, one commits a higher proportion of its justice resources to the probation function, the other to jail maintenance.

Los Angeles County, with a sentence severity measure intermediate between Marin and Imperial, differs from Marin

primarily in size and associated level of bureaucratization in the administration of justice, and in population heterogeneity. As a metropolitan urban community, Los Angeles differs from Imperial in respect to both ecological function and size. These comparisons and contrasts suggest that a jurisdiction's level of sentence severity, holding offense seriousness constant, may be an effect of the interaction among the factors of urbanization, size, and population heterogeneity, each constituting a dimension of continuous variability. Analysis of the data set in hand indicates, as in the case of Marin County, that the combined effect of high urbanization, high population homogeneity and small size is to reduce sentence severity. The combined effect of low urbanization, high population homogeneity, and small size, as in the case of Imperial County, is to increase the level of sentence severity. The question is, of course, whether these factors are mutually reinforcing or tend to offset one another in their effects on sentence severity. The case of Los Angeles County suggests the latter, combining as it does high urbanization, large size, and a very highly differentiated population, yielding a level of sentence severity intermediate between the other two jurisdictions.

These are no more than a sampling of problems and issues that have been brought into focus in the study reported. They can be resolved only through systematic further research in which a theory based identification is made of the dimensions of jurisdictional social setting relevant to the administration of

criminal justice, with these operationalized to yield measurable variables.

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