



THE SECOND CIRCUIT SENTENCING STUDY

**A Report to the Judges of
the Second Circuit**

August 1974

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**Federal Judicial Center
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FOREWORD

Among the constructive responses to America's grave problems of crime and punishment has been the growing interest of law people in the subject of "corrections" -- the dubious label we attach to the post-conviction process from sentence through prison and parole. Lawyers and judges have begun to confront these subjects as their proper responsibilities. We recognize increasingly that we are not free to take our final curtain when guilt has been admitted or determined. Like it or not, criminology is our business.

Responding to one aspect of this newly urgent awareness, Chief Judge Kaufman, in June 1973, appointed a Second Circuit Committee on Sentencing Practices. The sixteen members of the Committee include prosecutors, defense lawyers, probation officers, and judges.

Believing that self-knowledge is a necessary, albeit not sufficient, step towards self-improvement, the Committee has undertaken, as one of its primary responsibilities, to consider how the business of sentencing is actually conducted in the courts of our circuit. As part of this continuing investigation, the Committee expects to undertake in-depth interviews with the district judges so that we may marshal their collective wisdom, experience, attitudes, and, of course, divergences relating to this difficult responsibility.

For a modest beginning, having in mind the familiar view that "disparity" in sentencing is a major evil, we determined to take a somewhat particularized look at this subject in terms of the sentencing practices of our own judges. The present study is the result of this endeavor.

The task of organizing the disparity study was undertaken by a subcommittee composed of Hon. Robert C. Zampano, Hon. Paul J. Curran, Murray Mogel, Esq., Patrick Wall, Esq., Mr. John T. Connolly, S.D.N.Y. Probation Chief,

and Mr. James F. Haran, E.D.N.Y. Probation Chief, with the undersigned as chairman. The subcommittee worked closely with Messrs. William B. Eldridge and Anthony Partridge of the Federal Judicial Center, which agreed to advise on all phases of the study. After the basic outline of the study was formulated and approved by the full committee, the Center's scholarly representatives took over and conducted the administrative tasks and analysis hereinafter recounted. Our debt to our two friends from the Center and their colleagues is substantial, as we cheerfully acknowledge.

The occasion of this report is not one either for a major celebration or for false modesty. Our objectives were limited. Our product reflects that. It is our hope that this concrete picture of ourselves will help to encourage interest, self-scrutiny, and, most importantly, the proposals for law reform that we perceive as our ultimate aims.

Marvin E. Frankel
Southern District of New York
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This report is a disparity study, distinguished from all previous disparity studies by the opportunity to observe the sentences of many judges in identical cases. It contains the results of a unique experiment in sentencing, initiated and carried out by the judges of the Second Circuit in a major effort at self-evaluation.

The judges rendered sentences on twenty presentence reports selected to represent the sentencing business of the circuit, and on ten others selected to test for case characteristics that might explain disparity. They rendered roughly as many sentences as they normally do in half a year.

Disparity is defined for the purpose of the report as dissimilar treatment by different judges of similarly situated defendants.

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CHAPTER I - INTRODUCTION

This is a report of a sentencing experiment conducted by the district judges of the Second Circuit to determine the extent of disparity in the sentencing of criminal defendants within the circuit. The experiment, in which each district judge rendered sentences on approximately thirty presentence reports, was developed and organized by the Second Circuit Committee on Sentencing Practices, chaired by former Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit. In the course of it, the district judges of the Second Circuit -- all forty-three of the active judges and seven of the senior judges -- rendered roughly as many sentences as they normally do in half a year. The experiment thus represented a major effort at self-evaluation, initiated and carried out principally by the judges themselves.

The unique quality of this experiment, which sets it apart from all previous studies of disparity, is the opportunity it provides to observe a large number of judges rendering sentences in identical cases. Earlier studies have all been based on the observation of sentences rendered by different judges in different cases. The obvious problem for such studies is how to determine whether observed differences in sentences result from differences in judges or differences in cases. The solution is inevitably a statistical one: the analysis is based on groups of cases and relies upon group measures such as the percentage of cases in which different judges give prison sentences. The current study, by contrast, deals directly with differences in judges' sentencing behavior, without the complications introduced by differences in the underlying cases. For the first time, we are able to observe the extent of agreement among many judges on a case-by-case basis. As will be seen later, a study of this type has some methodological problems of its own. But it does permit modes of analysis not previously possible in disparity studies, and it therefore offers the hope of gaining substantial new knowledge about the sentencing process.

To the extent that this hope is fulfilled, the credit belongs almost entirely to the judges. Their interest in evaluating their own sentencing performance, and their willingness to undertake a substantial extracurricular burden in the service of that interest, are the foundations on which the study has been built.

The thirty presentence reports were sent to the judges at a rate of five reports a week over a six-week period beginning March 16, 1974. The first twenty of them were actual presentence reports, drawn from the files of probation offices within the Second Circuit, but edited to alter identifying facts such as names, places, identification numbers, and dates. These twenty cases were selected to be broadly representative of the sentencing business of the circuit.

Each of the last ten presentence reports was prepared in two versions which differed from one another with respect to some characteristic that might be relevant to the sentencing process. In Case 26, for example, the defendant pleaded guilty in one version and was found guilty after trial in the other, but the versions were otherwise identical. The judges were randomly divided into two groups, so that half the judges got one version and half got the other. Through this technique, it was hoped that we might learn whether certain case characteristics were more likely than others to be productive of disagreement about the appropriate sentence. These last ten presentence reports were not selected to represent the sentencing business of the circuit; rather, they were selected so that certain characteristics might be tested. Nine of them were actual presentence reports drawn from the files of probation offices within the Second Circuit, although one version of each was of course modified to produce the desired variation, and occasional other modifications were made to sharpen the issues being studied. The tenth presentence report in this group was an invention of the Judicial Center staff.

The analysis of the sentences returned is predicated on the assumption that all the judges sentencing in a particular case were acting on the basis of the same information -- that is, the information contained in the presentence report. To avoid introducing information gained from other sources,

a judge who had actually sentenced a defendant (or who had participated in a sentencing council considering the case) was not asked to sentence that defendant for the purposes of the experiment. About half of the judges therefore received somewhat fewer than the full series of thirty cases. The total number of presentence reports mailed was 1,465, not counting those mailed to one senior judge who was unable to participate because of illness. 1,442 responses were received, with all but two of the nonresponses being in the last ten cases.

For the purposes of the study, disparity is defined as dissimilar treatment by different judges of defendants who are similarly situated. Stated differently, disparity is departure from the principle that the defendant's sentence shouldn't depend on which judge he gets. It should be noted that this definition excludes two other phenomena that are sometimes referred to as disparity. First, it excludes dissimilar treatment of similarly situated defendants by the same judge -- that is, departure from the principle that the sentence shouldn't depend on such legally irrelevant factors as the judge's mood or racial prejudices. Second, the definition used here excludes disproportionately dissimilar treatment of unlike situations: we do not deal with the question whether sentences for stealing government checks are unduly harsh when compared with sentences for income-tax evasion. In view of the somewhat flexible content of the word "disparity," it is important to keep these limitations in mind.

CHAPTER II - THE EXTENT OF DISPARITY

A. Disparity in Sentences Rendered in the Experiment

For each case in the group of twenty that was selected as representing the sentencing business of the circuit, the sentences rendered have been ranked from most severe to least severe. Table 1 shows, for each of these twenty cases, selected points on the rank list: the two extreme sentences, the median sentence, the sixth most severe and sixth least severe sentences, and the twelfth most severe and twelfth least severe sentences. Thus, for Case 1, the median sentence was 10 years' imprisonment and a \$50,000 fine, and the sentences ranged from 3 years' imprisonment to 20 years' imprisonment and a \$65,000 fine. Twelve judges sentenced to 15 years' imprisonment or more; twelve judges sentenced to 8 years' imprisonment and a \$20,000 fine or less; and so on. In Cases 3 and 5, special parole terms under 21 U.S.C. § 841 are included in the term "probation."*

The construction of a rank list of sentences of course assumes a set of rules for determining when one sentence is more severe than another. In many cases, there would be no likelihood of disagreement on that question, but there are points at which different observers may disagree on whether one sentence or another is the more severe. Readers who disagree with the rules used here, as well

* Because this report is addressed to a group of Federal judges, it assumes familiarity with the various Federal statutes governing sentencing and uses shorthand expressions to refer to some of them. For the assistance of readers who are not familiar with these statutes, an explanatory note is provided in Appendix D.

Table 1 - Sentences in Twenty Cases

	Case #1	Case #2	Case #3	Case #4	Case #5	Case #6	Case #7	Case #8	Case #9	Case #10
Most severe sentence	20 yrs pris; \$65,000.	18 yrs pris; \$5,000.	10 yrs pris; 5 yrs prob.	7 1/2 yrs pris.	5 yrs pris; 3 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	YCA indet.	3 yrs pris.	1 yr pris.
6th most severe sentence	15 yrs pris; \$50,000.	15 yrs pris.	6 yrs pris; 5 yrs prob.	5 yrs pris.	3 yrs pris; 3 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	YCA indet.	6 mos pris; 2 yrs un-sup prob.	6 mos pris; 1 yr prob.
12th most severe sentence	15 yrs pris.	15 yrs pris. [(a)(2)]	5 yrs pris; 5 yrs prob. [(a)(2)]	4 yrs pris.	3 yrs pris; 3 yrs prob.	2 yrs pris; \$5,000.	1 1/2 yrs pris.	6 mos pris; 5 yrs prob. [\$4209]	6 mos pris.	3 mos pris; 27 mos prob.
Median sentence	10 yrs pris; \$50,000.	10 yrs pris.	5 yrs pris; 3 yrs prob.	3 yrs pris.	2 yrs pris; 3 yrs prob.	1 yr pris; \$5,000.	1 yr pris.	5 mos pris; 5 yrs prob. [\$4209]	3 mos pris; 21 mos un-sup prob.	2 mos pris; 1 yr prob.
12th least severe sentence	8 yrs pris; \$20,000.	7 1/2 yrs pris. [(a)(2)]	3 yrs pris; 3 yrs prob.	3 yrs pris.	1 1/2 yrs pris; 3 yrs prob.	6 mos pris; 2 1/2 yrs prob; \$3,000.	6 mos pris; 18 mos prob.	2 mos pris; 2 yrs prob. [\$4209]	1 mo pris; 2 yrs un-sup prob.	3 yrs prob.
6th least severe sentence	5 yrs pris; 3 yrs prob; \$10,000.	5 yrs pris.	3 yrs pris; 3 yrs prob.	2 yrs pris.	5 yrs prob; \$500.	6 mos pris; \$5,000.	3 mos pris.	3 yrs prob.	2 yrs un-sup prob.	2 yrs prob.
Least severe sentence	3 yrs pris.	5 yrs pris.	1 yr pris; 5 yrs prob.	4 yrs prob.	2 yrs prob.	3 mos pris; \$5,000.	1 yr prob.	1 yr prob.	Susp. if leave U.S.	1 yr prob.
No. of sentences ranked	45	48	46	45	42	48	39	41	49	48

Table 1 (Continued)

	Case #11	Case #12	Case #13	Case #14	Case #15	Case #16	Case #17	Case #18	Case #19	Case #20
Most severe sentence	6 mos pris; 6 mos prob; \$5,000.	1 yr pris.	1 1/2 yrs pris.	YCA indet.	1 yr pris; \$3,000.	YCA indet.	3 yrs pris.	6 mos pris; 18 mos prob.	2 yrs pris; \$2,500.	1 yr pris; \$1,000.
6th most severe sentence	6 mos pris; \$2,500.	6 mos pris; 3 yrs prob.	6 mos pris; 2 yrs prob.	YCA indet.	6 mos pris; 3 yrs prob; \$10,000.	5 yrs prob.	6 mos pris; 4 1/2 yrs prob.	5 yrs prob.	6 mos pris; 2 yrs prob.	3 mos pris; \$1,000.
12th most severe sentence	2 mos pris; 22 mos prob; \$5,000.	3 mos pris; 21 mos prob.	6 mos pris; 18 mos prob.	1 yr pris.	3 mos pris; 2 yrs prob; \$5,000.	3 yrs prob.	6 mos pris.	3 yrs prob; \$100.	3 mos pris; 33 mos prob; \$7,500.	3 yrs prob; \$1,000.
Median sentence	1 mo pris; 11 mos prob; \$5,000.	1 mo pris; 11 mos prob.	5 yrs prob.	4 yrs prob.	3 yrs prob; \$10,000.	3 yrs prob.	3 yrs prob.	3 yrs prob.	2 yrs prob; \$15,000.	2 yrs prob; \$500.
12th least severe sentence	2 yrs prob; \$7,500.	2 yrs prob.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob.	3 yrs prob.	2 yrs prob.	2 yrs prob; \$400.	1 yr prob; \$1,500.
6th least severe sentence	\$7,500; 2 yrs un- sup prob.	1 yr prob.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$1,000.	2 yrs prob.	2 yrs prob.	2 yrs prob.	1 yr prob; \$7,500.	1 yr prob; \$500.
Least severe sentence	\$2,500.	6 mos prob.	2 yrs prob.	1 yr prob.	1 yr prob; \$1,000.	2 yrs un- sup prob.	1 yr prob.	1 yr prob.	\$2,500.	\$1,000.
No. of sentences ranked	43	44	48	39	45	42	46	48	47	48

as others who wish to see more detailed data, are referred to the tables in Appendix A. These tables contain all the sentences rendered in each case, and permit fairly easy assessment of the importance of differences that would result from alternative ranking rules. Appendix A also contains brief descriptions of the cases.

The rules that have been used for ranking in this study are based on the assumption that imprisonment of any length is more severe than probation or a fine, that supervised probation is more severe than a fine or unsupervised probation, and that a fine is more severe than unsupervised probation. They also give some weight to the authority under which a prison sentence or probation is imposed. The details of the rules are perhaps best understood by treating them as a series of procedural steps. Each step is applicable only to sentences that are of equal rank under the previous step: that is, Step 2 is used only as necessary to break ties at Step 1, Step 3 is used only as necessary to break ties at Step 2, and so on. For ranking from most severe to least severe, the basis for ranking at the successive steps is as follows:

1. Length of term of imprisonment imposed (with indeterminate sentences under the Youth Corrections Act counted as four-year terms).
2. Length of term of supervised probation (including, in Cases 3 and 5, any special parole term imposed under 21 U.S.C. § 841).
3. Amount of fine.
4. Length of term of unsupervised probation.
5. Authority under which a prison sentence was imposed, as follows (from most severe to least severe):
 - a. Regular authority or 18 U.S.C. § 3651;
 - b. 18 U.S.C. § 4208(a)(1);
 - c. 18 U.S.C. § 4208(a)(2);
 - d. Youth Corrections Act (including 18 U.S.C. § 4209).

6. For Young Adult Offenders only, the authority under which a probation sentence or split sentence was imposed: a sentence under the regular authority is treated as more severe than a sentence of equal length under 18 U.S.C. § 4209.

The ranking is not affected by the length of any prison sentence whose execution was suspended, or by any requirement such as restitution, participation in a drug program, etc.

For a variety of reasons, the number of sentences available for ranking varies somewhat from case to case. In part, this reflects the policy of not sending the presentence report to the actual sentencing judge, but principally it reflects the exclusion from the rankings of two classes of response: failures to sentence by judges who indicated that they needed more information (including decisions to commit for observation), and sentences that were ambiguous or unlawful. The number of sentences ranked thus varies from 39 to 49. But speaking roughly, the six most severe sentences in each case can be viewed as the top eighth, the twelve most severe as the top quarter, and a similar translation may be made of the numbers at the less severe end of the scale. The median sentence is the sentence halfway down the rank list except that in Cases 10 and 13, where the true median fell between two sentences that were not identical, the more severe sentence was used. This convention is used in this report whenever median sentences are displayed, to avoid averaging the two sentences around the midpoint: every sentence shown in Table 1 and other tables is thus a sentence actually reported by one or more participating judges.

Table 1 clearly shows a wide range of disagreement among Second Circuit judges about the appropriate sentences in the twenty cases. Substantial disagreement persists, moreover, even if the extremes of the distribution are ignored. In both Cases 1 and 2, for example, at least six judges imposed prison terms of 15 years or longer, while at least six others imposed prison terms of 5 years or shorter. Indeed, in many of the cases the disagreement remains substantial even if we compare the twelfth most severe and twelfth least severe sentences. For the most part, the pattern displayed is not one of substantial consensus with a few sentences falling outside the area of agreement. Rather, it would appear that absence of consensus is the norm.

The effect of differences in the length of prison terms imposed may of course be somewhat moderated by the fact that actual time served is typically less than the stated sentence. If parole eligibility dates were arrayed instead of stated sentences, the range in Case 1 would be stated as one year to 6 2/3 years, which appears less dramatic than the three to twenty years of the stated sentence. Moreover, within the limits that the sentence imposes on its discretion, the Board of Parole tends to act in ways that limit the effect of disparate prison terms imposed by the judges. It is impossible to evaluate the impact of parole discretion on the time that would actually be served under the prison sentences displayed in Table 1, since the exercise of that discretion is affected by the defendant's behavior in prison. But there can be no question, given the ranges of sentences shown in the table, that the disparity in stated sentences would be reflected in substantial disparity in time served.

In addition, there is nothing in the system to moderate the effect of disagreements among judges about the threshold question of whether the offender should be incarcerated at all. The offender who is sentenced to prison may be released before the expiration of his stated term, but he does go to prison; the offender sentenced to probation or a fine does not. It is therefore worthy of note that there was disagreement on the threshold question in 16 of the 20 cases. In the remaining 4 cases, all the sentencing judges agreed on the appropriateness of prison; in no case did all of them agree on the inappropriateness of prison. If we again cut off the extremes of the distribution and look only at the sixth most severe and sixth least severe sentences, we still find 12 cases in which there was disagreement about the appropriateness of incarceration.

Differences in the lengths of probation terms and amounts of fines are generally of less importance, but the lack of consensus is also evident here.

In short, the consistent tenor of the data presented in the table is one of substantial disparity. In later chapters, we will seek the answers to questions such as whether similar sentencing patterns are found within individual districts, whether some judges' sentences are consistently toward one end of the rank list or the other, and whether

particular features of cases tend to generate disparate sentences. First, however, we turn to the question of the validity of conclusions drawn from an experiment of this kind.

B. What the Experimental Sentences Can Tell Us About Actual Sentences

Since the sentences that form the basis for Table 1 were rendered in an experimental environment, the question arises whether -- and to what extent -- the disparity shown in the table is representative of what occurs in the courtrooms of the Second Circuit. A number of issues must be considered.

The Representative Character of the Presentence Reports Studied

It was stated earlier that the twenty cases included in Table 1 were selected to be broadly representative of the sentencing business of the circuit. It should be understood, however, that they were not selected to be a statistically valid cross-section of that business. Moreover, it is important for readers to understand that no single case in the table is in any sense representative of any class of cases. Case 2, for example, was a bank robbery case. But there is no reason to assume that the pattern of sentences displayed for that case is typical of bank robbery cases. The sentences in the case were the product of judicial reactions to a collection of facts that included not only the title of the offense, but the circumstances under which it was committed, the defendant's other involvement with the law, and a variety of other matters. It would be erroneous to conclude that the range of sentences for bank robbery among the participating judges is 5 years to 18 years, or that sentences in bank robbery cases are highly disparate, or anything else about bank robbery cases as a class. The case can properly be viewed only as one case in a group of twenty that were selected through a process designed to achieve a reasonably representative group.

The selection process began with the identification of twenty crime categories from which the cases were to be selected. These categories are shown in Table 2, which also shows, for each category, the number of defendants

who were sentenced in the circuit, and in each district within the circuit, in fiscal 1973. The case numbers in this table are those used in Table 1 to designate the cases from the respective categories. Except for bribery, securities fraud, and perjury, the categories were selected because of their numerical significance, either for the circuit as a whole or for one or more districts within the circuit. The three exceptions were selected because of an interest on the part of members of the Committee on Sentencing Practices in increasing the representation of white-collar offenses.

Table 3 lists the crime categories that were excluded from the study. The first two categories were excluded, although they were relatively large, because it was anticipated that they would be very much smaller in 1974 and subsequent years. The remaining categories were excluded on the basis of the numbers shown in the table.

After the twenty crime categories had been selected they were assigned to districts, and the chief probation officers were asked to select presentence reports. The study included one presentence report from Vermont, two each from Connecticut, Northern New York, and Western New York, five from Eastern New York, and eight from Southern New York. The instructions to the chief probation officers were to seek reports in cases that would not strike judges as unusual. The chief probation officers of the Eastern and Southern districts undertook to assure that the cases would include both convictions on pleas and convictions after trial, and also that there would be a diversity of defendant characteristics such as prior record, age, narcotics history, and family background. Corporate and other organizational defendants were excluded because of the narrow range of sentencing alternatives available, but with that exception the objective was to obtain a variety of circumstances within the mainstream of the sentencing experience of participating judges.

The presentence reports submitted by the chief probation officers were screened by Judicial Center staff to ensure that they conformed with the desired characteristics. As a final step, abstracts of the cases were sent to the nonjudicial members of the subcommittee in charge of the experiment, and their approval of the cases was obtained. The judicial members of the subcommittee were excluded from this step to avoid any possibility that their participation in case selection would affect the sentences they rendered when they later received the presentence reports.

Table 2 - Included Crime Categories

Defendants Sentenced, Fiscal 1973*

Case No.	Category	Defendants Sentenced, Fiscal 1973*						Entire Circuit
		D. Conn.	N.D. N.Y.	E.D. N.Y.	S.D. N.Y.	W.D. N.Y.	D. Vt.	
1.	Extortion, threats, and travel in aid of racketeering	13	6	13	35	9	0	76
2.	Bank Robbery	16	3	45	47	14	2	127
3.	Distribution of narcotic drugs**	20	7	204	364	11	0	606
4.	Larceny or theft - interstate commerce	2	6	76	27	6	0	117
5.	Distribution of non-narcotic drugs**	6	4	31	23	8	0	72
6.	Income tax offenses	9	12	23	42	4	2	92
7.	Simple possession of narcotic drugs**	5	0	20	44	22	1	92
8.	Mail fraud (incl. wire, radio, etc.)	3	0	17	55	3	1	79
9.	Illegal entry or re-entry	2	8	1	8	1	33	53
10.	Postal embezzlement	8	1	6	92	0	0	107
11.	Bribery	0	0	13	33	0	0	46
12.	Firearms and weapons offenses	25	13	15	18	1	4	76
13.	Counterfeiting	10	6	42	55	11	3	127
14.	Forgery other than postal	11	16	26	40	9	0	102
15.	Gambling and lottery offenses	14	17	10	74	13	0	128
16.	Bank embezzlement	21	9	4	64	7	2	107
17.	Transportation of stolen securities	13	2	9	43	5	3	75
18.	Larceny or theft - Post Office	6	2	16	73	0	1	98
19.	Securities fraud	0	0	0	14	0	0	14
20.	Perjury	0	0	3	13	3	0	19
	Total - included crimes	184	112	574	1,164	127	52	2,213
		(74%)	(57%)	(65%)	(81%)	(65%)	(61%)	(73%)
	Total - all crimes	248	197	883	1,433	195	85	3,041

* This table and Table 3 are derived from data maintained by the Administrative Office of the United States Courts. Magistrates' cases are not included.

** The figures for drug offenses are somewhat understated because some defendants convicted under the old law were also sentenced in fiscal 1973. The old-law cases have been listed as an excluded category.

It must be obvious that this selection process could not provide a sample that is representative in the sense of being a statistically valid cross-section. To mention only one deficiency in this respect, the selection process for the twenty cases resulted in systematic underrepresentation of the less frequent offense categories. But the twenty cases are believed to be representative in the sense that they comprise a variety of case types that are familiar in the circuit. Not only has each of the cases in fact appeared in a Second Circuit courtroom, but similar cases will almost certainly appear in Second Circuit courtrooms in the future. To the best of our knowledge, none of the twenty cases studied could be termed odd or highly unusual. Moreover, except possibly for the three cases that were selected to add to the white-collar representation, none of the cases was selected on the basis of what people thought it would show about disparity; in that sense, the selection process was neutral.

In summary, the cases studied in the experiment cannot appropriately be used to draw conclusions about sentencing patterns for particular offenses. Nor can they be used to draw statistically valid inferences about matters such as the proportion of the Second Circuit cases in which the judges would disagree about the appropriateness of incarceration. But if, in this group of cases, disparity in sentencing appears to be a serious problem, the representative character of the group is certainly adequate to support the conclusion that disparity is a serious problem in a substantial proportion of Second Circuit cases.

The "Paper Defendant" Problem

Probably the most serious methodological issue to be considered is whether sentences rendered in an experimental situation provide an adequate approximation of what would occur in the courtroom. In the experiment, we have sentences rendered by judges who have never had an opportunity to form any personal impressions of the defendant on the basis of face-to-face contact. Moreover, we have a decision-making process that has no consequences for flesh and blood defendants or their families or victims.

Table 3 - Excluded Crime Categories

	<u>D.</u> <u>Conn.</u>	<u>N.D.</u> <u>N.Y.</u>	<u>E.D.</u> <u>N.Y.</u>	<u>S.D.</u> <u>N.Y.</u>	<u>W.D.</u> <u>N.Y.</u>	<u>D.</u> <u>Vt.</u>	<u>Entire</u> <u>Circuit</u>
Old-law drug offenses	3	0	28	31	1	0	63
Selective Service	0	15	24	62	6	2	109
Homicide	0	0	1	0	0	0	1
Robbery other than bank	0	0	6	1	0	0	7
Assault	2	5	3	12	1	0	23
Breaking and entering	1	0	2	2	0	0	5
Larceny or theft, bank	5	1	22	19	11	0	58
Larceny or theft other than bank, Post Office, or interstate commerce	6	2	43	6	4	0	61
Embezzlement other than bank or postal	2	3	2	8	1	0	16
Miscellaneous frauds	10	4	13	28	7	2	64
Transportation of stolen motor vehicles or aircraft	3	4	28	9	2	3	49
Postal forgery	0	0	1	2	0	0	3
Sex offenses	1	1	0	2	0	0	4
Narcotics - records & importation	1	10	13	3	4	3	34
Non-narcotic drugs - records and importation	0	10	11	0	1	6	28
Non-narcotic drugs - simple possession	1	1	18	4	8	2	34
Escape, bail-jumping, etc.	4	0	4	11	1	2	22
Kidnapping	0	0	2	1	0	0	3
Miscellaneous general offenses	6	0	3	0	0	0	9
Immigration other than illegal entry	0	8	0	1	1	8	18
Liquor - Internal Revenue	1	0	5	7	5	0	18
Agriculture and conservation statutes	2	0	8	14	0	0	24
Antitrust	0	0	16	4	0	0	20
Fair Labor Standards Act	0	0	1	3	0	0	4
Food and drug	2	3	9	8	0	0	22
Motor Carrier Act	6	1	1	3	2	4	17
National defense laws (except Selective Service)	0	0	0	0	0	1	1
Miscellaneous Federal statutes	3	3	9	8	3	0	26
Customs (except narcotics and liquor)	0	4	4	6	1	0	15
Marine offenses	2	4	4	8	0	0	18
Obstructing the mail	1	0	6	1	5	0	13
Violations of postal laws by P.O. employees	1	4	18	4	3	0	30
Violation of aircraft regulations	<u>1</u>	<u>2</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>9</u>
Total - Excluded Crimes	64	85	309	269	68	33	828

The absence of face-to-face contact with the defendant is the less troublesome of these two characteristics of the experimental milieu. It may be conceded that the sentences rendered by individual judges might be different if a personal assessment of the defendant were to enter into the equation. This is particularly true with respect to those defendants who go to trial, but it also applies to some extent to the much larger number who are convicted on pleas. But we are not concerned in this study with the individual sentences; we are concerned with the ranges of disagreement about appropriate sentences. There is very little reason to think that, if each of the judges participating in the study had had an opportunity to form a personal assessment of the defendants, the changes in their sentences would have operated in a manner that would substantially alter the distribution of sentences. A defendant who made an unusually favorable impression might well have had lower sentences all around; one who made an unusually unfavorable impression might well have had higher sentences. Some defendants might have affected some judges in one direction and other judges in the other direction. It would be unusual, one would suppose, to find that the impact of the defendant's demeanor on the sentences in one of the cases in the experiment would be to make the severe sentences more lenient and the lenient more severe. Thus, even though the experiment omits part of the information that is available to the judge at the time of sentencing, this omission is not likely to have had much impact on the extent of disparity observed.

The other feature of the experimental environment is of more concern. Surely, the judges participating in the study must have weighed their sentencing decisions less carefully and responsibly than they weigh decisions that have real consequences for real people. The appearance of a few unlawful sentences in the study would seem to confirm that a priori notion. It may be that the more careful and thoughtful deliberation that takes place when real defendants are before the court leads judges to reach more nearly similar results in similar cases. It may also be that the responsibility that a judge bears when dealing with the lives of real people tends to result in sentences more nearly in agreement: the judge inclined to be tough may find it easier to indulge that inclination

when there is neither a defendant nor a family to be hurt by his decisions; the judge inclined to take probation risks may find it easier to do so if there is no risk at all that the criminal will find other victims. If these observations are correct, it must be concluded that there is a tendency here for the experimental data to overstate the extent of disagreement among the judges. But one would also expect that this tendency would be less strong in those cases with fact patterns familiar to the judges: if the judge had a body of his own highly relevant sentencing experience to guide him in deciding upon a sentence in the experiment, the influence of less thorough deliberation or a diminished sense of responsibility would be expected to be greatly reduced.

As was noted earlier, the goal in selecting the twenty cases was to find cases of familiar types. Nevertheless, given differences in the offense mix from district to district, not all of the cases were likely to seem familiar to all of the participating judges. On the basis of the data contained in Table 2, it seems reasonable to conclude that Cases 1, 2, 3, 6, 13, 14, 15, and 17 involved offenses that would be familiar to all judges with the exception of those quite recently appointed and, in some of the cases, with the additional exception of the two judges in the District of Vermont. Putting Vermont aside, each of these offense categories accounted for at least as many defendants sentenced in each district in 1973 as there were active judges sitting in the district. For these eight cases, which might be thought to be more reliable indicators of courtroom performance than the others, the pattern of disagreement shown by Table 1 is not markedly different from that for the other twelve. Moreover, the pattern holds up even if we eliminate those judges who entered on duty within the last five years, a procedure that incidentally eliminates both of the Vermont judges. The results of this elimination are presented in Table 4. Since only 32 of the 50 participating judges entered on duty before 1969, this table uses the fourth and eighth sentences, rather than the sixth and twelfth, to approximate the octiles and quartiles. The table shows that the distribution of the sentences of the relatively experienced judges in these cases is very similar to the distribution of the sentences of all the judges that is presented

in Table 1. In the light of this pattern of sentences rendered by relatively experienced judges in cases involving relatively familiar offenses, it seems probable that the tendency for the experimental sentences to be more disparate than courtroom sentences, if it indeed exists at all, is not a very strong one.

The Use of Identical Presentence Reports

For each case in the study, all of the sentences were rendered on the basis of information contained in identical presentence reports submitted over the signature of a fictitious chief probation officer named James E. Miller. In actual practice, by contrast, defendants in cases that are quite similar may well have their presentence investigations conducted by different probation officers who react differently to similar facts and whose varying perceptions affect both the factual presentation to the judge and, if there is one, the recommendation. This difference between the experimental practice and actual practice may affect the data in several ways. First, and most obvious, by eliminating the differences in probation officers' perceptions we have eliminated a factor which in actual practice must tend to be disparity-creating. Indeed, it is possible that there are not only individual differences among the probation officers, but that we may also have eliminated institutional differences among probation offices that would also tend to create more disparity when judges from six separate districts are considered together.

But it is also possible that we have eliminated a disparity-reducing influence, at least within individual districts. It will be seen in Chapter IV that Mr. James E. Miller's sentence recommendations carried very little weight with the judges in the experiment. It may be, however, that the recommendations of their own chief probation officers -- in those districts in which recommendations are made -- would carry considerable weight. If that is the case, and if the chief probation officers in those districts manage to achieve some institutional consistency in the recommendations they make, the disparity shown in the study, insofar as it is among judges in the same districts, would tend to be somewhat overstated in comparison with what actually occurs in the courtroom.

Table 4 - Sentences in Eight Cases by Judges
Who Entered on Duty Before 1969

	Case #1	Case #2	Case #3	Case #6	Case #13	Case #14	Case #15	Case #17
Most severe sentence	20 yrs pris; \$65,000.	18 yrs pris; \$5,000.	10 yrs pris; 5 yrs prob.	3 yrs pris; \$5,000.	1 1/2 yrs pris.	YCA indet.	1 yr pris; \$3,000.	3 yrs pris.
4th most severe sentence	15 yrs pris; \$35,000.	15 yrs pris.	6 yrs pris; 5 yrs prob.	3 yrs pris; \$5,000.	6 mos pris; 2 yrs prob.	YCA indet.	6 mos pris; 3 1/2 yrs prob.	1 yr pris.
8th most severe sentence	10 yrs pris; 5 yrs prob; \$40,000.	15 yrs pris. [(a)(2)]	5 yrs pris; 5 yrs prob. [(a)(2)]	2 1/2 yrs pris; \$5,000.	6 mos pris; 18 mos prob.	1 yr pris.	3 mos pris; 2 yrs prob; \$5,000.	6 mos pris; 3 yrs prob.
Median sentence	10 yrs pris; \$20,000.	10 yrs pris.	5 yrs pris; 3 yrs prob.	1 yr pris; \$5,000.	4 yrs prob.	3 yrs prob.	3 yrs prob; \$10,000.	4 yrs prob.
8th least severe sentence	5 yrs pris; 5 yrs prob; \$10,000.	7 yrs pris.	4 yrs pris; 3 yrs prob. [(a)(2)]	1 yr pris; \$5,000.	2 yrs prob; \$500.	2 yrs prob.	2 yrs prob; \$5,000.	3 yrs prob.
4th least severe sentence	5 yrs pris; \$158,000. [(a)(2)]	5 yrs pris.	3 yrs pris; 3 yrs prob.	6 mos.pris; 2 yrs prob; \$5,000.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$1,000.	2 yrs prob.
Least severe sentence	3 yrs pris.	5 yrs pris.	2 yrs pris; 3 yrs prob.	3 mos pris; 5 yrs prob; \$5,000.	2 yrs prob.	2 yrs prob.	1 yr prob; \$1,000.	2 yrs prob.
No. of sentences ranked	28	31	29	31	31	28	29	31

A third possible effect of using identical presentence reports is that judges may have received some of the information in somewhat unfamiliar form. This does not seem likely to have had a major impact on the sentences rendered, inasmuch as the general format of the presentence report is prescribed by the Probation Division of the Administrative Office and is closely followed in all of the six districts of the Second Circuit. The only problem that was specifically observed was that, in Cases 2 and 9, the report did not call attention to the possibility of a Youth Corrections Act sentence. It is possible that this omission might have influenced the sentence of a judge whose probation office regularly presents the sentencing alternatives exhaustively, but it doesn't seem very likely that the distribution of sentences in either of those two cases could have been influenced very much.

Overall, it seems probable that the net effect of using identical presentence reports was some understatement of the extent of disparity.

Failure to Simulate Sentencing Council in the Eastern District of New York

For many years, practice in the Eastern District of New York has required that the sentence be rendered only after the sentencing judge has had an opportunity to consult with two of his colleagues in a sentencing council. In the course of the planning for the sentencing study, it was decided not to ask the judges of the Eastern District to simulate the sentencing council. The sentences received from the ten participating judges in the Eastern District therefore do not reflect the influence of their normal collegial procedure. To that extent, the sentences reported in the study must be taken as representing the sentences that would have been given in the absence of the sentencing council, rather than those that are actually handed down. Presumably, the sentences actually handed down by Eastern District judges are more nearly in agreement with one another.

Conclusion

The sentences reported in Table 1 are sentences rendered in a game. The object of the game was to simulate actual sentencing decisions. It is in the nature of games of this type that they are imperfect. But if we cannot eliminate

the imperfections, we can try to evaluate their likely impact on the experimental data. In the foregoing discussion, we have considered several such imperfections and reached the following conclusions:

1. The cases selected for the experiment are sufficiently representative that a finding of considerable disparity in this group of cases would support the conclusion that considerable disparity exists in a substantial proportion of Second Circuit cases.
2. The inability to simulate face-to-face contact with defendants in the experiment probably did not tend to produce an overstatement of the extent of disparity.
3. The fact that the sentences in the experiment would not in fact be carried out may have tended toward overstatement of the extent of disparity, but any such tendency does not appear to have been strong.
4. To the extent that probation office sentencing recommendations may tend to bring different judges together in their actual sentencing decisions, the use of identical presentence reports signed by a fictitious probation officer may have tended toward overstatement of the extent of disparity, but the net effect of using identical presentence reports probably tended toward understatement rather than overstatement.

Subject to the caveat that the sentences from the Eastern District must be considered to represent sentences that would have been rendered in the absence of a sentencing-council procedure, we therefore conclude that the disparity exhibited in Table 1 is a reasonably good approximation of what really happens in the courtrooms of the circuit.

CHAPTER III - PATTERNS OF SENTENCES

A. Introduction and Summary

In Chapter II, the focus was on the question whether substantial disparity exists among the district judges of the Second Circuit. In this chapter, an effort is made to analyze the disparity that has been observed by looking for patterns in the data that may increase our understanding of it. The analysis here is based on the same sentences that formed the basis for Chapter II.

The first question treated is whether the disparity observed in the previous chapter is primarily a result of disagreement among judges within individual districts or primarily a result of differences in sentencing practices among districts. It is concluded that substantial disparity exists within districts, and that differences among districts are of secondary importance. In addition, the disparity found among judges of the Eastern District of New York casts doubt on the theory that sentencing councils tend to generate common approaches to sentencing among the judges who participate.

The second question considered is whether experience on the Federal bench tends to bring judges closer together in their sentences. No evidence is found of any such tendency.

The third question addressed in the chapter is whether the disparity observed is a function of some judges habitually rendering relatively severe sentences while others habitually render light ones. It is concluded that the disparity is not so easily explained. The overwhelming majority of the Second Circuit judges are sometimes severe relative to their colleagues and sometimes lenient. If there are indeed "hanging judges" and lenient ones -- and it would appear that there are a few -- their contribution to the disparity problem is minor compared to the contribution made by judges who cannot be so characterized.

B. Methods of Analysis

In comparing sentences with one another, we are limited by the fact that there is no single unit of measurement. If one judge sentences to six months in prison and another imposes only a \$5,000 fine, we can probably agree that the first judge was more severe but we have no meaningful way of saying how much more severe he was. Our inability to do so serves to limit the number of statistical tools available for analyzing the data in a study of this type.

The principal tool used in this chapter and Chapter IV is known as the Kolmogorov-Smirnov test. This test does not require that we be able to measure the differences between sentences, but it does assume that we are able to rank sentences in order of severity. If that assumption is made, the test can be used to compare the sentences of two groups of judges in a particular case and ask whether the relative severity of their sentences is so different that the difference is unlikely to have occurred simply by chance. For example, if 60 percent of the experienced judges in the circuit rendered sentences of three years' prison or more in a case and only 50 percent of the inexperienced judges were that severe, the difference of 10 percent might well be due to one or more factors, unrelated to experience, that just happened to be distributed unequally between the two groups of judges. We could not conclude on this evidence that there is a relationship between the severity of a judge's sentences and the length of his experience on the bench. But if 60 percent of the experienced judges and only 10 percent of the inexperienced judges rendered sentences this severe, the 50-percent difference would not be likely to have resulted solely from the chance distribution of some irrelevant characteristic among experienced and inexperienced judges. We would conclude that there was a difference among the sentences that was related to experience. The Kolmogorov-Smirnov test is essentially a system for evaluating the likelihood that observed differences of this type might have occurred by chance.

The test is used here at the 95-percent confidence level. Thus, an observed difference between the sentences of two groups of judges will be treated as significant only if there are fewer than 5 chances in 100 that the difference could have occurred through the operation of chance.

Even so, it should be recognized that we run the risk of affirming some relationships that don't really exist. We run a greater risk, however, of rejecting with a Scotch verdict some relationships that do really exist. Indeed, given the number of judges whose sentences are the subject of this study, the Kolmogorov-Smirnov test generally requires that there appear, for at least one sentence in the case, a difference in the neighborhood of 40 percentage points between the two groups being compared before we can reject, at the 95-percent confidence level, the possibility that the difference in the sentences observed had nothing to do with the characteristic being studied.*

We will be assisted somewhat in the present chapter by our ability to test for differences between groups of judges not in one case but in twenty. If, for example, the more experienced judges as a group gave more severe sentences in each of our twenty cases, we would conclude that experienced judges sentence more severely even if we could not claim statistical significance in any single case. Partly because the twenty cases do not constitute a statistically representative sample of Second Circuit cases and partly because there does not appear to be an acceptable statistical test available, there is no mathematical way of determining when such a conclusion is justified. Thus a certain amount of nonstatistical judgment is involved.

C. Disparity Within Districts

Tables 5, 6, and 7 display the sentences rendered in the twenty cases separately for the Southern District of New York, the Eastern District of New York, and the four other districts considered together. Because of a commitment that the sentences rendered by individual judges would be kept confidential, it is not possible to publish separately the sentences rendered for each of the smaller districts.

*The Kolmogorov-Smirnov test is described in Conover, Practical Nonparametric Statistics, at 308-14 (1971).

Table 5 - Sentence in Twenty Cases by Judges
of the Southern District of New York

	Case #1	Case #2	Case #3	Case #4	Case #5	Case #6	Case #7	Case #8	Case #9	Case #10
Most severe sentence	20 yrs pris; \$10,000.	18 yrs pris; \$5,000.	10 yrs pris; 3 yrs prob.	5 yrs pris.	5 yrs pris; 3 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	YCA Indet.	1 yr pris; 2 yrs unsup prob.	1 yr pris.
4th most severe sentence	15 yrs pris; \$35,000.	15 yrs pris.	7 yrs pris; 3 yrs prob.	5 yrs pris.	4 yrs pris; 2 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	1 yr pris; 3 yrs prob.	6 mos pris; 2 yrs unsup prob.	6 mos pris.
8th most severe sentence	15 yrs pris.	10 yrs pris; \$5,000.	5 yrs pris; 5 yrs prob. [(a)(2)]	4 yrs pris.	3 yrs pris; 3 yrs prob.	2 yrs pris; \$5,000.	15 mos pris.	6 mos pris; 2 1/2 yrs prob.	6 mos pris.	3 mos pris; 27 mos prob.
Median sentence	10 yrs pris; \$75,000.	10 yrs pris.	5 yrs pris; 3 yrs prob.	3 yrs pris; 2 yrs prob.	2 yrs pris; 3 yrs prob.	1 yr pris; \$5,000.	1 yr pris.	6 mos pris.	3 mos pris; 15 mos unsup prob.	2 mos pris; 1 yr prob.
8th least severe sentence	10 yrs pris; \$32,500.	7 yrs pris.	3 yrs pris; 3 yrs prob.	3 yrs pris.	1 1/2 yrs pris; 3 yrs prob.	6 mos pris; 2 1/2 yrs prob; \$5,000.	6 mos pris; 18 mos prob.	2 mos pris; 18 mos prob.	2 yrs unsup prob.	2 yrs prob.
4th least severe sentence	8 yrs pris; \$20,000.	5 yrs pris.	3 yrs pris; 3 yrs prob.	2 yrs pris.	5 yrs prob.	6 mos pris; \$5,000.	4 yrs prob.	3 yrs prob.	2 yrs unsup prob.	2 yrs prob.
Least severe sentence	5 yrs pris; \$10,000.	5 yrs pris.	1 yr pris; 5 yrs prob.	1 yr pris.	2 yrs prob.	3 mos pris; \$5,000.	1 yr prob.	1 yr prob.	Susp. if leave U.S.	1 yr prob.
No. of sentences ranked	27	29	29	29	28	28	23	27	30	29

Table 5 (Continued)

	Case #11	Case #12	Case #13	Case #14	Case #15	Case #16	Case #17	Case #18	Case #19	Case #20
Most severe sentence	6 mos pris; 6 mos prob; \$5,000.	1 yr pris.	1 1/2 yrs pris.	YCA Indet.	1 yr pris; \$3,000.	2 mos pris; 16 mos prob.	3 yrs pris.	6 mos pris; 18 mos prob.	2 yrs pris; \$2,500.	6 mos pris; 2 yrs prob; \$1,000.
4th most severe sentence	6 mos pris; \$5,000.	6 mos pris; 3 1/2 yrs prob.	6 mos pris; 2 yrs prob.	YCA Indet.	6 mos pris; \$5,000.	3 yrs prob.	1 yr pris.	2 mos pris; 1 yr prob.	1 yr pris; \$10,000.	3 mos pris; \$1,000.
8th most severe sentence	3 mos pris; 21 mos prob; \$2,500.	3 mos pris; 21 mos prob.	6 mos pris; 18 mos prob.	YCA Indet.	3 mos pris; \$5,000.	3 yrs prob.	3 mos pris; 3 yrs prob.	3 yrs prob.	6 mos pris; 6 mos prob; \$10,000.	3 yrs prob; \$1,000.
Median sentence	1 mo pris; 11 mos prob. \$5,000.	1 mo. pris; 1 yr prob.	3 mos pris; 21 mos prob.	6 mos pris.	3 yrs prob; \$5,000.	2 yrs prob.	3 yrs prob.	3 yrs prob.	3 mos pris; \$5,000.	2 yrs prob; \$500.
8th least severe sentence	1 mo pris; 11 mos prob; \$2,500.	1 yr prob.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$10,000.	1 yr prob; \$1,000.
4th least severe sentence	6 mos prob; \$5,000.	1 yr prob.	2 yrs prob.	2 yrs prob.	2 yrs prob; \$1,000.	1 yr prob.	2 yrs prob.	1 yr prob.	18 mos prob; \$1,000.	1 yr prob; \$500.
Least severe sentence	\$2,500.	6 mos prob.	2 yrs prob.	1 yr prob.	1 yr prob; \$2,500.	2 yrs un- sup prob.	1 yr prob.	1 yr prob.	1 yr prob; \$5,000.	\$1,000.
No. of sentences ranked	26	28	29	26	27	28	27	28	27	28

Table 6 - Sentences in Twenty Cases by Judges
of the Eastern District of New York

(The table shows every sentence in each case, in declining order of severity).

Case #1	Case #2	Case #3	Case #4	Case #5	Case #6	Case #7	Case #8	Case #9	Case #10
15 yrs pris; 5 yrs prob; \$50,000; [(a)(2)]	15 yrs pris.	10 yrs pris; 5 yrs prob.	7 1/2 yrs pris.	4 yrs pris; 3 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	YCA Indet.	3 yrs pris.	6 mos pris; 3 yrs prob.
15 yrs pris; \$5,000.	15 yrs pris.	5 yrs pris; 8 yrs prob.	6 yrs pris. [(a)(2)]	3 yrs pris; 3 yrs prob.	3 yrs pris; \$2,500.	2 yrs pris.	YCA Indet.	1 yr pris.	6 mos pris; 18 mos prob.
12 yrs pris; \$15,000.	15 yrs pris. [(a)(2)]	5 yrs pris; 5 yrs prob.	5 yrs pris.	3 yrs pris; 3 yrs prob.	3 yrs pris. [(a)(2)]	2 yrs pris.	YCA Indet.	6 mos pris; 2 1/2 yrs un- sup prob.	3 mos pris; 21 mos prob; \$250.
10 yrs pris; \$50,000.	15 yrs pris. [(a)(2)]	5 yrs pris; 5 yrs prob. [(a)(2)]	4 yrs pris. [(a)(2)]	6 mos pris; 6 1/2 yrs prob.	2 yrs pris.	2 yrs pris. [(a)(2)]	3 mos pris; 5 yrs prob. [\$4209]	6 mos pris; 2 yrs un- sup prob.	3 mos pris; 21 mos prob.
8 yrs pris; \$75,000.	15 yrs pris. [(a)(2)]	5 yrs pris; 5 yrs prob. [(a)(2)]	3 yrs pris; 5 yrs prob. [(a)(2)]	5 yrs prob; \$500.	1 1/2 yrs pris; \$5,000.	1 yr pris.	3 mos pris; 3 yrs prob. [\$4209]	5 mos pris; 43 mos un- sup prob.	3 yrs prob; \$500.
7 yrs pris; \$8,200.	10 yrs pris; \$3,500. [(a)(1)]	5 yrs pris; 5 yrs prob. [(a)(2)]	3 yrs pris.	5 yrs prob.	1 yr pris; \$5,000.	6 mos pris; 1 yr prob.	2 mos pris; 3 yrs prob. [\$4209]	4 mos pris; 2 yrs un- sup prob.	3 yrs prob.
5 yrs pris; 3 yrs prob; \$60,000.	10 yrs pris. [(a)(2)]	4 yrs pris; 5 yrs prob. [(a)(2)]	6 mos pris; 2 1/2 yrs prob.		1 yr pris; \$5,000.	2 yrs prob.	1 mo pris; 35 mos prob.	3 mos pris; 2 yrs un- sup prob.	3 yrs prob.
5 yrs pris; 2 yrs prob; \$20,000. [(a)(2)]	8 yrs pris. [(a)(2)]				1 yr pris; \$5,000.			2 mos pris; 2 yrs un- sup prob.	3 yrs prob.
5 yrs pris; \$158,000. [(a)(2)]	6 yrs pris. [(a)(2)]				6 mos pris; 2 1/2 yrs prob; \$3,000.			1 mo pris; 2 yrs un- sup prob.	3 yrs prob.
5 yrs pris; \$25,000.	5 yrs pris.				4 mos pris; \$10,000; 32 mos un- sup prob.			5 yrs un- sup prob.	
10	10	7	7	6	10	7	7	10	9

Table 6 (Continued)

Case #11	Case #12	Case #13	Case #14	Case #15	Case #16	Case #17	Case #18	Case #19	Case #20
3 mos pris; 9 mos prob; \$5,000.	6 mos pris; 3 yrs prob.	6 mos pris; 2 1/2 yrs prob.	YCA Indet.	1 yr pris; \$2,500.	YCA Indet.	6 mos pris; 4 1/2 yrs prob.	5 yrs prob.	6 mos pris; 18 mos prob; \$2,500.	1 yr pris; \$1,000.
6 wks pris; 2 yrs prob; \$1,000.	6 mos pris; 2 1/2 yrs prob.	6 mos pris; 18 mos prob.	YCA Indet.	6 mos pris; 3 1/2 yrs prob.	YCA Indet.	6 mos pris; 2 yrs prob.	3 yrs prob; \$250.	1 mo pris; 11 mos prob; \$2,500.	3 mos pris; 21 mos prob; \$1,500.
1 mo pris; 3 yrs prob.	3 mos pris; 2 yrs prob.	5 mos pris; 31 mos prob.	2 yrs pris.	6 mos pris; 18 mos prob; \$10,000.	3 yrs prob.	6 mos pris; 18 mos prob.	3 yrs prob; \$100.	3 yrs prob; \$7,500.	1 mo pris; 11 mos prob; \$500.
1 mo pris; 23 mos prob; \$3,000.	3 mos pris; 21 mos prob.	4 mos pris; 44 mos prob.	5 yrs prob.	2 mos pris; 3 yrs prob; \$2,500.	3 yrs prob.	3 mos pris; 5 yrs prob.	3 yrs prob; \$50.	3 yrs prob; \$5,000.	3 yrs prob; \$2,000.
2 yrs prob; \$7,500.	3 mos pris.	3 yrs prob.	2 1/2 yrs prob.	1 mo pris; 35 mos prob; \$5,000.	3 yrs prob.	2 mos pris; 3 yrs prob.	3 yrs prob.	3 yrs prob; \$5,000.	3 yrs prob; \$1,000.
\$7,500; 1 yr unsup prob. \$5,000.	1 mo pris; 35 mos prob. 2 yrs prob.	3 yrs prob. 3 yrs prob.	2 yrs prob.	3 yrs prob; \$5,000. 3 yrs prob; \$2,500. 3 yrs prob. \$2,500. 2 yrs prob; \$3,500. 2 yrs prob; \$2,500.	3 yrs prob. 3 yrs prob.	5 yrs prob. 4 yrs prob. 3 yrs prob. 2 yrs prob.	3 yrs prob. 3 yrs prob. 2 yrs prob; \$200. 2 yrs prob; \$100.	3 yrs prob; \$4,000. 18 mos prob; \$5,000. 1 yr prob; \$7,500. \$5,000. \$2,500.	3 yrs prob; \$500. 2 yrs prob; \$1,000. 2 yrs prob. 1 yr prob; \$250.
7	7	9	6	10	7	9	10	10	10

Table 7 - Sentences in Twenty Cases by Judges
of the Four Smaller Districts

(The table shows every sentence in each case, in declining order of severity).

Case #1	Case #2	Case #3	Case #4	Case #5	Case #6	Case #7	Case #8	Case #9	Case #10
20 yrs pris; \$65,000.	17 yrs pris.	6 yrs pris; 4 yrs prob.	5 yrs pris.	3 yrs pris; 2 yrs prob.	3 yrs pris; \$5,000.	2 yrs pris.	YCA Indet.	6 mos pris.	6 mos pris; 3 yrs prob.
15 yrs pris; \$50,000.	15 yrs pris; [(a)(2)]	5 yrs pris; 5 yrs prob.	4 yrs pris.	3 yrs pris; 2 yrs prob. [(a)(2)]	2 yrs pris; \$5,000.	1 1/2 yrs pris.	YCA Indet.	3 mos pris; 3 yrs un-sup prob.	4 mos pris; 3 yrs prob.
15 yrs pris; \$50,000. [(a)(2)]	14 yrs pris.	5 yrs pris; 5 yrs prob. [(a)(2)]	3 yrs pris.	2 yrs pris; 3 yrs prob.	1 1/2 yrs pris; \$5,000.	1 1/2 yrs pris.	1 yr pris.	3 mos pris; 2 yrs un-sup prob.	3 mos pris; 2 yrs prob.
10 yrs pris; \$20,000.	12 yrs pris.	5 yrs pris; 3 yrs prob. [(a)(2)]	3 yrs pris.	2 yrs pris; 3 yrs prob.	1 yr pris; \$5,000.	1 yr pris.	4 mos pris; 3 yrs prob.	3 mos pris; 2 yrs un-sup prob.	2 mos pris; 2 yrs prob.
10 yrs pris; \$10,000.	12 yrs pris. [(a)(2)]	5 yrs pris; 3 yrs prob. [(a)(2)]	3 yrs pris.	2 yrs pris; 3 yrs prob.	1 yr pris; \$5,000.	1 yr pris.	2 mos pris; 3 yrs prob.	2 mos pris; 5 yrs un-sup prob.	2 mos pris; 22 mos prob.
8 yrs pris; \$15,000.	10 yrs pris.	5 yrs pris; 3 yrs prob. [(a)(2)]	3 yrs pris.	2 yrs pris; 2 yrs prob.	1 yr pris; \$5,000.	6 mos pris; 5 yrs prob.	5 yrs prob.	2 mos pris; 22 mos un-sup prob.	3 yrs prob; \$500.
5 yrs pris; 3 yrs prob; \$10,000.	10 yrs pris.	4 yrs pris; 10 yrs prob. [(a)(2)]	3 yrs pris.	1 yr pris; 4 yrs prob.	6 mos pris; 2 1/2 yrs prob; \$5,000.	6 mos pris; 5 yrs prob.	3 yrs prob. (\$4209)	2 mos pris; 10 mos un-sup prob.	3 yrs prob.
3 yrs pris.	8 yrs pris.	4 yrs pris; 3 yrs prob.	2 yrs pris.	6 yrs prob.	6 mos pris; \$5,000.	6 mos pris; 18 mos prob.		2 mos pris.	3 yrs prob.
	7 1/2 yrs pris. [(a)(2)]	3 yrs pris; 3 yrs prob.	4 yrs prob.		6 mos pris; \$5,000.	3 mos pris; 3 yrs prob.		1 1/2 mos pris; 2 yrs un-sup prob.	3 yrs prob.
		3 yrs pris; 3 yrs prob.			3 mos pris; 5 yrs prob; \$5,000.				3 yrs prob.
8	9	10	9	8	10	9	7	9	10

Table 7 (Continued)

Case #11	Case #12	Case #13	Case #14	Case #15	Case #16	Case #17	Case #18	Case #19	Case #20
6 mos pris; \$2,500.	2 mos pris; 2 yrs prob.	4 mos pris; 20 mos prob.	1 yr pris.	1 yr pris; \$3,000.	1 mo pris; 2 yrs prob.	6 mos pris; 3 yrs prob.	2 mos pris; 3 yrs prob.	3 mos pris; \$10,000.	3 yrs prob. \$200.
4 mos pris; 2 yrs prob; \$5,000.	4 yrs prob.	3 mos pris; 3 yrs prob.	6 mos pris; 5 yrs prob.	6 mos pris; 3 yrs prob; \$10,000.	5 yrs prob.	6 mos pris; 3 yrs prob.	5 yrs prob.	2 yrs prob; \$10,000.	3 yrs prob.
1 mo pris; 2 yrs prob.	3 yrs prob.	2 mos pris; 3 yrs prob.	4 yrs prob.	3 mos pris; 2 yrs prob; \$3,000.	3 yrs prob.	1 mo pris; 3 yrs prob.	5 yrs prob.	2 yrs prob; \$10,000.	2 yrs prob; \$1,000.
1 mo pris; 1 yr prob; \$5,000.	3 yrs prob.	3 yrs prob.	3 yrs prob.	1 mo pris; 11 mos prob; \$2,500.	3 yrs prob.	4 yrs prob.	3 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob; \$500.
1 mo pris; 11 mos prob; \$3,500.	2 yrs prob.	3 yrs prob.	3 yrs prob.	4 yrs prob; \$2,000.	3 yrs prob.	3 yrs prob.	3 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob; \$500.
1 mo pris; \$7,500.	2 yrs prob.	3 yrs prob.	2 yrs prob.	3 yrs prob; \$8,000.	3 yrs prob.	3 yrs prob.	2 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob.
3 yrs prob; \$2,000.	2 yrs prob.	3 yrs prob.	2 yrs prob.	2 yrs prob; \$5,000.	2 yrs prob.	3 yrs prob.	2 yrs prob.	2 yrs prob; \$1,000.	2 yrs prob.
2 yrs prob; \$6,000.	2 yrs prob.	3 yrs prob.		1 yr prob; \$1,000.		3 yrs prob.	2 yrs prob.	2 yrs prob.	2 yrs prob.
2 yrs prob; \$5,000.	1 yr prob.	2 yrs prob.				3 yrs prob.	2 yrs prob.	2 yrs prob.	2 yrs prob.
\$5,000.		2 yrs prob.				2 yrs prob.	2 yrs prob.	\$5,000.	1 yr prob; \$500.
10	9	10	7	8	7	10	10	10	10

Table 5, which displays the sentences for the Southern District of New York, is similar in format to Table 1. Since thirty of the participating judges were from the Southern District, the fourth most severe and least severe sentences are used to approximate the octiles, and the eighth most severe and least severe to approximate the quartiles. Tables 6 and 7, on the other hand, display every sentence rendered in the experiment by judges in the other districts. With ten participating judges in the Eastern District and ten in the four smaller districts, nothing would be gained by displaying only selected points on the rank list.

Tables 5 and 6 make it clear that the disparity observed in Chapter II is not wholly a problem of disagreement among districts. Within both the Southern and Eastern Districts of New York, there is very substantial disagreement. Moreover, inspection of the detailed data underlying Table 7 indicates that the smaller districts are not exceptions.

There is also in the data some evidence of differences among districts. It suggests that sentences in the Eastern District tend on the whole to be somewhat more severe than the median sentences for the entire circuit in particular cases, that sentences in the four smaller districts tend to be less severe, and that sentences in the Southern District are about equally distributed around the median. The figures are presented in Table 8.

Because Table 8 is not based on a random sample of cases, it is not possible to make a statement about the statistical significance of this data. In addition, application of the Kolmogorov-Smirnov test on a case-by-case basis does not suggest that the differences among districts are particularly strong. While it seems probable that there is some tendency for the Eastern District judges to be more severe than the circuit generally and for the judges from the four smaller districts to be less severe, it also seems clear that the venue is a good deal less important than the identity of the individual judge.

Table 8 - Sentences in Twenty Cases, by District,
Compared With Circuit-Wide Median
Sentences in Those Cases

	<u>E.D.</u> <u>N.Y.</u>	<u>S.D.</u> <u>N.Y.</u>	<u>Four smaller</u> <u>districts</u>
Number of sentences more severe than median sentence in same case	96	233	61
Number of sentences equal to median sentence	15	84	29
Number of sentences less severe than median sentence	<u>57</u>	<u>236</u>	<u>90</u>
Total sentences in 20 cases	168	553	180

The tables showing sentences by district also cast some light on the sentencing-council procedure used in the Eastern District of New York. The sentencing council is thought by many to reduce disparity in two ways. First, the sentencing judge has the benefit of his colleagues' wisdom in arriving at a sentence in a particular case, and is thought likely to be discouraged from rendering a sentence greatly out of line with his colleagues' views. Second, the practice of discussing sentencing problems on a regular basis is thought likely to bring the participating judges closer together in their approach to sentencing problems. It is extremely difficult to evaluate these claimed effects with data about actual sentencing councils, since they involve constantly changing trios of judges. The current study, of course, provides no opportunity to evaluate the immediate effect of a collegial process on sentences in cases that are considered in sentencing councils. But Table 6 suggests that the alleged effect on judges' ways of approaching sentencing, if it exists at all, is not very effective in creating a common approach among

the judges of a district. This is not to say that participating in sentencing councils is not educational. It is to suggest, however, that the generation of a common approach should not be regarded as one of the major benefits of that particular kind of education. Each of the Eastern District judges entered on duty in 1971 or earlier, so the sentences in Table 6 are sentences of judges who all had at least two years of sentencing council experience.

D. The Effect of Experience on the Federal Bench

It might be thought that experience on the bench would tend to be a moderating factor in sentencing disparity -- that experienced judges, as a consequence not only of their experience in actual sentencing but also of their greater opportunities to consider sentencing problems in sentencing institutes and other forums, would have developed greater consensus among themselves than the judges with less experience. If this were true, it would suggest that disparity in sentencing might be somewhat moderated through efforts to find training substitutes for the experience that the more recently appointed judges lack. An analysis was therefore undertaken to determine whether a greater consensus was in fact exhibited in the twenty cases by the more experienced judges.

For the purposes of this analysis, the judges were divided into two groups: those who entered on duty in July 1971 or later, and those who entered on duty in August 1968 or earlier. Since none of the participating judges entered on duty in the three years between those two dates, this division followed a natural break in the data. For the circuit as a whole, 32 of the participating judges were in the more experienced group and 18 in the less experienced group. For the Southern District of New York, which was also analyzed separately, 17 judges were in the more experienced group and 13 in the less experienced.

The Kolmogorov-Smirnov test indicates that there are not statistically significant differences in the rank lists of sentences when the experienced and inexperienced judges are compared, either at the circuit level or within the Southern District. Within each group of twenty comparisons, a significant difference at the 95-percent confidence level was found for one case; in twenty tests at a 95-percent confidence level, that can easily happen by chance.

Another way of examining the effect of experience is to ask whether the sentences of experienced judges are often found among both the most severe and the least severe sentences on the rank list. To answer that question, a group of extreme sentences was identified at each end of the rank list for each case. The number of sentences in the group was variable because, if two or more judges gave identical sentences, there was no basis for choosing among them; blocks of identical sentences had to be completely included or completely excluded. At the circuit-wide level, groups of six sentences were sought; if the sixth and seventh sentence were identical, a group of five was sought; if the fifth through seventh sentences were identical, a group of four was sought; and if the fourth through seventh were identical, the group of seven or more was accepted rather than accepting a group as small as three. Within the Southern District the first choice was a group of four, then a group of three, and then a group of five or more. This technique produced groups ranging from four to twelve sentences for the circuit as a whole, and from three to nine for the Southern District.

At the circuit level, half or more of the most severe sentences were rendered by experienced judges in every one of the 20 cases. Half or more of the least severe sentences were rendered by experienced judges in 14 of the 20 cases. Within the Southern District, half or more of the most severe sentences were rendered by experienced judges in 19 of the 20; half or more of the least severe in 11 of the 20. Within the circuit, some 64 percent of the participating judges were classified as experienced; within the Southern District, 57 percent.

Neither the Kolmogorov-Smirnov test nor the examination of the extremes of the rank lists completely precludes the possibility that experience on the Federal bench does have some tendency to reduce disparity. But it is entirely clear that much disparity exists among experienced judges, and that this remains true even if venue is controlled for by examining the sentences of judges within a single district.

E. Consistency Among Judges

The final question addressed in this chapter is whether the disparity that exists reflects a consistent tendency of some judges to impose severe sentences and of others to impose light ones.

The analytical technique used to deal with this question required ranking the sentences in each case in order of severity and then, for each judge, comparing the ranks assigned to his sentences in different cases. The most severe sentence in a case was given a rank of 1, the next most severe was given a rank of 2, and so on. Since different numbers of judges sentenced in the various cases, however, a continuation of this process would have made the numbers at the other end of the scale noncomparable: a rank of 39 might be the least severe sentence in one case but the tenth least severe in another. To adjust for this, a judge who did not sentence in a particular case was arbitrarily put into the rank list for that case at a point suggested by his average rank in the cases in which he did sentence, with the result that every judge had a rank in each case.

Each time a judge is given an arbitrary rank by this procedure, it of course tends to increase the apparent consistency of his sentencing. The effect on the data for the other judges is less clear, however. Since ranks are relative, their places in the rank list would be affected by the arbitrary ranking of another judge, but the direction of that effect might be expected to vary from judge to judge and case to case. To reduce the impact of this factor, only the sentences in the thirteen cases having 45 sentences or more were included in the analysis. Of the 650 ranks analyzed for these thirteen cases, only 39, or 6 per cent, were arbitrary; not more than 5, or 10 per cent, were arbitrary in any single case.

Table 9 shows, for each of the 50 judges, his average rank in the thirteen cases, and also his lowest and highest ranks. The table is arranged in declining order of judge severity as indicated by the average rank. Thus, Judge #1 was the most severe judge, with an average rank of 5.4. His lowest rank was 1, indicating that he gave the most severe sentence in at least one case. His highest rank was 11.

In accordance with a common statistical convention, an averaging process was used when two or more judges gave identical sentences. If the most severe sentence in a case was ten years in prison, the next most severe nine years, and the next two judges sentenced to eight years, these last two judges would be given a rank of 3.5 rather than being treated as tied with a rank of 3; the next rank would be 5. If three judges gave the eight-year sentence, they would all be given a rank of 4 and the next rank would be 6. It is, therefore, not quite accurate to say that Judge #1 was among the 11 most severe in each of the thirteen cases. That statement is a reasonably good approximation, however.

For any given case, the average rank is 25.5, as is the median. If a judge were exactly in the middle of the rank list for each case, therefore, the average rank for that judge would be 25.5. If his average rank was less than 25.5 he may be said, on the whole, to have been somewhat more severe than his fellow judges in these thirteen cases; if more than 25.5, somewhat less severe.

Table 9 shows that most of the judges had average ranks quite close to the center. Some 29 of the 50 judges had average ranks within three points of 25.5. But the table also shows that these closely grouped average ranks are averages of widely differing ranks in individual cases. Judge #33, for example, with an average rank of 27.0, rendered the least severe sentence in at least one case and the second most severe in another. Of the 29 judges with averages between 22.5 and 28.5, 26 judges had a sentence that ranked among the ten most severe in at least one case and a sentence that ranked among the ten least severe in at least one other. Thus, relative to one another, individual judges appear sometimes lenient and sometimes severe. The pattern persists even with the judges whose average ranks are outside the middle group. Of the judges at the more severe end of the scale, only the first two can be said to have been consistently severe; of those at the more lenient end, only one appears to be consistent. Consistency of relative position is thus very much the exception.

Table 9 - Ranks of Sentences of Individual
Judges in Thirteen Cases

(A rank of 1 represents the most severe sentence given in a case; a rank of 50 the least severe. More complete data is provided in Appendix C.)

<u>Judge*</u>	<u>Average Rank</u>	<u>Lowest Rank</u>	<u>Highest Rank</u>
1	5.4	1	11
2	10.6	3.5	23
3	12.1	1	47
4	15.3	1	44
5	19.2	1.5	48.5
6	19.2	2	46
7	19.6	6	39
8	19.6	2	45.5
9	20.8	1	49.5
10	22.7	2	45
11	22.8	3	44
12	23.0	3	44.5
13	23.4	4	37.5
14	24.3	3	47
15	24.5	4	46
16	24.5	2	46
17	24.6	10	44.5
18	24.6	7	44.5
19	24.6	2	43
20	24.7	3	44.5
21	25.0	1.5	47
22	25.2	2	47
23	25.5	6.5	48
24	25.7	3.5	48
25	25.8	1	44.5

* The judge numbers in this table are not the numbers that were used for identification in the course of the experiment.

Table 9 (Continued)

<u>Judge</u>	<u>Average Rank</u>	<u>Lowest Rank</u>	<u>Highest Rank</u>
26	25.9	8	47
27	26.0	3.5	44
28	26.0	5.5	48.5
29	26.1	12	43
30	26.7	5.5	48.5
31	26.7	14.5	38
32	26.8	7	44.5
33	27.0	2	50
34	27.6	7.5	41
35	27.8	5	45.5
36	27.8	10	50
37	27.9	5.5	50
38	28.3	5	50
39	29.3	4.5	49
40	30.0	12.5	49
41	30.1	7.5	45.5
42	31.5	3.5	47.5
43	31.8	11.5	47
44	32.1	1	50
45	32.7	5.5	50
46	33.0	17	50
47	33.4	5.5	50
48	34.7	10.5	50
49	36.1	3.5	49.5
50	36.9	26.5	48.5

This should not be interpreted as implying that judges are not individually consistent in their sentencing. To say that judges' sentencing cannot be explained by simply characterizing the judges as "hanging" or "soft" is not to say that the judges are behaving irrationally. On the contrary, it suggests only that their individual approaches to sentencing are more complex than is widely believed. The data is wholly consistent with the proposition that each judge could give a rational and consistent explanation of his sentences in these thirteen cases. There would, however, have to be a number of different rational and consistent explanations to choose from.

At this writing, it has not been possible to identify any groups of judges whose ranks seem to move in the same directions -- that is, who share in common a group of cases in which they are relatively severe and a group in which they are relatively lenient. There is some possibility that further analysis will reveal some patterns that may help explain why position in the rank lists is so fluid. For the present, all that can be said is that it is fluid and that sentencing disparity cannot, on the whole, be explained by labeling the judges. Put another way, the disparity reflected in this study would not be substantially reduced by excluding from consideration the sentences of judges who are consistently severe or consistently lenient.

CHAPTER IV - EFFECT OF PARTICULAR CASE CHARACTERISTICS

A. Introduction and Summary

While the first twenty cases were chosen for their representative qualities, the last ten cases sent to the judges participating in the experiment were designed to test specific hypotheses about case characteristics that might tend to be productive either of sentencing disparity or of consensus. In the first twenty cases, the effect of a single characteristic could not be tested because each case differed from the others with respect to many characteristics. In the last ten cases, limited and controlled variations in the presentence reports were used to permit some testing of such effects.

Presentence reports in each of the last ten cases were produced in two versions -- an "A" version and a "B" version -- which differed from one another with respect to a single characteristic. The judges were divided into two groups, which remained fixed for the series of ten cases. The "A" judges received the "A" versions of these cases; the "B" judges received the "B" versions. Judges were randomly assigned to the two groups, so it was expected that the two groups would be similar to one another in their sentencing predilections. Differences in the sentences imposed by the two groups of judges in a particular case could thus be attributed to the difference between the two versions of the case.

In addition, in three of the last ten cases the judges were explicitly asked, after sentencing on the facts as presented to them, what their sentences would have been if a particular fact had changed. These questions created an additional opportunity to assess the impact of particular case characteristics on sentencing disparity.

Using these techniques, efforts were made to determine whether the degree of disparity was affected by the following matters:

1. Whether or not the probation office offered a recommended sentence.
2. Whether or not the defendant was addicted to heroin.
3. Whether or not the defendant was eligible for sentencing as a young adult offender.
4. Whether the defendant stood trial or pleaded guilty.
5. Whether the defendant's prior arrests had resulted in convictions.
6. Whether the offense was "blue collar" or "white collar."

The conclusions reached display a consistency that was not wholly expected. In some instances, the data indicate that judges do indeed disagree about how to respond to particular issues raised by the cases. But with a possible exception for the third item, which is discussed in Section E below, the data also indicate that resolution of these disagreements would not significantly narrow the range of disparate sentences. Thus, the lesson of these ten cases seems to be that an effort to resolve these matters, whatever its intrinsic merit, would not carry much promise of reducing the extent of disparity within the circuit.

B. Methodological Note

It was stated above that the judges were randomly divided into "A" and "B" groups. To be more precise, a stratified random sampling technique was used to ensure proportionate representation of individual districts and also, within the two districts that have senior district judges, proportionate representation of the senior judges.*

*Since the sampling was done fairly early in the course of the experiment, it was also stratified to ensure proportionate representation of the judges who had returned

Although the selection process was random, the possibility remained that the two groups were significantly unlike in their sentencing predilections. As a check against this possibility, the Kolmogorov-Smirnov test was applied to the sentences rendered by the two groups of judges in the first twenty cases, in which they were acting on identical information. In none of these cases did the test reveal a statistically significant difference in the sentencing patterns of the two groups, even at the 80-percent confidence level. There was, however, some tendency observed for the "A" judges to sentence more severely in most of the twenty cases. It is probable that the results reported in this chapter do reflect some tendency toward greater severity on the part of the "A" group, even though the tendency was not so strong as to produce a statistically significant difference in any one case among the twenty.

C. Effect of Probation Office Recommendation

Cases 21 and 22 dealt with the effect of sentence recommendations by the probation office.* Recommendations were included in the presentence reports as follows:

21A: "It is therefore felt that he merits some consideration for probation combined with the imposition of a fine."

21B: None.

one or more sentences at that time. The purpose was to approach, as nearly as possible, proportionate representation of judges who would participate in the experiment. This precaution turned out to be unnecessary since all but one of the active judges participated in this portion of the experiment, as did all but one of the senior judges who were asked.

*Brief descriptions of the last ten cases, together with all the sentences rendered, are presented in Appendix B. Although the cases are discussed in this chapter only from the standpoint of examining the impact of particular characteristics on the sentences, it may be noted that the sentences in these cases tend to confirm the finding that substantial disparity is the rule rather than the exception.

22A: None.

22B: "We respectfully recommend that this defendant be sentenced to three years imprisonment."

In both of these cases, the sentences of the judges who received the probation recommendation conformed with that recommendation somewhat more frequently than the sentences of the judges who did not receive it. But in both cases, the Kolmogorov-Smirnov test indicates that there is no statistically significant difference in the distributions of the "A" and "B" sentences. In other words, the observed differences could be simply the result of the operation of chance in the division of the judges into the "A" and "B" groups. There is therefore no sound basis in the data for concluding that the probation recommendation served as a vehicle for enlarging the area of consensus about the appropriate sentence.

Since the probation recommendations in the study were over the signature of a fictitious chief probation officer named James E. Miller, they were for all practical purposes anonymous. It is hard to know whether the apparent lack of influence of these anonymous recommendations reflects the judges' attitudes toward recommendations received from their own probation offices. While the study results suggest that judges do not give much weight to the recommendations of a probation office perceived as an abstract institution, they do not speak to the question whether the judgments of particular offices, or particular officers, may carry weight with the judges who regularly deal with them. If the recommendations are influential, the additional question remains whether probation offices achieve a measure of consistency in their recommendations that would lead to the conclusion that their recommendations are disparity-reducing.

In both Cases 21 and 22 the sentence recommended by the probation office was the median sentence for both "A" and "B" judges. Even if the recommendations of an anonymous probation officer were not to be accepted by the judges who received them, it might have been thought that the sentences of the judges who received them would be more closely grouped around the median than the sentences of the others. Whether the sentences in these two cases display any such centripetal tendency is not wholly clear from examination of the rank lists, but if such a tendency is there at all it is not statistically significant at the 95-percent confidence level.

D. Effect of Heroin Addition

Cases 23 and 24 dealt with heroin addiction. The defendant's status in this respect was as follows:

- 23A: Currently addicted to heroin. Was in a drug treatment program at the time of the crime, and person in charge of the program believed him to be drug-free at that time.
- 23B: Formerly addicted, but currently appears to be drug-free. Was in a drug treatment program at the time of the crime, and person in charge of the program believed him to be drug-free at that time.
- 24A: No record of addiction.
- 24B: Currently addicted, and addicted at the time of the crime.

Among the judges who sentenced in these two cases, there was no discernible pattern of differences between the "A" and "B" judges. Indeed, in each of the two cases, the median sentences of the "A" and the "B" judges were identical. Statistical testing indicates that any differences in the sentences of "A" and "B" judges could well be due to chance.

In Case 23, however, four of the judges handling the addicted defendant committed for observation under the Narcotic Addict Rehabilitation Act, and in Case 24 one judge did so. In Case 23, it is possible that the sentences that would follow observation reports would produce a discernible difference in the sentences of the two groups of judges.

Another effort to test the effect of heroin addiction was made in Case 29. In that case, the presentence report on which judges were asked to sentence presented the defendant as having sniffed cocaine on a few occasions but as never having used heroin. However, the judges were also asked what the sentence would have been "if it were established that the defendant was currently addicted to heroin." In contrast to Cases 23 and 24, both of which involved crimes that might have been committed to support a drug

habit, this case involved a sale of several thousand dollars' worth of heroin; the "A" and "B" versions differed with respect to the family background and employment of the defendant.

Table 10 shows the responses to the question what the sentences would have been if the defendant had been a heroin addict. Most of the judges indicated that their sentences would be the same. Among the others, some were inclined to reduce their sentences in this circumstance, but the principal change is reflected in the large number of commitments for observation. What the sentences would ultimately have been is of course unknown. But four of them were by judges who had sentenced to probation on the facts as originally presented. In those cases, commitment itself might well be regarded as an increase in the severity of the sentence.

In summary, the information derived from these three cases indicates that there are considerable differences among judges in their reactions to heroin addiction, but it does not suggest that resolution of these differences would markedly reduce sentencing disparity. When the sentences meted out to addicts and those meted out to nonaddicts in otherwise identical cases were compared, no difference in the rank lists of sentences was apparent.

E. Effect of Youth Corrections Act

In Case 25, an effort was made to test the effect of the Youth Corrections Act on disparity. The hypothesis was that the availability of another sentencing alternative might substantially affect the extent of disagreement about sentences among the judges. In version "A" of Case 25, the defendant was twenty-six years old; in version "B," he was twenty-five years old and therefore eligible for sentencing as a young adult offender.

Case 25 was a bank robbery case and, among the judges who received the "B" version, only one used the Youth Corrections Act; he sentenced to ten years under 18 U.S.C. § 5010(c). The case therefore did not indicate that there was any statistically significant difference between the sentencing patterns for the young adult offender and the ineligible offender. Data from other cases in the study, however, suggests that the availability of the Youth Corrections Act does make a difference in less serious cases.

Table 10 - Changes in Sentences in Case 29 if
 Defendant Had Been a Heroin Addict

No change		15
Reduce sentence		5
5 yrs pris to 2 yrs pris	1	
YCA Indet. to 3 yrs prob	1	
3 yrs pris to 6 mos pris, 30 mos prob	1	
2 yrs pris to 1 yr pris	1	
2 yrs pris to 6 mos pris	1	
Increase sentence		1
4 mos pris, 8 yrs prob to YCA Indet.	1	
Commit for observation		12
Youth Corrections Act	3	
Narcotic Addict Rehabilitation Act	9	
Other information requirements		3
Whether defendant would elect civil commitment under Narcotic Addict Rehabilitation Act	2	
More information on extent of addiction	1	
Change to ambiguous or unlawful sentence		2
No response to question		<u>5</u>
		43

It would appear that the indeterminate sentence under the Youth Corrections Act, with its maximum incarceration term of four years, is used in the circuit principally in cases in which a regular sentence would be substantially shorter than four years.

Other than the "B" version of Case 25, there were seven cases in the study in which the defendant could have been sentenced under 18 U.S.C. § 5010(b). This authority was not used at all in Case 9, which involved illegal entry by a nonresident alien. It was not used at all in Case 2, in which the least severe sentence given called for five years' imprisonment. It was used six times in Case 8, although the most severe regular sentence given in that case was two years' prison, three years' probation and a fine. It was used ten times in Case 14, although the most severe regular sentence was two years' imprisonment. It was used twice in Case 16, although the most severe regular sentence was two months' imprisonment followed by sixteen months' probation. It was used once in Case 24, although the most severe regular sentence in either version of that case was one year's imprisonment. Only in Case 29 was the indeterminate sentence under the Youth Corrections Act used in a case in which some other judges rendered sentences of three, four, and five years under regular authority; even in that case, two years' imprisonment or less was the more common sentence under the regular authority. We cannot say, of course, what sentences would have been given in the absence of Youth Corrections Act authority by the judges who gave these indeterminate sentences. But the suggestion is fairly strong that the indeterminate sentences are largely given in cases in which the appropriate sentence for an adult is thought to be two years' imprisonment or less.

If that inference is correct, there are two possible explanations. One is that judges sometimes sentence more severely when the Youth Corrections Act indeterminate sentence is available than they do otherwise, and that this in some cases increases disparity by expanding the range of sentences rendered at the more severe end of the scale. The other is that this pattern of sentencing indicates that it is inappropriate to rank indeterminate sentences under the Youth Corrections Act in roughly the same severity category as four-year regular sentences. Whether one conclusion or the other is correct, or perhaps a little of each, is a matter on which there may be a disparity of views.

F. Effect of Method of Conviction

In Case 26, an effort was made to determine whether the degree of disparity among the judges might be influenced by whether the defendant pleaded guilty or stood trial. In the "A" version of this case the defendant was convicted upon a plea; in the "B" version he was convicted after a bench trial. No statistically significant difference was found in the sentences rendered on the two versions.

The effect of plea or trial was also examined with questions in Cases 24 and 30. In Case 24, the defendant was presented in both versions as having pleaded guilty, the two versions differing with respect to heroin addiction. The judges were then asked what their sentences would have been "if, instead of pleading guilty and admitting his offense, the defendant had been convicted of this offense in a bench trial and had continued to maintain a posture of non-involvement." In Case 30, the defendant was presented in both versions as having been convicted in a jury trial; the difference between the versions was that in one version the crime was a fraud against the government while in the other it was transportation of stolen securities. The judges were then asked what the sentence would have been "if, instead of being convicted by a jury, the defendant had pleaded guilty."

The responses to these questions are shown in Tables 11 and 12. These tables indicate, as might be expected, that there are differences among judges about whether sentences should be less severe if the defendant is convicted upon a plea. For reasons that are not immediately apparent, many judges who considered a lighter sentence appropriate in Case 30 if the defendant pleaded guilty did not consider a similar concession appropriate in Case 24. It is possible that this was a function of the way the questions were asked, but that is not a probable explanation. The questions appeared prominently on the same sheets on which the judges were asked to render their sentences on the facts as presented in the presentence reports, and the judges are likely in both cases to have been aware before entering their sentences that they were being asked to consider both the trial and plea assumptions.

Table 11 - Changes in Sentences in Case 24
if Defendant Had Gone to Trial

No change	27
Increase sentence	6
3 yrs prob to 1 yr pris	1
3 yrs prob [\$ 4209] to 1 yr pris	1
2 yrs prob [\$ 4209] to 2 mos pris, 2 yrs prob	1
2 yrs prob [\$ 4209] to YCA Indet.	1
2 yrs prob [\$ 4209] to 2 yrs prob [regular]	1
1 yr prob to 4 mos pris, 20 mos prob	1
More information needed on defendant's behavior at trial	4
Change to ambiguous or unlawful sentence	1
No response to question	<u>3</u>
	41

Table 12 - Changes in Sentences in Case 30 if
Defendant Had Pleaded Guilty

No change		24
Decrease sentence		19
3 yrs pris, \$20,000 [(a)(2)] to 1 yr pris, \$20,000	1	
2 1/2 yrs pris, \$3,500 to 2 yrs pris, \$3,500	1	
2 yrs pris, \$10,000 to \$20,000	1	
1 yr pris, \$10,000 to 9 mos pris, \$10,000	1	
1 yr pris to 6 mos pris	1	
1 yr pris to 6 mos pris, 2 yrs prob	1	
1 yr pris to 1 yr prob, \$10,000	1	
6 mos pris, 4 1/2 yrs prob, \$5,000 to 4 mos pris, 4 yrs and 20 mos prob, \$3,000	1	
6 mos pris, 3 yrs prob, \$4,000 to 3 yrs prob, \$4,000	1	
6 mos pris, 18 mos prob, \$5,000 to 2 yrs prob, \$5,000	1	
6 mos pris, \$5,000 to 3 mos pris, \$5,000	1	
3 mos pris, 2 yrs prob, \$10,000 to 2 yrs prob, \$10,000	1	
3 mos pris, 9 mos prob, \$15,000 to 1 yr prob, \$15,000	1	
3 mos pris to 2 yrs prob	1	
3 yrs prob, \$20,000 to 3 yrs prob, \$15,000	1	
2 yrs prob, \$20,000 to 1 yr prob, \$10,000	1	
\$10,000, 5 yrs unsup prob to \$5,000, 5 yrs unsup prob	1	
\$5,000 to \$3,000	1	
\$5,000 to \$2,500	1	
Information requirements		2
More information about defendant's attitude	1	
Information about cooperation with prosecutor	1	
No response to question		<u>2</u>
		47

Although it is clear that judges disagree on whether a concession should be given to defendants who plead and, if so, how large a one, there is no discernible pattern that would suggest that one method of conviction or the other is likely to produce more disparate sentences. The median sentence necessarily tends to be lower in cases in which the conviction is by plea, reflecting lower sentences being given by those judges who do make concessions. But there is no suggestion in the data of any substantial impact on the range of sentences rendered in a particular case.

G. Effect of Prior Record

Cases 27 and 28 dealt with differences in the defendant's prior record. The hypothesis was that disparity might be greater if there was only a record of arrests than if the arrests had resulted in convictions, since judges might disagree on the effect to be given to an arrest record where there were no prior convictions. The defendants' prior records were as follows:

27A: Four arrests: one resulting in a small fine, one in dismissal, one in a year's probation, and one in a one-month jail term.

27B: Same four arrests: one resulting in a small fine, the other three in dismissal.

28A: Three arrests: one resulting in acquittal, one in dismissal, and one pending.

28B: Same three arrests: one resulting in a three-year prison term, one in a small fine, and one in a three-month prison term.

In Case 27, there was a statistically significant difference at the 95-percent confidence level between the sentences of the "A" judges and those of the "B" judges. The "B" judges, sentencing a defendant with no convictions, gave markedly lighter sentences. Indeed, 9 of the 23 "A" sentences that were ranked were more severe than any of the 23 "B" sentences. But it is also true that 7 of the "B" sentences were less severe than all but one of the "A" sentences. It is therefore hard to infer from the data any tendency for one version to bring the judges closer together than the other. It would appear, as expected, that judges give more severe sentences

to defendants who have records of convictions then to those who merely have records of arrests; it does not appear that they give less disparate sentences to either group, however.

In Case 28, the defendant was a narcotics addict, a fact that caused many judges to decline to sentence in the absence of more information. Only 14 "A" judges and 8 "B" judges were ranked, and no statistically significant difference appeared.

H. Effect of Socio-Economic Considerations

Cases 29 and 30 represented an attempt to develop some insight on whether disparity is greater in white-collar cases than in blue-collar cases.

The judiciary has come in for a good deal of criticism in recent years for giving white-collar criminals sentences that are thought by some to be too light when compared to sentences given to blue-collar criminals. The validity of that criticism is outside the scope of this study: we are concerned here with whether judges disagree with one another about similar cases, and not with the appropriate relationships between sentences for defendants in dissimilar cases. But if the appropriate handling of white-collar cases is a subject of public controversy, it might also be expected that it would be a subject on which judges had differing views, and that there might therefore be a tendency for sentences to be more disparate in white-collar than in blue-collar cases.

Obviously, this problem is too complex to be tested simply. The phrases "white collar" and "blue collar" are shorthand expressions that sum up a great variety of characteristics, and there is no typical white-collar or blue-collar situation. Indeed, it isn't always clear whether the phrases are used to refer to the type of crime or to the personal characteristics of the defendant. Without any pretensions of completeness, it was decided to include in this study one case in which the crime was varied and one in which the personal characteristics were varied. The differences in the versions of these two cases were as follows:

- 29A: Sale of heroin. Defendant was from a stable working-class home in which both parents worked, but the defendant was a high-school drop-out. Since high school, he had had alternate periods of short-term jobs and unemployment.
- 29B: Same transaction. Defendant was the son of a successful businessman, and was a college student.
- 30A: Presenting false claims to the government and conspiracy to defraud, involving Medicare claims by the defendant physician.
- 30B: Transportation of stolen Treasury securities and conspiracy to sell them, by the same defendant physician. (The value of the securities was the same as the amount of the false claims in the "A" version.)

In both of these cases, the "A" judges tended to be somewhat more severe. This tendency was not statistically significant in either case, however, and it may reflect only chance factors. There is no discernible tendency in either case for the sentences based on one version to be closer to each other than those based on the other. Thus, insofar as these two cases are adequate to test the proposition, they do not suggest either that district judges in the Second Circuit are more severe in blue-collar cases or that they are more disparate in white-collar cases.

Appendix A

Detailed Information on Cases 1-20

Summary of Responses in Cases 1-20

<u>Case No.</u>	<u>Sentences ranked</u>	<u>Ambiguous or unlawful sentences</u>	<u>Judges needing more information</u>	<u>Total responses</u>
1	45	2	2	49
2	48	0	1	49
3	46	1	0	47
4	45	1	2	48
5	42	1	4	47
6	48	0	1	49
7	39	2	8	49
8	41	6	2	49
9	49	0	0	49
10	48	2	0	50
11	43	3	0	46
12	44	3	1	48
13	48	1	0	49
14	39	2	8	49
15	45	3	1	49
16	42	7	0	49
17	46	1	2	49
18	48	1	0	49
19	47	0	2	49
20	48	1	0	49

Case #1 - Description and Notes

Case Characteristics

Offense: Extortionate credit transactions and related income-tax violations (18 U.S.C. §§ 371, 372, 891(6), 891(7), 894; 26 U.S.C. §§ 7201, 7206(1)).

Number of counts: Nine.

How convicted: Trial.

Age at conviction: Over 40.

Sex: Male.

Prior record: Three convictions, six other arrests, two periods of incarceration; none of the prior offenses was similar to the current offense. In addition, there was one serious charge pending.

Narcotics use: None reported.

Current employment: Union official.

Sentencing options: Twenty years and/or \$10,000 (or twice the value of the money advanced) on one count; five years and/or \$10,000 on each of five counts; three years and/or \$5,000 on each of three counts.

Additional Information Requested

Two judges indicated that they would need more information before sentencing. One committed for observation under 18 U.S.C. § 4208(b); the other sought additional information about the defendant.

Case #1 - Rank List of Sentences

<u>Description of Sentences</u>					
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
240	--	65,000	--	1	
240	--	10,000	--	1	
180	60	75,000	--	1	
180	60	50,000	(a)(2)	1	
180	--	76,000	--	1	
180	--	50,000	--	1	
180	--	50,000	(a)(2)	1	
180	--	35,000	--	1	
180	--	30,000	--	1	
180	--	25,000	--	1	
180	--	5,000	--	1	
180	--	--	--	2	
144	60	15,000	--	1	
144	--	15,000	--	1	
120	60	40,000	--	1	
120	--	100,000	--	1	
120	--	85,000	--	1	
120	--	75,000	--	4	
120	--	50,000	--	2	
120	--	35,000	--	2	
120	--	32,500	--	1	

Case #1 - Rank List of Sentences (Continued)

<u>Description of Sentences</u>				<u>Num- ber</u>	<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>		
120	--	20,000	--	1	
120	--	10,000	--	1	
120	--	--	--	1	
108	--	30,000	--	1	
96	--	75,000	--	1	
96	--	60,000	--	1	
96	--	20,000	--	1	
96	--	15,000	--	1	
84	--	50,000	--	1	
84	--	8,200	--	1	
60	60	10,000	--	1	
60	36	60,000	--	1	
60	36	10,000	--	1	
60	24	20,000	(a) (2)	1	
60	--	158,000	(a) (2)	1	
60	--	25,000	--	1	
60	--	10,000	--	1	
36	--	--	--	1	

Number of sentences ranked

45

Case #2 - Description and Notes

Case Characteristics

Offense: Bank robbery (18 U.S.C. § 2113(a)).
Number of counts: One.
How convicted: Plea.
Age at conviction: 22-25.
Sex: Male.
Prior record: Three convictions, two other arrests, two periods of incarceration; none of the prior offenses was similar to the current offense, but there were additional bank robbery cases pending.
Narcotics use: None reported.
Current employment: In jail; previously unemployed.
Sentencing options: Twenty years and/or \$5,000; defendant eligible for sentencing as a young adult offender under 18 U.S.C. § 4209.

General Observations About the Data

Defendant's eligibility for sentencing as a young adult offender was not called to the attention of the judges.

Additional Information Requested

One judge indicated that he would need more information before sentencing. He wanted clarification of whether the plea was intended to cover other open indictments, and also a Probation Office recommendation.

Case #2 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
216	--	5,000	--	1	
204	--	--	--	1	
180	--	--	--	6	
180	--	--	(a)(2)	4	
168	--	--	--	1	
144	--	--	--	3	
144	--	--	(a)(2)	1	
120	--	5,000	--	1	
120	--	3,500	(a)(1)	1	
120	--	--	--	12	
120	--	--	(a)(2)	2	
96	--	--	--	2	
96	--	--	(a)(2)	1	
90	--	--	(a)(2)	1	
84	--	--	--	3	
72	--	--	(a)(2)	1	
60	--	--	--	7	

Number of sentences ranked

48

Case #3 - Description and Notes

Case Characteristics

Offense: Sale of heroin (21 U.S.C. § 841(a)).

Number of counts: One.

How convicted: Plea.

Age at conviction: Over 40.

Sex: Male.

Prior record: Seven convictions, three other arrests, five periods of incarceration; no offenses similar to the current offense.

Narcotics use: Some history of cocaine-sniffing; no other narcotics use reported.

Current employment: Cab driver.

Sentencing options: Fifteen years and/or \$25,000; special parole term of at least three years to follow any sentence of imprisonment.

General Observations About the Data

Special parole terms are treated as supervised probation in the rank list.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #3 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
120	60	--	--	1	
120	36	--	--	1	
96	36	--	--	1	
84	60	--	(a)(2)	1	
84	36	--	--	1	
72	60	--	--	1	
72	48	--	--	1	
60	96	--	--	1	
60	60	--	--	3	
60	60	--	(a)(2)	8	
60	36	--	--	6	
60	36	--	(a)(2)	5	
48	120	--	(a)(2)	1	
48	60	--	(a)(2)	1	
48	36	--	--	1	
48	36	--	(a)(2)	1	
36	36	--	--	9	
36	36	--	(a)(2)	1	
24	36	--	--	1	
12	60	--	--	1	

Number of sentences ranked

46

Case #4 - Description and Notes

Case Characteristics

Offense: Theft and possession of goods stolen from an inter-state shipment (18 U.S.C. § 659).

Number of counts: Two.

How convicted: Jury trial.

Age at conviction: 26-40.

Sex: Male.

Prior record: None, but charges pending for several felonies allegedly committed after the instant offense.

Narcotics use: None reported.

Current employment: Unemployed; formerly a cab driver.

Sentencing options: Ten years and/or \$5,000 on each count.

Footnotes to Rank List

1. Split sentence under § 3651, as contrasted with 6 months' imprisonment on one count and probation on the other. Use of the split sentence makes the defendant ineligible for parole or good time.

Additional Information Requested

Two judges indicated that they would need more information before sentencing. They both committed for observation under 18 U.S.C. § 4208(b).

Case #4 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
90	--	--	--	1	
72	--	--	(a) (2)	1	
60	--	--	--	6	
48	36	--	--	1	
48	--	--	--	8	
48	--	--	(a) (2)	1	
36	60	--	--	1	
36	60	--	(a) (2)	1	
36	36	--	--	1	
36	24	--	--	1	
36	--	--	--	13	
36	--	--	(a) (2)	1	
24	60	--	--	1	
24	48	--	--	1	
24	--	--	--	4	
12	--	--	--	1	
6	30	--	--	1	See Fn. 1
--	48	--	--	1	

Number of sentences ranked

45

Case #5 - Description and Notes

Case Characteristics

Offense: Possession of barbiturates with intent to distribute (21 U.S.C. § 841(a)).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Prior record: Two convictions, one case pending, no incarceration; no offenses similar to the current offense.
Narcotics use: History of heroin addiction; currently on methadone maintenance.
Current employment: White-collar job with corporate employer.
Sentencing options: Five years and/or \$15,000; special parole term of at least two years to follow any sentence of imprisonment.

General Observations About the Data

Special parole terms are treated as supervised probation in the rank list.

Footnotes to Rank List

1. The sentence included a probation condition requiring participation in a drug treatment program.
2. The sentence included a probation condition requiring that the defendant maintain his employment or return to school.

Additional Information Requested

Four judges indicated that they would need more information before sentencing. All of them committed for observation under the Narcotic Addict Rehabilitation Act.

Case #5 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
60	36	--	--	1	
48	36	--	--	2	
48	24	--	--	2	
36	36	--	--	8	
36	24	--	--	2	
36	24	--	(a) (2)	1	
30	36	--	--	1	
24	36	--	--	9	
24	24	3,500	--	1	
24	24	--	--	2	
18	36	--	--	2	
12	48	--	--	1	
12	24	--	--	2	
6	78	--	--	1	
--	72	--	--	1	
--	60	500	--	1	See Fn. 1
--	60	--	--	2	See Fn. 1
--	48	--	--	2	
--	24	--	--	1	See Fns. 1 and 2

Number of sentences ranked

42

Case #6 - Description and Notes

Case Characteristics

Offense: Filing false income-tax returns (26 U.S.C. § 7206(1)).
Number of counts: One.
How convicted: Plea.
Age at conviction: Over 40.
Sex: Male.
Prior record: One conviction, no other arrest, no
incarceration; offense not similar to the current offense.
Narcotics use: None reported.
Current employment: Operates own business.
Sentencing options: Three years and/or \$5,000

Footnotes to Rank List

1. Defendant also to pay costs of prosecution.
2. This sentence should have been excluded as unlawful because the \$10,000 fine exceeds the statutory limit; it is included because this was discovered only after several tabulations had been completed. The probation term in the sentence is unsupervised.
3. The sentence included a probation condition requiring the defendant to pay the taxes due.

Additional Information Requested

One judge indicated that he would need more information before sentencing. He found the presentence report generally skimpy.

Case #6 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
36	--	5,000	--	6	Fn. 1 applies to 4 sentences
36	--	2,500	--	1	
36	--	--	(a)(2)	1	
30	--	5,000	--	1	
24	--	5,000	--	4	Fn. 1 applies to 1 sentence
24	--	2,500	--	1	
24	--	--	--	1	
18	--	5,000	--	4	Fn. 1 applies to 2 sentences
12	--	5,000	--	14	Fn. 1 applies to 5 sentences
6	36	5,000	--	1	See Fn. 1
6	30	5,000	--	2	
6	30	3,000	--	1	See Fn. 1
6	24	5,000	--	1	
6	6	5,000	--	1	See Fn. 1
6	--	5,000	--	6	Fn. 1 applies to 1 case
4	32	10,000	--	1	See Fns. 2 and 3
3	60	5,000	--	1	See Fn. 3
3	--	5,000	--	1	See Fn. 1

Number of sentences ranked

48

Case #7 - Description and Notes

Case Characteristics

Offense: Possession of heroin (21 U.S.C. § 844).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Female.
Prior record: Over 20 convictions, several other arrests,
over ten periods of incarceration; prior offenses
principally prostitution and drug offenses.
Narcotics use: Long history of heroin addiction.
Current employment: Incarcerated on State charges; formerly
unemployed.
Sentencing options: Two years and/or \$10,000 (second offense).

Footnotes to Rank List

1. The sentence included a probation condition requiring participation in a drug treatment program.

Additional Information Requested

Eight judges indicated that they would need more information before sentencing. Seven of them committed for observation under the Narcotic Addict Rehabilitation Act; the other committed for observation under 18 U.S.C. § 4208(b).

Case #7 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
24	--	--	--	9	
24	--	--	(a)(2)	1	
18	--	--	--	4	
15	--	--	--	1	
12	--	--	--	9	
6	60	--	--	2	Fn. 1 applies to 1 sentence
6	18	--	--	3	
6	12	--	--	2	Fn. 1 applies to 1 sentence
6	6	--	--	1	
3	36	--	--	1	See Fn. 1
3	--	--	--	1	
--	48	--	--	1	See Fn. 1
--	24	--	--	3	Fn. 1 applies to 2 sentences
--	12	--	--	1	

 Number of sentences ranked

39

Case #8 - Description and Notes

Case Characteristics

Offense: Mail fraud (18 U.S.C. §§ 1341, 1342).
Number of counts: Two.
How convicted: Plea.
Age at conviction: 22-25.
Sex: Male.
Prior record: One conviction, no other arrests, no
incarceration; offense not similar to the current offense.
Narcotics use: None reported.
Current employment: Truck driver.
Sentencing options: Five years and/or \$1,000 on each count;
defendant eligible for sentencing as a young adult offender
under 18 U.S.C. § 4209.

General Observations About the Data

As a result of a clerical error, some of the judges did not receive the last page of the presentence report, which contained part of the Evaluative Summary and also a recommended sentence. An unknown number of the reported sentences (but at least one) were rendered on the basis of the incomplete version of the report.

Footnotes to Rank List

1. The sentence included a probation condition requiring that restitution be made to injured parties.
2. Split sentence under § 3651, as contrasted with 6 months' imprisonment on one count and probation on the other. Use of the split sentence makes the defendant ineligible for parole or good time.
3. Not a split sentence: jail on one count, probation on the other.
4. The sentence included a probation condition requiring the defendant to legalize his marital status.

Additional Information Requested

Two judges indicated that they would need more information before sentencing. They both committed for observation under the Youth Corrections Act.

Case #8 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
Indet.	--	--	YCA	6	
24	36	2,000	--	1	
24	--	--	--	1	
12	36	--	--	1	See Fn. 1
12	--	--	--	1	
9	--	--	--	1	
6	60	--	\$4209	1	See Fns. 1 and 2
6	36	1,000	--	1	See Fn. 3
6	30	--	--	1	See Fns. 1 and 2
6	24	--	--	1	See Fn. 3
6	24	--	\$4209	1	See Fns. 1 and 2
6	18	--	\$4209	3	See Fn. 2; Fn. 1 applies to 2 sentences
6	--	--	--	1	
5	60	--	\$4209	1	
4	36	--	--	1	
3	60	--	\$4209	1	
3	45	--	\$4209	1	See Fn. 1
3	36	--	--	1	
3	36	--	\$4209	1	See Fn. 1
3	24	--	\$4209	1	

Case #8 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
2	36	--	--	1	
2	36	--	\$4209	1	See Fns. 1 and 4
2	24	--	\$4209	1	
2	18	--	--	1	See Fn. 1
1	36	--	--	1	See Fn. 1
1	35	--	--	1	
--	60	1,000	\$4209	1	See Fn. 1
--	60	--	--	1	See Fn. 1
--	36	--	--	3	Fn. 1 applies to 2 sentences
--	36	--	\$4209	2	See Fn. 1
--	12	--	--	1	

Number of sentences ranked

41

Case #9 - Description and Notes

Case Characteristics

Offense: Eluding examination and inspection by immigration Officers (8 U.S.C. § 1325); illegal entry after deportation (8 U.S.C. § 1326).
Number of counts: Two
How convicted: Plea.
Age at conviction: Under 22.
Sex: Male.
Prior record: One conviction, one other arrest, one period of incarceration; both other offenses were illegal entry.
Narcotics use: None reported.
Current employment: In jail; previously unemployed.
Sentencing options: Two years and/or \$1,000 on each count; Youth Corrections Act is applicable.

General Observations About the Data

The presentence report indicated that the defendant in this case had been in jail since February 8, 1974, six weeks before the report was mailed to the participating judges. There was therefore no practical difference between a sentence involving no incarceration and one imposing a sufficiently short jail term.

In this case, probation has been treated as unsupervised even if that was not specified in the sentence, in view of the apparently universal expectation that defendant would be required to leave the country. All but three of the sentences that used probation had conditions requiring the defendant to leave the United States, or not to return, or not to return illegally.

The applicability of the Youth Corrections Act was not called to the attention of the judges.

Footnotes to Rank List

1. Of the seven sentences that included 6 months of incarceration plus a term of probation, five were split sentences under 18 U.S.C. § 3651. One was a sentence of 6 months' incarceration on one count and 24 months' probation on the other. The seventh specified 6 months' incarceration and 24 months' probation without indicating the authority relied upon. A defendant receiving a split sentence is not eligible for parole or good time but a defendant receiving a regular six-month sentence is.
2. The sentence did not include a probation condition requiring the defendant to leave the United States or not to re-enter.
3. Sentenced to time served plus the period of probation indicated.
4. Sentence suspended on condition defendant leave the United States.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #9 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
36	--	--	--	1	
12	24	--	--	1	
12	--	--	--	1	
6	30	--	--	1	See Fns. 1 and 2
6	24	--	--	4	See Fn. 1
6	18	--	--	1	See Fns. 1 and 2
6	12	--	--	1	See Fn. 1
6	--	--	--	3	
5	43	--	--	1	
4	60	--	--	1	
4	24	--	--	4	Fn. 2 applies to 1 sentence
3	60	--	--	1	
3	36	--	--	1	
3	24	--	--	3	
3	21	--	--	1	
3	15	--	--	1	
3	--	--	--	1	
2	60	--	--	1	
2	24	--	--	3	
2	22	--	--	1	
2	10	--	--	1	

Case #9 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
2	--	--	--	2	
1 1/2	24	--	--	1	
1	24	--	--	2	
--	120	--	--	1	
--	60	--	--	1	
--	24	--	--	6	Fn. 3 applies to 2 sentences
--	12	--	--	1	
--	--	--	--	2	See Fn. 4

 Number of sentences ranked

49

Case #10 - Description and Notes

Case Characteristics

Offense: Postal embezzlement (18 U.S.C. § 1709).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Prior record: None.
Narcotics use: None reported.
Current employment: Janitorial work.
Sentencing options: Five years and/or \$2,000

Footnotes to Rank List

1. A fine was also imposed, but was suspended on condition that the defendant make restitution.
2. The sentence included a probation condition requiring that restitution be made.
3. Imprisonment portion of sentence to be served on week-ends; probation to follow completion of confinement.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #10 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
12	--	--	--	1	See Fn. 1
6	36	--	--	2	
6	18	--	--	1	
6	12	--	--	2	
6	--	--	--	3	
4	36	--	--	1	See Fn. 2
3	33	--	--	1	
3	27	--	--	1	
3	24	--	--	3	
3	21	250	--	1	
3	21	--	--	1	
3	19	--	--	1	
3	--	--	--	2	
2	24	--	--	2	Fn. 2 applies to 1 sentence
2	22	--	--	1	
2	12	--	--	1	See Fn. 3
2	10	--	--	2	
1	12	--	--	1	
1	--	--	--	2	
--	36	500	--	2	
--	36	--	--	9	

Case #10 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
--	24	2,000	--	1	
--	24	250	--	1	
--	24	--	--	3	
--	18	--	--	2	
--	12	--	--	1	

 Number of sentences ranked

48

Case #11 - Description and Notes

Case Characteristics

Offense: Bribery (18 U.S.C. § 201(f)).
Number of counts: One.
How convicted: Plea.
Age at conviction: Over 40.
Sex: Male.
Prior record: None.
Narcotics use: None reported.
Current employment: Physician.
Sentencing options: Two years and/or \$10,000

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #11 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
6	6	5,000	--	2	
6	6	500	--	1	
6	--	5,000	--	1	
6	--	2,500	--	2	
4	24	5,000	--	1	
3	24	5,000	--	1	
3	24	2,500	--	1	
3	21	2,500	--	1	
3	9	5,000	--	1	
2	22	5,000	--	1	
2	--	5,000	--	1	
6 wks.	24	1,000	--	1	
1	36	--	--	1	
1	24	--	--	1	
1	23	3,000	--	1	
1	12	10,000	--	1	
1	12	5,000	--	1	
1	11	5,000	--	6	
1	11	3,500	--	1	
1	11	3,000	--	1	
1	11	2,500	--	2	

Case #11 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
1	--	7,500	--	1	
--	36	2,000	--	1	
--	24	7,500	--	1	
--	24	6,000	--	1	
--	24	5,000	--	1	
--	24	2,500	--	2	
--	6	5,000	--	1	
--	24	7,500	--	1	Probation unsupervised
--	12	7,500	--	1	Probation unsupervised
--	--	5,000	--	3	
--	--	2,500	--	1	

 Number of sentences ranked

43

Case #12 - Description and Notes

Case Characteristics

Offense: Possession of an unregistered firearm
(26 U.S.C. § 5861(d)).

Number of counts: One.

How convicted: Plea.

Age at conviction: Over 40.

Sex: Male.

Prior record: Over 40 convictions, several additional arrests,
19 separate periods of incarceration; at least one previous
arrest involved the use of firearms.

Narcotics use: None reported.

Current employment: Unemployed.

Sentencing options: Ten years and/or \$10,000.

Footnotes to Rank List

1. The sentence included a probation condition restricting the possession of firearms.

Additional Information Requested

One judge indicated that he would need more information before sentencing. He committed for observation under 18 U.S.C. § 4208(b).

Case #12 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
12	--	--	--	3	
6	42	--	--	1	
6	36	--	--	2	
6	30	--	--	1	
6	18	--	--	1	
3	24	--	--	1	
3	21	--	--	3	
3	--	--	--	1	
2	24	--	--	2	
2	22	--	--	2	
2	--	--	--	1	
1	35	--	--	1	
1	23	--	--	1	
1	12	--	--	1	
1	11	--	--	2	
--	48	--	--	1	
--	36	--	--	3	Fn. 1 applies to 1 sentence
--	24	--	--	6	
--	18	--	--	2	
--	12	--	--	8	
--	6	--	--	1	

Case #13 - Description and Notes

Case Characteristics

Offense: Possession of counterfeit Federal Reserve Notes
(18 U.S.C. § 472).

Number of counts: One.

How convicted: Plea.

Age at conviction: 26-40.

Sex: Male.

Prior record: No convictions, two arrests; offenses not
similar to the current offense.

Narcotics use: None reported.

Current employment: Butcher.

Sentencing options: Fifteen years and/or \$5,000

Additional Information Requested

No judges indicated that they would need more information
before sentencing.

Case #13 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
18	--	--	--	1	
12	--	--	--	1	
6	36	--	--	1	
6	30	--	--	1	
6	24	--	--	3	
6	18	--	--	6	
5	31	--	--	1	
4	44	--	--	1	
4	36	500	--	1	
4	20	--	--	1	
3	36	--	--	2	
3	21	--	--	2	
2	36	--	--	1	
1	--	--	--	1	
--	60	--	--	1	
--	48	--	--	1	
--	36	--	--	10	
--	24	500	--	1	
--	24	--	--	12	

Number of sentences ranked

48

Case #14 - Description and Notes

Case Characteristics

Offense: Uttering a forged U.S. Treasury check
(18 U.S.C. § 495).
Number of counts: One.
How convicted: Plea.
Age at conviction: Under 22.
Sex: Male.
Prior record: Four convictions, two other arrests, one
period of incarceration; some of the prior offenses
involved forgery.
Narcotics use: History of heroin addiction; current status
unclear.
Current employment: Recently released from local jail.
Sentencing options: Ten years and/or \$1,000; Youth Corrections
Act is applicable.

Footnotes to Rank List

1. The sentence included a probation condition requiring participation in a drug treatment program.
2. The sentence included a probation condition requiring that the defendant accept employment.

Additional Information Requested

Eight judges indicated that they would need more information before sentencing. Three committed for observation under the Youth Corrections Act; two committed for observation under the Narcotic Addict Rehabilitation Act; one committed for observation under 18 U.S.C. § 4208(b); one sought clarification of whether the defendant was currently addicted; one sought clarification of a reference to "related local charges" in the presentence report.

Case #14 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
Indet.	--	--	YCA	10	
24	--	--	--	1	
12	--	--	--	3	
6	60	--	--	1	See Fn. 1
6	36	--	--	1	See Fn. 1
6	30	--	--	1	
6	--	--	--	1	
--	60	--	--	1	See Fn. 1
--	48	--	--	1	See Fn. 1
--	36	--	--	6	Fn. 1 applies to 2 sentences
--	30	--	--	1	See Fns. 1 and 2
--	24	--	--	11	Fn. 1 applies to 3 sentences
--	12	--	--	1	

Number of sentences ranked

39

Case #15 - Description and Notes

Case Characteristics

Offense: Operating an illegal gambling business
(18 U.S.C. § 1955).
Number of counts: One.
How convicted: Plea.
Age at conviction: Over 40.
Sex: Male.
Prior record: A series of gambling arrests, several resulting
in conviction; no incarceration.
Narcotics use: None reported.
Current employment: Operates family business.
Sentencing options: Five years and/or \$20,000.

Footnotes to Rank List

1. The sentence included a probation condition restricting the defendant's gambling activities.
2. The sentence included a probation condition requiring treatment for gambling.

Additional Information Requested

One judge indicated that he would need more information before sentencing. He indicated that he might adjourn sentencing to explore the possibility that the defendant had underworld connections.

Case #15 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
12	--	3,000	--	2	
12	--	2,500	--	1	
6	42	3,000	--	1	
6	42	--	--	1	
6	36	10,000	--	1	
6	18	10,000	--	1	
6	18	5,000	--	1	
6	--	5,000	--	2	
6	--	2,500	--	1	
3	24	5,000	--	1	
3	24	3,000	--	1	
3	--	5,000	--	1	
3	--	2,000	--	1	
2	36	2,500	--	1	
2	--	2,500	--	1	
1	35	5,000	--	1	
1	24	1,000	--	1	
1	11	2,500	--	1	
--	48	2,000	--	1	
--	36	10,000	--	2	
--	36	8,000	--	1	See Fn. 1

Case #15 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
--	36	5,000	--	3	Fn. 2 applies to 1 sentence
--	36	2,500	--	2	Fn. 1 applies to 1 sentence
--	24	20,000	--	1	
--	24	10,000	--	3	
--	24	5,000	--	2	
--	24	3,500	--	1	
--	24	2,500	--	2	
--	24	2,000	--	1	
--	24	1,000	--	2	
--	12	20,000	--	1	
--	12	5,000	--	1	
--	12	2,500	--	1	
--	12	1,000	--	1	

Number of sentences ranked

45

Case #16 - Description and Notes

Case Characteristics

Offense: Bank embezzlement (18 U.S.C. § 656).
Number of counts: One.
How convicted: Plea.
Age at conviction: Under 22.
Sex: Female.
Prior record: None.
Narcotics use: None reported.
Current employment: Telephone company employee; duties not specified.
Sentencing options: Five years and/or \$5,000; Youth Corrections Act is applicable.

Footnotes to Rank List

1. The sentence included a probation condition requiring that restitution be made to the bank.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #16 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
Indet.	--	--	YCA	2	
2	16	--	--	1	See Fn. 1
1	24	--	--	1	
--	60	--	--	2	See Fn. 1
--	36	--	--	16	Fn. 1 applies to 11 sentences
--	24	250	--	1	
--	24	--	--	14	Fn. 1 applies to 11 sentences
--	18	--	--	1	See Fn. 1
--	12	--	--	3	See Fn. 1
--	24	--	--	1	Probation unsupervised; see Fn.

 Number of sentences ranked

42

Case #17 - Description and Notes

Case Characteristics

Offense: Interstate transportation of stolen securities
(18 U.S.C. § 2314).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Prior record: One conviction (other than traffic), no other
arrests, no incarceration; offense not similar to the
current offense.
Narcotics use: None reported.
Current employment: Salesman.
Sentencing options: Ten years and/or \$10,000.

Additional Information Requested

Two judges indicated that they would need more information
before sentencing. One committed for observation under 18 U.S.C.
§ 4208(b); the other sought information on the defendant's coopera-
tion and a recommendation from the United States Attorney.

Case #17 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
36	--	--	--	2	
24	--	--	--	1	
12	--	--	--	2	
6	54	--	--	1	
6	36	--	--	2	
6	24	--	--	2	
6	18	--	--	1	
6	--	--	--	1	
3	60	--	--	1	
3	36	--	--	1	
3	24	1,000	--	1	
2	36	--	--	1	
1	36	--	--	1	
--	60	--	--	1	
--	48	--	--	2	
--	36	2,000	--	1	
--	36	--	--	14	
--	24	--	--	9	
--	18	--	--	1	
--	12	--	--	1	

Number of sentences ranked

46

Case #18 - Description and Notes

Case Characteristics

Offense: Mail theft (18 U.S.C. § 1702).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Prior record: Eight convictions, three other arrests, three periods of incarceration; several of the prior offenses involved theft.
Narcotics use: None reported.
Current employment: Factory worker.
Sentencing options: Five years and/or \$2,000.

Footnotes to Rank List

1. The sentence included a probation condition requiring the defendant to maintain his employment.
2. The sentence included a probation condition requiring that restitution be made to injured parties.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #18 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
6	18	--	--	1	
6	6	100	--	1	
3	36	--	--	1	
2	36	--	--	1	
2	12	--	--	1	
--	60	--	--	3	Fn. 1 applies to 1 sentence
--	36	500	--	1	
--	36	250	--	1	
--	36	200	--	1	
--	36	100	--	1	
--	36	50	--	1	
--	36	--	--	13	Fn. 1 applies to 1 sentence; Fn. 2 applies to 3 others
--	30	--	--	1	
--	24	350	--	1	
--	24	250	--	1	
--	24	211	--	1	
--	24	200	--	2	
--	24	150	--	1	
--	24	100	--	1	
--	24	--	--	9	
--	18	--	--	1	
--	12	--	--	4	

Case #19 - Description and Notes

Case Characteristics

Offense: Conspiracy to commit securities fraud
(18 U.S.C. § 371).
Number of counts: One.
How convicted: Plea.
Age at conviction: Over 40.
Sex: Male.
Prior record: One conviction, no incarceration; offense
not similar to the current offense.
Narcotics use: None reported.
Current employment: Securities salesman.
Sentencing options: Five years and/or \$10,000.

Footnotes to Rank List

1. The sentence included a probation condition requiring that restitution be made to injured parties.
2. The sentence included a probation condition restricting defendant's future participation in the securities business.

Additional Information Requested

Two judges indicated that they would need more information before sentencing. One of them wanted an FBI fingerprint return; the other wanted further information about the defendant's finances.

Case #19 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
24	--	2,500	--	1	
18	--	8,000	--	1	
12	--	10,000	--	2	
6	36	--	--	1	
6	24	--	--	1	
6	18	10,000	--	1	
6	18	2,500	--	1	
6	6	10,000	--	1	
6	--	--	--	1	
3	60	--	--	1	See Fn. 1
3	33	7,500	--	1	
3	24	5,000	--	1	
3	--	10,000	--	1	
3	--	5,000	--	2	
1	11	2,500	--	1	
1	11	--	--	1	
--	36	7,500	--	1	
--	36	5,000	--	2	
--	36	4,000	--	1	
--	30	10,000	--	1	
--	24	15,000	--	1	See Fn. 2

Case #19 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
--	24	10,000	--	5	Fn. 2 applies to 1 sentence
--	24	5,000	--	4	
--	24	1,000	--	2	
--	24	400	--	1	
--	24	--	--	2	Fn. 1 applies to 1 sentence
--	18	5,000	--	1	
--	18	1,000	--	1	
--	12	15,000	--	1	
--	12	7,500	--	1	
--	12	6,000	--	1	
--	12	5,000	--	1	
--	--	5,000	--	2	
--	--	2,500	--	1	

Number of sentences ranked

47

Case #20 - Description and Notes

Case Characteristics

Offense: Perjury (18 U.S.C. § 1621).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Prior record: None. Another pending charge related to the
instant offense was expected to be nolle prossed.
Narcotics use: None reported.
Current employment: Securities salesman.
Sentencing options: Five years and/or \$2,000.

Footnotes to Rank List

1. The sentence included a probation condition restricting defendant's future participation in the securities market.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #20 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
12	--	1,000	--	1	
6	24	1,000	--	1	
6	12	100	--	1	
4	20	--	--	1	
3	21	1,500	--	1	
3	--	1,000	--	1	
2	--	2,000	--	1	
1	36	2,000	--	1	See Fn. 1
1	11	500	--	1	
1	--	--	--	1	
--	36	2,000	--	1	
--	36	1,000	--	2	See Fn. 1
--	36	500	--	2	
--	36	200	--	1	
--	36	--	--	2	
--	24	1,000	--	3	
--	24	750	--	1	
--	24	500	--	6	
--	24	--	--	8	
--	12	1,500	--	1	
--	12	1,000	--	2	

Case #20 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Num- ber</u>	<u>Notes</u>
--	12	500	--	5	
--	12	250	--	2	
--	6	500	--	1	
--	--	1,000	--	1	

Number of sentences ranked

48

Appendix B

Detailed Information on Cases 21-30

Summary of Responses in Cases 21-30

<u>Case No.</u>	<u>Sentences ranked</u>	<u>Ambiguous or unlawful sentences</u>	<u>Judges needing more information</u>	<u>Total responses</u>
21A	19	2	1	22
21B	23	1	1	25
22A	22	1	0	23
22B	21	2	1	24
23A	18	1	4	23
23B	23	0	1	24
24A	21	2	0	23
24B	20	2	1	23
25A	23	0	0	23
25B	19	2	2	23
26A	22	1	0	23
26B	24	0	0	24
27A	23	1	0	24
27B	23	0	0	23
28A	14	2	8	24
28B	8	3	12	23
29A	23	1	0	24
29B	20	3	1	24
30A	24	0	0	24
30B	23	1	0	24

Case #21 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the probation office recommended probation and a fine. The "B" version did not carry a recommendation.

Other Case Characteristics

Offense: Making false statements (18 U.S.C. § 1001).

Number of counts: One.

How convicted: Plea.

Age at conviction: 26-40.

Sex: Male.

Prior record: None.

Narcotics use: None reported.

Current employment: Consultant.

Sentencing options: Five years and/or \$10,000.

Additional Information Requested

One "A" judge and one "B" judge indicated that they would need more information before sentencing. The "A" judge sought additional information about the circumstances of the crime; the "B" judge deferred sentencing pending the outcome of trials of other defendants.

Case #21 - Rank List of Sentences

<u>Description of Sentences</u>				<u>Numbers</u>		<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special authority</u>	<u>A</u>	<u>B</u>	
12	--	--	--	1	1	
6	30	--	--	1	--	
6	18	5,000	--	1	--	
6	18	2,500	--	--	1	
6	12	--	--	--	1	
6	--	--	--	--	1	
4	48	--	--	1	--	
3	33	3,000	--	--	1	
2	36	10,000	--	1	--	
2	34	--	--	--	1	
2	22	--	--	--	1	
2	10	1,000	--	1	--	
1	24	1,000	--	--	1	
1	6	5,000	--	1	--	
3 wks.	11	3,000	--	--	1	
--	36	5,000	--	1	--	
--	36	2,500	--	--	1	
--	24	5,000	--	2	2	
--	24	3,000	--	--	1	
--	24	2,500	--	2	3	
--	24	1,000	--	3	1	

Case #21 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
--	24	--	--	1	2	
--	12	3,000	--	--	1	
--	12	2,500	--	1	--	
--	12	1,000	--	1	--	
--	--	10,000	--	--	1	
--	--	5,000	--	1	1	
--	--	3,000	--	--	1	

 Number of sentences ranked

19 23

Case #22 - Description and Notes

Difference Between "A" and "B" Versions

The "A" version did not carry a recommendation with respect to the sentence. In the "B" version, the probation office recommended three years' imprisonment.

Other Case Characteristics

Offense: Interstate transportation of forged securities (18 U.S.C. § 2314).
Number of counts: One.
How convicted: Plea.
Age at conviction: Over 40.
Sex: Male.
Prior record: Twelve convictions, no other arrests, ten periods of incarceration; several of the prior offenses were similar to the present offense.
Narcotics use: None reported.
Current employment: In jail; formerly held a variety of unskilled and semi-skilled jobs.
Sentencing options: Ten years and/or \$10,000.

General Observations About the Data

The presentence report indicated that the defendant in this case had been in jail since December 18, 1973, three and one-half months before the report was mailed to the participating judges. There was therefore no practical difference between a sentence of probation and one imposing a sufficiently short jail sentence.

Footnotes to Rank List

1. The sentences of the "A" judge and one "B" judge also included probation conditions requiring the defendant to accept employment.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #22 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				A	B	
120	--	--	--	1	--	
60	--	--	--	2	3	
60	--	--	(a)(2)	1	--	
48	--	--	--	2	--	
48	--	--	(a)(2)	1	--	
36	--	--	--	5	7	
36	--	--	(a)(2)	--	1	
30	--	--	--	1	1	
24	--	--	--	3	5	
24	--	--	(a)(2)	1	--	
12	--	--	--	1	--	
6	24	--	--	1	--	
6	18	--	--	1	--	
--	60	--	--	1	2	
--	36	--	--	1	2	See Fn. 1

Number of sentences ranked

22 21

Case #23 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, defendant was a heroin addict. In the "B" version, he was a former addict, but apparently drug-free now. In both versions, he was in a drug treatment program at the time of the crime and believed by the person in charge to be drug-free at that time.

Other Case Characteristics

Offense: Possession of heroin with intent to distribute (21 U.S.C. § 841(a)).

Number of counts: One.

How convicted: Plea.

Age at conviction: Over 40.

Sex: Male.

Prior record: Seven convictions, six other arrests, one period of incarceration; none of the offenses was similar to the instant offense.

Current employment: Unemployed.

Sentencing options: Fifteen years and/or \$25,000; special parole term of at least three years to follow any sentence of imprisonment.

General Observations About the Data

The requirement of a special parole term was not called to the attention of the judges, and a number of them omitted the special parole term from their sentences. These sentences were accepted for tabulation rather than excluded as illegal. In constructing the rank list, special parole terms that had been imposed were ignored, with the result that prison sentences of equal length were treated as equally severe even though they may have been accompanied by special parole terms of different lengths.

There appears to be a difference of opinion about the applicability of the special-parole-term requirement to split sentences under 18 U.S.C. § 3651. Split sentences were assumed to be legal whether or not they carried a special parole term; if imposed, the special parole term was used in the ranking. Special parole terms accompanying split sentences are included under "Probation" in the rank list.

Footnotes to Rank List

1. The sentence included a probation condition requiring participation in a drug treatment program.
2. One of these sentences included a probation condition requiring participation in a drug treatment program; the other included a condition requiring the defendant to remain drug-free.

(Continued at bottom of facing page.)

Case #23 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
60	--	--	--	2	1	
48	--	--	--	--	2	
48	--	--	(a)(2)	--	1	
42	--	--	--	--	1	
36	--	--	--	4	4	
30	--	--	--	1	--	
24	--	--	--	2	4	
18	--	--	--	2	1	
12	--	--	--	2	4	
6	114	--	--	--	1	
6	30	--	--	1	--	See Fn. 1
6	24	--	--	--	2	See Fn. 2
6	12	--	--	1	--	
--	60	--	--	--	1	
--	48	--	--	1	--	See Fn. 1
--	36	--	--	2	--	See Fn. 1
--	18	--	--	--	1	

Number of sentences ranked

18 23

Description and Notes (continued)Additional Information Requested

Four "A" judges and one "B" judge indicated that they would need more information before sentencing. The "A" judges all committed for observation under the Narcotic Addict Rehabilitation Act. The "B" judge sought a Probation Office recommendation.

Case #24 - Description and Notes

In the "A" version, defendant had no record of narcotics addiction. In the "B" version he was both currently addicted and addicted at the time of the crime.

Other Case Characteristics

Offense: Possession of stolen mail (18 U.S.C. § 1708).
Number of counts: One.
How convicted: Plea.
Age at conviction: 22-26.
Sex: Male.
Prior record: Two arrests, dispositions unknown; one of the prior offenses was larceny.
Current employment: Consultant.
Sentencing options: Five years and/or \$2,000; defendant eligible for sentencing as a young adult offender under 18 U.S.C. § 4209.

General Observations About the Data

Eligibility as a young adult offender was not called to the attention of the judges.

The judges were also asked what the sentence would have been if the defendant, instead of pleading guilty, had been convicted in a bench trial and had continued to maintain a posture of non-involvement. A tabulation of the responses is contained in chapter IV.

Footnotes to Rank List

1. The sentence included a probation condition requiring that restitution be made to the injured party.
2. Two "B" sentences included probation conditions requiring participation in a drug treatment program; one "B" sentence included a condition requiring that restitution be made to the injured party.
3. One "A" sentence included a probation condition requiring that restitution be made to the injured party; two "B" sentences included conditions requiring participation in a drug treatment program.
4. One "B" sentence included a probation condition requiring participation in a drug treatment program.

Additional Information Requested

One "B" judge indicated that he would need more information before sentencing. He committed for observation under the Narcotic Addict Rehabilitation Act.

Case #24 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
Indet.	--	--	YCA	1	--	
12	--	--	--	--	1	
6	12	--	--	1	--	
3	24	--	\$4209	1	--	See Fn. 1
--	60	--	\$4209	--	2	
--	48	--	\$4209	1	--	
--	36	250	--	--	1	
--	36	--	--	1	1	
--	36	--	\$4209	6	5	See Fn. 2
--	24	--	--	3	3	
--	24	--	\$4209	4	4	See Fn. 3
--	18	--	\$4209	--	1	
--	12	--	--	2	2	See Fn. 4
--	12	--	\$4209	1	--	

Number of sentences ranked

21 20

Case #25 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the defendant's age at conviction was 26. In the "B" version, it was 25, so that defendant was eligible for sentencing as a young adult offender under 18 U.S.C. § 4209. There was a compensating difference of one year in the duration of a prior job.

Other Case Characteristics

Offense: Bank robbery and conspiracy (18 U.S.C. §§ 371, 2113(a), 2113(d)).

Number of counts: Four.

How convicted: Jury trial.

Sex: Male.

Prior record: Five convictions, two other arrests, two periods of incarceration; none of the offenses was similar to the instant offense.

Narcotics use: None reported.

Current employment: In jail; formerly a factory worker.

Sentencing options: Twenty-five years and/or \$10,000 on one count; twenty years and/or \$5,000 on each of two counts; five years and or \$10,000 on one count.

Additional Information Requested

Two "B" judges indicated that they would need more information before sentencing. One committed for observation under the Youth Corrections Act; the other sought a Probation Office recommendation.

Case #25 - Rank List of Sentences

<u>Description of Sentences</u>				<u>Numbers</u>		<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>A</u>	<u>B</u>	
240	--	--	--	1	--	
210	--	--	(a)(2)	1	--	
204	--	--	--	1	--	
180	--	--	--	2	1	
144	36	--	--	1	--	
144	--	--	--	1	1	
144	--	--	(a)(2)	1	-	
120	60	--	--	1	--	
120	--	--	--	3	4	
120	--	--	(a)(1)	--	1	
120	--	--	(a)(2)	2	2	
120	--	--	YCA	--	1	
108	--	--	--	1	--	
96	--	--	--	2	2	
96	--	--	(a)(2)	1	1	
84	--	--	--	--	1	
72	--	--	--	--	1	
72	--	--	(a)(2)	1	--	
60	--	--	--	2	2	
60	--	--	(a)(2)	--	1	
48	--	--	--	1	1	
36	--	--	--	1	--	

Number of sentences ranked

23 19

Case #26 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version the defendant was convicted on a plea. In the "B" version, he was convicted after a bench trial.

Other Case Characteristics

Offense: Extortionate credit transactions (18 U.S.C. § 894).
Number of counts: One.
Age at conviction: Over 40.
Sex: Male.
Prior record: One conviction, no other arrests, no incarceration; the offense was similar to the instant offense.
Narcotics use: None reported.
Current employment: Mechanic.
Sentencing options: Twenty years and/or \$10,000.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #26 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
120	--	2,500	--	1	--	
96	--	--	(a)(2)	1	--	
84	--	--	(a)(2)	--	1	
60	--	10,000	--	1	--	
60	--	5,000	--	1	1	
60	--	2,000	(a)(2)	1	--	
60	--	--	--	5	2	
60	--	--	(a)(2)	1	1	
42	--	5,000	--	--	1	
36	--	10,000	--	--	1	
36	--	3,500	--	1	1	
36	--	1,000	--	1	--	
36	--	--	--	1	4	
36	--	--	(a)(2)	1	--	
24	--	2,000	--	--	1	
24	--	1,000	--	1	--	
24	--	--	--	--	2	
18	--	5,000	--	--	1	
18	--	--	--	--	1	
12	--	5,000	--	--	1	
12	--	--	--	1	1	
6	60	--	--	1	--	

Case #26 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				A	B	
6	36	--	--	1	--	
6	30	5,000	--	--	1	
6	24	--	--	1	--	
6	18	5,000	--	1	--	
1	35	5,000	--	1	--	
--	36	2,500	--	--	1	
--	36	--	--	--	1	
--	24	5,000	--	--	1	
--	--	5,000	--	--	1	

Number of sentences ranked

22 24

Case #27 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the defendant had three convictions, one other arrest, and one brief period of incarceration. In the "B" version, the defendant had one conviction, three other arrests, and no incarceration. The arrests in both versions were for the same offenses, none of them similar to the instant offense.

Other Case Characteristics

Offense: Conspiracy (gambling business) (18 U.S.C. § 371).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Narcotics use: None reported.
Current employment: Stockroom worker.
Sentencing options: Five years and/or \$10,000.

Footnotes to Rank List

1. One sentence included a probation condition restricting the defendant's gambling activities.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #27 - Rank List of Sentences

<u>Description of Sentences</u>				<u>Numbers</u>		<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>A</u>	<u>B</u>	
24	--	--	--	1	--	
18	--	--	--	2	--	
12	--	--	--	5	--	
9	--	--	--	1	--	
6	60	--	--	--	1	
6	42	--	--	--	1	
6	36	--	--	2	1	
6	30	1,000	--	1	1	
6	30	--	--	1	--	
6	24	--	--	1	1	
6	18	--	--	1	1	
6	--	--	--	3	2	
4	60	--	--	1	--	
4	20	--	--	--	1	
4	14	--	--	--	1	
3	33	--	--	--	2	
3	24	--	--	--	3	
2	36	--	--	1	--	
2	24	--	--	--	1	
2	12	--	--	1	--	
--	60	250	--	1	--	
--	36	500	--	--	1	

Case #27 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
--	36	--	--	--	3	See Fn. 1
--	24	750	--	--	1	
--	24	500	--	1	--	
--	24	--	--	--	1	
--	--	500	--	--	1	
Number of sentences ranked				23	23	

Case #28 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the defendant had no convictions but three arrests, one of them still pending. In the "B" version, the defendant had three convictions, no other arrests, and two periods of incarceration.

Other Case Characteristics

Offense: Theft of goods from an interstate shipment
(18 U.S.C. § 659).
Number of counts: One.
How convicted: Plea.
Age at conviction: 26-40.
Sex: Male.
Narcotics use: Heroin addict.
Current employment: Unemployed.
Sentencing options: Ten years and/or \$5,000.

General Observations About the Data

The presentence report indicated that the defendant was in jail for inability to make bail, although the duration of this incarceration was unclear. There was therefore no practical difference between a sentence of probation and one imposing a sufficiently short jail sentence.

Footnotes to Rank List

1. The sentence included a probation condition requiring participation in a drug treatment program.

Additional Information Requested

Eight "A" judges and 12 "B" judges indicated that they would need more information before sentencing. Five "A" judges and nine "B" judges committed for observation under the Narcotic Addict Rehabilitation Act; one "A" judge and two "B" judges committed under 18 U.S.C. § 4208(b); two "A" judges withheld sentence to determine whether the defendant would accept a civil commitment under the Narcotic Addict Rehabilitation Act; one "B" judge sought further information from the Probation Office about drug-treatment possibilities.

Case #28 - Rank List of Sentences

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
36	--	--	--	1	--	
24	--	--	--	2	--	
12	--	--	--	3	4	
6	36	--	--	1	--	See Fn. 1
6	30	--	--	1	1	
6	24	--	--	1	--	
6	18	--	--	1	1	Fn. 1 applies to the "A" sentence
6	--	--	--	1	1	
2	24	--	--	1	--	See Fn. 1
--	60	--	--	1	--	See Fn. 1
--	36	--	--	--	1	See Fn. 1
--	24	--	--	1	--	See Fn. 1
Number of sentences ranked				14	8	

Case #29 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the defendant was from a stable working-class home in which both parents worked, but the defendant was a high-school drop-out. Since high school, he had had alternate periods of short-term jobs and unemployment. In the "B" version, the defendant was the son of a successful businessman, and was a college student.

Other Case Characteristics

Offense: Possession of heroin with intent to sell
(21 U.S.C. § 841(a)).

Number of counts: One.

How convicted: Plea.

Age at conviction: Under 22.

Sex: Male.

Prior record: None.

Narcotics use: Some cocaine sniffing; otherwise,
none reported.

Sentencing options: Fifteen years and/or \$25,000; Youth
Corrections Act is applicable; special parole term of
at least three years to follow any sentence of im-
prisonment under the regular authority.

General Observations About the Data

Neither the applicability of the Youth Corrections Act nor the requirement of a special parole term was called to the attention of the judges.

A number of judges omitted the special parole term from their sentences. These sentences were accepted for tabulation rather than excluded as illegal. In constructing the rank list, special parole terms that had been imposed were ignored, with the result that prison sentences of equal length were treated as equally severe even though they may have been accompanied by special parole terms of different lengths.

Special parole terms were used in ranking split sentences, however. These terms are included under "Probation" in the rank list.

The judges were also asked what the sentence would have been if it were established that the defendant was currently addicted to heroin. A tabulation of the responses is contained in chapter IV.

(Continued at bottom of facing page.)

Case #29 - Rank List of Sentences

<u>Description of Sentences</u>				<u>Numbers</u>		<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>A</u>	<u>B</u>	
60	--	--	--	3	1	
48	--	--	--	--	1	
Indet.	--	--	YCA	8	7	
36	--	--	--	3	1	
24	--	--	--	4	3	
24	--	--	(a)(2)	--	1	
6	96	--	--	1	--	
6	72	--	--	1	--	
4	96	--	--	--	1	
--	60	--	--	--	1	
--	48	--	--	2	--	Fn. 1 applies to 1 sentence
--	36	--	--	1	3	See Fn. 2
--	24	--	--	--	1	
Number of sentences ranked				23	20	

Description and Notes (continued)Footnotes to Rank List

1. The sentence included a probation condition requiring the defendant to undertake education or skills training.
2. One of the "B" sentences included a probation condition requiring participation in a drug treatment program.

Additional Information Requested

One "B" judge indicated that he would need more information before sentencing. He committed for observation under the Youth Corrections Act.

Case #30 - Description and Notes

Difference Between "A" and "B" Versions

In the "A" version, the defendant was convicted of conspiracy to defraud the Government (18 U.S.C. § 286) and presenting false claims (18 U.S.C. § 287) in connection with claims for Medicare reimbursement. In the "B" version, he was convicted of transporting stolen securities (18 U.S.C. § 2314) and conspiracy (18 U.S.C. § 371). The value of the stolen securities in the "B" version was the amount of the false claims in the "A" version.

Other Case Characteristics

Number of counts: Two.
 How convicted: Jury trial.
 Age at conviction: 26-40.
 Sex: Male.
 Prior record: None (except traffic violation).
 Narcotics use: None reported.
 Current employment: Physician.
 Sentencing options: Ten years and/or \$10,000 on one count; five years and/or \$10,000 on the other. (Same for both versions.)

General Observations About the Data

The judges were also asked what the sentence would have been if the defendant, instead of being convicted by a jury, had been convicted on a plea. A tabulation of the responses is contained in chapter IV.

Footnotes to Rank List

1. The sentence included a probation condition requiring the defendant to make restitution to the Government.
2. Split sentence under § 3651, as contrasted with 6 months' imprisonment on one count and probation on the other. Use of the split sentence makes the defendant ineligible for parole or good time.
3. Not a split sentence: jail on one count, probation on the other.
4. The "A" sentence is not a split sentence; the "B" sentence is unclear on this question. The "A" sentence also included a probation condition requiring the defendant to make restitution to the Government.
5. Defendant sentenced to 25 week-ends in jail, remainder of three-year period on probation.

Additional Information Requested

No judges indicated that they would need more information before sentencing.

Case #30 - Rank List of Sentences

<u>Description of Sentences</u>				<u>Numbers</u>		<u>Notes</u>
<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>A</u>	<u>B</u>	
36	--	20,000	(a)(2)	1	-	
30	--	3,500	--	1	--	
24	--	10,000	--	1	1	
24	--	--	--	--	1	
12	36	10,000	--	1	--	See Fn. 1
12	--	10,000	--	1	1	
12	--	5,000	--	1	--	
12	--	1,000	--	1	--	
12	--	--	--	3	3	
6	54	5,000	--	--	1	See Fn. 2
6	36	5,000	--	1	--	See Fn. 2
6	36	4,000	--	--	1	See Fn. 3
6	36	2,500	--	--	1	See Fn. 2
6	30	5,000	--	1	--	See Fn. 2
6	24	20,000	--	1	--	See Fn. 2
6	24	--	--	1	--	See Fn. 2
6	18	5,000	--	1	--	See Fn. 2
6	18	--	--	1	1	See Fn. 4
6	--	5,000	--	--	1	
3	33	5,000	--	--	1	
3	24	10,000	--	1	--	
3	15	5,000	--	--	1	

Case #30 - Rank List of Sentences (Continued)

Description of Sentences

<u>Months prison</u>	<u>Months prob'n</u>	<u>Fine (\$)</u>	<u>Special author- ity</u>	<u>Numbers</u>		<u>Notes</u>
				<u>A</u>	<u>B</u>	
3	9	15,000	--	1	--	
3	--	10,000	--	1	--	
3	--	--	--	--	1	
2	34	5,000	--	--	1	See Fn. 5
2	10	5,000	--	--	1	
--	60	10,000	--	1	--	See Fn. 1
--	36	20,000	--	1	--	
--	36	10,000	--	1	1	
--	24	20,000	--	--	1	
--	24	5,000	--	--	2	
--	12	--	--	--	1	
--	60	10,000	--	1	--	Probation unsupervised. See Fn.
--	--	10,000	--	1	--	
--	--	5,000	--	--	2	
<u>Number of sentences ranked</u>				24	23	

Appendix C

Ranks of Sentences of Individual Judges
in Thirteen Cases

The table on the following pages shows the rank given to each judge's sentence in each of thirteen cases. A rank of 1 represents the most severe sentence given in a case; a rank of 50 the least severe.

Chapter IV contains a discussion of the way in which the table was constructed.

The underscored ranks are those that were assigned arbitrarily in cases in which the judge did not render a sentence.

Ranks of Sentences of Individual Judges in Thirteen Cases

<u>Judge</u>	<u>Average Rank</u>	<u>Case #1</u>	<u>Case #2</u>	<u>Case #3</u>	<u>Case #4</u>	<u>Case #6</u>	<u>Case #9</u>	<u>Case #10</u>	<u>Case #13</u>	<u>Case #15</u>	<u>Case #17</u>	<u>Case #18</u>	<u>Case #19</u>	<u>Case #20</u>
1	5.4	11	5.5	1	1	7	3	2.5	4	7	9.5	10	8	1
2	10.6	4	10.5	15.5	20	3.5	14	4	14	5	6	7	23	11
3	12.1	<u>12</u>	47	15.5	45.5	3.5	6.5	8	10.5	1.5	1.5	2	1	3
4	15.3	38	1	15.5	5.5	9	17.5	1	10.5	22.5	44	1	29	4
5	19.2	6	17	10	5.5	44.5	12	21.5	31.5	1.5	17	7	48.5	27
6	19.2	23	26.5	24.5	9	27.5	2	14	6	4	21	28	46	<u>18</u>
7	19.6	15	14	6	21	11.5	6.5	18	6	26.5	30.5	33.5	39	27
8	19.6	8	26.5	24.5	13.5	14	44.5	24	16	45.5	4.5	5	2	27
9	20.8	23	5.5	43	5.5	3.5	49.5	8	1	37	3	48.5	3.5	39
10	22.7	42	38	<u>24.5</u>	2	39	4	16	15	41	11	13	45	5
11	22.8	<u>23</u>	5.5	15.5	<u>22</u>	17.5	17.5	28	10.5	44	44	3	<u>22</u>	44
12	23.0	10	26.5	24.5	34	44.5	31	43	3	9.5	30.5	20.5	15.5	6
13	23.4	34	16	35	34	11.5	<u>22</u>	14	18.5	13	30.5	4	37.5	34.5
14	24.3	44	47	8	<u>23</u>	27.5	17.5	32.5	38	3	16	33.5	17	9

Ranks of Sentences of Individual Judges in Thirteen Cases (Continued)

Judge	Average Rank	Case #1	Case #2	Case #3	Case #4	Case #6	Case #9	Case #10	Case #13	Case #15	Case #17	Case #18	Case #19	Case #20
16	24.5	23	26.5	24.5	45.5	40	20	45	2	12	44	20.5	13	2
17	24.6	13.5	26.5	10	13.5	44.5	38.5	19.5	18.5	19	12	41	29	34.5
18	24.6	7	13	7	34	27.5	24	38	44.5	24	30.5	7	29	34.5
19	24.6	33	2	43	34	27.5	21	2.5	22	6	19.5	41	34.5	34.5
20	24.7	27.5	15	3	5.5	27.5	35.5	19.5	44.5	17	44	<u>20.5</u>	18	44
21	25.0	36	47	<u>24.5</u>	34	37.5	17.5	38	25	22.5	1.5	11	24	7
22	25.2	3	47	2	19	36	40	30	44.5	47	15	20.5	11	12.5
23	25.5	19	26.5	43	48	17.5	6.5	46	31.5	14	30.5	20.5	10	18
24	25.7	5	18	48	41	3.5	26	11	44.5	8	<u>30.5</u>	48.5	9	40.5
25	25.8	16	10.5	10	<u>24</u>	27.5	1	17	44.5	42.5	44	36	42	21
26	25.9	47	19	<u>24.5</u>	18	8	41	38	31.5	16	13	46	20.5	14.5
27	26.0	<u>23</u>	<u>26.5</u>	15.5	<u>25.5</u>	3.5	29	32.5	31.5	21	30.5	41	14	44
28	26.0	48	5.5	15.5	34	27.5	6.5	<u>26</u>	10.5	26.5	30.5	12	48.5	47.5
29	26.1	17	41	43	43	27.5	12	12	20.5	37	30.5	20.5	12	23
30	26.7	9	5.5	32	13.5	44.5	10	26	44.5	9.5	44	48.5	15.5	44

Ranks of Sentences of Individual Judges in Thirteen Cases (Continued)

Judge	Average Rank	Case #1	Case #2	Case #3	Case #4	Case #6	Case #9	Case #10	Case #13	Case #15	Case #17	Case #18	Case #19	Case #20
31	26.7	27.5	34.5	36	<u>25.5</u>	17.5	31	38	31.5	32	18	20.5	20.5	14.5
32	26.8	23	41	32	27	<u>27.5</u>	9	26	44.5	26.5	30.5	20.5	7	34.5
33	27.0	2	26.5	24.5	42	<u>27.5</u>	12	50	10.5	48	44	31	6	<u>27</u>
34	27.6	40	26.5	32	13.5	37.5	24	10	31.5	20	7.5	41	40.5	34.5
35	27.8	41	36.5	5	34	11.5	44.5	21.5	6	45.5	9.5	41	44	21
36	27.8	30.5	<u>26.5</u>	50	13.5	27.5	44.5	30	23	<u>26.5</u>	<u>30.5</u>	20.5	<u>29</u>	10
37	27.9	46	10.5	<u>24.5</u>	5.5	15	38.5	38	31.5	18	<u>30.5</u>	20.5	50	34.5
38	28.3	43	26.5	43	34	27.5	44.5	14	31.5	15	14	20.5	5	50
39	29.3	49	26.5	43	34	27.5	28	8	44.5	11	4.5	41	37.5	27
40	30.0	37	43	15.5	49	48	24	38	<u>31.5</u>	32	19.5	20.5	19	12.5
41	30.1	<u>29</u>	36.5	43	45.5	17.5	37	38	31.5	<u>29</u>	7.5	20.5	40.5	16
42	31.5	18	47	43	5.5	41	44.5	5.5	44.5	35	44	30	3.5	47.5
43	31.8	13.5	47	43	45.5	11.5	31	<u>30</u>	<u>31.5</u>	42.5	<u>30.5</u>	35	25	27
44	32.1	1	39	32	50	49	35.5	38	44.5	<u>30</u>	30.5	20.5	29	18
45	32.7	35	5.5	24.5	13.5	27.5	48	44	10.5	49	50	48.5	<u>29</u>	40.5

Ranks of Sentences of Individual Judges in Thirteen Cases (Continued)

<u>Judge</u>	<u>Aver- age Rank</u>	<u>Case #1</u>	<u>Case #2</u>	<u>Case #3</u>	<u>Case #4</u>	<u>Case #6</u>	<u>Case #9</u>	<u>Case #10</u>	<u>Case #13</u>	<u>Case #15</u>	<u>Case #17</u>	<u>Case #18</u>	<u>Case #19</u>	<u>Case #20</u>
46	33.0	50	26.5	37	34	27.5	34	23	17	39.5	44	41	34.5	21
47	33.4	32	41	15.5	34	50	27	5.5	20.5	<u>32</u>	49	<u>32</u>	47	49
48	34.7	45	10.5	32	34	44.5	33	38	31.5	50	30.5	41	34.5	27
49	36.1	30.5	47	49	13.5	3.5	49.5	48.5	44.5	<u>34</u>	30.5	41	43	34.5
50	36.9	39	26.5	38	34	27.5	44.5	48.5	44.5	39.5	30.5	29	34.5	44

Appendix D

Note on the Sentencing Authority of Federal Judges

Note on the Sentencing Authority of Federal Judges

Generally speaking, a Federal judge sentencing a convicted offender may impose a term of imprisonment or a term of probation, either of which may be accompanied by a fine. The maximum term of imprisonment and the maximum fine that can be imposed are set forth in the statute dealing with the particular crime; the maximum term of probation that can be imposed is five years.

If a judge imposes a prison sentence of more than six months, he may not also impose a term of probation for the same offense. For an offender convicted on a single count, probation and imprisonment for more than six months are thus mutually exclusive alternatives. Under 18 U.S.C. § 3651, however, a judge may provide for a term of imprisonment of six months or less to be followed by a term of probation. This is commonly referred to as a "split sentence."

If imprisonment is imposed (other than a split sentence), an offender serving a term of more than 180 days may be released on parole, in the discretion of the United States Board of Parole, after serving one third of his term. An offender serving a term of 180 days or less is not eligible for parole.

Except as specifically noted, the descriptions of sentences in this report assume that the sentences were rendered under the above rules. Among the exceptions that are noted are the following:

Shorthand
Notation

Meaning

- | | |
|----------|--|
| "(a)(1)" | Refers to a sentence under 18 U.S.C. § 4208(a)(1), which authorizes the judge to fix a parole eligibility period of less than one third of the prison term. |
| "(a)(2)" | Refers to a sentence under 18 U.S.C. § 4208(a)(2), which authorizes the judge to eliminate the minimum period for parole eligibility. |
| "YCA" | Refers to a sentence committing an offender under the Youth Corrections Act. Generally, commitments under this act are "indeterminate" sentences pursuant to |

18 U.S.C. § 5010(b). Under such a sentence, the offender must be paroled on or before the fourth anniversary of his conviction. Occasionally, commitments are pursuant to 18 U.S.C. § 5010(c), under which the judge imposes a term of more than six years (but not more than the maximum provided for the particular offense) and the offender must be paroled at least two years before the expiration of the term. There is no minimum period for parole eligibility under a Youth Corrections Act sentence.

"§ 4209" Refers to 18 U.S.C. § 4209, which permits the judge to apply the provisions of the Youth Corrections Act to a young adult offender -- that is, one who was at least 22 years old but not yet 26 at the time of conviction. If the sentence includes a term of probation, the effect of citing § 4209 is to make 18 U.S.C. § 5021(b) applicable; that section provides that a judge may release a youth offender from probation before the expiration of the probation term initially established, in which case the conviction will be set aside.

Reference is also made in the report to special parole terms under 21 U.S.C. § 841. This statute, which deals with certain drug-related offenses, requires a judge who imposes a sentence of imprisonment to impose in addition a "special parole term," which is added to any regular period of parole. In the event that special parole is revoked, the original term of imprisonment is increased by the length of the special parole term.

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