

1-1-1989

The subjective nature of decision-makers in the domain of objective sentence processing

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Brown, William Bud, Ph.D.

University of Nevada, Las Vegas, 1992

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THE SUBJECTIVE NATURE OF DECISION-MAKERS
IN THE DOMAIN OF OBJECTIVE
SENTENCE PROCESSING

by

William B. Brown

A dissertation submitted in partial fulfillment
of the requirements for the degree of

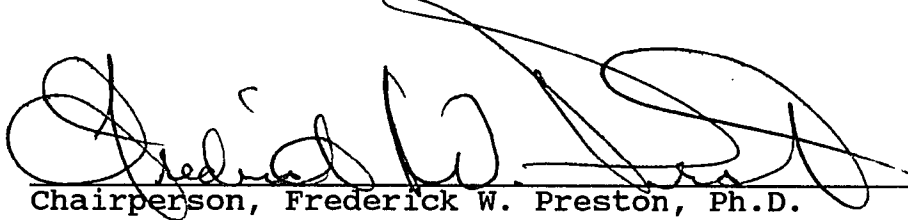
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in

Sociology

Department of Sociology
University of Nevada,
Las Vegas, May
1992

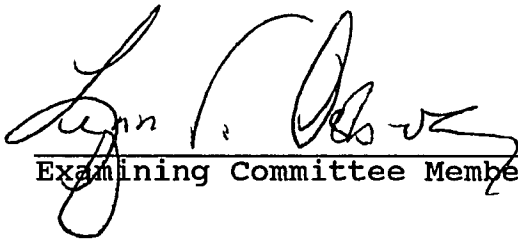
The dissertation of William B. Brown for the degree of Ph.D.
in Sociology is approved.



Chairperson, Frederick W. Preston, Ph.D.



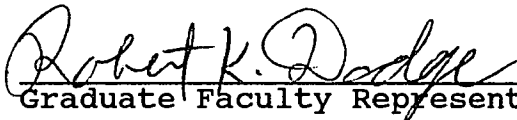
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University of Nevada, Las Vegas
May, 1992

ABSTRACT

Selective incapacitation has been defined as an objective process whereby violent and/or chronic offenders are isolated and given longer prison terms. The purpose of this process is to keep these offenders out of society for longer periods of time resulting in a safer society. Couched within this utilitarian perspective is the assumption that the social sciences have developed a reputable formula from which future criminal behavior can be accurately predicted. This research, a case study of a Nevada presentence investigation unit, found that all convicted offenders are dealt with using the same criteria applied to violent and/or chronic offenders. This study employed a triangulated research strategy (participant observation, interview, document analysis, and quasi-experiment methods) which reveals that the subjective nature of social actors appears to supersede the scientifically-objective sentence recommendation guidelines. Interviews were conducted with 17 presentence investigators, which included their participation in a quasi-experiment using a scenario set with two hypothetical criminal cases. Data indicate that, inadvertently, institutional racism, sexism, classism, etc., play an active role, as proxy indicators, in the sentence recommendation process.

To my wife Judy, and my daughter Tina

ACKNOWLEDGEMENTS

The success of any research project extends far beyond the individual researcher, and this study was no exception. If it were not for the assistance and advice of Christina M. Chandler, Division Manager of the presentence investigation unit of the Nevada Department of Parole and Probation, and the approval and cooperation facilitated by John Slansky, Chief Parole and Probation Officer for the state of Nevada, this research could not have been conducted. If the dedicated presentence investigators, who voluntarily participated in this study, had not been so helpful, this study could not have been successful. To all of these individuals I extend my deepest gratitude.

I want to extend my appreciation to the Criminal Justice Department at the University of Nevada, Las Vegas. The Criminal Justice Department extended their "open door" policy to me, as they do to all their students, throughout this research, offering professional advice, recommendations, and encouragement. A special thanks is given to Carole Case, for her understanding nature, and Ron Farrell for his unselfish assistance and encouragement. I also extend my gratitude to John Horvath who assisted me by providing research material and encouragement. To my friend and colleague, Randy Shelden, who has always made himself available for assistance and encouragement over the past five years, I extend my warmest regards and appreciation.

Randy was an instrumental figure in assisting me to obtain approval for this research. He was also very helpful at crucial stages throughout the research process.

The assistance and guidance that I received from my examining committee extends far beyond the research setting. All of my committee members assisted me throughout this research but, more importantly, they provided the tools necessary to conduct meaningful social research. I will always be indebted to Robert Dodge, the Graduate Faculty Representative member of my committee, who unrelentingly demonstrated that technical writing need not be boring and could actually be written for audiences outside specific disciplines. I will always be thankful that I selected Barbara Brents as a committee person. She has taught me, often reinforced through her own actions, that there are other standpoints for perceiving people and for viewing the world. I employed these alternative standpoints throughout my research but, more importantly, I will always try to draw from her insight and teaching in my everyday encounters and relationships. My interest in sociology and criminology was sparked by the sincerity and energy of Lynn Osborne who is an inspiration to all students who are truly interested in the world around them. The many hours Lynn spent reviewing early manuscripts of this work, always providing constructive advice, exemplifies her dedication and concern for students. Research techniques, ways of analyzing data,

and consideration of ethical principles are research tools that I have acquired from the "dedication to academic excellence" of Bob Rucker, who is a student's teacher--one who always put the needs and concerns of students first, even when this approach proved to be detrimental to his own interests. Finally, I will always be thankful to Fred Preston, my committee chairperson, who has always been supportive of me and my projects and "adventures." Fred has always allowed me the opportunity to make mistakes without saying, "I told you so." Fred has allowed me to grow academically, and as a person. To my entire committee, I want to express my most sincere gratitude for standing by me at critical intersections, and putting up with me at other junctures.

There is one additional person that I must acknowledge. Ron Smith, the Graduate Dean at the University of Nevada, has always offered timely and sincere advice to me throughout my graduate school experience. His support, advice, and encouragement throughout the past year have had a profound impact on the successful completion of this dissertation.

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CHAPTER 1

INTRODUCTION

An integral part of our society is the fundamental idea that criminal acts must be defined as public matters, and criminal justice agencies have been empowered to administer "justice" in those incidents where a violation against one person is viewed as a violation against all citizens. Criminal justice agencies act under the auspice of criminal law, which, in theory, allows ordinary citizens to survive in an imperfect world. Criminal law provides the means whereby individuals are given the opportunity of representation, through the courts, of society when criminals violate the basic rules of society. Sanctions for convicted offenders are also provided through criminal law.

In the case of Nevada, as in many other jurisdictions, the presentence investigation unit of the Nevada Department of Parole and Probation (NDPP) has been given legislative authority to conduct presentence investigation reports which are submitted to the courts for felony and gross misdemeanor convictions. Their authorization, as well as their assigned responsibilities, are outlined in the Nevada Revised Statutes.

Determining appropriate sentences for convicted offenders is a courtroom assignment that many judges find as their least favorite. Attempts to change sentencing laws and

practices have been characteristic of our society for some time (Shane-DuBow, Brown, and Olsen 1985). Blumstein et al. (1983:1) reveal that,

The decade of the 1970s was characterized by a variety of efforts to modify sentencing practices, to establish more than detailed criteria for sentencing, and to establish new sentencing institutions and procedures.

In spite of the extensive research which has centered on the sentencing of convicted offenders, our knowledge about the processes and outcomes of sentencing remains limited. In fact, as Gibson (1979:83) points out, "research on criminal court decision making is currently characterized by a significant degree of balkanization." Although much research has focused attention on the selection of particular variables, based on their "criminality prediction" capabilities, the results are far from conclusive.

Issues that currently surround the dispositions of convicted offenders are not new. Many of these issues have been focal points of public debate for decades (Blumstein et al. 1983). The most prevalent concerns are integrated into the following questions: (1) What should we do with convicted offenders? (2) What criteria should be used to determine the appropriate sentences for offenders who commit particular crimes? (3) What, if any, sentencing alternatives should be made available for use by sentencing judges? (4) Are we capable of accurately predicting human behavior to the extent that it is possible to identify and predict

future criminal propensities of known offenders? and (5) Is the current process of sentencing convicted offenders meeting the specified goals established by policy makers? Whereas my research centers on the objective/subjective nature of decision-making in the presentence investigation process of Nevada, the aforementioned issues are germane to this study.

Partridge and Eldridge (1974) found that judges tend to impose disparate sentences even when they are confronted with identical cases. When a large number of jurists were given the task of determining sentences for identical hypothetical cases, the results rarely coincided between those jurists. Differing perceptions of the purpose of criminal law was one of the principle attributes used to explain this disparity. This is understandable, particularly when one considers that the characteristics of retribution, deterrence, incapacitation, and rehabilitation are obviously not compatible (Talarico 1979). Whereas one judge may subscribe to the retributionist orientation of punishment, thereby focusing on the severity of the offense, another judge may focus on the possibility of recidivism, which is a preoccupation of the incapacitation model.

There has been little research into the connection between the preferences of judges and the sentences they impose. Conflict theory has directed much of the research that centers on discretionary sentencing practices of judges, as

well as the effects of extralegal factors associated with sentencing. Socioeconomic characteristics and sentencing practices have also been targeted by researchers (Johnson 1957; Wolfgang et al. 1962; Green 1964; Nagel 1969). Sellin (1928), a pioneer in sentencing disparity studies, examined the relationship between race and sentencing, and found extensive disparity. An underlying assumption germane to many of these studies was that judges, as well as all political actors, seek to reinforce the existing social order rather than administer justice. Most of the research conducted in this area has concluded that within the sentencing process legal variables are often treated as irrelevant factors to decision-makers, while extralegal factors are dominating influences in determining criminal sanctions. In a study conducted by Horgarth (1971) it was noted that while sentencing disparity is common among judges, there is evidence that judges are often consistent in their own sentencing decisions. The primary issues associated with sentencing disparity have yet to be addressed. First, do judges sentence convicted offenders on a basis independent of their work experience? or second, are their decisions shaped by their office? Although this study does not examine sentencing decisions made by judges, it does focus on an integral part of the sentencing process in Nevada--sentence recommendations submitted by presentence investigators of the NDPP. Similar questions to those that

were raised about decisions made by judges are reflected in this study. Do presentence investigators base their decisions on their work experience? or are those decisions based on outside influences?

A key administrator at the NDPP informed me that Nevada's judges concurred with between 85 and 90 percent of the sentence recommendations submitted by that agency's presentence investigation unit, a claim that is astounding when one takes into account that the NDPP is an agency within the criminal justice apparatus--the same institution that prides itself for its pragmatic and/or atheoretical approaches to "solving" the problem of crime. Moreover, depending on the validity of this claim, the key to understanding sentencing processes in Nevada may be located in the presentence investigation unit that boasts such a towering degree of success. Methodologically, this approach to understanding sentencing processes may be superior to canvassing judges who are typically more difficult to access for social research.

Central to this study is the issue of objectivity versus subjectivity in the sentence recommendation process. In other words, are presentence investigation reports based mostly on objective or subjective criteria? Objectivity is perceived by administrators, and many presentence investigators, as the art of detaching one's self during their evaluation of criteria used in determining sentence

recommendations. Moreover, their insistence that objective decision-making is employed in the sentence recommendation process seems to be enhanced through their use of structured forms with quantified indicators of selected variables (e.g, education, employment history, attitude toward offense, etc). Most administrators and presentence investigators attempt to legitimate their actions through numbers.

Conversely, there appears to be concerted effort, on the part of administrators and presentence investigators, to deny professional affiliation with the notion that the nature of an object, as it is known in the mind, is distinct from the thing itself. As Quinney (1970:4-5) points out,

Our observations...are based on our own mental constructions, not on essences beyond our experiences... Thus, our concern is not with any correspondence between 'objective reality' and observation, but between observation and the utility of such observations in understanding our own subjective, multiple social worlds.

Extending this debate, what are the predominate influences which may impinge on the decision-making process of sentence recommendations? Within this context, a methodological question is also prompted: how can those external influences be identified in the everyday processes associated with recommending sentences for convicted offenders? Finally, and perhaps most important, if external influences do affect the sentence recommendation process, what are their consequences?

Chapter two presents the triangulated strategy used during this research to answer the questions raised above.

Different types of research methods safeguard against some of the common pitfalls of social research, particularly in the case of qualitative studies. Validity is a central issue in conducting obtrusive research. Validity refers to whether one is adequately measuring that which is intended to be measured since during interview sessions, or field observations, there is always the risk of data contamination on the part of both the researcher and the participant (McCall 1969; Denzin 1970; Douglas 1976). This chapter reveals the problems encountered, and the attempts to resolve those problems, throughout this study. The topic of research bias, demonstrated in the work of McCall (1969), is addressed in this chapter and six items associated with research bias are considered as points of reference for this study.

Following the advice of Lindesmith (1947), in his study of opiate addiction, a basic assumption of my research was the importance of searching for propositions that applied to as many aspects of the issue of objectivity versus subjectivity as possible. This assumption led me to the inclusion of the third chapter which considers many theoretical orientations in pursuit of propositions which may, or may not, have influence over the decisions made by presentence investigators. The general scope of this chapter is to compare statements made by presentence investigators with selected criminological theories, and/or their propositions,

to determine if these theories/propositions served as influences in the decision-making process. I surmise that, in most cases, these theories/propositions are simply reflections of ideas already developed through the life experiences of these investigators. Many of the ideas expressed by the investigators "fit" very well with many of the theories/propositions selected for this study. However, if these theories are employed at all, they are probably used unconsciously by presentence investigators only because they happen to coincide with the investigators general conservative standpoint of the world around them. In some cases, participants reference to theoretical orientations may be used to legitimate decisions that would otherwise be suspect.

One of the principal goals of presentence investigation reports is to provide the court with a criminal-social history synopsis for criminal offenders. The purpose of this report is to advise sentencing judges in their effort to initiate appropriate sentences for convicted offenders that will be equitable for the state, the victim(s), and the offender(s). Although retribution plays a key role in determining the appropriate sentence, there is also a long-standing concern about the future propensity to crime of the convicted offender. Chapter Four focuses on the issue of predicting future criminal propensity by examining the work of the proponents of the selective incapacitation model

(e.g., Greenwood 1982; Chaiken and Chaiken 1982; and Wilson 1985). While the selective incapacitation model assumes that, through the use of selected variables, future criminality can be predicted, other research contends that this predictive power is questionable. Whereas proponents of selective incapacitation often point to the economic advantage of implementing policies patterned after their model, some researchers question whether or not any economic advantage would be realized. Ethical issues associated with selective incapacitation are also discussed in this chapter.

Chapter Five reflects the core of this research by examining the actual instruments employed by the NDPP in their sentence recommendation process. Each item contained in the NDPP's "Probation Success Probability" form is a target of criticism and/or support regarding its possible relevance to the convicted offender's future involvement in crime. Throughout this chapter it is noted where variables, characteristic of the selective incapacitation model, have been adopted by the NDPP. Obvious proxy indicators (i.e., sex, race, socioeconomic status, etc.), covertly couched in various items contained in this instrument, are illuminated. Moreover, the question of objectivity through quantification is questioned extensively throughout this chapter. This chapter lays the groundwork necessary to fully appreciate the findings of the quasi-experiment presented in Chapter Six.

Chapter Six provides striking evidence that presentence investigation reports are probably more subjective than objective reflections of the sentencing process. This chapter deals with the results of a quasi-experimental method which was employed during this study. Beginning with an overview of the hypothetical cases used in this study, including the researcher's motives while creating the hypothetical cases, it is demonstrated that particular items are more likely to be addressed subjectively than objectively by presentence investigators.

The final chapter of this work connects all of the previous chapters into a comprehensive critique of the sentence recommendation process of the NDPP presentence investigation unit. The conflict theoretical foundation which guided much of analysis of data generated during this research, proved to be crucial in the critique of sentence recommendation policies and practices at the NDPP. Richard Quinney's "Social Reality of Crime" orientation is discussed and the relevance of this orientation to this study is established. This chapter also provides some suggestions for future research as well as policy options for decision-makers who are involved in the sentencing processes of the state of Nevada.

CHAPTER 2

RESEARCH METHODS

Several years ago I had the opportunity to work with a supervision unit of the Nevada Department of Parole and Probation (NDPP) as an intern. During that period I found myself confronted with situations that were similar to previous experiences I had encountered while working for a U.S. Army CID (Criminal Investigation Division) unit in narcotics.¹ My supervisor shared knowledge of my past CID experiences with many of his colleagues, which made it possible for me to be readily accepted into the supervision unit as "one of the guys." One year following that internship, I completed another at the Nevada Department of prisons where my duties included "counseling" inmates, working on a procedural manual, and writing parole board reports for parole applicants. Many of the reports were for inmates whom I had never met. After completing my undergraduate degree, I accepted a position at a federal "halfway house" as a senior case manager. That position required me to become involved with practitioners who worked for the U.S. Parole and Probation Department, and others who were employed by the Federal Bureau of Prisons. The purpose of introducing this information is not to present myself as an "expert" in the day-to-day operations of the NDPP, or other institutions previously mentioned, but to suggest that

these experiences have assisted me in understanding many of the functions associated with those institutions. Moreover, those experiences sensitized me to the dilemmas faced by criminal justice practitioners, as well as helped me to understand some of the needs of convicted offenders. Hence, these experiences have provided me with a "quasi-insider's" perception of the institution of parole and probation.

Since this study focused on the objective/subjective nature of decision-makers in the presentence investigation report process, it was also necessary that I consider my own subjective nature in conducting this study as well as analyzing the collected data. In order that I might guard against possible biases that developed as a result of my experiences within the criminal justice system, I thought it necessary to select a triangulated strategy for conducting research at the NDPP. Based on my "quasi-insider" status and understanding of the language and general philosophy of the NDPP, it could be argued that participant observation is an integral part of that triangulated strategy. During the months spent conducting interviews at that agency, I was able to make some observation of the daily routines and discussions that transpired between presentence investigators both inside and outside of their private offices.

Interviews conducted with participating investigators, were also a data-gathering method employed by this study,

following a loosely constructed interview schedule which was designed to allow participants the opportunity to "take the interview where their interests laid" (See Appendix One). This approach proved to be very successful since it allowed me the opportunity to compare the interests and concerns of participants without leading them in specific directions. It became apparent, early in this study, that most participants shared similar interests and concerns, and many harbored the same perspectives regarding sentencing policies and convicted offenders. The interview schedule contained closed-ended questions at the beginning which were designed to evaluate participants attitudes about particular social issues (e.g., crime, homelessness, welfare, etc.) Although some of the responses to these items proved useful, the principal purpose of including these questions fulfilled participants expectations of "what interviews are supposed to be." In other words, these questions legitimated the interview process in the eyes of the participants.

The third facet of this triangulated approach includes document analysis. This part of the study was restricted to the analysis of those sections of the Nevada Revised Statutes which pertained to presentence investigation reporting. Analysis of the primary instruments used by the NDPP presentence investigation unit was also included in this study (See Appendix Two). The results of analyzing these instruments are the primary focus of chapter five, but

for now it is important to point out that the NDPP presentence investigation unit is bound by legislative and executive mandates to specific duties and responsibilities.

Finally, a quasi-experimental method was used, in part, to establish the extent of external influence in the decision-making processes. Many of the expressed ideas presented throughout this work were extracted from statements made by participants as they completed the experiment. The quasi experiment consisted of two hypothetical criminal cases which constituted a scenario set (See Appendix Three). Each participant was required to review the information provided for both cases and, implementing normal presentence investigation report procedures, a sentence recommendation was made for each hypothetical criminal case. One key administrator reviewed the hypothetical cases and indicated that, "These cases are very typical of the ones that our officers are normally confronted with everyday."² The results of this quasi experiment are discussed in Chapter Six.

THE RESEARCH PROCESS

Administrative approval for conducting this study was no easy chore. A number of changes were required before data collection could proceed. Certain political issues created a barricade for the entire study. Initially, the project was approved by the Division Manager of the presentence investigation unit at the NDPP located in Las Vegas, Nevada.

Several days later, in the middle of data collection preparations, I received a notice that the project was no longer sanctioned by the NDPP. It seemed that the District Administrator had not been consulted about the study, and as a result felt compelled not to permit the study to proceed as scheduled. This was obviously connected to an interdepartmental policy of using the "chain of command" inappropriately. Nevertheless, the rationale given for curtailing the project stemmed from the contents of several items contained in my interview schedule, notably, items dealing with the topics of abortion, capital punishment, and job discrimination which were viewed as inappropriate.³ The administrators felt that these topics were too "intrusive" for their employees. Through extensive negotiations it was agreed that the items pertaining to abortion and job discrimination would be omitted from the interview schedule. However, as the interviews proceeded, without my raising the censored issues myself, participants introduced and addressed these issues themselves.

Interestingly, administrators had no objection to the use of a scenario set which was designed to determine the extent of subjectivity in the sentence recommendation process. The only significant comment about this scenario set came from one administrator who stated, "It was a waste of time to use this method [scenario set] because all of the officers have to follow strict sentencing guidelines," and predicted that,

"all of the recommendations will be the same."⁴ This statement was later corrected by the same administrator who conceded that, "There may be a slight difference in scores, but the outcomes will all be the same." In retrospect, I have the feeling that this administrator actually believed their sentence recommendation process was truly an objective process.

Following final approval to proceed with this study, one administrator informed me that a memo would be distributed throughout the presentence investigation unit indicating that the research was sanctioned by the NDPP and that all officers would be required to participate. I raised objection to this memo, stating that it was my intention that participation in this study would be voluntary and that I did not want presentence investigators ordered to participate. I told the administrator that previous experiences demonstrated that forced participation was potentially disastrous.⁵ I also asked that the investigators not be "prepped" regarding the scenario set. One administrator viewed this latter request as offensive, but I told the administrator that there was no malice behind my request, and that "I just wanted to be certain that data from this method was not contaminated."

The setting for this study was the offices of the presentence investigation unit of the NDPP in Las Vegas, Nevada. There are approximately 30 officers working in the

presentence investigation unit, and 17 of those voluntarily participated in this study. The interviews were conducted in the private offices of participating investigators. Each office was unique, since presentence investigators were allowed to furnish their offices according to their own tastes (e.g., picture, photographs, and other personalized paraphernalia). Although this is not a study about the meanings of symbols, several interviews and scenario sets later, I found myself accurately "guessing" (10 out of 12 relatively successful "guesses") what type of sentences my hypothetical criminals would receive by observing office decorum of the interview settings.

Participants were selected on the basis of time compatibility and the willingness of individual investigators to participate. Scientific sampling methods were not employed, largely because it was impractical for such a small population, but also because it was not my intention to make generalized statements concerning the findings of this study.⁶ Each interview began with the formality of exchanging forms which confirmed investigators' understanding that their participation was voluntary, and my assurance that confidentiality would be strictly adhered to, and that responses would not be connected to participant identifiers. The length of the interviews ranged from two and one-half hours to over five hours. Some of the interviews were carried over to the next day because of

official obligations of the participants (e.g., mandatory court appearances, training sessions, etc.) Completing the scenario set was an integral part of the interview process.

Questions about the background of the participant (e.g., education level, length of employment at NDPP, previous employment experiences, marital experiences, etc.) were used at the beginning of each interview. The interview then moved to areas such as social issues such as crime, poverty, welfare, women's movement, etc. Attitudes toward these issues were being sought. Topics which focused on types of offense which participants found most appalling, differences in criminal behavior between males and females, problems within the criminal justice system (e.g., law enforcement, prosecution, and courtroom function, etc.) were also explored. It was generally during this phase of the interview that I allowed participants the freedom to talk about things that they felt were important to understanding the sentence recommendation process. Frequently, participants views about the policies of the NDPP would surface, and the participants would often vent their frustrations about the rigors of their jobs (e.g., large case loads, insensitivity of supervisors and administrators, favoritism in promotions, etc.). In most cases the participants would then begin to express their views about criminal offenders (e.g., why do offenders commit crimes? what should be done with convicted offenders? the perils of

failing drug laws, how to identify offenders who are likely to commit future offenses, etc.). Some participants shared their personal feelings about previous cases they had encountered, and others enjoyed revealing "war stories" about some of the "assholes," "pukes," "fuckheads," etc. whom they had "busted," "revoked," and "beat the shit out of" over their years in the "trenches." Although the validity of these stories is clearly questionable, this information was particularly revealing and interesting to a researcher who was studying the objective/subjective nature of decision-making in the sentence recommendation process.

HYPOTHETICAL CRIMINALS AND DOCUMENT ANALYSIS

A crucial part of this study hinged on the successful application of the quasi-experimental method, which was constructed from past research experience, and analysis of pertinent documents related to the presentence investigation process. Hypothetical criminal cases were created on the basis of my past experience of working with offender records, and took into account the requisites set forth in the Nevada Revised Statutes which regulate the sentence recommendation process, and the instruments used by the NDPP to "calculate" appropriate sentence recommendations.

First, after a careful analysis of the "Probation Success Probability" form used by the NDPP, the main instrument used to calculate sentence recommendations that are forwarded to the court, I determined that most items could be measured

for each hypothetical case. Second, I considered the mandates set forth in the Nevada Revised Statutes which provide the foundation for recommending sentences by the NDPP. It became obvious that the NDPP had met the statutory requirements, and had constructed an elaborate process for evaluating necessary criteria, much of which had obviously been influenced by the selective incapacitation model of Peter Greenwood (1982).

Each of the two hypothetical cases contained in the scenario set had necessary demographic characteristics (e.g., age, education, race, sex, etc.) and the required social (e.g., employment history, occupation, marital status, etc.) and criminal (e.g., prior arrests, convictions, incarcerations, etc.) history information. Also included were the "offender's" statement of the circumstances surrounding the instant offense (the offense which resulted in the current conviction), as well as the arresting officer's statement. Moreover, results from plea bargaining negotiations were also included. The major fault with this method lies in the fact that face-to-face interviews with the "offender" are not provided, nor were participants able to interview others who had knowledge of the instant offense (e.g., the victim) or the offender (e.g., parents, spouses, employers, etc.). Although one administrator commented that, "Interviews with offenders are only used to verify information already known by the

investigators,"⁷ participants quickly pointed out that interviews with convicted offenders often determined the sentence recommendation outcome. As demonstrated in subsequent chapters, many participants view interviews with convicted offenders as a time when they can determine the candidness of offenders, make determinations regarding the probability of offenders successfully completing supervision programs, and, in rarer cases, simply get to know the offender better.

VALIDITY AND RELIABILITY

Validity is a central issue in conducting qualitative research. Validity refers to whether one is adequately measuring what is intended to be measured. During the interview, or while conducting field observations, there is always a risk of contaminating the data by the researcher and/or the participants.

According to McCall (1969), there are many sources of research bias. First there is the issue of knowledgeability: are the participants in a position to have valid knowledge of what they are reporting? Not only were the participants in this study in a position to know about the processes linked to presentence investigation reports, but they were key actors in that process. However, most participants were rarely aware of the subjective nature of that process. Moreover, most participants were cognizant of their own views and feelings when it came to recommending

sentences, or explaining why convicted offenders committed the instant offense. Subsequently, the issue of knowledgeability was not perceived, at least by this researcher, to be a major problem for this study.

The second issue is reportorial ability: do participants express themselves well, have clear and reliable memories, and do they have sufficient self-confidence to respond to probing questions without feeling their integrity is being challenged? The participants were, for the most part, not hesitant to express their views about issues related to this study. Furthermore, since the interviews were conducted in the participants private offices, when they could not remember the facts surrounding specific instances they were able to go to their files for the purpose of "refreshing" their memories. Participants did not appear to view probing questions as an attack on their integrity, which can possibly be attributed to their cross examination experiences in courtroom activities. As previously mentioned, participants rarely failed to be candid in their views about issues surrounding this study. This was particularly evident following the completion of "canned" questions contained in the interview schedule. Moreover, because the interviews were conducted in the familiar surroundings of the participants private offices, they did not feel threatened. They exhibited exceptional composure in those "friendly" settings. In fact, I had the impression

that some participants believed they were in control of the interview process because of their positions behind their own desks. This was particularly true when they were given the freedom to focus on issues that they wanted to discuss.

The third issue McCall (1969) focused on was reactivity: are participants trying to give the researcher the kinds of responses they think are being sought? are comments and reactions of the researcher causing the participants to answer or respond in certain ways? In many cases, particularly at the beginning of each interview, participants attempted to "trivialize" the study as another academic inquiry into the criminal justice system. It was not uncommon for participants to state, "I know that you are from the university and, well quite frankly, I don't think people connected to the university understand much about what we do here."⁸ I would normally respond to such statements by asking the participant, "Then why don't you go ahead and explain to me just what you do here?" As most interviews progressed, participants seemed to be very straight-forward with their responses and views, and losing sight of what I may or may not want to hear, they talked about things they wanted to talk about. This technique possibly promoted the idea that the study was genuinely concerned with the "real" operations of the sentence recommendation process. Much of the graphic language used by many presentence investigators may have been a test to

see if they could "shock" me.⁹ Whether or not my remarks or comments were construed by participants to be leading or misleading is a topic for further research. I made every attempt not to lead or solicit particular kinds of responses by the participants. Actually, my approach, which allowed participants to "take the interview where they wanted it to go," was somewhat of a safeguard against researcher bias.

The next item of concern is that of ulterior motives: is the participant trying to slant the results of the research in a particular direction? In most cases, throughout the entire interview process, I would have to respond "yes." Early on it became obvious that many participants were avid supporters of the current sentence recommendation process. Most participants seemed to believe that the process was extremely objective, which is how they presented their perception of that process. Nearly all participants attributed the high level of objective decision-making to the numerical scores for indicators which they selected from each item contained in the evaluation instrument. However, as chapter six will demonstrate, subjectivity seems much more prevalent than objectivity.

Another item of concern in qualitative research is barring spontaneity: was someone else present or was there a chance that someone might overhear the interview and thus cause the participant to be hesitant to respond truthfully? The scope of this study is conducive to participant apprehensiveness,

particularly in the area of sensitive questions raised by the researcher, or initiated by the participant. The possibility of reprisals, by administrators, against "identifiable" participants who gave "wrong responses" was always a concern to this researcher. Since the interviews were conducted in participants private offices, I felt that it was unlikely the interviews could be overheard, although the thought of "secret microphones" installed somewhere in the office did cross my mind from time to time. As an added precaution, although limited to demonstrating my own sincerity in assuring complete confidentiality, I gave each participant a signed form guaranteeing that their responses would be kept strictly confidential, and insuring that every precaution would be taken not to link individual responses, or statements with identifiable characteristics of participants. In a system where signed documents for a variety of purposes (e.g., CYA [cover your ass], "hanging" internal and external "enemies," etc.) are a "way of life," this document appeared to be generally accepted in the spirit that it was offered.¹⁰ It was also necessary to develop a trust/bond between researcher and participant, and my past experiences within the criminal justice system tended to serve as the nucleus of that trust/bond relationship. There were only two cases where I sensed that the participants remained on constant "guard" of their responses throughout the interview process. As an

additional precaution I did not identify participants by either race or sex. Moreover, in the case of potentially compromising statements that could be linked with particular participants, I have taken the liberty of omitting them from my findings.

The final item addressed by McCall (1969), which pertains to this study, is idiosyncratic factors: was the participant in a particular mood prior to, or during, the interview that might influence his or her responses? Throughout the interview process of this study it was clear that participants were under a great deal of stress. Some of the stress obviously was a result of the demands of the supervisors or administrators, but other sources may have also been contributing to their stress as well, particularly the gravity or nature of the position--having such a tremendous amount of power over the futures of convicted offenders. As one participant expressed, "Whatever the recommendation is that we give to the court, it will have an impact on the offender's life from that time forward."¹¹ Some participants took advantage of the opportunity to have someone (anyone) listen to their frustrations. Obviously many of their frustrations were directed at both supervisors and administrators, as well as convicted offenders. For example, one participant vented, "The administrators and supervisors don't know what the fuck they are doing when they give us so many cases to do."¹² Without hesitation I

surmised that this type of comment might suggest that the participant was not in a "good" mood. In another situation, however, one participant stated, "I love my job, and everyone is willing to give me support."¹³ In these situations I viewed the participant as probably being in a "good" mood, although when judged against the majority of participants, I wondered if the remark was not an effort to conceal frustrations. Interestingly, most participants, regardless of their particular mood, nearly always defended the process of preparing presentence investigation reports. In many cases they adamantly defended the notion that this process was mostly objective. Of course this could be the result of legitimating the role one finds him/herself situated in (presentence investigator), and the functions performed in that role (providing judges with sentence recommendations for convicted offenders). This whole idea of objective decision-making occurs in a setting where subjectivity is treated as if it were a disease rather than a natural response exhibited by subjective beings.

In addition to pointing out potential pitfalls associated with qualitative research, McCall (1969) also draws attention to two things which can be done to protect the validity of qualitative studies. First, inquire whether the account is plausible, whether it makes sense based on the researcher's understanding of human behavior. I have assumed that my "quasi-insider" understanding of

practitioners working at the NDPP enabled me to discern the plausibility of participants accounting. Many of their responses coincided with views and expressions made by officers working in the NDPP supervision unit. Moreover, the views of the participants corresponded to those views held by other practitioners in other criminal justice agencies with which I have been involved (e.g., U.S. Department of Parole and Probation, Federal Bureau of Prisons, Nevada Department of Prisons, and the U.S. Army CID).

The other suggestion offered by McCall (1969) focuses on the data consistency from individual participants. In other words, and in harmony with Jack Douglas' (1976) perception of many participants, were the respondents lying? Although the possibility of participants lying is probably always present, I did not undertake this research with the assumption that everyone I talked to would lie to me. On the other hand, I did not enter the interview session completely naive, thinking that each participant would reflect "reality." Precautions were taken to verify the expressed views of participants, particularly in the area of objectivity versus subjectivity. The use of the scenario set was the means to differentiate between "what was claimed" and "what was actually done." For example, most participants claimed that their involvement in the decision-making process of recommending sentences for convicted

offenders was almost entirely objective. Yet, the results of the quasi-experiment critically questions those claims. However, this does not mean that the participants were lying, but rather reflects that their self-perceptions differ from their actual performances. In short, most participants, like the previously mentioned administrators, apparently believe that what they do is directed by objective decision-making.

In the case of reliability, which can be enhanced by improving validity, the concern is with the idea that two researchers working independently of each other, and with the same data, will arrive at similar conclusions. The issue of reliability is not as salient as validity in the constant comparative method. However, according to Glaser and Strauss (1967:103), the constant comparative method,

...is not designed to guarantee that two analysts working independently with the same data will achieve the same results; it is designed to allow, with discipline, for some of the vagueness and flexibility that aid the creative generation of theory.

The probability of independent researchers arriving at identical conclusions in this study is not likely, precisely for the same reasons that qualitative research holds an advantage over more structured methodologies. Individuals realities are often restricted by their experiences and perceptions of the world around them. Nevertheless, I feel confident that other researcher could follow my study of the objective/subjective nature of decision-making at the NDPP

concluding, as I have, that subjectivity best describes the decision-making process. The specifics associated with the findings may vary, but the general conclusions would be very similar.

NOTES

1. The most notable situation occurred when I accompanied my supervisor, members of Las Vegas Metropolitan Police Department narcotics unit, and a representative from the District Attorney's office (Clark County, Nevada) on a drug raid. My supervisor had, on a previous occasion, informed members of the narcotics unit that I worked with the NDPP, and no one bothered to inquire as to the capacity in which I worked with the NDPP. I watched as balloons were being filled with "china white" heroin for the purpose of "baiting" a suspected heroin dealer. When the actors of this group initiated the drug "bust" at a house in Las Vegas, I could help reflect my past experiences in performing similar tasks. Based on my previous experience with CID, it seemed that the tactics employed were somewhat of an overkill. The house was completely "trashed," and the only drugs that were confiscated were a few ounces of marijuana. Nevertheless, it appeared that most of the participants of the raid had a "good time."

2. Informal interview with an administrator at the Nevada Department of Parole and Probation.

3. The topic of abortion was never initiated by me during any interview with presentence investigators, although several participants raised the issue themselves. Apparently those particular participants, unlike the administrators, felt that the topic was not intrusive. The same can be said of capital punishment, which all participants discussed freely and, without reservation, expressed their views about this issue.

4. Discussion with administrator at the Nevada Department of Parole and Probation.

5. During an earlier study of the Nevada Department of Prisons I encountered a situation where a warden instructed inmates that they were required to participate in a study focusing on recidivism. The results were disastrous (contaminated data), and I did not intend to repeat the experience during this study.

6. Although I make no claims of generalizing the findings of this study to other jurisdictions, I am not professing that these findings would not apply to other areas.

7. Discussion with administrator at the Nevada Department of Parole and Probation.

8. Interview with presentence investigator conducted at the Nevada Department of Parole and Probation.

9. The "shock test," as I refer to excessive profanity used by some participants of this study had very little effect on me. Actually, I find such language an inherent part of many criminal justice practitioners throughout the criminal justice system. Of course this "colorful" display of rhetoric is generally reserved for "behind the scenes" display, it is rarely demonstrated in front of a camera or in the courtroom. This phenomenon is indicative of Goffman's "Front stage-back stage" analogy of human behavior.

10. Each participant signed a form acknowledging that they understood the purpose of this study and that their participation was completely voluntary. Furthermore, each participant acknowledge that the only promise provided by the researcher was complete respect for confidentiality.

11. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

12. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

13. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

CHAPTER 3

CRIMINOLOGICAL THEORY AND ITS INFLUENCE ON CRIMINAL JUSTICE DECISION-MAKERS

You know, Sutherland's theory said that crime is a product of the neighborhood, and that is why so many of these blacks get caught. They just don't have the intelligence to keep themselves from getting caught. They just insist on hanging around their neighborhoods and getting involved in crime with all of their relatives and friends. They don't want a job like the rest of us. They like committing crimes. Life has no meaning for them.¹

Many aspects of early criminological thought appear to be "institutionalized" in the minds of today's criminal justice practitioners. If classical and positivist theories have actually influenced practitioners working in the criminal justice arena, they have had, inadvertently in many cases, a consequential effect. This is particularly true in the offender identification and sentencing processes where decisions are often based on a "gut instinct" about the offender's degree of culpability, and sanctions are "scientifically" tailored to "fit the crime." In some instances these early theories seem to be situationally splintered to accommodate personal, political, or professional interests rather than providing a foundation for objective decision-making.

Throughout the past few years I have interviewed more than 75 criminal justice practitioners in the fields of law enforcement, parole and probation, corrections, and the courts. Their occupational positions have ranged from a

Director of Prisons to prison guards, from a Director of Parole and Probation to individual parole officers, from judges to defense attorneys, an under-sheriff and many police officers. Various topics associated with criminological thought have surfaced periodically during those interviews; typically, they were presented in the form of single propositions, common-sense assertions, or nonsensical beliefs propagated from personal experiences which were colored with individual prejudices.

Many interviews later, I have arrived at the conclusion that, in a formal sense, contemporary theories about crime and delinquency have very little direct influence on criminal justice practitioners in their day-to-day decision-making processes. Based on the findings of this study, it appears that presentence investigators do not seem to be guided by any theoretical orientation that is not confined to the identification of offenders, or proscription of particular sentences for particular crimes. Their understanding of the etiology of crime, along with most other nonprofessionals, coincides with one or more propositions of a limited number of theories that try to explain why people commit crime. Nevertheless, they draw on fragments of those propositions in their selection of who goes to prison and who receives probation. The fundamental issues at hand for this chapter suggest that the views of many criminal justice practitioners tend to parallel, rather

than follow, classical and early positivist ideas about crime which were also preoccupied with sentence prescriptions and offender identification. In addition, this chapter will demonstrate that selected theories associated with the etiology of crime are reduced to fragmented individual influences, and seem to serve as justification for decisions rather than standardized guidelines for presentence investigators. Of course this could also simply be a reflection of underlying conservative assumptions of the classical theories that tend to mirror their conservative perceptions of the world.

Today's presentence investigators, who are influential contributors to the judicial branch of the criminal justice system, are very similar to classical criminologists who were rarely concerned with, or influenced by, the mitigating circumstances associated with criminality, as well as the early positivists who focused on the individual as the cause of crime. This may suggest that: (1) criminology has either failed to progress much over the past couple of centuries, particularly in the area of providing concrete theoretical orientations that are worthwhile for criminal justice practitioners; (2) academia has failed to equip these practitioners with an adequate theoretical foundation during their education process; or (3) Criminal justice agencies and practitioners simply don't care why people engage in crime--they just view themselves as processors; or (4) all,

or any combination of the above. In any case, a discussion of classical and early positivist criminology is a crucial building block for the foundation of this study.

Many of the early beliefs about crime, criminals, and sanctions during the 18th and 19th centuries continue to flourish in the 20th century American criminal justice system. An understanding of these two early schools of criminology provides an insight into the decision-making process of contemporary presentence investigators. Although these schools of thought may not specifically direct decision-making, many of their ideas clearly coincide with the general thoughts and beliefs of many criminal justice decision-makers.

THE EMERGENCE OF CLASSICAL CRIMINOLOGY

It makes very little difference why the offender becomes involved in crime. Actually there are no excuses for criminal behavior. Most people have experienced difficulties in their life--some emotional and others economic--and they don't resort to crime so why should these offenders be given consideration for their alleged mitigating circumstances? Laws are passed to protect law abiding citizens, and there should be no exceptions. If we didn't incarcerate these people they would take over the city. Everything that we have now would be gone. The criminals would take it all. I wish there was more prison space so we could lock more of them up. That would be a solution to today's crime problem.²

Early beliefs about crime centered on demonology where the criminal was believed to be possessed by the devil, or influenced by other supernatural powers which required bizarre rituals and magical operations to rid the individual of these influences. The rise of Christianity fostered the

belief that individuals, not demons, were responsible for violating social rules. The notion that individuals were responsible for their socially acceptable as well as unacceptable behavior became part of both ecclesiastical and criminal law.

Classical criminological theories emerged, in part, as a response to the ecclesiastical explanations of crime which linked the causes of criminal behavior to supernatural phenomena (via sins), and the remedy for that criminality was thought to be found in retribution. Hobbes' "bellum omium contra omnes" (the war of all against all), and Montesquieu's eternal and universal laws of nature, played an essential role in refuting supernatural explanations of deviant behavior, and assisted in the construction of a foundation for the Classical School of Criminology.

Opposed to the discretionary and cruel practices of the State, the Enlightenment Philosophes called for justice and more humanistic modes of punishment for criminals.³ On the surface these pleas seemed benevolent enough but, masked beneath the outer veneer, other motives were perhaps busy at work. Social unrest escalated as the Industrial Revolution gained momentum, resulting in greater inequality for opportunities and property ownership. The security and stability of the middle and upper classes were viewed to be at risk as the social reality of the lower classes became more pronounced. The "humanistic" movement to abolish

barbaric practices in the treatment of law violators served to maintain control over the masses and protect the status quo. This maneuver was social control masquerading as compassion and concern for human dignity and suffering. Moreover, there was a need to "market" the State as a legitimate enterprise.

Throughout Europe, with the exception of England, the 17th and 18th centuries were characterized by a criminal processing procedure that was secretive from both the public and from the accused. Magistrates and judges enjoyed unhindered discretionary powers. Confessions were obtained by coercive means (usually torture), and punishment (e.g., the gallows, the guillotine, the "wheel," and other inhumane punishments) frequently turned legal sanctions into public spectacles. For example, public uproar occurred when Robert Francois Damiens was executed for the attempted murder of Louis XV of France. In a tormenting execution process which lasted hours, he was burned with molten lead, skinned, and "quartered" in public. People occasionally became unruly during many of these public executions, and often directed their scorn, not at the condemned person, but toward the State and/or Church. Quite frequently people would gather around the scaffold, and as Foucault (1977:60) notes,

...it was not simply to witness the sufferings of the condemned man or to excite the anger of the executioner: it was to hear an individual who had nothing to lose curse the judges, the laws, the government and religion.

Death was the prescribed sanction for over 200 criminal offenses during the 18th century, with property offenses disproportionately over-represented on the list of capital offenses. As poverty and unemployment increased, accompanied by the rise of unequal property distribution, the frequency of property offenses escalated.

Cesare Beccaria and Jeremy Bentham, now considered the founders of classical criminology, were adamantly opposed to the criminal processing procedures of the 18th century. Their principal focus was on the punishment process but they were careful not to threaten the status quo, or to question the unequal distribution of property. They reinforced the social reality of inequality through their legal and penal reforms by augmenting social control of the "dangerous class" which was comprised of the unemployed and unemployable. This was accomplished by ignoring mitigating circumstances associated with crime (e.g., stealing food out of hunger).

Discarding all predispositional explanations of crime, they promoted the idea that people were rational and free-willed beings who were capable of choosing between right and wrong. They focused on the administrative and legal aspects associated with crime, and ignored the etiology of crime altogether. As Vold (1958:26) suggests,

It seems fair...to characterize the Classical School as administrative and legal criminology. Its great advantage was that it set up a scheme of procedure easy to administer. It made the judge only an instrument to

apply the law, and the law undertook to prescribe an exact penalty for every crime and every degree thereof. Puzzling questions about the reasons for or causes of behavior, the uncertainties of motive and intent, the unequal consequences of arbitrary rule, these were all deliberately ignored for the sake of administrative uniformity. This was the classical conception of justice--an exact scale of punishments for equal acts without reference to the nature of the individual involved and with no attention to the question of special circumstances under which the act came about.

Taking the utility of law into account, Beccaria (1764, 1963:30) argued that coerced confessions were contrary to the principle of the law,

...the fact of the crime is either certain or uncertain; if certain, all that is due is the punishment established by the laws, and tortures are useless; if uncertain, then one must not torture the innocent, for such, according to the laws, is a man whose crimes are not yet proved. One of the primary problems with the idea of deterrence is that it takes months for a defendant to go to trial, and by the time he gets to trial any subsequent punishment is too late. Most people in the community realize that most criminal acts go unpunished so many become involved in crime by betting on the odds that they will not get caught. Even if they are apprehended they probably won't be punished.⁴

Beccaria was also concerned with the utility of deterrence. He believed that it would be more economical to dissuade "potential" criminals from engaging in crime, as well as active criminals from committing more crime, through deterrence rather than through punishment. He emphasized the utility of swift punishment:

I have said that the promptness of punishments is more useful because when the length of time that passes between the punishment and the misdeed is less, so much the stronger and more lasting in the human mind is the association of these two ideas, 'crime and punishment' (1764, 1963:56)

Jeremy Bentham (1780, 1973:170) realized the utility of punishment and its relationship to social control. He was aware of the potential dangers associated with excessive punishment (e.g., rioting and demonstrations by the masses, and particularly the potentially dangerous lower class who had little to lose in the event of social uprisings). He said,

All punishment is mischief; All punishment in itself is evil. Upon the principle of utility, if it ought to at all be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil.

Like Beccaria, Bentham took the position that the punishment should fit the crime, and he set out to create an elaborate scheme to assign "appropriate" punishments for all crimes. Legislators were also target for Bentham's criticisms. He argued that legislators must follow specific rules of utility when they establish prescriptions for punishment. The ultimate goal of punishment should be to discourage all crime. The pleasure one received from committing a crime should be met with a particular punishment that discouraged similar acts in the future but must not be in excess, since adopted policies which promoted excessive punishment could result in revolt by the lower classes who were more likely to be affected by such policies, thus bearing the brunt of excessive punishment. The threat of punishment should serve as a general deterrent for the masses. However, if a person insisted upon committing a crime the punishment should not encourage unnecessary damage to be committed by the

perpetrator (e.g., if the committed offense was robbery, the punishment should not be so severe as to induce the perpetrator to murder witnesses in order to escape the sanctions set forth for robbery). Finally, he recommended that legislators should strive to keep the costs of crime prevention at a minimum.

Beccaria and Bentham sought efficiency in the processing of criminal offenders. But efficiency was incapable of controlling the spiralling increases in criminality. In fact, their legal and prison reforms resulted in the overcrowding of a vast network of institutions which was a product of those reforms.⁵

POSITIVIST CRIMINOLOGY SURFACES

I read statistics about crime and it makes me damn mad. The number of crimes committed continue to increase. Prisons are overcrowded and so are the jails. Something must be done to reduce the case loads in the courts. I continually see the same type of people coming through my office. Most of them are too lazy to work... When I look at their criminal histories I look for certain patterns of behavior. The criminal history is the only reliable piece of information that I have found to predict behavior. Well, that's not completely true. Body language plays an important part in determining whether a person is telling the truth. I can observe their body language while they sit in my office, and that tells me whether or not they are worthy of getting probation. If they act like a smart ass, you know, over-confident, then I know they are not good candidates for probation. I have got this down to a science.⁶

Positivism is a philosophy rather than a theory and can be divided into at least two distinct categories. Positivism can be perceived as an 18th century artifact of the Enlightenment with a focus on reason, or it may be viewed as

a 20th century rendition of the Enlightenment with a focus on mathematical reasoning and formal modes of thought. Epistemologically, positivist criminology is an approach which uses traditional scientific methods of inquiry to explain crime, or criminal behavior.

Economics, curiosity, statistics, and the dissatisfaction with the classical approach to crime gave rise to the Positivist School of Criminology. Early in the 19th century it became clear that the classicist's elaborate scheme of prison networks, and their views of general deterrence were shortsighted. New institutions became filled as fast as they were constructed, and eventually overcrowding became "normal." Ignatieff (1978:154) points out, "Between 1810 and 1819, the number of adult males committed for trial soared from 66 per 100,000 to over 200. This drastic increase brought chaos to the prisons." Unlike the Classicists who ignored mitigating circumstances associated with crime, people who were being taxed to support this prison expansionism demanded explanations for the increased criminality. Statistics became useful in the analysis of data collected on "dangerous" populations, and positivist criminology promised to provide answers to questions that centered on the etiology of crime. The Positivist School of Criminology was responsible for the shift of focus from the "crime," which assumed free will and moral responsibility, to the "criminal."

Adolphe Quetelet, a Belgium astronomer, built the foundation for positivist criminology through his work in statistics. His quest for identifying law-like regularities in society, using traditional scientific methods, resulted in an interest in studying crime by studying the rates of crime. Quetelet looked at official crime data for France and found striking regularities within the French criminal justice apparatus. He found consistencies in the number of defendants who failed to appear in the courts. Certain courts were also found to be more likely to impose particular sanctions for particular offenses. Looking at different types of crimes committed in France between 1826 and 1829 he concluded,

So, as I have had occasion to repeat several times before, one passes from one year to the other with the sad perspective of seeing the same crimes reproduced in the same order and bring with them the same penalties in the same proportions (1831,1984:69).

Identifying a correlation between crime and the ability to read and write, Quetelet found that, as reading and writing proficiency increased, the frequency of criminal acts decreased. For example, looking at the years 1828 and 1829, he was able to identify over 2000 crimes against the person committed by people who could not read or write. During the same period he noted that only 80 similar offenses had been committed by people who have received "superior" academic instruction. He found that the more superiorly educated were much less likely to be involved in property crimes than

their uneducated counterparts. He identified 206 property offenses committed by the well educated compared to 6,617 like offenses committed by illiterate offenders during the same time period. These phenomena were explained by Quetelet, as follows;

It is possible, in fact, that individuals of the knowledgeable class of society, while committing fewer manslaughters, murders, and other serious crimes than those individuals who have not received any instruction, nevertheless commit even fewer crimes against property...This conjecture likewise becomes probable if one considers that the knowledgeable class implies more affluence and, consequently, less need to resort to the different varieties of theft which make up a great part of crimes against property; while affluence and knowledge do not succeed as easily in restraining the fire of the passions and sentiments of hate and vengeance (1831, 1984:25).

Later, he turned his attention to the propensities for crime, and found striking correlations between crime and independent variables such as age, sex, climate, and socio-economic status of offenders. Young males between the ages of 21 and 25 were found to have the highest propensity for crime, while women had the lowest. When Quetelet compared female and male offenders he discovered that males committed nearly four times as many property offenses as women, and they were involved in over six times the number of violent offenses committed by their female counterparts. He also noted that violent offenses were more likely to occur in the summer months, and property offenses were more commonly committed during the winter. The poor and the unemployed were found to have a higher propensity for crime than

members of the working and upper classes. He also discovered that economic changes were related to crime rates, surmising that society itself, through its economic and social attributes, was responsible for crime. While people may have free will there were, nevertheless, scientific laws to which criminal behavior was responsive.

Recognizing that all people had the "capacity" to commit crime (an idea that would later be adopted by neo-Freudians), Quetelet argued that the average person rarely transferred that option into action. He eventually turned away from the social influences of criminal behavior (as most contemporary criminologists have done), and focused on the correlation between crime and morality, suggesting that certain "types" of people were more prone to criminal behavior than others (e.g., vagabonds, gypsies, and others with "inferior moral stock").

Explanations of criminal behavior near the end of the 19th century, and extending into the 20th century, continued to be overshadowed by positivist criminology which was dominated by the disciplines of biology and psychology; psychology in particular was indicative of the individualistic approach to deviant behavior, although often both disciplines complemented each other. The individual was perceived to be autonomous and free of group restrictions. Hence, all forms of deviant behavior were viewed as attributes of the individual. Criminals came to

be considered atavists with conspicuous evolutionary deficiencies.

Lombroso, an Italian military physician, proposed the idea that criminals could be identified through unequivocal physical stigmata, such as a large jaw, excessive hair (or abnormal absence of hair), slanting forehead, and scores of other physiological characteristics. Adamantly opposed to the classical free will orientation, he felt that criminals were predisposed to criminal behavior, and that criminality could only be explained through objective scientific methodology with its emphasis on value-free empirical evidence.

Passing through several stages of development, Lombroso's work increased in complexity with each subsequent phase. His earlier work, focusing on the "born criminal," was little more than an analogy of the similarities between criminals and lower form animals, and early humans. Revising his earlier thesis of the born criminal, and in accord with the spirit of positivism, Lombroso later categorized other types of criminals. He eventually acknowledged that all criminals were not atavistic, but nevertheless continued to include the born criminal in his taxonomy of criminal types. Also included were the insane and the epileptic criminal (criminality through disease and arrested development resulting from hereditary factors), the passionate and the occasional criminal (who were drawn

toward crime, not as a result of biological influences, but because of external factors), and female criminals. In the case of the latter, Lombroso conceded that most women were not criminals, and for those few who were it was their lovers or husbands who were actually responsible for their lawlessness. He supported the idea that the key to solving female criminality was couched in women's vanity; they should try to make themselves look less attractive so that men would not be enticed to recruit them into crime, particularly prostitution.

Enrico Ferri, a former student and colleague of Lombroso, revised the latter's classification of criminals to include the born criminal, the criminal who committed crime out of passion, and the habitual criminal. According to Ferri, crime was a result of physical factors such as race, geography, and climate, as well as anthropological factors like age, sex, and physiological characteristics. He also considered limited social factors such as religion, economics, and population density. An Italian sociologist, Raffaele Garfalo, was skeptical of biological explanations of criminal behavior. Nevertheless, he supported the idea that moral anomaly (lacking altruistic sensibilities), resulting from insanity or mental illness, was at the root of crime. Moreover, he argued that those deficiencies were most common in certain inferior races (Allen 1972).

The idea that criminals could be identified through their physical characteristics was received enthusiastically during the late 19th century, particularly in Italy, France, Germany, and Russia. The biological explanations for crime and delinquency characterized the offender as biologically different from the non-criminal. Moreover, deviant behavior was believed to be linked to hereditary factors. However, Lombroso's work was met with criticism on methodological and substantive grounds. Charles Goring, a British physician, tested many of Lombroso's propositions. Analyzing Goring's work, Gault (1932:86-87) found that,

Goring and his associates had spent twelve years making greatly detailed studies of 3,000 prisoners. All the prisoners were recidivists...They, if any, therefore, according to Lombroso's views, should reveal the criminal types. These studies included measurements in almost infinite detail of certain physical features of the prisoners, and he worked out correlations between figures obtained from each of several groups. There were no striking differences to be found between those of one group and those of another...The anthropometric data relating to the skull and face, and based, too, upon certain descriptive data concerning facial and other features is nothing. No physical characteristics can be accepted as signs of the criminal or any other sub-group of criminals.

According to Gault, Goring found mental deficiencies to be the principal cause of criminality, and those deficiencies were passed on from generation-to-generation. Apparently, Goring had considered social factors to be influential in criminal behavior but quickly abandoned them on the grounds that they acted independently of both mental capacity and heredity.

THE "GHOST" OF LOMBROSO

I remember sitting in class and discussing Lombroso. At the time I thought the guy was a genuine quack--Lombroso, not the professor. Now I'm not so sure. I think he may have had something there, but I guess it is too racist for today's society. There are certain kinds of people who just seem to fit into criminal behavior naturally... It's very possible that they were born that way.⁷

Staggering evidence supplied by Gault, and others, like Tarde (1890, 1912), demonstrated that no proof existed which supported a consensus of the characteristics of the born criminal. Yet, despite the mounting evidence, there were a number of researchers during the 20th century who retained the "ghost" of Lombroso. This was particularly true in the case of American criminology. Researchers like Earnest Hooten, William Sheldon, and Eleanor and Sheldon Glueck supported many of Lombroso's earlier claims, inadvertently in some cases, through their studies and theoretical orientations.

Hooten (1939) rejected Goring's findings on the grounds that he had failed to use scientific methods, and that the results of this study had been distorted to conform to the latter's bias. Hooten supplied "evidence" supporting the idea that antisocial behavior was a consequence of physical and racial factors. He professed that criminals, when compared to non-criminals, were physiologically inferior. Non-criminals, he argued, were able to maintain their higher status through biological superiority.

These assertions were based on the results of data which were collected from more than 12,000 convicts throughout ten states, and a sample of nearly 2,000 non-criminals. Most of the criminals were from state prisons and 743 were considered criminally insane. Hooten conceded that the non-criminal group was collected by using a catch-as-catch-can approach. Some of the non-criminals were members of a bathing beach in Massachusetts, and a municipal fire station, while others were militiamen, and patrons of a bath house. No attempts were made to control for environmental or economic factors, and many of his generalizations are questionable. For instance, a sample of 27 Irish criminals was deemed sufficient to represent criminal patterns for all Irish offenders. Hooten explained Italian criminality on the basis of data collected from 29 Italian offenders, suggesting that this sample adequately reflected all American-Italian criminals. Many of his conclusions about criminality in general seem as preposterous as his methodology.

According to Hooten (1939:130), "Criminal behavior is capable of considerable diversification...but whatever the crime may be, it ordinarily arises from a deteriorated organism," and therefore "The primary cause of crime is biological inferiority." Hooten (1939:374) correlated particular types of biological inferiorities with specific types of criminal behavior. For example,

Thieves and burglars tend to be sneaky little constitutional inferiors, either physically stunted or malnourished, or both. Their physiques and sociological status suggest inability to succeed even in the humbler law-abiding pursuits, in spite of moderate schooling.

Moreover,

Robbers lean to several variants of the wiry, narrow, hard bitten, tough, not notably undersized, not necessarily unintelligent, and often fairly well educated (374).

Criminal body types played a key role in the types of crimes they committed:

It is a remarkable fact that tall, thin men tend to murder and rob, tall heavy men to kill and commit forgery and fraud, undersized thin men to steal and burglarize, short heavy men to assault, to rape and commit other sex crimes, whereas men of mediocre body build tend to break the law without obvious discrimination or preference (Hooten 1939:376).

Environmental factors were inconsequential in relationship to crime, according to Hooten, since they simply provided an opportunity for these biological inferiors to commit their crimes.

Inherently inferior organisms are, for the most part, those which succumb to the adversities or temptations of their social environment and fall into antisocial behavior...it is impossible to improve and correct the environment to a point at which these flawed and degenerate human beings will be able to succeed in honest social competition (Hooten 1939:388).

Hooten's solution to crime was grounded in the control and manipulation of known offenders. First offenders should be exiled and kept away from society. Their spouses and children would be permitted to accompany them. However, depending on the nature and frequency of the criminality, future reproduction "rights" would be questionable. In the

case of habitual criminals, Hooten (1939:392-93) was very explicit,

Habitual criminals who are hopeless...inferiors should be permanently incarcerated and, on no account, should be allowed to breed...they should be treated humanely and if they are to be kept alive, should be allowed some opportunity for freedom and profitable occupation within their own severely restricted area.

The question of race was addressed extensively by Hooten. He differentiates between the "Negro" and the "Negroid" on the basis of "impurities" in the blood. He claimed that the Negroid, because of cross-breeding with whites, is more likely to be better educated than the full-blooded Negro. He found the Negroid to have a higher propensity to crime, and attributed this phenomenon to the introduction of "white" blood which increased the intelligence level of the Negro race and enabled the Negroid to commit slightly more sophisticated crimes than the Negro. Blacks are obviously treated by Hooten as inferior beings, but he contends that their criminality, as well as that of other inferiors, is not a result of race, but is a result of their existence in an advanced society. He argued,

Crime flourishes...in rich cultures where production is varied and abundant, so that constitutional inferiors are coddled and fostered, inevitably to bite the hands which have fed them (Hooten 1939:389).

Hooten's work, while subjected to extensive criticism, was continued by William Sheldon who conducted research that focused on the association between body types and delinquent behavior.

Sheldon (1949), a psychiatrist, drawing from Kretschmer's earlier work on personality and body types, set out to demonstrate the association between personality types and physiological characteristics. Following a study of 200 "probable" delinquents in the Boston area, Sheldon concluded that identification of a particular somatotype was instrumental in the prediction of delinquent behavior.

Similarly, a recent interview with a presentence investigator produced the following statement:

Most of the gang members that I have had encounters with are wiry little shits. Its almost like the gangs have a silent code for looking a certain way. There are so many of them now, I don't even have to ask if they are gang bangers. I can tell just by looking at them. They all have this certain physical look to them.⁸

Based on a premise that behavior is a function of physical structure, Sheldon categorized three body types which include: (1) the endomorph (overweight and soft), (2) the mesomorph (hard and muscular), and (3) the ectomorph (fragile and lean). In the context of a "recipe" which could be used to predict delinquent behavior, and based on body type, Sheldon concluded that the "ideal" male delinquent was predominately mesomorphic, moderately endomorphic, with a "dash" of ectomorph. Failing to demonstrate the relationship between personality types and physiological characteristics he asserted that delinquents and non-delinquents were biologically different, and that delinquents were physiologically inferior due to hereditary influences.

Sheldon was criticized extensively on methodological grounds, most notably by Sutherland (1951:10) who charged,

His data, in fact, do not justify any of these conclusions, either that the delinquents are different from the non-delinquents in general, or that the difference if it exists indicates inferiority, or that the inferiority if it exists is inherited.

Many substantive questions come to mind when analyzing Sheldon's conclusions. The most obvious question is related to physiological changes. Since body types are not necessarily static over time, at which point would the propensity to delinquency be the greatest? Furthermore, does that propensity increase or decrease with changes in physiological changes? Finally, it would seem that social factors would intervene at some point during the individual's life, particularly in relation to diet. For example, if one was raised in a low-income environment it would appear that access to body-building nutrients would be limited when compared to another whose social reality was a higher-income environment.

In a similar vein, Eleanor and Sheldon Glueck (1950) supported the idea that body types played a key role in precipitating delinquent behavior. They indicated that differences in body types are reflected in the differences of those traits associated with delinquent behavior. They also supported the idea that negotiating environmental pressures was related to body type differences. Nevertheless, the Glueck's admitted that body types alone

were insufficient for a comprehensive explanation of delinquency, and suggested that future research should ask why mesomorphs failed to exhibit delinquent behavior. Like their constitutional predecessors, the Glueck's believed that delinquency was hereditary. In a study of 500 criminals they found that many came from families with some degree of criminal history. Synonymous with these constitutional claims were studies that focused on mental retardation and criminal behavior.

During the early years of Positivist Criminology mental retardation was considered an important aspect of criminal behavior. The Jukes by Richard Dugdale, and The Kallikaks by Henry H. Goddard, both "classics" on the topic of mental retardation and crime, supported the idea that mental retardation was a key factor in delinquency, and that this phenomenon was linked to heredity.

A number of subsequent studies followed Dugdale and Goddard's work, and most refuted their claims that mental retardation was linked to crime. Weiss and Sampliner (1944), in a study of 189 adolescents, found that the distribution of intelligence in first offenders was similar to the intelligence levels of the general public.

PSYCHOLOGICAL CONTRIBUTIONS TO POSITIVIST CRIMINOLOGY

A large number of offenders who come through this office are psychologically imbalanced. You would be surprised at the number of degenerates who are out walking the streets and haven't been caught yet. There is something

about them that makes my skin crawl. I can tell by looking at these people that they are guilty. Some of these rejects belong locked up and never released. Of course sentencing statutes prohibit locking them up for ever, but they will never contribute anything of value to our society.⁹

Paralleling the discipline of biology, early psychological approaches to deviant behavior focused on crime, delinquency, sexuality, and other forms of "degenerate" behavior in the late 19th and early 20th centuries. Many of these approaches were linked to the psychiatric and medical backgrounds of researchers like Lombroso, Goring, Kretschmer, and Sheldon, who engaged in what I have termed biological studies of criminality.

Freud, the "father" of psychoanalysis, was a dominant influence for many psychological approaches to abnormal behavior, including crime and delinquency. Considering environmental and social factors as being incidental to behavior, early psychological proponents believed that behavior was a product of bio-psychological drives or instincts that were not obvious to the individual. As a result, all deviant behavior was viewed as a substitute response for repressed complexes. The unconscious mind experienced conflict which created guilt or anxiety feelings. In a desperate attempt to balance the "good" versus "evil" conflict and remove the feelings of that guilt, the individual, unconsciously, had a desire to be caught and punished (Freud, 1966).

Freudians as well as non-Freudians viewed deviance as a result of inner conflicts, emotional problems, feelings of insecurity, inadequacy, and inferiority. Subsequently, deviant behavior was seen as a reflection of those "deficiencies" (Aichhorn 1925; Alexander and Healy 1935; Bromberg 1950). A general assumption of the psychological approach was that everyone had criminalistic instincts. The difference between criminals and non-criminals was the latter's ability to cope with emotional problems, thereby suppressing criminal urges (Abrahamson 1960).

Piaget (1932), disenfranchising himself from the Freudian influence, suggested that as individuals interact more and more in the social world, moral absolutism (rules that are external to the child such as commands by the parent) weakens and the meanings of moral rules are then determined by social context. In a similar vein, Kohlberg and Mayer (1972) found that interaction between the individual and the environment was significant in moral development.

INFLUENCES AND IMPLICATIONS

I think it is horrible to categorize all these people into one pigeon hole. They are all unique individuals with individual problems. I know that many of my colleagues disagree with me and view these offenders as unexcusably sick or disturbed, but none of them are doctors or psychologists. I think that the criminal justice system relies too much on stereotyping people. Don't you think that's true?¹⁰

Biological and psychological deterministic approaches to the etiology of crime continue to flourish. While the whole

idea of biological determinism and its association with criminality has lost some of its lustre among many sociologists and criminologists today, there has been a resurgence of interest among others (See Wilson and Herrnstein, 1985). Some researchers, like Wilson (1975:4)), suggest that sociobiology is little more than a study of animals and primitive man, arguing that sociobiology is,

The systematic study of the biological basis of all social behavior. For the present it focuses on animal societies...But the discipline is also concerned with the social behavior of early man and the adaptive features of organization in the more primitive contemporary societies.

Biological approaches to crime and delinquency, as well as other aspects of contemporary society, are obviously interested in more than animals, primitive man, and contemporary "savages." Jensen (1980) found that blacks score much lower on I.Q. tests than whites, and that the sources of these differences lie in genetic make-up. In 1973, Herrnstein argued that mental ability is inherited and that success is dependent upon mental ability. If this is true, then what is the sense in sending blacks to college since they are unable to learn due to genetic deficiencies? Furthermore, if success is dependent upon mental ability, and mental ability is inherited, then those at the bottom of the social ladder are there because they lack the mental capacity to negotiate the rigors of upward mobility. Social programs to assist low income people, who are biologically predisposed to their current social and economic realities,

are actually a waste of taxpayers money--justifying a return to Spencerian mentality, to which current conservative policies tend to pay their allegiance.

Additional evidence that sociobiology has not confined itself to studies that involve the mating patterns of laboratory rats, or conducting experiments deep in the Amazon, is reflected in research like that of Rubin (1987:256) who argues,

Most research on the neuroendocrine and neurochemical correlates of antisocial behavior has focused on violent interpersonal behaviors such as assault, rape, and murder. The propensity of certain individuals toward violent antisocial behavior most likely develops over time, perhaps even having its origin during fetal development.

Endocrinology, the science of ductless glands, is not new to the study of criminal behavior. Schlapp (1924) indicated that perhaps as many as one-third of all prisoners experiencing emotional problems had glandular disorders. Berman (1921) made similar claims. Schlapp and Smith (1928) explained the action of thieves and murderers in purely "glandular" terms. However, researchers like Hoskins (1941) pointed out the dangers of drawing conclusions from inconclusive research on endocrine glands and their association with criminality. Ashley-Montagu (1941:55) stated,

I should venture the opinion that not one of the reports on the alleged relationship between glandular dysfunctions and criminality has been carried out in a scientific manner, and that all such reports are glaring examples of the fallacy of 'false cause'...The fact is that as far as the endocrine system and its relation to

personality behavior is concerned, we are still almost in a world of the unknown, and to resort to that system for an explanation of criminality is merely to attempt to explain the known by the unknown.

Sociobiology has also focused on the association between violent offenders and diseases like hypoglycemia (Virkkunen and Huttunen 1982), arguing that many of the subjects fulfilled the criteria for borderline personality disorder. Other studies, like that of Berger and Gulevich (1981) support the idea that violence can be a result of most major mental illnesses.

Psychological explanations of crime and delinquency often draw attention to psychopathic and sociopathic personalities. The psychopath has failed to develop a superego or conscience which is thought to be a consequence of an unresolved Oedipal conflict. Rabin (1961:278) identified two characteristics associated with a deficient superego:

The first aspect is represented in the ability to apply the moral standards of society to his behavior...He has not absorbed the 'thou shalts' and the 'thou shalt nots' of his society and cultural milieu. The second aspect is that of the absence of guilt...Guilt is an unknown experience for the personality with no superego...He may sometimes express regret and remorse for the actions and crimes which he may have perpetrated; however, these are usually mere words, spoken for the effect, but not really and sincerely felt.

Some, like Yochelson and Samenow (1976), contend that a criminal personality does exist and can be characterized by the individual's reluctance to recognize their own actions as being criminal. Yet these same individuals are capable

of recognizing criminal characteristics in the actions of others.

Yablonsky (1962) developed the idea that sociopathy was the principal component that promoted gang violence. However, his study was limited to observations of two gangs which disbanded after only a few weeks in the first case, and several months in the second. He noted that gang members engaged in violent behavior because they had never been exposed to anti-delinquency patterns of behavior. He further argued that the reason they were so violent was due to an innate need to demonstrate their prowess to other members of the gang, as well as for their own self-esteem. He managed to capture the public's imagination with his findings. More recent studies focusing on gang activities have surfaced which discredit Yablonsky's principal propositions supporting sociopathy (e.g., Klein 1969; Klein and Maxson 1989; Vigil 1988).

The disciplines of biology and psychology (including psychiatry) work together forming a medical model which follows its own definition of criminal and delinquent behavior. Psychiatrists and psychologists, in particular, have enjoyed enormous amounts of authority based on the premise of many theories that are beyond empirical testing (Sutherland and Cressey 1974). These practitioners often serve as judge and jury in cases where the defendant's "sanity" is questioned. In many cases these professionals

have the power to deprive individuals of their freedom without corroborating evidence beyond their own "professional" opinion. Often, deviant or "abnormal" people are confined in institutions for long periods of time because of their age, their assets, or the whim of relatives (Szasz 1977; Skull 1989).

The biological and mental health communities have managed to recruit many criminal justice practitioners into their camp. The problem with this recruitment stems from the fact that many criminal justice practitioners were not afforded the opportunity to become well versed in the terminology of biology and psychology and yet they base many of their daily decisions upon terms with ambiguous definitions. Often, terms like psychopath, sociopath, and antisocial behavior are determined by indicators such as skin color, age, sex, socio-economic status, previous criminal history, etc. For example one respondent indicated that,

Black female offenders are an interesting lot. They drop their children off on their mothers and aunts while they go out looking for drugs, or turn "tricks" to supply their drug habits. Most of them are psychopathic. They don't really care about their children at all. Not like other people do. They come into my office before sentencing and they cry and put on an act like they were caring and concerned mothers. Their antisocial behavior gives them away every time. They act like they are so concerned about their children, especially when they think they may go to prison.¹¹

Extremely interested in the respondent's ability to conduct such a "high-quality" psychological assessment, I asked upon what basis such an analysis was made:

I have the criminal history of the offender and I also conduct an interview. The criminal history is the most reliable because so many of these people are pathological liars.¹²

The typical tautological argument persists: "Criminals are psychopaths because they are criminals." My curiosity demanded further clarification. How long do your interviews normally last? "That depends on a number of things, but usually they last between fifteen to twenty minutes." There was only one more question which I felt was germane to the respondent's assessments, so I asked, were you a psychology major in school? to which the respondent replied, "No, I had to take psychology 101 twice and I hated it both times."

SOCIOLOGICAL EXPLANATIONS OF CRIME AND DELINQUENCY: ARE THEY RELEVANT?

An animal is almost completely under the influence of his physical environment; its biological constitution predetermines its existence. Man, on the contrary, is dependent on social causes (Durkheim 1973:128).

Most of these people [blacks] come from areas that are crawling with crime. Frankly, I don't know what keeps all of them who live on the Westside from committing crime. Most of them have no opportunities whatsoever. Unemployment is high over there and social assistance programs have been drastically cut. I am certain that to many who live in that area crime is a logical solution to an illogical problem. Most of the families over there are plagued with drug abuse, divorce, illegitimate children, domestic violence, and gangs. Temperaments run thin on the Westside and crime is a normal, everyday thing over there. But I guess its not all bad--it keeps us [presentence investigators] working steady.¹³

As suggested earlier in this chapter, criminal justice practitioners often make decisions about a defendant's sentence recommendation drawing from a limited knowledge of

theories that focus on the etiology of crime. Insofar as their self-defined role at the Nevada Department of Parole and Probation is one of a processor, many of their "judgement calls" necessitate the consideration of factors which are associated with mitigating circumstances surrounding individual offenses (e.g., age, education, employment versus unemployment, family situation, military history, substance abuse, etc.). Although most presentence investigators deny that these factors play a crucial role in their decision-making process, the guidelines which direct each investigator in his or her role demand that consideration be given to these factors (a point which will be demonstrated in Chapter Four). During the interviewing process of this study a number of propositions contained within several sociological theories of crime surfaced. The responses suggest that some etiological orientations do influence the decisions made by presentence investigators, although I am not suggesting that these theories consciously direct the investigators in their decision-making process. They appear to be subtle influences, and in most cases, they can be considered a collection of consensus orientations that completely omit any association with a radical or Marxist orientation. Most of the propositions tend to be employed as a justification for the presentence investigators viewpoints and their decisions in recommending sentences to the court.

Counter to the individualistic perspectives of biology and psychology explaining crime and delinquency are the environmental strategies employed by sociologists. If crime and delinquency were a matter of individual characteristics then a more random distribution of these phenomena would be exhibited throughout society; crime and delinquency would not appear to be confined to particular geographic areas while being "statistically" absent from other locales. I am certain that these types of observations must have led sociologists to the development of theoretical orientations that accentuated external sources of influence upon the individual (e.g., poverty, discrimination, education, urbanization, etc.)

Crime has always been interesting to me. Over the years I think I have seen every type of criminal, and I have worked with every type of offense known to man. Crime runs in cycles, you know; In some years burglary is obviously popular, while in other years, like this year, bank robbery is the preferred crime. What is vogue today will be less fashionable tomorrow. For example, look at women and the offenses they commit: They used to be confined to particular crimes like shoplifting and writing bad checks. Now they have expanded their criminality to include robbery, drug trafficking, and burglary. I guess they are trying to be like their boyfriends and husbands.¹⁴

Tarde, in the 19th century, refuted Quetelet's earlier proposition that suggested free will was at the root of predictable crime rates. He argued that people imitated others, and that the laws which govern imitation prompted individuals to "imitate one another in a proportion as they are in close contact. The superior is imitated by the

inferior to a greater extent than the inferior by the superior" (1890,1968:326). Tarde also argued that, "there are serious reasons for maintaining the vices and crimes of today, which are to be found in the lowest orders of the people, descending to them from above [highest order of people]" (1890,1968:331). Offenses like drunkenness, poisoning, and murder by command were offenses popularized by the aristocratic class, and because of the laws of imitation these practices had been adopted by the lower classes.¹⁵ Tarde contended that criminal behavior is learned and adopted in the same way as are fashions and fads, and that crime patterns are a reflection of this learning. Learning, Tarde believed, was a result of either conscious imitation or unconscious suggestion.

Crime has always been around and it will continue to be with us. The criminal justice system goes through the motions of controlling crime but we really don't control anything; we just react to what has occurred. I can't complain though, because if it wasn't that way I would have to go out and get a real job.¹⁶

Durkheim (1938, 1966:65-66), who wrote during a period when criminology was beginning to acquire positivist methodology, criticized criminologists who viewed crime as a pathological phenomenon:

Crime is present not only in the majority of societies of one particular species but in all societies of all types. There is no society that is not confronted with the problem of criminality. Its form changes; the acts thus characterized are not the same everywhere; but everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression. If, in proportion as societies pass from the lower to the higher types, the rate of criminality...tended to

decline, it might be believed that crime, while still normal, is tending to lose this character of normality. It has everywhere increased...there is, then, no phenomenon that presents more indisputably all the symptoms of normality, since it appears closely connected with the conditions of collective life.

Poverty and vice were characteristic of slum areas throughout the early industrialized urban centers of America, an idea that remains in contemporary thought, and sociologists became committed to the eradication of social conditions which gave rise to them. This setting, combined with the intellectual influences of the time, spawned the "social pathology" approach to all social problems (Mills 1943).

In the tradition of the French Enlightenment, where human nature was idealized and social problems were viewed as repressive or constraining for human beings, the social pathology approach focused on general social problems. This approach dominated criminological thought from the beginning of the 20th century until World War I. During this period theories about crime and delinquency were closely linked to the general development of American society. The roots of this orientation can be traced to Comte, who, using the analogy of a biological organism, argued that society was a relatively harmonious, interdependent system that was subject to the same laws that govern other biological organisms. Society, for Comte, was more than just the sum of its parts. He argued that it must be viewed and understood in its complex whole. Therefore, social problems

were perceived as a disease which attacked the social system. Moreover, these social problems were looked upon as manifestations of pathology, and social science was obligated to eliminate those pathologies.

By the turn of the century American sociologists emphasized the individual in society, both as a source of social change and as a basis for understanding crime. It was thought that to attain a healthy society the maladjusted person should be corrected, and their social relationships must be improved. The criticism of this orientation was based on the idea that the definition of a social problem was more a reflection of the sociologist's own moral standards than any objective criteria. Borrowing from scientific jargon, and relying on analogies, the early social pathologists rarely provided any empirical evidence beyond their own moralistic viewpoints.

THE CHICAGO SCHOOL'S IMPACT ON CRIMINOLOGY

In know that I have certain biases, but when you have been doing presentence investigation reports for as long as I have you learn how to overcome them. Personal views no longer influence my decisions...I absolutely detest defendants who are involved in any form of child molestation or sexual abuse of children. I suppose this is a reflection of the morals and values that I developed when I was growing up. When those kinds of cases cross my desk I always exhaust all my energy to make sure that my recommendations will sway the judge. It is my intention that the judge uses my recommendation to give the defendant the maximum sentence allowed by law...By being very articulate and graphic with the details surrounding the case I am usually confident that the judge will be compelled to give the defendant the maximum sentence.¹⁷

Many of the early sociologists at the University of Chicago were from middle America and were often influenced, directly or indirectly, by theology. Albion Small, for example, who was head of the sociology department at Chicago from 1892 until 1924, was the son of a Baptist minister, and W.I. Thomas was the son of a minister from Virginia. Charles Henderson and Charles Zueblin, faculty members during Small's tenure as the chair, were both ministers and profound reformists (Blumer 1984). Frequently their focus was directed to the negative aspects of urban society. In many respects their work resembled a "reformist crusade" that criticized and attempted to change the existing "decadent" urban values, particularly those values that happened to contradict their own. Much of the work produced at the Chicago school prior to 1940 had what Mills (1943) referred to as a "small town" or rural bias.

George Herbert Mead's philosophy, influenced by Freud as well as Cooley's "Looking Glass Self," was instrumental in laying out the social direction at Chicago. The idea that consciousness was not self generating but was instead the result of social processes through interaction with others illustrates Mead's impact on the school. "Ends were seen as relative to circumstances in which action was undertaken. Goals were not fixed" (Blumer 1984).

Many of the sociological theories that surfaced during the early part of this century crystallized into theoretical

explanations of deviant behavior (i.e., crime and delinquency); some were expanded upon while others served as topics for debate. Several of these early theories continue to influence contemporary scholars in sociology and criminology as well as contemporary workers in criminal justice fields.

Crime has continuously been on the increase in our city and it is because so many transients are moving in. Many of these transients are people who bring their criminal habits from where they came from. Its our job to police them and get them off the streets.¹⁸

This town is growing so fast that it is becoming difficult to maintain order. That is what happens when you have so many people of certain ethnic groups come into a place like Las Vegas. As long as they continue coming into town crime will continue to increase. Just look at the gang problem we now have. They [blacks] move here from Los Angeles and set up shop here. We need more law enforcement to combat this increased gang activity.¹⁹

Conflict tends to increase during periods of rapid change, particularly when those changes are linked to values and culture. The Chicago school emerged during a period when social disruption was caused by urbanization (Chicago doubled its population between 1900 and 1930), increased immigration by Eastern and Southern Europeans (who experienced despicable levels of discrimination), industrialization, prohibition, the Great Depression, unemployment and labor disputes following World War I, etc. "Social disorganization" emerged as a concept within the Chicago school and was viewed as concomitant of those social disruptions. Social disorganization was a result of the depreciation in influence of social rules of behavior on

individual members of social groups (Thomas and Znaniecki 1927). Crime came to be seen as an indicator of social disorganization, and social disorganization came to be viewed as a cause of crime.

Due to the tremendous increase of Eastern and Southern European immigrants with their diverse values and customs, coupled with America's own rural migration to urban areas, native residents of many urban areas were uncomfortable with and discriminatory toward these newcomers. This was the case in Chicago during the first part of the 20th century. As Thomas and Znaniecki (1961:1259-96) wrote,

An unfavorable consequence of the now prevalent social organization is that the immense majority of individuals is forced into Philistinism and Bohemianism. An individual who accepts any social system in its completeness, with all the schemes involved, is necessarily drifting toward routine and hypocrisy...if the individual either refuses to accept certain schemes included in a social complex or develops some positive form of behavior contradicting in the eyes of society some of the schemes of the complex, he is forced to reject the complex in its entirety, and became thus, voluntary or not, a rebel.

W.I. Thomas, a major figure in early ethnography, helped introduce this new methodology to American sociology. The Polish Peasant in Europe and America (1927), a classical work produced by Thomas and Znaniecki, was a landmark because it was the first attempt to integrate theory and data in a way that revolutionized American sociology. This work represented a shift from abstract and library research to empirical research.

The problem with academicians is that they typically sit

in their secluded sanctuaries at universities and try to tell us [criminal justice practitioners] how we should do our work. Most of them have a difficult time understanding anything about what we do from the shelter of their ivory towers. They don't have to deal with this scum, but they are always quick to criticize our approaches.²⁰

Social researchers went into the community to study people in their natural environment. The Chicago school pioneered efforts to discover the dynamics of social disorganization by examining delinquency-prone neighborhoods (Brekinridge and Abbot 1912, 1970), and the spacial distributions of social phenomena in urban settings (Park 1925). Park, who was closely associated with Thomas, sent students into pool halls, slum areas, rail yards, etc. to look at and to record the activities of the inhabitants. Chicago was an endless testing ground for students and faculty alike. The city stimulated challenging sociological questions (e.g., questions associated with poverty, crime, disease, etc.) for the school and for the discipline of sociology.

This city is changing, and so are the people in it. I think that crime plays a big part in those changes...People are more aware that they are likely to become victims so they protect themselves better...As the city expands and becomes more complex law enforcement becomes more controlling and impersonal. I'm not saying I like it but that is the way it is.²¹

Park had a major influence on the progress and direction of the Chicago school. He supported the idea that human beings and their environment were interdependent. Social life is organized, he argued, and it is organized through interaction among individuals who are influenced by

surrounding external sources. He advocated the idea that human behavior was likely to change as society became more complex. Along with Burgess, Park became interested in the development of urban areas. They observed that "natural areas" within the city were the result of the natural processes of free market competition, and not the result of Government planning or zoning. Concentric zones of homogeneous land-use areas resulted from this natural selection process (Shannon 1989).²²

Many of these kids [young black offenders] come from the Westside, or other lower class neighborhoods across the country. All they know is crime. Their fathers and uncles were criminals and many of their mothers and sisters were, or are, prostitutes or drug addicts. They learn how to steal in their own neighborhoods, and before you know it they go into more lucrative neighborhoods to commit their crimes. I can talk to one of these kids for five minutes and know what area they are from without ever asking.²³

Park and Burgess' work on concentric zones had a profound impact on other researchers like Shaw and McKay. The latter linked increases in delinquent behavior, as well as other social ills (e.g., infant mortality rates, tuberculosis, etc.), to particular areas they called "delinquent zones." Based on information revealed through the mapping of delinquent areas, Shaw (1929) was able to conclude that as one moved outward through the concentric zones and outward from the city center, crime rates systematically declined. Delinquency was subsequently noted as being significantly higher in areas characterized by physical decay, poverty, poor housing, as well as other attributes of social

disorder. Much of Shaw's research is revealed in his classic work, The Jack-Roller: A Delinquent Boy's Own Story (1930). Shaw and McKay (1931) attributed the social disorganization of inner-city areas, in part, to the migration of older inhabitants to the outer concentric zones as businesses encroached upon their residential areas. The older neighborhoods became squalid, and traditional social controls broke down because marginal people (blacks, European immigrants, etc.) had reclaimed these neighborhoods and contributed to their deterioration. The depreciation of conventional social control resulted when cultural clashes broke out in neighborhood takeovers by these marginal groups. Moreover, Shaw (1931:229) argued,

The community situation was not only disorganized and thus ineffective as a unit of control, but it was characterized by a high rate of juvenile delinquency and adult crime, not to mention the widespread political corruption which had long existed in the area. Various forms of stealing and many organized delinquent and criminal gangs were prevalent in the area. These group exercised a powerful influence and tended to create a community spirit which not only tolerated but actually fostered delinquent and criminal practices.

Delinquent areas were not only areas of economic deprivation, they were areas of confinement to their inhabitants. The delinquent's life chances were impeded by his or her surroundings, and, as Shaw (1931:75) noted,

It is a matter of great significance that the delinquent child, growing up in the delinquent areas of the city, has very little access to the cultural heritages of the larger conventional society.

Shaw and McKay (1941) further contended that broken homes were common in lower socio-economic sections of the city, surmising that this social phenomenon contributed to higher rates of delinquency. Thus, the family institution and delinquency had been linked together. They drew attention to the broken home status of many delinquents, pointing out that they were very likely to be taken to court because of their dysfunctional family circumstances rather than the gravity of their offense.

You have to understand that these people [criminals], particularly ethnic minorities, come from families that do not quite measure up to the standards that most of us experienced when we were growing up. Actually, I think some of them were raised more like animals than people. Many of them did not have the support of caring, loving parents. Why many of the parents of these people didn't even give them the time of day. This places a bind on the investigator that must come up with a sentencing recommendation. Ultimately, this factor is ignored because we cannot start buying into dysfunctional family excuses for criminality.²⁴

Several years earlier a model for the "ideal" home had been presented by Dr, Marian Van Waters (1925:64), who asserted,

The home has primary tasks to fulfill for its young: to shelter and nourish infancy in comfort, without inflicting damage of premature anxiety, enable the child to win health, virility and social esteem; to educate it to meet behavior codes of the community, to respond effectively to human situations which produce the great emotions, love, fear, and anger; to furnish practice in the art of living together on a small scale where human relationships are kindly and simple; finally the home has as its supreme task the weaning of youth, this time not from the breast of the mother, but from dependence, from relying too much on that kindness and simplicity of home, so that the youth may not fail to become imbued with joy of struggle, work and service among sterner human relationships outside.

This "ideal" home was used as a measuring rod against those "marginal" people.²⁵

Most of these defendants either don't understand, or don't give a damn that other people work hard to get what they have. They do not have any respect for things that you and I do. They live by their own rules and ignore other rules, at least that's how they live until they get caught.²⁶

Often the delinquents only contact with conventional society was formal (e.g., police courts, caseworkers, etc.). Shaw (1931:75) argued that the delinquents', "conception of moral value is shaped and molded by the moral code prevailing in his play groups and the local community in which he lives," and that, "the young delinquent has very little appreciation for the meaning of the traditions and formal laws of society" (Shaw 1931:75-76).²⁷.

Shaw and other "delinquent area" researchers found that recidivism rates were much higher for law violators living in those areas, but Warner and Lundt (1941) pointed out that these researchers typically failed to consider the differential treatment of the inhabitants of slum areas. They noted that the police were not restricted nor restrained in lower class neighborhoods as they sometimes were in more affluent areas. Nevertheless, ecological explanations of crime and delinquency persisted: Delinquency patterns similar to those found in Chicago were found in Cleveland, Denver, Philadelphia, Richmond, and Seattle. Calvin Schnids' (1937) study of spacial-location of crime and delinquency in Minneapolis, and Lottier's

(1938) study of delinquency in Detroit supported the concentric zone hypothesis, reinforcing the idea that certain urban environmental conditions were instrumental in "producing" crime and delinquency.

The concentric zone delinquency hypothesis was praised for its innovating approach to crime and delinquency, debunking many constitutional explanations of deviant behavior. However, it was not without early criticism. Sophia Robinson (1936:4), who conducted a study of delinquency in New York City using the concentric zone approach, argued that,

Although the delinquency area technique of the study, developed in Chicago and later extended to an examination of the locus of delinquency in other cities, has received official recognition, the suspicion persists that this method is not only essentially invalid to indicate the extent of juvenile delinquency behavior but that it does not furnish any very useful approach to the problem of understanding or preventing delinquency.

Other studies, like Bernard Lander's (1954) examination of crime and delinquency in Baltimore, also failed to sustain the conclusions found in earlier ecological research.

This city, and all of its distractions, promotes much of the crime that goes on here. The gambling, the drinking, all the money that is spread around works on some people differently. There are those who loose their money and are willing to do almost anything to get it back...It's a reason for some people to commit crime but it is not an excuse.²⁸

The Chicago school promoted the separation from the individualistic, determinist views of the biological and psychological constitutionalists. The correlation between degenerative and disorganized social "ailments" had a

alluring appeal to the discipline of sociology. Many classical works emerged that reflected the impact of the Chicago school: The Hobo (1923), by Nels Anderson, which focused on the plight of homeless men and their migratory lifestyles, and Frederick Thrasher's work, The Gang: A Study of 1,313 Gangs in Chicago (1927), employed the "Four Wishes" introduced by W.I. Thomas' classic, The Unadjusted Girl (1923). Other classics include The Gold Coast and the Slum (1929) by Harvey Zorbaugh who looked at a Chicago slum neighborhood that was adjacent to an affluent area, Cressey's 1932 work, The Taxi-Dance Hall, and Sutherland and Locke's Twenty Thousand Homeless Men (1971) which illustrated how homeless men adapted to their situation by becoming beggars. These works centered on the natural forces that dictated the development of the city. Employing a demographic approach, supported by statistical analysis, the researchers were able to provide a panorama of social disorganization throughout Chicago. Official records from law enforcement, and other local government agencies, provided data which, when compared with concentric zone maps, suggested that the city of Chicago, itself, actually produced crime.

Shaw (1938) suggested that crime was a product of the social relationships between offenders and other people, and, hence, that criminality was prescribed by peers and was a result of the social and cultural setting where

opportunities are not equal. Park and Burgess also focused on collective behavior, and developed the assumption that, "man is a group-involved being whose life is both part of, and a product of his group associations" (Vold 1973:77).

Burgess (1932) argued that social interaction with others was the key to studying crime and delinquency. He suggested that not only crime and delinquency,

but all social problems, indeed the entire area of group behavior and social life, is subjected to sociological description and analysis. The person is concerned in his interrelations with the social organization, with the family, the neighborhood, the community, and society. Explanations of his behavior are found in terms of human wishes and social contacts and social interaction, conflict, accommodation and assimilation (Burgess 1932:670).

Much of Park and Burgess' work is reflected in Sutherland's development of differential association.²⁹

I know that some of the people coming through my office are gang members, while others are alleged members of some gang in town. This last group are only guilty of being identified as hanging around known gang members. The logic is, if he hangs around known gang members he is either a bonified member, or he will soon become a member.³⁰

The theory of differential association promoted the assumption that delinquent behavior was learned behavior, and that learning occurred within intimate personal groups through interaction and communication.³¹ Central to the principal assumptions of this theory was the notion that delinquent behavior occurs when the definitions of violating the law exceed those definitions that support the law. Furthermore, Sutherland argued that individuals are exposed to both delinquent and normative examples of behavior.

They [black offenders] all have a choice between committing crimes and not committing crimes. There are law-abiding citizens as well as criminals living in the Westside area. Many of the youngsters look at the drug dealers and pimps, who are driving around in flashy cars and decked-out in gold, and these kids think it is better to emulate those types rather than to work hard like normal people. They need good role models but I don't know where they are going to come from.³²

Sutherland believed that if individuals find that law violating definitions are more appealing they are likely to gravitate to delinquent behavior. Moreover, delinquent behavior was viewed as an expression of general needs and values, but it is difficult to explain delinquency through those needs because the same needs are common to those who do not become involved in crime and delinquency.

Sutherland was the first to use crime statistics provided through the FBI's Uniform Crime Reports, which began in 1930. This new research tool offered the opportunity for "objective analysis" resulting from its quantification possibilities.³³ For the most part, however, these data were restricted to a crude illumination of basic offender characteristics and the types of offenses they committed within the participating jurisdictions. In sum, the FBI crime statistics reflected police activity, and ignored the etiology of crime.

Taken to its logical conclusion, differential association suggests that excessive affiliation with deviant groups must inevitably lead to deviant behavior (See Vold and Bernard, 1986). This theory fails to explain why people gravitate

toward particular groups, and why people become committed to definitions favorable to the law while other elect to commit to unfavorable definitions. There have been claims that the theory is not empirically testable (Goode 1989). On the other hand, some, like DeFleur and Quinney (1966) argue that the theory is capable of producing testable hypotheses by reducing it to a number of propositions, although the theory itself was based on nine propositions. Their general argument is based on the notion that criminality is learned, and learning is a product of exposure to norms and people. DeFleur and Quinney (1966:14) stated,

Overt criminal behavior has as its necessary and sufficient conditions a set of criminal motivations, attitudes, and techniques, the learning which takes place when there is exposure to criminal norms in excess of exposure to anticriminal norms during symbolic interaction in primary groups.

Manheim (1965:8) contends that, "The challenge of Sutherland's theory has been a valuable stimulus to further thought in the field of criminology," and Cohen et al (1956:1) point out that, "The principal and significant contribution of Sutherland's theory consisted in its comprehensive and trenchant criticisms of conventional criminological thought." The theory of differential association provided significant accounting of the nature and effect of environmental group influences on the individual (Vold 1958). Sutherland's theory, still regarded by many as a criminological landmark, has been the foundation for Synanon, a drug rehabilitation organization

that was founded in 1959, as well as numerous rehabilitation programs for delinquents.

PATRIOTISM, QUANTIFICATION AND
"LEAVE IT BEAVER"

Our sentencing recommendations, for the most part, are objective because we are confined to basing our decisions on sentencing guidelines which are numerically structured to safeguard against individual subjectivity. Our methods for making sentence recommendations are very scientific.³⁴

During the late 1930s and early 1940s the Chicago school began to lose much of its influence over the discipline of American sociology. Conflict and social disorganization theories lost much of their appeal and became subjected to extensive scrutiny. There were other factors, too, which contributed to the school's loss of academic authority. The political unrest throughout Europe during the 1930s roused suspicion about the credibility of German philosophy which served as a cornerstone for much of the work being conducted at Chicago. The outbreak of World War II, and the subsequent evidence presented after the war (e.g., the fascist movement and the Holocaust), confirmed many American sociologists' suspicion about German intellectualism. They rejected virtually all German philosophy and sociology. Heidegger had turned to Nazism. Even Kant, who was an ardent proponent of parliamentary democracy, was rebuffed. Max Weber's work had also been scorned. After all, it was he who had proposed the theory of a charismatic leader and called for a "fuhrer democracy" in Germany. (Mommson 1983).

American sociology became "patriotic" during the post-war years. The sociology of Durkheim was selected to direct the new course for American sociology. Although Merton (1938) and Nisbet (1961) had extended Durkheimian sociology substantively, American knowledge of French sociology was incomplete and theoretically unsophisticated. Rejecting the criticisms of positivism made earlier by Kant and Hegel, American sociology became enmeshed in positivism. This shift was accomplished under the banner of "objectivity." Even the symbolic interactionists who dominated the Chicago school after the war expanded and systematized their participant observation methodology. The charted course was "pure empiricism" with "mathematical calculation" and "value-free analysis (Vidich and Lyman 1985). Campaigns were launched to collect massive data sets, although much of the data were never analyzed because of the technological limitations to process that data. There were rare exceptions to this frenzied rush to collect data, for the sake of "collecting data," found in the work of Lipset (1985), Coleman (1970), and Lazarsfeld (1959).

Ironically, Talcott Parsons, who is commonly referred to by many sociologists as the "father of American Structural Functionalism," had spent considerable time in Germany studying and translating the works of Weber. Nevertheless, and this was probably a result of the political climate of the times, Parsons elected to subscribe to Radcliffe-Brown's

organic analogy approach to understanding and explaining society, although he retained abstract elements of the German systems theory (Parsons, 1951, 1978).

Preoccupied with the temporary euphoria being experienced in America after World War II (e.g., the development of elaborate transportation systems, and the migration to the suburbs by many who were able to capitalize on G.I. financing), Parsons, and the Harvard school, directed most of American sociology. Parsons set out to create a "grand theory" that would explain all aspects of social life. While he enjoyed a large following among sociologists, most were not familiar with his theory construction. Many did not even bother with theory construction themselves--they just collected mammoth amounts of data. Although many were receptive to Parsons' "doctrine," a significant number of his advocates were unable to understand his theory of the social system (Mills 1959).

I have observed over the years that many defendants are driven by a hunger for material things that they feel are not available to them by working hard at a legitimate job...people who become involved in drugs simply reject everything that is good about society. They just drop out of society for the most part but return when they need to steal for money to resupply themselves with drugs.³⁵

Robert K. Merton, a former student of Parsons at Harvard, took a faculty position at Columbia and eventually diverted the attention of mainstream American sociology from its Parsonian influence. He managed to shift the focus of American sociology from Parson's system theory to a

Durkheimian functionalism. It was not Merton's intention to discredit grand theories; he wanted to promote those theories which were of mid-range vintage. The rationale for this position was that he believed American sociology required more time before grand theories could be formulated. The recommended areas of study were roles and norms, statuses and institutions, and anomie and deviance. To the latter, Merton (1938) extended Durkheim's insights of anomie to a general theory of deviant behavior.

Merton's version of anomie theory is based on the general assumption that the acquisition of wealth represented the principal success-goal in American culture.³⁶ He further contended that individuals who internalize the values of success, status, and power, and become preoccupied with them, are candidates for criminality when they find, or believe they find, legitimate means of obtaining those ends blocked. When people find that the means to achieve cultural success-goals are exaggerated they tend to withdraw their support for the rules and engage in deviant behavior. People "become estranged from a society," argued Merton (1964:218), "that promises them in principle what they are denied in reality." Merton offered five reactional patterns to environmental circumstances which serve as avenues available to individuals who experience anomic situations. Included are conformity, retreatism, ritualism, innovation, and rebellion.³⁷

The problem with theories that deal with crime is that they are not relevant to the real world. All of the theories that I learned when I was in school simply do not apply to what I do...Sure, many of the cases assigned to me show that some people learn how to commit crimes from other people, or they get into trouble because they hang-out with the wrong people, or maybe it is because they are raised in the wrong part of town. But what good does that do for me? These theories do not provide any answers that will make my job any easier. Besides, if I went to my supervisor and started talking theories I would find myself in deep shit. They don't want theories, they want production.³⁸

By the middle of the 20th century American sociology had been bombarded by theories explaining deviant behavior. Some of those theories supported Merton's version of anomie, while other leaned toward Sutherland's differential association. Some theorists tried to find a balance between Merton and Sutherland in their attempts to explain crime and delinquency. Two orientations, both addressing delinquent subcultures, that emerged during this period were Cohen's (1955) and Miller's (1982, 1958) delinquent subculture theories and Cloward and Ohlin's (1960) differential opportunity. The general themes of these theories appear to have significant support among the presentence investigators who were interviewed during this study.

Cohen (1955) argued that subcultures emerge in highly differentiated societies where similar problems are shared by a significant number of people. This occurs through the interactive process among people within these groups (Clinard, 1974). Cohen attempted to denounce the relationship between delinquent behavior and social

disorganization. However, in the process of castigating the Chicago school orientation, he actually reinforced many of the basic postulates of that perspective. His argument in opposition to social disorganization stemmed from the belief that deviance could not be identified with social disorganization if that concept referred to the dissolution of social bonds, the disintegration of social groups, or the disruption of organized social activities.

These guys [gang members] are representatives from the lower class of Las Vegas. I realize that everyone over on the Westside is not a criminal, but most of them think the same--get something for nothing. Its kind of like getting welfare.³⁹

Central to Cohen's subculture theory was the idea that lower class gang delinquency denounced middle class culture.⁴⁰ He envisioned lower class youth retaliating against middle class culture because of the large number of lower class youth who found themselves barred from the middle class and its subsequent rewards. "The delinquent subculture is most likely to be found in the working class" (Cohen 1955:73), who, Cohen argued, found themselves locked into their social position.

Some gang members [young black gang members] are involved in crime for the fun of it. They commit drive-by shootings, not to get even with anyone, but for the thrill of watching someone die. I can understand the profit motive aspect of crime, but I cannot understand how some of those kids can simply shoot people for the sole purpose of watching them fall...Maybe they are just bored, or maybe they just like the idea of hurting people.⁴¹

Delinquents did not simply engage in wrong doing for profit, argued Cohen, they wanted recognition. They also wanted to avoid isolation. Cohen believed that delinquent subcultures inverted the norms of the larger culture which meant that their acts were really not deviant at all by the standards of their own culture. For instance, let us assume that the larger culture subscribed to the norm that "people must support the efforts of local law enforcement." According to Cohen's theory, the lower class culture, which is reflected within the delinquent subculture, would subscribe to the norm that, "one should never support local law enforcement." To do otherwise would be inconsistent with the delinquent subculture, as well as with the lower class culture. Walter Miller (1982, 1958:160), who argued that delinquent gangs actually accepted lower class values, suggests,

In certain situations, 'getting into trouble' is overtly recognized as prestige-conferring; for example, membership in certain adult and adolescent primary groupings [gangs] is contingent on having demonstrated an explicit commitment to the law violating alternative.

Cohen (1955:30) accused delinquent gangs of being hedonistic, arguing that, "They are impatient, impetuous and out for 'fun,' with little heed to the remote gains and costs." He conceded, however, that hedonism was not an exclusive delinquency trait but that, "it [hedonism] is common throughout the social class [lower class] from which delinquents characteristically come," (Cohen 1955:30). He

also noted that, "there is a kind of malice apparent and enjoyment in the discomfort of others" (Cohen 1955:27), a point that Yablonsky (1962) later capitalized on by arguing that the leaders of the subculture gangs were necessarily sociopathic, and that this trait was "epidemic" among other members of the group. Miller (1982, 1958:165) also supported the notion that the lower classes subscribed to a particular set of values (although in this case, values specific to the working class) which induced delinquent behavior, indicating that,

The dominant component of the motivations of 'delinquent' behavior engaged in by members of lower class corner groups involves a positive effort to achieve states, conditions, or qualities valued within the actor's most significant cultural milieu.

Finally, Cohen presented the notion that the lower class characteristic of present-time orientation reflected in delinquent gangs. Contradicting Sutherland's argument that delinquents evaluate the advantages and disadvantages of legal or illegal definitions, Cohen argued that gang members were incapable of weighing the consequences of delinquency because that would require forethought. Cohen's obviously perceived the lower class as decadent, and in that context coincided with the earlier Chicago school's pathological view of that class. This approach to deviant behavior is obviously class biased--blaming the lower class for spawning crime and delinquency. In fact, Cohen revealed that the

principal audience for his book, Delinquent Boys: The Culture of the Gang, would be middle class adults.

Crime is something that certain people do to acquire things that they think they are unable to get legitimately. Everyone cannot become involved in crime because they either lack the know-how or the opportunity. Most people cannot become drug dealers because they do not have the connections. The connections are established in the person's community or associations.⁴²

Borrowing from Merton's application of anomie to deviant behavior, and the Chicago school's early ecological theories of crime and delinquency, Cloward and Ohlin (1960) developed the theory of differential opportunity. Critical of the manner in which earlier theorists ignored the relativity of illegal opportunities available to potential criminals, Cloward and Ohlin tried to identify differences in delinquent subcultures and account for them in terms of socially structured anomie that was based on interclass conflict, as well as the availability of legitimate and illegitimate opportunities. They argued that delinquent subcultures are formed because of the discrepancies between culturally defined success-goals and the limitations imposed on lower class youth to attain those goals through legitimate means. Frustration and various forms of anti-social behavior result because many of these youth find that not only are legitimate means denied them, but in many cases they are denied access to illegitimate means as well. Delinquent behavior had a specific purpose of gaining wealth, Cloward and Ohlin urged, and these youth were not

simply reacting to middle class values, they were questioning the legitimacy of those values.

Most offenders have a limited formal education. Many have "street smarts" but rarely are they able to produce documentation reflecting formal education achievements. I think this can be attributed to a certain type of personality fails to demonstrate very much drive to succeed. They all had an opportunity to go to primary and secondary schools, but they failed to develop any interest in that kind of education. Subsequently, they end up in my office trying to cry for probation.⁴³

Cloward and Ohlin disagreed with Cohen's argument that failure in school or other middle class institutions necessarily led to delinquency. They believed that the causation of delinquent behavior was much more complicated. They suggested that, "If youngsters...become delinquent, it is chiefly because they anticipate that legitimate channels to the goals they seek will be limited or closed" (Cloward and Ohlin 1960:97).⁴⁴

In the context of the relationship between theory and practice, most of the presentence investigators that I interviewed had degrees in one of the social sciences, and all had college degrees. Therefore, it seems reasonable to assume that most of the respondents probably had some exposure to criminological theories, though it is obvious they did not emerge as academic theoreticians. Earlier in this chapter I raised the argument that criminological theories, whether they were the utilitarian orientations of Beccaria or Bentham, or the positivist positions of Lombroso or Hooten, were reflected in the sentence recommending

process. I also suggested that they were evident in the views of decision-makers who are employed in that process. The same can be said of the sociological theories like the Chicago school's social disorganization orientations, Merton's theory of anomie, and the many delinquent subculture theories that emerged in the 1950s and 1960s. All are reflected in the sentencing process, although some more than others, and the decisions made by presentence investigators. Their understanding of these theories, limited or expanded, contribute to their perceptions and treatment of offenders.

Despite claims made by administrators and practitioners of the Nevada Department of Parole and Probation that the decision-making process is mostly objective, many investigators are influenced by what they learned, partially learned, or "mis-learned" about criminological theories. In fact, much of the criteria used in their formal guidelines contain elements directly related to these theories.

You know, I grew up during the early 1960s and I have a difficult time understanding why there is so much crime and violence. Violence was something that was very rare. Nowadays these kids [young offenders] are very familiar with violence. I wonder how the next generation will turn out. With the role models they have to select from, with the movies that popularize violence, with all the pornography, drugs, alcohol, and everything else, I suppose they will be violent too. Maybe what is needed is more television reruns of "Leave it to Beaver." Look at our generation, it worked for us.⁴⁵

Although the principal task of this work is devoted to examining the level of objectivity associated with

constructing the presentence investigation report, it has been necessary to elaborate on selected criminological theories and to suggest their direct/indirect influence on presentence investigators. Throughout the following chapters it will become clear that each of these theories has played a key role in formulating sentencing guidelines, and, to a lesser degree, influencing presentence investigators in the decisions they make about convicted offenders. Nowhere is this more evident than in the following chapter which concentrates on selective incapacitation.

NOTES

1. This statement surfaced in a discussion about the disproportionate number of blacks incarcerated in the Nevada Department of Prisons (NDP) system. The interview was conducted in 1987 with a leading administrative official of the NDP.

2. This statement recently emerged in an interview with a pre-sentence investigator at the Nevada Department of Parole and Probation. The discussion was centered on mitigating circumstances surrounding the sentencing recommendation process. This individual supported the idea that anyone who commits a criminal offense should receive a prison sentence--without any consideration given to the dynamics encompassing the offense.

3. For example, Hobbes (1651, 1991:215) questioned the "right" of judges to prescribe punishment for wrong-doers, and argued, "the evil inflicted by usurped power, and Judges without Authority from a Sovereign, is not Punishment, but and act of hostility."

4. Interview recently conducted with a presentence investigator at Nevada Department of Parole and Probation.

5. When Ronald Reagan assumed the role of President of the United States he soon began fulfilling campaign promises to promote "get tough on criminals" policies. In 1981, with 8,889 agencies reporting (representing an estimated population of 144,605,000) there were 1,831,920 index crime arrests in our cities (Maguire and Flanagan, 1991:427). In 1989, with 7,232 agencies reporting (representing an estimated 138,070,000) there were 1,942,741 index crime arrests in U.S. cities (Brown, Flanagan, and McLeod 1984:436). Based on official arrest data, these types of policies have clearly failed to reduce criminality.

6. This statement was recorded during a recent interview with a pre-sentence investigator with the Nevada Department of Parole and Probation. The principle topic focused on "truth." The specific question presented to the investigator was, how can you determine whether a defender is telling the truth? The individual perceived his "scientific" application of watching body language was an objective process--due to the length of time he/she has practiced this process.

7. Interview with presentence investigator with Nevada Department of Parole and Probation recently conducted.

8. The issue of gangs emerged in several interviews in my study of sentencing recommendations. Many of the investigators indicated they were able to identify gang members easily. This interview revealed that body build was yet another "scientific" identifier used to catalog individuals as members of delinquent gangs used by this particular presentence investigator.

9. During my study of sentencing recommendations I found that most of the investigators have preconceived ideas about psychological symptoms and their association with criminality. However, when asked about their formal training, few demonstrated psychological training beyond several college courses taken during their undergraduate training. Interestingly, they used terms like psychotic, schizophrenia, antisocial interchangeably.

10. Several pre-sentence investigators at Nevada Department of Parole and Probation, registering their disapproval of "pigeon-holing" defendants, stated that stereotyping was a common practice among many parole and probation officers. Generally, these respondents were more inclined to view criminality as a result of social rather than pathological factors.

11. References to race and criminality were frequent during interviews with presentence investigators at the Nevada Department of Parole and Probation. Often the references were indirect. For example, many pointed to geographic areas, which were predominately occupied by blacks when they discussed family disorganization and other "social ills." Black female offenders seem to be looked upon most critically. Most investigators appeared to view black female offenders as drug addicts or prostitutes that were incapable of caring for their children. When confronted with the issue of white female offenders most officers acknowledged that these offenders were also negligent with their children. However, the point of reference for negligent mothers rested with the black female offender.

12. Interview was recently conducted at Nevada Department of Parole and Probation.

13. Interview with presentence investigator conducted at Nevada Department of Parole and Probation. Most of the interviewees referred to the Westside as an area of Las Vegas that is plagued with crime and criminals. Several investigators drew attention to the lack of opportunities for residents of that area, but most were quick to argue that this was no excuse to engage in criminal activities.

14. Interview with presentence investigator at Nevada Department of Parole and Probation. Several investigators referred to criminality in the context of women copying their male counterpart's methods of committing crime. Most of the respondents hinted that the "women's movement" was probably responsible for the diverse criminality associated with women today. They indicated that increased opportunities for contemporary women were, in part responsible.

15. The association between upper-level and lower-level drug dealers substantiates Tarde's argument about imitation. Patricia Adler (1985) provides an interesting accounting of upper-level drug dealers, while James A. Inciardi (1992) offers an excellent presentation of lower-level drug dealers. There are many similarities between both groups, and it appears that the lower-level drug dealers do attempt to imitate the actions of their superiors.

16. Interview with presentence investigator at Nevada Department of Parole and Probation. Several investigators indicated to me that they felt their particular job had nothing to do with reducing crime, instead, their principle role was that of a "paper processor," and that politics directed the flow of paper, as well as dictated the amount of paper to be used. Each time I tried to probe further into this theme the respondents acted as though I must be a naive academician in pursuit of an answer which would eliminate crime. One investigator told me, "it is not in my personal interest to eliminate crime."

17. Interview with presentence investigator at Nevada Department of Parole and Probation. There were several references made by investigators to manipulating reports which would present the offender in a less-than-favorable position with the sentencing judge.

18. Interview with presentence investigator at Nevada Department of Parole and Probation. The majority of investigators indicated, like their superiors, that transients were a major problem for Las Vegas because they were frequently involved in crime. Several investigators stated, however, that this was not an accurate perception, and that most of the crimes were committed by residents--not transients. I was confronted with similar claims of transient criminality during a study of the Nevada Prison System in 1987. Official records revealed that most inmates in the Nevada Prison system were indeed Nevada residents long before they committed the offense which resulted in their current incarceration.

19. Interview with presentence investigator at Nevada Department of Parole and Probation. Many presentence investigators pointed to Los Angeles, California as the major cause for gang violence in Las Vegas. A couple of respondents indicated that, without trivializing the impact of gang violence on victims, they felt the gang "thing" is being blown out of proportion and was actually a means to increase manpower at the Metropolitan Police Department. Other respondents "hinted" that the Las Vegas media has engaged in a concerted effort to expose ethnic minority gangs while ignoring white gang activity. One respondent suggested, "coverage of black gang activities puts some 'color' into the stories. People here don't want to read or watch coverage of white gang violence."

20. Interview with presentence investigator at Nevada Department of Parole and Probation. A number of respondents expressed approval with this study there was a suspicion that this study, "like most academic research," would result in "nothing." Most investigators were apprehensive about theories explaining crime and delinquency which serve as the cornerstones for criminology. Nearly all respondents felt that academicians had very little knowledge of the "real" criminal justice world. Furthermore, one respondent stated,

Even if your findings are accurate, and you offer some useful solutions, the study will serve no purpose unless it is viewed to be politically or economically advantageous for the higher-ups, who don't give a shit about us or the defendants. They just want to impress the governor, who probably knows as little about criminals as most academicians.

21. Interview with presentence investigator at Nevada Department of Parole and Probation. Several presentence investigators discussed the population growth of Las Vegas over the past few years. They attributed the rise in crime to this growth. One respondent indicated that the city was becoming less "personal" as it grew, and that this impersonalization, "trickled down to law enforcement too."

22. While natural selection may play a part in the zoning of an urban area, politics and economics also play a role (See J. Allen Whitt's (1982) work titled, Urban Elites and Mass Transportation).

23. Interview with presentence investigator at Nevada Department of Parole and Probation. Many discussions with respondents from this agency focused on the theme of how some people become criminals. Frequently, the "blame" was transferred to parents and the neighborhood. During this particular interview the investigator took considerable

pride in making a correlation between the individual and his or her residence by simply "looking" at the individual. This "resident-identification" technique was later revised to include listening to the offender, as well as physical "inspection."

24. Interview with presentence investigator at Nevada Department of Parole and Probation.

25. The "ideal" home is still used to day as a measuring rod for determining the sentencing recommendation for offenders. Throughout this study many presentence investigators have referred to the family life of the defendants that they come into contact with. In most cases the respondent acknowledges that broken families, alcoholism, drug abuse, prostitution, and other family dysfunctions lie in the backgrounds of many offenders. However, they are careful to point out that while this may be a "sad reality," it does not justify the offenders involvement in crime.

26. Interview with presentence investigator at Nevada Department of Parole and Probation. Many presentence investigators, as indicated by this study, suggested that criminals and delinquents maintained and subscribed to a different set of morals and values than do "normal" people.

27. This point surfaced in subsequent sociological theories dealing with the etiology of crime and delinquency (e.g., Cohen 1955; Cloward and Ohlin 1960).

28. Interview with presentence investigator at Nevada Department of Parole and Probation. Many presentence investigators indicated that the unique demographic characteristics of Nevada, particularly Las Vegas, contributed to the crime problem. Most notably, the issues of gaming and 24 hour availability of alcohol surfaced as contributing factors to the crime rate in the Las Vegas community.

29. Sutherland's work also seems to have been influenced by Tarde (1890, 1968), particularly where Tarde suggests that criminal behavior is learned the same as other forms of behavior. Examining Sutherland's (1974) work Criminology, however, I found three small references to Tarde's work with no recognition of influence upon differential association.

30. Interview with presentence investigator at Nevada Department of parole and Probation. This particular interviewee stated that many alleged gang members were not gang members at all. For example, this investigator said,

The situation over there [Westside] demands some affiliation with gang members by many of the people in that community. Hell, many of them live next door to gang members. What are they supposed to do? ignore them? When Metro officers witness someone talking to a known gang member they just consider the other individual to be a gang banger too.

31. Mead (1944) noted that patterns of behavior develop which are consistent with the collective expectations of others who are members of the individual's intimate group. A "generalized other" emerges which is the individual's response to those expectations. If the groups is involved in crime or delinquency, and if that individual internalizes the expectation of the group, he or she is likely to engage in similar forms of behavior.

32. Interview with presentence investigator at Nevada Department of Parole and Probation. This interviewee suggested that all offenders have a choice of whether or not to commit a crime. The respondent, as did several others, further suggested that the influence of "these criminal role models" is very strong throughout the Westside neighborhood. Several presentence investigators agreed with a question raised by one investigator, "the standards and values in that [Westside] neighborhood are different that in other neighborhoods...They want something for nothing."

33. Many of the presentence investigators who were interviewed during this study stated that because of the quantification properties of the sentencing guidelines, used by the Nevada Department of Parole and Probation, their decisions were based on objective criteria.

34. Interview with presentence investigator at Nevada Department of Parole and Probation. Several investigators referred to their decision-making process as being scientific approaches to sentencing recommendations. This was based, as in the case of this respondent, on the mathematical values assigned to the dimensions of selected variables.

35. Interview with presentence investigator at Nevada Department of Parole and Probation. Many of the respondents indicated that criminal offenders had perceptions about acquiring material goods that were contrary to the perceptions held by "normal" people. Whereas most people worked hard at legitimate jobs to get the things they wanted, criminals simply "took" what they wanted without working.

36. Anomie is a functionalist approach to deviant behavior that embraces the idea that the social system is in a state of harmony when it is capable of providing realistic means for achieving socially prescribed success-goals.

37. Individuals who accept the success-goals and the socially prescribed means of attainment are referred to by Merton as conformists. They "realize" that hard work, education, self-discipline, etc., which are concerted with the Protestant work ethic, can lead to success-goals. The retreatist is an individual who once reacted as a conformist, but now rejects both the success-goal and means of attainment. This transition, Merton suggested, was generally a result of some cataclysmic experience (e.g., the unexpected death of a spouse, or the dismissal from a job which the individual feels is unfair). Merton argued that this individual perceives the future as hopeless. The innovator is a person who, while accepting the socially prescribed success-goals, rejects the prescribed means. This individual was referred to by Merton as the criminal. The ritualist is an individual who is preoccupied with the institutional means of goal attainment, and places little value on the success-goal. I use the example of the bureaucrat in my classes, since this person seems completely consumed in the "process," and does not spend much time thinking about the consequences of the process. Merton's final category is the rebel who rejects both the socially prescribed success-goals and means of attaining those goals. This individual, argued Merton, substitutes his or her own goals and means of attainment.

38. Interview with presentence investigator at Nevada Department of Parole and Probation. When the topic of criminological theory surfaced during an interview, as it frequently did, most respondents seemed to judge the merits of a theory by whether or not it provided a detailed "recipe" for practitioners to follow. Most presentence investigators expected a theory to not only provide a foundation for addressing social phenomena, but wanted a list of "things to do" offered in a prioritized way.

39. Interview with presentence investigator at Nevada Department of Parole and Probation. This was one of many interviews where criminals and welfare recipients were cast into similar categories.

40. David Matza (1964) and Gresham M. Sykes (1967) adamantly opposed the idea that lower class youth denounced middle class culture. In fact, both maintained that lower class youth were committed to middle class values. Matza (1964:41) contends that if the subculture of delinquency

denounced middle class culture the perpetrator would not experience guilt or shame upon apprehension:

Once the delinquent has expressed his wrongful indignation, he proceeds to either contriteness or defensive explanations. The contriteness that he manifests may be based on guilt, or more likely shame, but it cannot be dismissed as simply a manipulative tactic designed to appease those in authority.

41. Interview with presentence investigator at Nevada Department of Parole and Probation. Several respondents suggested that insensitivity toward people was a dominating characteristic of offenders who are gang members.

42. Interview with presentence investigator at Nevada Department of Parole and Probation. Most investigators suggested that anyone was capable of committing criminal acts, and that criminals created their own opportunities.

43. Interview with presentence investigator at Nevada Department of Parole and Probation. The vast majority of respondents stated that education was a principle indicator of future behavior. One investigator noted, "If they can't finish something like high school they certainly can't successfully complete probation."

44. Cloward and Ohlin's work contributed to the passage of the Juvenile Delinquency Prevention and Control Act of 1961. The program focused on making improving education, the creation of jobs, and social services designed to assist individuals, gangs, and families. Vold and Bernard (1986:201) point out that the program, "was later expanded to include all lower-class people and became the basis of Lyndon Johnson's War on Poverty." Richard Nixon abandoned the program on the grounds that clear-cut results were not evident.

45. Interview with presentence investigator at Nevada Parole and Probation. Due to my self-imposed restrictions of safeguarding information that could possibly connect respondents with their statements I am unable to expand on this individual's past life experiences. I was taken back by the statement and wondered if the individual had ever considered the effects the Vietnam War, the 1968 Democrat Convention, Kent State, El Salvador, Nicaragua, Grenada, Panama, or Desert Storm, and other activities of that particular generation.

CHAPTER 4

INCAPACITATION: A QUESTIONABLE PANACEA FOR CRIME

My official job description is quite specific: I am required to make sentence recommendations for defendants with the idea that the public's safety always comes first. Translated, this means that a lot of people coming through my office will go to prison. Of course there is a certain amount of politics involved too; like when the legislature decides that the cost of prison becomes too high and they expect us [presentence investigators] to quietly readjust our priorities and become servants of their new policies. Legislative whims become a real pain in the ass around here...My real functions are to process people and paperwork in a timely manner so that the supervisors and administrators will keep off my ass.¹

The intended purpose of criminal law sanctions is usually an integral part of criminal codes. The more celebrated purposes of criminal law are "just desserts" (retribution), "incapacitation," (concern for public safety), "deterrence" (social control), and the least-popular "rehabilitation" (the least popular model). Such purposes are often used to direct the construction and interpretation of criminal statutes as well as to establish sanctions for individual cases. Due to their distinct philosophical foundations, legislators generally select one purpose and the remainder are discarded. The primary question that is raised for lawmakers and criminal justice practitioners is, "which purpose do we support?"

A review of Nevada's criminal statutes suggests that "punishment," a characteristic of retribution, is the

selected purpose for criminal sanctions which underlie the criminal codes of this state. For example, the Nevada Revised Statutes (1987-1988), laying out the basic sanctions for different levels of criminal offenses, stipulate, "Every person convicted of a misdemeanor shall be punished by imprisonment in the county jail for not more than six months," and, "Every person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for not more than one year." The General Provisions of Title 15, of the revised statutes, titled Crimes and Punishment, "states,

Every person convicted of a felony:

1. For which a term of imprisonment is provided by statute, shall be sentenced to a definite term of imprisonment which shall be within the limits prescribed by the applicable statute, unless the statute in force at the time of the commission of such felony prescribed a different penalty.

2. For which no punishment is specially prescribed by statute, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment (Nevada Revised Statutes 1987-1988:441).

This does not suggest that alternative sanctions like probation or fines are omitted. These are viable alternatives within the realm of criminal sanctions in Nevada. The important point to make here is that all sanctions are considered punishment, and incarceration seems to be the most "recommended" vehicle used to administer punishment.² The role of incarceration is clearly delineated in the Nevada Revised Statutes while a principal goal of the Nevada Department of Parole and Probation

(NDPP), which is to protect the public,³ contradicts the purpose subscribed to by the statutes. Whereas law-makers appear to embrace "just desserts," "incapacitation" appears to be perceived by NDPP as the purpose of criminal sanctions. Of course there is the distinct possibility that "just desserts" is a political rendition of incapacitation--it is easier to explain the "getting even" aspects of "just desserts." And it may be possible that both concepts are used interchangeably, by law makers and the NDPP, without regard to the concepts philosophical differences. Moreover, it is also conceivable that both the law-makers and the NDPP share similar concerns with the presentence investigator mentioned above: completely ignoring philosophical distinctions, they may "just want to keep the public off their asses," but change their orientations out of "political necessity."

WHAT WE DO HERE IS SCIENTIFIC

The presentence investigator leaned back in the chair and reached into a file cabinet and pulled out a thick pad of legal forms. Yanking off several pages from the pad and handing them across the desk to me, the investigator said,

Everyone [offenders] is treated equal around here. These are the forms that we use when we calculate a sentence recommendation for a defendant. They are called "Probation Probability Success Forms" and they are designed so that each decision is based on objective criteria, regardless of how much we may dislike the bastard [offender]. If you look at the first page, which is the most important one, it deals with the defendant's criminal history and the instant [current] offense. You

can see that facts, not subjective judgements, determine the defendant's score...Some of the people we have to make reports on are real assholes, and if we didn't have objective safeguards like these [mathematical scales] there would be an inclination to hang some of them...The bottom line is that I don't send them to prison--they send themselves to prison with their past behavior...We [presentence investigators] make our final assessments on objective criteria. I guess you could say that what we do around here is scientific.⁴

Several presentence investigators used the concept "scientific" to explain the "process" they employed to determine sentence recommendations for offenders. One investigator, making the concept more complex, indicated that the sentencing process was an "application of scientific methods to predict the future criminal behavior of defendants."⁵ Most of the investigators who compared their work with science based the idea of "doing science" on the assumption that the sentence recommendation process was built on a foundation of objectivity, and that objectivity was closely associated with mathematical values which are assigned to the indicators of selected variables contained within the "Probation Probability Success" forms. As one investigator stated,

Numbers don't lie. No one can claim that subjectivity dominates the decision-making process of a sentence recommendation. If the defendant's score falls within a certain range on the "Offense Severity Scale" then the sentence recommendation is determined objectively.⁶

Therefore, for some presentence investigators, "science" is reduced to "numbers;" if "it has numbers it is science." So where do these "numbers" come from? and what impact do they have on predicting future criminal behavior? Earlier

studies, that centered on criminal prediction (with an emphasis on criminal propensity) and crime control (examining a variety of sentencing policy options), produced an array of indices and matrixes which provided "tools"-- "instructions included"-- for criminal justice applications. Quantitative legitimation was given to the criminal justice system through these studies. Criminal propensity "predictors," and sentencing policy scenarios employed by various studies, could be incorporated into the daily routine of criminal justice practitioners with the "justification" that what they were doing was based on objective scientific inquiry. Of course they were careful to select only those studies which reinforced pre-existing common sense beliefs (e.g., ethnic minorities, young males, the unemployed, etc. were the ones who were committing crimes). This is not surprising if one considers that much of the data collected for these studies were provided by the criminal justice network (e.g., FBI, California Youth Authority, etc.), and most of that earlier research was conducted under the auspice of state and federal funding.⁷

Three approaches are typically used to predict human behavior: The first, anamnestic prediction, assumes that people will behave in the future much as they behaved in the past when they are confronted with similar sets of circumstances. The second approach, clinical prediction, is frequently used by professionals through a cooperative

analysis of information about a particular subject (Miller and Morris 1985). Finally, there is actuarial prediction which relies exclusively on the development of statistical categories used for calculating probability in human behavior. In the criminal justice system clinical prediction analyses are usually reserved for the courtroom setting and the judge (e.g., psychological assessments of selected defendants). However, most criminal justice officials, particularly those who are involved in the sentence recommendation process, claim to rely almost exclusively on "evidence" generated from actuarial prediction methods. This "evidence" seems to provide justification for their sentencing policies and practices that embrace the incapacitation philosophy. One investigator claimed that the idea of sending someone to prison had "no emotional impact on me" and later stated, "The numbers [scales] make it [sentencing] clean and free of subjective personal involvement."⁸ The anamnestic prediction approach appears to be reserved for individual perceptions, which subtly reveal personal biases and prejudices. During a recent interview one investigator claimed,

These people [young black offenders] will never change. They are constantly in trouble with the law because each time the are released they return to the same old neighborhoods [the Westside and North Las Vegas]. They will never get out of the system.⁹

At the beginning of the 1970s the National Council on Crime and Delinquency sponsored a study that focused on the prediction of violent criminal behavior. In one instance, a sample of 4,146 youths committed to the California Youth Authority was selected by Wenk and his associates (1972), who found that 104 subjects, following their release from custody, became violent recidivists. The purpose of the study was to construct a model that would have identified those 104 cases in advance. It was thought that past violent behavior would be the best predictor variable to use, but when the researchers examined the subjects records for evidence of previous violent behavior, they found that only 52 of the violent recidivist cases had a history of violence. By using official records of prior violent behavior, the other half of this group would have escaped early detection. In an effort to isolate other predictor variables, the researchers solicited the assistance of professional clinicians in providing indices of "violent proneness." After weeks of investigation and deliberation the clinicians reported that, in addition to official documentation of previous violent behavior, "obvious" emotional problems and drug or alcohol abuse would be excellent predictors of violent behavior. Incorporating these new indices into their model Wenk et al. concluded that their study had been successful; they had come up with a model for predicting violent behavior that only had a 10

percent error rate. This "successful" model revealed that out of 4,146 cases, with 52 true positives (violent persons correctly identified) and 52 false negatives (violent persons incorrectly identified as nonviolent), there would have been 3,638 true negatives (nonviolent persons correctly identified as nonviolent), but there would have also been 408 false positives (nonviolent persons incorrectly identified as violent) who would have been incarcerated needlessly.¹⁰

A lot of crime is being committed out there in the streets everyday, and I think that most of it is being done by a few assholes who happen to be very good at what they do. A lot of people break the law now and then, but they don't do it continuously. Its the part-time criminals that get caught at it so frequently, while the other assholes are the ones who get away. Once in awhile we get lucky and catch a pro...The part-time criminals just don't understand the mechanics of the system like the professional criminals do.¹¹

Avi-Itzhak and Shinnar (1973) developed a mathematical model that demonstrated the relationships among criminal behavior, the probability of arrest, conviction, and incarceration (including the length of incarceration). In 1975, Shlomo and Shinnar, using data from the Uniform Crime Reports, attempted to determine what effect more sentencing policies might have on crime prevention. They "estimated" that 25 crimes were committed during the course of a criminal's career, and that while recidivists constituted only 16 percent of the criminal population, they committed 90 percent of the crimes in America.

All we need to do is lock them up [offenders] for longer

periods of time and most of our crime problems would be resolved. Stiff sentences should be mandatory. This is really the only thing they [offenders] understand. It seems to me that the more criminals we lock up the less crime we'll have. Its just simple logic.¹²

Shlomo and Shinnar (1975) projected that mandatory sentences of five years for violent index crimes, and three year mandatory sentences for burglary, could reduce the occurrence of these offenses by 80 percent. Conversely, but with much less optimism, Greenberg (1975), using California criminal data, estimated that each year reduction in average sentence length would result in a 1.2 to 8 percent increase in the index crime rates.

Van Dine, Dinitz, and Conrad (1977:24) conducted a study of violent offenders in Franklin County, Ohio. Their primary research question was:

What can the criminal histories of actual offenders tell us about the optimal sentencing policies if the reduction of violent crime is to be the object of a policy of incapacitation?

The researchers had 342 cases which met the following criteria: "All were adults or juveniles bound over and charged as adults." Furthermore, "All had been indicted or arraigned for one of the major personal crimes." Finally, "All were listed by the Franklin County prosecutor as 'disposed of' during the 1973 calendar year" (p. 25). Of the 342 cases, 166 were found guilty as charged, while the other 176 cases were either released on writs or, after plea bargaining, plead guilty to a reduced charge. The basic assumption underlying this study was that,

All subjects in the cohort, whether found guilty or not of the crimes with which they were charged, did in fact commit all the crimes for which they were arrested. Thus a man who was arrested for 14 robberies but tried and convicted on only three, is assumed, for the purpose of this study, to have committed all 14 (Van Dine, Dinitz, and Conrad, 1977:25).

The researchers indicated that, although they would have liked to include variables such as socioeconomic status, education levels, and employment histories, they were limited to only age and race. Age and race were the only uniformly available data that could be extracted from the records. In order to test the effectiveness of incapacitation they had to determine how many of the 1973 crimes would have been prevented had the offenders been incarcerated at their last felony conviction.

In order to accomplish this task they created five hypothetical sentencing policies: Option one assumed that any felony conviction would result in a five year prison term. Option two assumed that a five year mandatory prison sentence would be given to offenders who had previously been convicted of any felony. Option three assumed that the third felony conviction of an offender would result in a five year prison sentence. Option four assumed that any felony conviction, violent or not, would result in a three year mandatory prison sentence. The final option, focusing exclusively on violent offenses, would result in a mandatory five year prison sentence. Using the first option, which is both impractical and harsh, the researcher concluded that

incapacitation would have resulted in a modest reduction of violent crime rates--netting only a 4 percent decline.

Largely ignoring the results of the Van Dine et al. study, the preoccupation with criminal prediction continued to persist. During the 1980s selective incapacitation, a controversial concept with an "old" legacy, emerged promising to be the panacea for crime in society--reducing crime rates at an "affordable price." Selective incapacitation moved to the forefront of criminological interest offering "scientific" legitimacy to criminal prediction through numerical scales which were based on scientific research (e.g., Chaiken and Chaiken 1982; Greenwood 1982; Peterson and Braiker 1980).

SELECTIVE INCAPACITATION

Selective incapacitation is a process whereby violent and/or chronic offenders, upon arrest and conviction, are given longer prison sentences based on a particular set of criteria that have been reduced to mathematical scales (Brown and Preston 1988). Habitual criminal statutes represent the purest form and spirit of selective incapacitation sentencing policies.¹³ The proposed goal of this type of sentencing policy is to significantly reduce crime rates by targeting certain types of offenders who are thought to have a high propensity to crime (e.g., burglars and robbers). This sentencing orientation was influenced by research, focused exclusively on police contacts, which

suggested that a small minority of offenders were responsible for committing a disproportionately large number of crimes (Wolfgang, Figlio, and Sellin 1972). As Samuel Walker (1989:58) notes,

It [selective incapacitation research] addresses the two main questions that Wolfgang raised but left unanswered: Exactly how many crimes do career criminals commit, and how can we positively identify the members of this small group?

Our job requires us to conduct investigations on each case that we are assigned...the significance of a case determines the amount of time that I can spend investigating it. If a case happens to be a high profile [receiving extensive media coverage] one then I will spend a lot of time investigating the defendant's background...The administrators take a special interest in these [high profile] cases...Probably because they think it will get them some political recognition and it also gives them an opportunity to grandstand around here [the office]...you know, pretend that they give a shit about the public's safety. Anyway, this places a lot of pressure on us [presentence investigators]...When I have a high profile case the rest of my caseload suffers...The administrators don't give a damn about these little cases. They just want the paperwork run through as fast as possible; they just want production...The only time they question my work is when they think I might be too lenient on a defendant...like recommend probation when they want a recommendation for prison...Actually, I think it's impossible to predict who will, or will not, commit more crimes. Some people around here say they can, but when they send them to prison how can you test the accuracy of their claims? I just hope that the decisions that I make are right. I guess it just boils down to just do the best you can do and let God sort out the mistakes.¹⁴

Taking into account the overwhelming public concern about the costs associated with policing and prosecuting offenders, and coupled with the rising fear of being victimized, selective incapacitation has a seductive appeal. This is largely due, however, to the success of a

conservative ideological perspective that has had a consequential influence on criminal justice priorities and subsequent policies. Walker (1989:71) suggests that, "Incapacitation rests on the same deceptively simple idea as preventive detention:¹⁵ we can reduce crime by locking up the few chronic offenders." "Politically," he continues, "incapacitation is currently one of the hottest ideas in criminal justice." Davis (1983) and Fox (1983) have both noted that by emphasizing "law and order" conservative political campaigns have moved criminal justice into the political arena. The result has been a "preoccupation" with the dangers of street crimes by the public, and an outcry to increase the use of incapacitation as the primary crime control strategy. Reiman (1990) has accused the media of "fueling distortions" about the risks associated with street crimes, and politicians have benefitted from this deceptive projection while the public and criminal justice practitioners have been misled. Both the public and criminal justice practitioners are led to believe that it is ethnic minorities and the lower classes that are responsible for crime. It is in this context that selective incapacitation has been used as a means to focus on what Fox (1983) calls "underclass dysfunctions," and to ignore Simon and Eitzen's (1986) "suite" crimes altogether.

Predicting criminal behavior within the criminal justice system is neither new, nor unusual; predicting criminal

behavior has become "second nature" to that system over the years. Wilson (1983) argues that everyone in the criminal justice system is involved in predicting criminal behavior--even defense attorneys do this when they plead for their client's release without bail. And, as Greenwood (1983:263) points out,

Courts and parole boards have always in practice considered future dangerousness in sentencing and release decisions...It is certainly no more just to impose sanctions on offenders in order to prevent crimes that others may commit than to prevent crimes that they may commit themselves.

Attempts to predict criminal behavior are reflected in the discretionary practices of the police who decide who they arrest and who they will release to District Attorneys offices which in turn, decide which cases to prosecute and which cases to dismiss (Shelden and Brown 1991). Similarly, the presentence investigator attempts to predict criminal behavior when he or she prepares reports for the judge, who uses his or her discretionary powers to comply with or reject the presentence investigator's sentence recommendation. Moreover, predicting criminal behavior is common in correctional institutions where prison officials must determine the inmate's level of custody. Less conspicuously, prison officials "unofficially" select "snitches" based on the probability of their usefulness and reliability (Clear and Barry 1983). And, as indicated by a presentence investigator,

If you think our [presentence investigators] decisions

are more or less subjective, you should see the "tarot cards" used by the parole board to predict an inmate's behavior when he is released.¹⁶

Society would probably benefit if the criminal justice system could accurately identify and lock up, more frequently and for longer periods of time, those offenders who would continue committing more crimes. At least it would make more sense to incarcerate those offenders rather than squander scarce resources by imprisoning low-rate/low-risk offenders. Such a practice would not only be more economical but would also enhance the safety of, and assist in reassuring, an already frightened society. As one investigator suggested,

It is cheaper to lock these criminals up rather than turn them loose, and let them commit more costly crimes. It takes a lot of money to arrest, detain, and drag them through the court process again. The cost of maintaining them in prison is small when you consider the cost of the damage they do if they were free.¹⁷

But how can individuals with a high propensity to crime be accurately identified? Moreover, what would we do with all the "extra" bedspace in our prisons and jails if such a policy were to be adopted? The criminal justice system's operatives have always been compelled to make certain that all available bedspace in prisons and jails are occupied (Pontell et al. 1988). As Walker (1989:81) argues,

The...problem with selective incapacitation is a financial/administrative one...The Rand report engages in sleight of hand. The 'savings' are to be achieved by the sentencing of low- and possible middle-risk offenders to jail rather than prison. They are simply to be incarcerated in a different place, although admittedly

for a shorter period of time.

Under the sanctuary of the Rand Corporation, Greenwood (1982) surveyed 2190 males who were incarcerated in California, Michigan, and Texas jails and prisons. The study focused on the inmate's personal and criminal activities. Age, race, employment, formal education, illegal drug use, prior arrests, convictions, and adult and juvenile commitments, used in the context of predictor variables, were recorded for each inmate. The subjects were then placed in categories based on their level of criminality during the two year period that preceded their current confinement. Analysis was limited to data from 781 inmates who were serving time for burglary and robbery. Three classifications of criminal-types were created: The first classification consisted of those subjects who ranked below the 50th percentile during their last two years of freedom (low-rate offenders); the second category was made up of those who ranked between the 50th and 75th percentile (medium-rate offenders); and the third classification of those who ranked above the 75th percentile (as high-rate offenders.) All three groups were then cross-tabulated with the predictor variables that were selected on the basis of correlation strength with high-rate offenders. A seven-point scale was constructed based on those characteristics:

1. Incarceration for more than half of the two year period preceding the most recent arrest.
2. Prior conviction for the crime type that is being predicted.

3. Juvenile conviction prior to age 16.
4. Commitment to a state or federal juvenile facility.
5. Heroin or barbiturate use in the two year period preceding current arrest.
6. Heroin or barbiturate use as a juvenile.
7. Employment for less than half of the two year period preceding current arrest (Greenwood 1983:260).

In the event that an offender had four or more of these characteristics he was classified a high-rate offender. If he had only one of the characteristics he was classified a low-rate offender who warranted a minimum sentence.

Greenwood claimed that by using his seven-point scale and adopting policies that would sentence high-rate offenders to longer prison sentences, and release low-rate offenders earlier, crime would be reduced significantly (e.g., approximately 15 percent of all robberies). Selective incapacitation policies could, he argued, achieve a reduction in crime without increasing prison resources. He later pointed out that, not only would incarceration prevent crimes "that would have been committed by inmates during their period of incarceration," but that "the incarceration experience can change the propensity of those incarcerated to engage in crime when they are released." Furthermore, "the threat of incarceration can deter potential offenders from engaging in crime" (Greenwood 1983:252).

Two critical issues of selective incapacitation are linked to claims of crime reduction made by advocates of that perspective: The first issue centers on the idea that criminals who are classified high-risk offenders will

continue to commit crimes if they are not incarcerated. Petersilia (1980), von Hirsch and Gottfredson (1984), and Gottfredson and Gottfredson (1985) have argued that current research, that focuses on career criminals, does not have the statistical confidence to identify those offenders accurately. Obviously, offenders who are incarcerated would not be directly involved in committing crimes outside the prison.¹⁸

Any sentencing policy...even if it makes no systematic attempt to focus on high-risk offenders, achieves some incapacitation effects--i.e., offenders in jail are not committing crimes on the outside (Blumstein 1983:242).

Furthermore, it seems over-confident to assume that all incapacitated high-risk offenders would continue committing crimes if they were not incarcerated. Blackmore and Welch (1983), as well as Cohen (1983), point out that incapacitating those offenders who would not have committed crimes would fail to reduce the crime rate, particularly if other offenders filled their place while they were in prison. The second issue focuses on the notion that those crimes prevented by locking up high-rate offenders might be committed by other offenders who have not yet been apprehended. It seems plausible to assume that other offenders would commit at least some of the crimes that might have been committed by incarcerated high-risk offenders. Quite likely new offenders would surface to take their place, as demonstrated in the case of drug dealers throughout the 1980s, and extending into the 1990s (Inciardi

1992; Wisotsky 1990). Moreover, those incarcerated high-risk offenders who were members of criminal groups will probably be replaced by other groups members, and very little, if any, difference in the crime rate will be noticed. But, as Haapanen (1990) has indicated, research on this aspect has all but been excluded because it deals with the basic nature and etiology of crime itself--a not so popular theme during periods of conservatism.

Employment histories of defendants is an important factor to consider when I determine a sentencing recommendation. The employment record demonstrates responsibility and the possibility of security...If the defendant has a poor work history it is unlikely that he can support himself...Besides, if a defendant hasn't worked, for say a year, its obvious that he has been committing crimes to make money--probably stealing and/or selling drugs. ¹⁹

Neatly tucked away in Greenwood's seven-point scale are sex, race, and social class which become proxy predictors through the unemployment predictor. Ethnic minorities, and other disadvantaged groups have experienced problems in securing employment as well as experiencing unemployment more frequently than the white male class. Thus, according to Greenwood's scale, disadvantaged groups like minorities and the poor become obvious candidates for high-rate offender classification. Decker and Salert (1987) found that disadvantaged groups were more likely to receive a higher "Greenwood" score, even when controls for prior offenses are included. A similar study found that race and social class are inherent proxies within the selective incapacitation guidelines (Capune 1988). "There is a strong

correlation between many socioeconomic variables and race," argues Blumstein (1983:243), "and this raises the concern that even if race is excluded, socioeconomic proxies for race will nevertheless have a racially discriminatory effect." Recent data (Maguire and Flanagan 1991) reflect a strong correlation between race and criminality, with blacks being disproportionately over-represented in crimes committed, arrests, convictions, and incarceration rates. However, the large differences in crime involvement between the races are associated more with the differences in prevalence or rates of participation than with the differences in propensity to commit more crimes. It is a propensity for recidivism, not prevalence, that is relevant to selective incapacitation (Blumstein and Graddy 1982).

Many of the harshest criticisms leveled at selective incapacitation, and predicting criminal behavior, are couched in the concepts of false positives and false negatives. Gottfredson and Gottfredson (1985:141) wrote, "Unless prediction is perfectly accurate--and we have a long way to go to achieve this in the justice system--two types of errors [false positive and false negative] will always be made." Critics of selective incapacitation who are concerned with the ethical and legal aspects of this orientation tend to focus on the false positives that result from inaccurate predictions--offenders presumed to continue their careers as criminals but who, in fact, would not

continue (Chaiken and Chaiken 1982; Currie 1985; Gottfredson and Gottfredson 1985; Monahan 1981; von Hirsch 1984). False negatives defeat the utility of selective incapacitation by predicting that offenders will not engage in future criminality, when they actually do commit more crimes. Both concepts defeat the purpose of selective incapacitation policies: by incarcerating offenders who would not commit future crimes prison resources are taxed unnecessarily, and by releasing offenders who continue their criminality there is a failure to reduce crime rates. Blumstein and his associates (1978:76) point out that,

Selective incapacitation policy introduces both the technical problem of predicting individual's future crime rates and the ethical and legal problems of explicitly imprisoning people to avoid crimes they commit in the future...Poor prediction not only undermines the utilitarian justification for selectively incapacitating some convicted offenders, but it introduces concern for the injustices suffered by those who are imprisoned because their future crime propensity is erroneously predicted to be higher than it is.

Selective incapacitation proponents claim to have discovered the cure-all for violent crimes committed in our society. However, as Currie (1985:92) argues,

Like many other panaceas offered over the years, selective incapacitation appeals to that part of the American psyche that is forever on the lookout for the technical breakthrough that will magically resolve tough social problems without tackling their deep roots in American life.

Only part of the package has been digested by the American public, however. In theory, the idea of ridding our communities of violent predators through incapacitation is

enticing, but the real cost of the alluring promises of selective incapacitation are staggering, and they have been concealed from the public for political reasons. For example, the Van Dine, Dinitz, and Conrad study in Ohio revealed that in order to reduce violent crimes by 26 percent, the Ohio prison system would experience a 500-600 percent growth rate within five years.²⁰

Selective incapacitation policies have been adopted in various jurisdictions, but they have not experienced success. One such jurisdiction was New York which adopted a strict drug law in 1973 which became known as "the nation's toughest drug law." The law contained three principle provisions: First, lengthy mandatory prison sentences were established for heroin dealers; second, plea-bargaining negotiations were restricted for heroin-dealing cases; and third, mandatory prison sentences were prescribed for particular groups of recidivists. The new sentencing policies targeted three classifications of criminal offenders: The first category of offenders (Class A-1 offenders) included major drug dealers who were to receive mandatory prison sentences ranging from 15 or 20 years to life. The second group of offenders targeted (Class A-2 offenders) were mid-level drug dealers who were to be given mandatory prison sentences of at least 6 or 8 1/3 years to life. The last category of offenders (Class A-3 offenders), which was filled with violators who were involved in minor

"street dealing," were given mandatory prison sentences of at least 1 or 8 1/3 years to life. To accommodate the anticipated increase in courtroom caseloads, New York added 49 new judges.

Three years later evaluation of the newly enacted sentencing policy was conducted. Heroin use in New York remained at the 1973 level and serious property crimes, which were associated with heroin users, had increased 15 percent. Recidivism had remained constant during the same throughout the three year period. Prosecutors, it was later found, were often reluctant to bring many offenders to court. In the past, with lower penalties, it was easier to get a defendant to plead guilty (Walker 1989).

There are striking similarities between selective incapacitation policies and the sentencing policy adopted by New York in 1973. Both assume that a particular kind of offense is occurring too frequently. In the case of selective incapacitation it is generally those crimes which involve violence or tend to draw chronic offenders (i.e., robbery or burglary) whereas New York was preoccupied with heroin dealers. Second, each assumed that the targeted offenders could be readily identified. Finally, by making criminal sanctions more severe (e.g., longer, mandatory sentences), both assumed that the targeted offenders would be taken off the street and crime rates for the particular offense would decline.

The United States had 474,713 reported robberies during 1987. Of these reported robberies 26.5 percent (125,798) were cleared by arrest (Jamieson and Flanagan 1988). Selective incapacitation policies would only affect those cases which resulted in arrest. Therefore, 73.5 percent (348,915) of the robberies reported in 1987 would not have been affected by selective incapacitation policies. In 1990, criminal justice agencies indicated that they had 479,814 reported cases of robbery. Of those reported cases, 26 percent (124,752) of the cases were cleared by arrest, leaving 74 percent (355,065) beyond the grasp of selective incapacitation policies (Maguire and Flanagan, 1991). The incarceration rate of the United States has increased from 228 per 100,000 in 1987 to 271 per 100,000 in 1989. Prison populations have increased, during the same period, from 560,812 to 680,809 (Maguire and Flanagan 1991). This seems to suggest that while many states, as well as the federal government, have adopted a "get tough on criminals" approach to crime (e.g., longer, mandatory sentences) the results are far from encouraging. In fact, if America's criminal justice jurisdictions continue their present course, we may shortly lead the world in incarceration rates, surpassing South Africa and the former Soviet Union, which would be conducive to even more growth in our growing correctional "industry."

CONCLUSION: WHAT DOES ALL THIS
HAVE TO DO WITH NEVADA?

We cannot justify punishment of criminals in terms of any likelihood of reduced amounts of crime, either by those so punished or by others...Systematic inquiry cannot dictate the 'right' amount of punishment, though it would seem to be established that some kind of punishment, though it would seem to be established that some kind of punishment is necessary to preserve the social structure...We have two problems rather than one: we have (a) the problem of what to do with persons who are found guilty of crimes, and (b) the problems of what to do about crime. We cannot simplify the problem of crime to the problem of the offender (Wilkins, 1984:70).

Selective incapacitation sentencing policies meet many of the needs of a legal apparatus that is dedicated to pursuing goals that are associated with the "control" of crime, rather than exploring and addressing issues associated with the etiology of crime. In most cases issues that are linked to social class (e.g., poverty, structural unemployment, etc.) and social inequality (e.g., sexism, racism, etc.), have all but been abandoned by policy makers. Crime is a problem for everyone within a given society; it is expensive in terms of physical and property losses, and crime often causes mental anguish for its victims, far beyond the reaches of monetary compensation. Crime is also expensive in terms of law enforcement, prosecuting, supervising and incarcerating the perpetrators, and those costs are compounded in the case of recidivists. Presumably, factors such as these must weigh heavily on the minds of policy makers as they formulate sentencing policies. After all, policy makers are also potential victims of crime. But are

these the only driving forces behind Nevada's sentencing policies?

Galliher and Cross (1985) suggest that Nevada's policy makers, in their construction of sentencing policies, are influenced extensively by hotel and casino interests. Their argument further suggests that because of the "moral stigma" attached to gaming (which is the leading industry for Nevada's economy), legalized prostitution, "over-night" marriage services, and "quicky" divorce laws, Nevada is compelled to over-compensate in the sanctioning of criminal offenders.

Presentence investigators do what is prescribed by policy makers and many are economically "chained" to their job in a stagnant economy. As one investigator put it, "Its a job, like any other job; I have to do things I don't always approve of, but I need a paycheck."²¹ Some investigators were employed in other areas of the criminal justice system and have simply brought a "get tough on criminals" mind set with them to NDPP, while others simply adopted a conservative position to insure job security. One investigator noted,

I've worked in several areas of the criminal justice system, and this job is not really different. Do your work, don't create waves, because these defendants are not worth losing a job over.²²

Another investigator stated,

Much of what I do here I don't like, and I think that I would take another job if there was one available. It's like I'm spinning my wheels here. I thought I could make

a difference but the system has been constructed to insure that that is not possible.²³

Nevertheless, many investigators have continued to work for the Nevada Department of Parole and Probation over a long period of time. While many are unaware of the general assumptions underlying the selective incapacitation approach, they reproduce the propositions set forth by selective incapacitation proponents each time they complete a Probation Success Probability form on assigned offenders.

NOTES

1. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
2. Official records of the Nevada Department of Prison reflected that over 58 percent of all inmates incarcerated in the Nevada prison system had never before been convicted of a felony. This evidence suggests that prison may be the "first" and most popular option for sentencing offenders in Nevada (Brown and Preston 1987).
3. All presentence investigators that were interviewed, as well as administrators, indicated that the ultimate role of Nevada Department of Parole and Probation was to protect the public. As one presentence investigator stated, "I am a Peace Officer first. After that, depending on the circumstances, I can occasionally engage in 'social work' stuff."
4. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
5. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
6. The "Sentence Severity Scale" is a matrix which was designed to calculate the sentence of an offender which takes into account the statutory sentence range and the gravity of the offense. Only the criminal history and instant offense scores apply to this matrix. (See Appendix 4).
7. It has been my experience that research which focuses on various aspects of the criminal justice system, as it is with research in other "sensitive" government domains (See Johnson 1975), is suspect by administrators. Particularly, if that research is not solicited or funded by "that" organization. For example, the director of the Nevada Department of Prisons was quite concerned about a survey instrument that I proposed to use in a non-funded study of Nevada's inmates in 1987. The "concern" was whether or not certain questions would possibly "incite a riot" by inmates. Similar problem surfaced in my current study of sentencing recommendations. The approving authority for this study was concerned about my asking presentence investigators about their views on abortion, for the purpose of evaluating the respondent's conservative-liberal philosophy. Another item which raised concern during the approval stage of this study centered on an item associated with the respondent's views of the death penalty. The concern expressed by administrators for both items centered on the "invasion of

employees privacy," even though participation in the study was completely voluntary. A compromise was reached, whereby I was not authorized to introduce the topic of abortion, but I was allowed to ask the respondents about their view on capital punishment.

8. Interview with presentence investigator conducted at Nevada Department of Parole and Probation. This particular investigator later hinted that, "Well, on some occasions I think about some of those kids who 'I' sent to prison for somewhat minor offenses, but then it is the process and the defendant himself that sent him to prison--not me." Most of the investigators that I interviewed initially "played a role" of being in control at all times, and part of this role seemed to include an attitude of "toughness," meaning that their job or decisions did not affect them personally. However, as the interview became more probing, several investigators "suggested" that they were concerned about the victim's, the public, and the defendant's welfare.

9. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

10. It is important to point out that Wenk et al. only used recidivism for violence as a means to determine violent behavior of the sample of 4,146. There was no way of knowing how many subjects engaged in violent behavior but were not apprehended or charged for violent behavior.

11. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

12. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

13. The charge of "habitual criminal" is reserved for those offenders who have multiple felony convictions. The charge of habitual criminal is not, in and of itself, an offense. It is a charge resulting from prior convictions. In Nevada, the charge is not "automatic," but must be initiated by the District Attorney's office. The "charge" of habitual criminal carries a "punishment" of 10 to 20 years in prison. In certain situations the charge carries a life, or life without the possibility of parole sanction. The habitual criminal charge in Nevada is not restricted to prior felony convictions, it also includes misdemeanor and gross misdemeanor convictions. The criteria to invoke the habitual criminal charge is both quantitative and qualitative. For example, the Nevada Revised Statute (1987-88:649) 207.010 stipulates,

Every person convicted in this state of any crime of

which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been twice convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been three times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to fraud is an element, is an habitual criminal and shall be punished by imprisonment in the state prison for not less than 10 years nor more than 20 years.

And furthermore,

Every person convicted in this state of any crime which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been three times convicted...or who has previously been five times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state prison for life with or without possibility of parole...eligibility for parole begins when a minimum of 10 years has been served.

14. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

15. Preventive detention, one of many discretionary options employed by criminal justice practitioners, is a concept that is associated with the denial of bail, or the purposefully setting of excessive amounts of bail, based on the premise that the individual will commit additional offenses if he or she were allowed out of jail (Flemming 1982).

16. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

17. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

18. During an earlier study of the Nevada prison system, both inmates and staff concurred that certain inmates had the capability to maintain control of particular criminal operations (e.g., drug deals) "beyond the gates and walls" of prison. This would tend to suggest that selective incapacitation policies would fail to significantly reduce crimes which were under the control of such inmates.

19. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

20. Adoption of stringent sentencing policies would have meant that the population of that prison system, which had an inmate population of 13,000 in 1973, would have increased to 78,000 by 1978. In dollar value, the cost of constructing new facilities to accommodate the population increase would have exceeded \$2 billion of 1973 dollars.

21. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

22. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

23. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

CHAPTER 5

THE PROCESS: OBJECTIVITY IS NOT GUARANTEED FOR ALL

Providing sentence recommendation reports of convicted offenders for the court is one of several tasks designated by the Executive branch to the Department of Parole and Probation (NDPP). Authorized under Chapter 176.135 of the Nevada Revised Statutes (NRS), the NDPP is required to conduct presentence investigation reports on all offenders who have either entered a plea of guilty or nolo contendere to or have been found guilty of felonies. The department is also required, upon request from the court, to conduct presentence investigation reports on offenders who have pled guilty or nolo contendere to or been found guilty of gross misdemeanors. The only exceptions are (1) if the sentence is to be determined by a jury, or (2) if an investigation or report has previously been conducted on a given offender within the five-year period preceding the date of sentence for the instant offense.

Chapter 176.145 of the NRS stipulates that reports must include offenders prior criminal records, and pertinent information regarding their individual characteristics, financial situations, conditions which affect their behavior, and the circumstances surrounding the instant offense. This statute also directs the department to collect information from victims of instant offenses which

will assist in determining the extent of psychological or medical injury sustained by victims. This does not imply that the department is required to conduct an examination of each and every victim, although the department may request victims be examined if deemed necessary. The department is required to recommend definite sentences and/or fines. The NDPP must also comply with any further requests as the courts deem necessary. This statute also provides the department with the option to furnish additional information, "without limitation," that will help the courts establish appropriate sentences for convicted offenders.

The presentence investigation consists of several stages which conclude with a formal report to the court. The process is initiated when the department receives a non-trial disposition memo from the District Attorney's office stating that an offender has pled guilty or nolo contendere to or been found guilty of a criminal offense. When applicable, there is reference to plea bargaining arrangements that were made between the District Attorney's office and the offender.¹ Upon receiving this notification the case is assigned to a presentence investigator.

Offenders are directed to report immediately to the presentence investigation unit where they are given questionnaires to complete and return to their assigned investigator. This generally occurs in about one week, at which time formal interviews are conducted. The exception

to this procedure is when offenders are still in custody, in which case questionnaires are delivered to the jail. During the period between receiving cases and conducting interviews, investigators initiate criminal background investigations of offenders. This begins with requests for criminal records from local law enforcement agencies (i.e., Las Vegas Metropolitan Police Department) and the F.B.I. Often, information received from these agencies reveals that offenders have had previous police contacts in other jurisdictions. Presentence investigators then request criminal records from those jurisdictions, and when all records have been submitted interviews are conducted.

The "official" purpose of the interview, as indicated by one administrator, is to verify criminal history records received from participating agencies, as well as clarify information that an offender included on the completed questionnaire. Many investigators, however, when asked to state their "individual perceptions" of the interview, revealed somewhat different intentions than those expressed by the administrator. Some investigators discussed not only their interview techniques but their views of why interviews are conducted. More than a few investigators revealed that they preferred to "keep offenders in the dark" regarding information that was already "on their desk." The purpose was to determine if offenders were withholding information, or if they were being candid.

In most cases, interviews begin when offenders return their completed questionnaires to their assigned investigator who then instructs them to give a criminal and social narrative summary of their past experiences. This approach, as noted by one investigator, is "used to test the willingness of the defendant to be forthright with me,"² while another investigator said,

If the defendant demonstrates that he is willing to be honest with me by telling me things that I already know, I will be more inclined to give him the benefit of the doubt in tight situations [close scores]. But if he lies to me and conceals things then its a different story.³

Several investigators supported this approach and added that the technique was also useful to ascertain whether offenders were belligerent, indifferent, or remorseful about their involvement in instant offenses. Consistency in offenders' descriptions of circumstances surrounding their instant offenses is important if they want to convince investigators that they are being truthful. Conversely, if offenders are inconsistent, for whatever reasons, it usually means, according to some investigators, that they are lying. "I am always on the lookout for defendants who try to conceal things from me," one investigator stated, "...and when they do conceal things from me, I like to watch the fear in their eyes when I tell them they are lying."⁴ Another investigator evaluated offenders' honesty in a different way: "I like to sit them in that chair," pointing to the chair that I was occupying, "and see if they will maintain

eye-to-eye contact with me throughout the interview. If they don't, they are lying to me."⁵ One investigator developed an interview technique that could "get to the truth" quickly:

I like to get them [offenders] in my office in the late morning, with the sun bearing down on their backs through that window...that always brings out the truth if they sit there and sweat long enough.⁶

In summarizing the purpose of conducting an interview, another investigator stated,

The interview gives me an opportunity to see if the asshole is bullshitting me or not. If he is its his ass; if he's not, and he comes clean right away without jacking me around, I might cut him some slack. But if the offense is severe it don't [sic] make a fuck what he says or doesn't say--he's off to prison...I don't fuck around with em, and they learn that straight away.⁷

Finally, one investigator stated, "The interview is a way that I can get to know the defendant better, which is beneficial to the system, the community, the defendant, and to me."⁸

Topics likely to surface, beyond the general criminal and social histories and the instant offense, include gang membership/involvement (particularly for young, black, male offenders), alcohol and/or drug abuse experiences, their military experiences (when applicable), and offenders' plans for their futures. "Each defendant and each interview is unique," said one investigator, "and the dynamics surrounding the case generally dictate the atmosphere of each interview."⁹ The length of time spent interviewing

offenders ranges from about 15 minutes to over one hour.

One investigator graphically stated,

About 15 minutes is all I can stand to be in the same room with some of these fuckheads...unless its a female defendant with nice tits, but even that becomes boring after awhile.¹⁰

Whatever the officially-stated purpose is for having interviews, some investigators have modified it to meet their individual perceptions of why interviews are conducted. It was clear in some cases that the terms interview and interrogation were the same thing to some investigators.

The next stage of the sentence recommendation process focused on victims of instant offenses as well as information provided by offenders in their questionnaires. Chapter 176.145 (NRS) specifies that victims must be contacted by presentence investigators, except in cases where death resulted from an instant offense. The victims' survivors are contacted in these cases. One investigator stated, "We are often the only real sympathetic ear that the victim has encountered through their ordeal."¹¹ Some investigators perceived victims with less than a sympathetic eye. As one investigator noted, "Many of them [victims] never even bother to return our calls, and often when we send them forms they never bother to return them."¹²

Frequently, the topic of restitution, provided for under NRS Chapter 176.189, arises during interviews with victims

or their survivors. Occasionally, as many investigators noted, victims abuse their right to restitution. An investigator angrily recalled, "I recently had a case where the victim turned out to be worse than the defendant. He tripled the value of his loss."¹³ Documentation from the insurance company apparently resolved the "misunderstanding."

In most instances investigations focus on the families or significant others of offenders. Assessments are made on residence suitability and availability of support systems if offenders were to receive probation.¹⁴

Moreover, interviews with family members sometimes provide information that has eluded official detection. For example, one investigator, recalling a sexual abuse case, found evidence that revealed similar behavior by the offender that was never reported.¹⁵

Depending on the gravity of a case and the investigator's available time, which is often dictated by caseload size, interviews are conducted with various members of the community who have had contact with the offender (e.g., teachers or principals, a previous or current employer, etc.). These interviews, occasionally, provide an additional perspective about the offender. They may also reveal possible support systems beyond the offender's immediate family or significant other (e.g., employment opportunities). Often, due to factors beyond the control of

the department (e.g., budget cuts, hiring freezes, etc.), investigators are unable to extend their investigation much beyond the offender's immediate family. This is particularly true in low profile cases, where the instant offense is lower in severity with little or no media recognition. One investigator, who was obviously infuriated with the current process, stated,

Our job requires us to conduct an investigation for each case that is assigned to us...The significance of a case, and the number of cases that I have to complete determines the amount of time that I can spend investigating a defendant. If a case happens to be a high profile case [receiving extensive media coverage] then I am supposed to bust my ass investigating the defendant's background...The administrators take special interests in these cases...Probably because they anticipate political recognition. It also gives them an opportunity to strut around here [office] and act like big shots...You know, they pretend to give a shit about the public's safety. Anyway, this places a lot of pressure on us [presentence investigators]...When I have a high profile case the rest of my caseload goes to hell...The administrators don't give a damn about these little cases. They just want production and to hell with quality.¹⁶

Another investigator, raising a thick stack of papers above his head, exclaimed, "Look at these fucking cases I have going right now! How can I possibly conduct a thorough investigation on each one? Concern for the public's safety my ass!"¹⁷

After the investigation is complete the next stage of the process is to transfer the accumulated data to official forms and quantify that data. At this juncture of the process subjectivity is "magically removed" and objectivity is attained by selecting indicators, for each item, which

have pre-assigned numerical scores. The data are evaluated, and on the basis of their professional and personal experiences, coupled with "gut instinct," the investigators arrive at a score that will or can have a tremendous impact on the remainder of that offender's life.

THE PROBATION SUCCESS PROBABILITY FORM

The "Probation Success Probability" (PSP) form is an instrument that was adopted to help presentence investigators organize collected data in such a way that "objective" sentence recommendation reports could be submitted to the court (See Appendix One).¹⁸ The form is divided into two sections with the first section, "Offense Data," concentrating on offenders' criminal histories and the circumstances surrounding their instant offenses. The second section, "Social Data," is partitioned into three parts: (1) "Social History," (2) "Community Impact," and (3) "Presentence Adjustment." Both sections contain items which have been selected for their "criminality prediction" capabilities. Each item has its own set of indicators with their own pre-assigned scores.

The process of completing the PSP form requires investigators, based on their perception of the available data, to choose indicators for each item that best reflects the characteristics of offenders. The scores are then entered into the corresponding columns. As each section is completed a raw score, representing the aggregate of all

scores for items contained within that particular section, is entered in the designated place at the end of the section. In the case of the offense data section, however, the raw score is multiplied by 1.2, resulting in an adjusted score. This is because offense data account for 60 percent of offenders' overall score. One investigator attributed the difference of weight between the two sections to "the fact that we are in the criminal business, not the social work business."¹⁹ The combined score (adjusted score from the offense data section and the raw score from the social data section) is entered into the provided space at the end of the form. Using the combined score one of three categories will apply to the recommended sentence: Denial, Borderline, or Probation.

If the combined score falls between 0-54 (Denial) probation is not recommended,²⁰ but if the score is 65 or greater probation will normally be recommended. If the score is 55-64 (Borderline) the recommended sentence is left to the discretion of the investigator who conducted the presentence investigation. However, the investigator's decision is subject to supervisor approval as are all other recommendations.

OFFENSE DATA: PRIOR CRIMINAL HISTORY

The first part of the offense data section is titled "Prior Criminal History."²¹ Data obtained from official records (e.g., police or F.B.I. reports) are the primary

source of information necessary to complete this part of the offense data section. Factors associated with the instant offense, with the exception of the item "Criminal Patterns," are omitted from this sub-section. The range of aggregate scores for the prior criminal history sub-section is 22 (highest) to -3 (lowest).

FELONY CONVICTIONS: None (1) One (0) 2 or More (-1)

The first item of the prior criminal history sub-section, "Felony Convictions," has been overwhelmingly recognized as a key factor for predicting offenders propensity to crime (e.g., Peterson and Braiker 1980; Greenwood 1982; Chaiken and Chaiken 1982; Wilson 1983). This item has three indicators with scores that range from 1 to -1. Selecting the appropriate indicator is contingent on the number of felony convictions incurred by offenders prior to their instant offenses. Official police records provide information necessary to make the appropriate indicator selection.

It is peculiar that the indicator scores stop with "2 or More." It would seem that offenders with four or more felony convictions would have higher propensities to crime, and, therefore, deserve lower scores than offenders with only two or more felony convictions. Moreover, since this item is generally considered to be such a significant predictor of future criminality, it is ironic that, when

compared to other items within this sub-section, felony convictions have the lowest "None" indicator score. A range of scores from 2 to 4 are characteristic of this indicator for all other criminal history items.

MISDEMEANOR CONVICTIONS: None (2) 1-3 (1) 4 or More (0)

"Misdemeanor Convictions," which also includes gross misdemeanors,²² is another item within this sub-section. Unlike the category of felony convictions, which has a low score of 0 for the indicator "2 or More," the lowest possible score of 0 for the misdemeanor convictions item is given to offenders with "4 or More" convictions. In addition, the "None" indicator for this item has a score of 2 which suggests that offenders receive a greater reward for not having committed misdemeanor offenses than they would for not having committed felonies. Moreover, comparing possible scores for felony conviction and misdemeanor conviction items, this Bentham-like "recipe" suggests that any four misdemeanors are equal to any one felony. Analogously, this means that four jaywalking convictions, which are misdemeanors, are equal to one first-degree murder conviction, which is a felony.

PENDING CASES: None (2) Misdemeanor (1) Felony (0)

The "Pending Cases" item refers to charges of crimes committed by offenders prior to their arrest for instant

offenses. Pending cases have no relationship to instant offenses. Warrants from various jurisdictions provide data for this item. Although it may be assumed that offenders with outstanding warrants are not good probation risks, this item perpetuates the negation of the cliché, "Innocent until proven guilty." This item seems to violate offenders' rights to due process by "punishing" them with lower scores before the adjudication process has been completed. This clearly supports the notion that people are guilty by accusation.

**SUBSEQUENT
CRIMINAL HISTORY:** None (2) Arrest/Pending (1) Conviction (0)

This item focuses on police contacts and adjudication processes that offenders incur after, and completely isolated from, their instant offenses. Similar to pending cases, "Subsequent Criminal History" views the terms accusation and guilt interchangeably. This item goes beyond pending cases, however, in that it considers a subsequent "Conviction," in addition to accusation, that has no relevance to the instant offense. Offenders who are convicted of a subsequent offense receive a score of 0, which "re-punishes" them for a factor that has probably already been used against them in either the felony convictions or misdemeanor convictions items. Thus, subsequent conviction would be used against an offender in at least two items in the criminal history sub-section.

PRIOR INCARCERATION: None (3) One (1) 2 or More (0)

"Prior Incarceration," like felony convictions, is a celebrated element in the prediction of future criminal behavior (Greenwood 1982; Chaiken and Chaiken 1982; Wilson 1983). However, in the context of the PSP form, this item, when compared to felony convictions, serves as a paradox. Offenders who have never served time in prison receive a score of three, but if they have had one prior prison sentence they receive a score of 1, which is identical to the score received by offenders who have never been convicted of a felony prior to their instant offense. Moreover, if offenders served two or more prison sentences they would receive a score of 0, which is the same score given to offenders who had only one prior felony conviction. This means that offenders who have been in and out of prison four times preceding their instant offense are perceived to have no greater propensity to crime than offenders who have only one prior felony conviction.

TIMES IN JAIL: None (2) 2 or Less (1) 3 or More (0)

"Times in Jail" is another item which lends itself to extensive debate. For example, when compared to misdemeanor convictions, this item has the same number of indicators with the same range of possible scores (2 to 0). Offenders who have previously been sentenced to jail on "2 or Less" occasions share an identical score with offenders who have

previously been convicted of three misdemeanors. In many cases, offenders are sentenced to jail because the gravity of their offenses warrants jail. On the other hand, many offenders serve time in jail because they are unable to pay fines. Thus, in the context of the PSP form, social class intervenes as a proxy predictor of criminality. Offenders who have had "3 or More" jail sentences, which by law resulted from misdemeanor convictions, receive the same score as offenders who have had "2 or More" prior prison incarcerations. In a vein similar to the jaywalking-murderer analogy mentioned above, an offender who has been sentenced to jail three times for "drunk and disorderly conduct" receives the same score as an offender who went to prison twice for forcible rape. Clearly, the gravity of an offense is carelessly omitted from this item.

JUVENILE COMMITMENTS:	None/or	One (1)	Two (0)
<u>(If defendant under 24)</u>	Under 24 (2)		

Offenders 24 years of age and older are given a "free" score of 2 points for this item, even if they have served time in a juvenile correctional institution. Several investigators explained that the difficulty in obtaining juvenile records for this group of offenders probably accounted for the "free" 2 points. Omission of this item for any offenders is in contradiction to a basic canon of selective incapacitation that relies extensively on the weight of this item in criminal behavior prediction. This

item, in the context of the PSP form, clearly discriminates against offenders under the age of 24 who are singled out for "special" consideration. Like the number of jail sentences, this item is equally weighted with prior prison incarcerations and completely ignores the differences between juvenile and adult incarcerations. Moreover, this item employs sex as a proxy predictor since research has found that females are more likely to be sentenced to juvenile correctional facilities for less serious offenses (e.g., status offenses) than their male counterparts (Chesney-Lind 1977). In fact, "Institutionalization has long been a cornerstone of the juvenile justice system's response to girls' delinquency" (Chesney-Lind and Shelden 1992:164).

YEARS IN THE COMMUNITY

FREE OF CONVICTIONS: Over 5 (4) 3-5 (2) Less than 3 (0)

When applicable, the interval between an offender's last conviction and the instant offense is reflected in the item, "Years in the Community Free of Convictions." The supporters of selective incapacitation have long considered this item a crucial component in attempting to predict criminal behavior (Greenwood 1982; Chaiken and Chaiken 1982; Wilson 1983). Some have taken the position that the narrower the interval between convictions of offenders, the greater the likelihood they are career criminals (van den Haag 1975). This perception leads to the argument that we

can identify career criminals because they have brief intervals between convictions, which demonstrate that they commit more crimes than other offenders. Of course this argument completely ignores the concept "selective law enforcement," which is a term synonymous with "police discretion." Many law enforcement officers view ex-felons as "easy busts" since these offenders' credibility is generally low (Davis 1975). Richard Quinney (1977) and William Chambliss (1978) argue that police tend to focus much of their attention on offenders who have frequently been through the system as opposed to offenders who do not have lengthy police records.

PRIOR FORMAL SUPERVISION: None (2) One (1) More than 1 (0)

Another item touted by selective incapacitation proponents is "Prior Formal Supervision." This item fails to distinguish between successful and unsuccessful formal supervisions. Prior formal supervision is an item that may be subjected to a certain amount of "department bias." Any indicator, other than none, could be construed as a failure of previous supervision opportunities since the offender is back in the system. This view was shared by many of the investigators whom I interviewed. Conversely, one investigator suggested that this item may also be viewed as "an indictment against the institution of parole and probation." Continuing, the investigator stated,

Probation and Parole is supposed to be a program that offers opportunities to selected defendants, but when the agency's budget is limited, and many of the officers think of themselves as cops catching offenders when they fuck up rather than helping them, many defendants are going to fail. Just allowing them to fend for themselves and bust them when they fuck up is not enough.²³

Thus, offenders who have had prior formal supervisions may tend to be castigated for their own failures, or it may be that they represent a failure of the institution of parole and probation. This latter possibility is entirely plausible when one considers that the possible scores for this item are nearly identical to those for prior incarcerations.

<u>CRIMINAL PATTERNS:</u>	None/No Record (2)	Random/ Decreased Severity (1)	Same Type or Increased Severity (0)
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History of Violence (-2)

The final item contained in the prior criminal history sub-section is "Criminal Patterns." This item attempts to take into account the levels of severity of the instant and past offenses (when applicable), and determine if a progressive or regressive pattern can be identified. Based on that determination an indicator is selected which best reflects identified patterns, or levels of stability for offense types. The indicator "History of Violence" requires no comparative analysis since any reference to violent behavior in offenders' official records results in a score of -2. Close examination of possible scores for this item,

particularly when one considers their regressive nature, unveils the distinct relationship between this item and 18th Century perceptions of the utility of punishment. Bentham (1780, 1973) took the position that the punishment must fit the crime, and if the punishment was properly applied, it would deter offenders from committing the same crimes in the future. In that vein, the "Criminal Patterns" item provides a reward to offenders who commit crimes with "Decreased Severity" compared to their previous crime(s) by giving them a score of 1. On the other hand, if the instant offense shares the same gravity as earlier offenses, or are deemed more serious, an offender will be penalized with a score of 0.

This item, like others in this sub-section, has indicators that are too limiting. There is a clear distinction between same type of offense and offense with increased severity. For example, if an offender had a prior conviction of possession of marijuana, and the instant offense for this same offender was possession of marijuana, he or she would receive a score of 0. This score would also be given to an offender who was previously convicted of petty larceny, but was now guilty of murder. Both situations are obviously different in nature, yet both receive the same score.

OFFENSE DATA: PRESENT OFFENSE

The second part of the criminal data section, "Present Offense," focuses on factors which are directly related to

instant offenses. Data used to complete this sub-section are obtained from official reports submitted by contributing agencies that were involved in the arrest, pre-trial investigation, and prosecution of convicted offenders. Supplemental information is provided by the victims of instant offenses, insurance claims documents, medical reports, professional witnesses, etc. The range of possible scores for this part is 27 to -20. The first item appearing in this sub-section is "Circumstances of Arrest."

CIRCUMSTANCES OF ARREST: Voluntary (3) Non-Problematic (2)
 Resistive (0) Violent (-2)

This item concentrates on the apprehension of offenders for their instant offenses. Typically, the arresting officer's statement provides information necessary to select an appropriate indicator. Scores for this item range from 3, for voluntary arrests, to -2 in cases where offenders used violence to avoid apprehension (e.g., firing a weapon at, or fighting with, police officers). In response to a question about the rather curious category of "voluntary arrest" which would receive a maximum score of 3, one investigator replied,

I have never given a defendant a score of 3 in all the years that I have been writing presentence reports. I suppose the guy would have to be completely stupid and turn himself in to Metro [Las Vegas Metropolitan Police Department] the minute after he committed the crime.²⁴

Arrest situations reflected in the "Non-Problematic" indicator are, according to most investigators, the "normal" type of arrest situation. The "Resistive" indicator reflects circumstances in which offenders "allegedly" demonstrate resistance without resorting to violence. Research has found that offenders are sometimes "susceptible" to failing an "attitude test" during confrontations with law enforcement officials. Incidents such as failing to exhibit acceptable demeanor can result in failing the attitude test (Chambliss 1973). Sheldon and Brown (1991), looking at arrest records for a county detention center, found that a significant number of arrests contained numerous "incidental" charges like interfering with the duties of an officer and resisting arrest. These incidental charges were "stacked" above primary instant offense charges. The authors noted that by padding booking slips with extraneous charges, arresting officers serve as surrogate bail setters, since each charge carries its own prescribed bail amount. This practice could conceivably have a profound effect on the sentencing recommendation process as well. Questioning the authority of an officer, failure to show proper respect to a police officer, and many other similar situations could be translated into "resisting arrest."

<u>TYPE OF OFFENSE:</u>	Victimless (Excluding Sales) (3)	Property (2)	Sales (1)
	Person (0)	Multiple Person 2 Person (-1)	Multiple person 3 or More (-2)

There are a number of ways in which criminal offenses can be classified. The Uniform Crime Report sets aside a category called index offenses which reflect the "commonly projected" street felonies like burglary, larceny, forcible rape, murder, etc. Black's Law Dictionary differentiates between misdemeanors and felonies:

A felony is a crime of a grave and more atrocious nature than those designated as misdemeanors. Generally it is an offense punishable by death or imprisonment in a penitentiary. A misdemeanor is lower than a felony and generally punishable by fine or imprisonment other than a penitentiary (Black 1979:744, 1150).

Title 15 of the Nevada Revised Statutes (1987-88) provides definitions for twelve different classifications of crime, each with individual offenses that are germane to their respective category. The "Type of Offense" item classifies criminal offenses through six indicators, ranging from "Victimless" offenses, which include simple drug possession charges with a score of 3, to "Multiple Person 3 or More" with a score of -2. There is also a "Sale" indicator that is reserved for illegal drug sales with a score of 1. There are three other indicators, "Property," "Person," and "Multiple Person--2 Person," with scores of 2, 0, and -1 respectively. The major criticism of this item lies in the limitation of offense classifications.

PSYCHOLOGICAL OR MEDICAL CRIME IMPACT:	N/A (3)	Minor/No Treatment (2)	Required Medical Treatment/Psych. (1)
	Disability (0)	Death (-10)	

The "Psychological or Medical Crime Impact" item examines the extent of psychological or medical damages incurred by victims of instant offenses. Indicators for this item include: (1) "Minor or No Treatment" with a score of 2, (2) "Required Medical Treatment/Psychological" with a score of 1, and (3) "Disability" with a score of 0, and (4) "Death" with a score of -10. Statements from victims, doctors or hospital records, interviews and supporting documents from other professionals within the medical and psychological communities, and insurance claims reports contribute to the completion of this item.

The principal criticism of this item is directed to the process of selecting between minor and required treatments. Most investigators, when asked to describe a borderline situation between minor and required treatment, could not provide a clear answer. Instead they offered vague responses such as "You just know when its a minor incident, like maybe a band aid was all that the victim required,"²⁵ or, "If the victim had to stay in the hospital for a month it's obvious that the injuries were not minor."²⁶

Some criminologists have taken the position that in a capitalist society the state promotes and protects the financial interests of the ruling class through criminal laws and their sanctions (Chambliss 1975; Spitzer 1975; Quinney 1977). A close examination of the financial crime impact item and its indicators tends to support this idea. The indicator scores for this item are identical with those scores contained in the medical or psychological crime

impact item (with the exception of "death" in the case of the former item). Comparing the possible scores of both items it becomes clear that material or monetary losses incurred during crimes are considered equally as important as medical or psychological damage to victims. For example, assume that the indicators "minor or no treatment" (Medical/psychological) and "minimal or no loss" (financial), both with scores of 2, are compatible for comparison. The first indicator deals with the person, and the second deals with material goods. According to the PSP form, human beings and material goods are "equal" in respect to victim losses. To further demonstrate this point, let us "pretend" that two offenders each committed a crime: During the first offense the victim was severely assaulted and was left paralyzed. In the second offense, the offender stole one-half million dollars worth of valuables from the victim. In the first case, the offender would receive a score of 0 for assaulting and paralyzing the victim. The offender in the second case would also receive a score of 0 for stealing what most people would consider an "excessive" amount. In sum, permanent damage to one victim is no more, or less, important than the excessive property loss to the other victim. Although this example does not prove or disprove the argument raised by radical criminologists that agents of the state view protection of property as more important than

human lives, it does suggest that concern for human beings does not supersede that of material goods.

CONTROLLED SUBSTANCES: N/A (3) Simple Possession (2) Possession for sale/
Minor Sales (0)
Sales/Smuggling/Manufacturing (-2)

Nevada's drug laws are among the most strict in America. In fact, "Nevada is the only state where first offense possession of the slightest amount of marijuana is still a felony, punishable by one-to-six years in prison" (Galliher and Cross 1985:86). "Controlled Substances" is an item which focuses exclusively on illegal drugs and their implication in the instant offense. This item has four indicators with scores ranging from 3 to -2. In some cases, the indicator "Possession for Sale/Minor Sales" represents a reduction in charges from "Sales/Smuggling/Manufacturing" which occurs during plea bargaining. Without suggesting that drug abuse is not a serious problem in Nevada, it seems that the score for the indicator "Possession for Sale/Minor Sales" is extreme when one considers that it shares the same score (0) with other indicators such as two or more prior incarcerations, or when victims are disabled due to a criminal offense. As noted earlier, some offenders who are originally charged with more serious drug offenses manage to have the charge reduced to possession for sale/minor sales. On the other hand, some who are convicted on that same charge are "victims" of the principle of "weight" versus

"activity." Many of these offenders simply had quantities of illegal drugs over the prescribed limit allowed for "personal use," and never intended to engage in selling drugs.

SOPHISTICATION/PREMEDITATION: None (2) Moderate (1) High (0)

The item "Sophistication/Premeditation" takes into account the degree or extent of forethought used by offenders in preparation to commit their instant offenses. The indicators employed by this item include "None" which suggests that some offenses are spontaneous, "Moderate," with a score of 1, and "High," with a score of 0. The latter two indicators, in most cases, are difficult to differentiate. When asked to describe how one would distinguish between moderate and high degrees of sophistication, one investigator said, "You just know. The longer you work here the easier it is to tell the difference."³⁰

**PLEA BARGAINING
BENEFITS TO APPLICANT:** N/A (2) Somewhat (1) Significant (0)

Plea bargaining is a "tool" used by the courts to reduce overcrowded court dockets. Ironically, offenders who engage in plea bargaining, which benefits the court system, assist in penalizing themselves in the presentence investigation process. There are three indicators used for the "Plea Bargaining Benefits to Applicant" item. They include "N/A,"

"Somewhat," and "Significant." The indicator "N/A," with a score of 2, is reserved for offenders who plead guilty or are found guilty by judges or juries. The indicators "Somewhat" and "Significant" have regressive scores of 1 and 0 respectively. There are no set rules for differentiating between these last two indicators, which suggests that subjective conjecture is frequently used by investigators.

WEAPON: N/A (3) Implied/
 Concealed (0) Brandished (-2) Used (-4)

The item "Weapon" contains four indicators with scores ranging from 3, for "N/A" (no weapon), to -4 if the weapon was "Used" by offenders.³¹ I asked one investigator to explain why the use of a weapon which would seem far more threatening than the sale of drugs, scored as -2, had only a score of -4. The investigator stated, "If the son of a bitch used a weapon it doesn't matter what the score is, he's going to prison."³²

CO-OFFENDER: Follower (2) Equal
 Responsibility (1) Leader/Coerced
 Others or None (0)

"Co-Offender" refers to situations in which more than one offender was involved in an instant offense. The purpose of this item is to determine levels of culpability. This decision is generally made on the basis of information provided by arresting authorities, the courts, and statements made by offenders. In cases where offenders act

about his "bad luck." He looked to his side and noted that a purse was sitting between two slot machines, while the owner was concentrating on playing a slot machine further down the row of machines. He stated, "If that damn purse hadn't been there I wouldn't be here [prison]. I certainly wouldn't have walked around looking for a purse to steal."³⁴

Other crimes are committed with extensive calculation involved in preparation. In these cases the indicator "Deliberate," with a score of 0, seems appropriate.

Throughout my discussion of items, and their indicators, contained in the offense data section, I have attempted to point out the most obvious contradictions within and among the various items, and indicators, included in this section. Moreover, I have tried to draw attention to the difficulty in selecting indicators objectively. I had anticipated that of the two sections that make up this form, this section would be the most objective. My expectations were based on a rationale that most of the data contributing to this section were from official documents, and while the objectivity level of those documents may be questionable, it would be relatively simple to transfer that data to the PSP form without much subjective bias. Yet, as I will demonstrate in the next chapter, presentence investigators tend to disagree more on selecting appropriate indicators for this section than the "Social Data" section, which I thought would be heavily contaminated with subjectivity.

SOCIAL DATA

The "Social Data" section of the PSP form has three sub-sections: "Social History," "Community Impact," and "Presentence Adjustment." Possible scores for this section range from 39 to -1. Contributing sources for this section include interviews with offenders and others (e.g., families, employers, etc. of offenders), official documents that are not specifically related to the criminal justice system (e.g., employment records, school transcripts, and military records), and, as one investigator put it, "Gut instinct."³⁵

SOCIAL DATA: SOCIAL HISTORY

This part of the special data section addresses demographic and selected social characteristics of offenders that may affect their social stability. Most of the information used to complete this sub-section comes from offenders completed questionnaires, although documents and statements from other sources, such as current or potential employers, are also used.

Social class emerges in this sub-section through proxies like education, employment/employability, and financial capability. Correlating social class with crime became "popular" largely through the efforts of Shaw and McKay (1929, 1949), and continued to draw support from Cloward and Ohlin's (1960) strain theory, Miller's (1958) cultural deviance orientation, Schur's (1971) labeling perspective,

and Quinney's (1977) conflict approach. Due to the conservative "tenor" of the 1980s, the notion of a relationship between social class and crime diminished, and a host of criticisms, directed toward this early Chicago school tradition, emerged (e.g., Hindelang and McDermott 1981; Hindelang, Hirschi, and Weis 1981; Weis 1987; Stewart 1989). In spite of this newly adopted conservatism toward crime and social class, some, like Blau and Blau (1982), Carroll and Jackson (1983), Currie (1985), and Reiman (1990), have continued to draw attention to social class and its association with crime. These authors do not support the idea that poverty, or the lower class, causes crime, but as Reiman notes, "We know that poverty is a 'source' of crime, even if we don't know how it 'causes' crime" (1990:24).

AGE: 40 or More (3) 25-39 (2) Under 25 (1) Certified adult (0)

Official Uniform Crime Reports (UCR) data show that participation in conventional crimes increases through the age of 18, remains relatively constant through age 24, and steadily decreases beginning at age 25 (Maguire and Flanagan 1991:420-21). These data reflect that offenders under the age of 25 were charged with 45.5 percent of all offenses, and 46.4 percent of all violent offenses. Clearly, this tends to justify the "Under 25" indicator score of 1 for the "Age" item. Furthermore, juveniles who are certified as

adults tend to be charged with extremely serious offenses like murder, thereby warranting a score of 0.

Obviously, this item discriminates against younger offenders; the older an offender, the higher the score. However, Hirschi and Gottfredson (1983:552) point out that this is simply, "One of the brute facts of criminology that we must live with."³⁶

Most investigators, when asked specifically about the importance of factoring age into presentence reports, indicated that offenders' age had no significant effect. However, one investigator noted, "I think I am more inclined to send older defendants, with prior convictions, to prison rather than the younger ones who have not been in prison yet."³⁷ Another investigator stated,

I think prison is better for younger defendants because it teaches them that they can't get away with fucking up...Older defendants aren't going to gain much from prison. Besides the older a defendant is, the less likely they are to continue breaking the law. The younger they are the more time they have to commit crimes.³⁸

FAMILY SITUATION

<u>(Immediate):</u>	Constructive Support (3)	Moderately Supportive (2)	Non-Supportive/ Non-Existent (1)
	Disruptive (0)		

The second item within offenders social histories is "Family Situation," which focuses on immediate family members. Carter, Glasser, and Wilkins (1984) point out that family support is a crucial element in offenders' potential to successfully complete supervision programs. Most

investigators indicated that immediate family generally meant a mother and/or father, and siblings. Several investigators, when asked about married offenders, stated that they prefer to place more reliance on the parent(s) for information. "The wives of these guys will either lie to keep their husbands out of prison, or they will lie to get them in if there is trouble between the couple."³⁹

There are four indicators for this item, and they range from "Constructive Support," with a score of 3, to "Disruptive," with a score of 0. "Moderately Supportive," with a score of 2, and "Non-Supportive/Non Existent," with a score of 1, are also indicators for this item. "Disruptive Support," according to most investigators, includes situations in which violence is, or has been, present among family members. Several investigators indicated that non-supportive circumstances were those in which offenders' parents have "given up on them." "Non-Existent" situations include offenders who have no family members, either because they are dead, through divorce, or because they cannot be located. Nearly all investigators concurred that most offenders had moderate family support. Several investigators pointed out that very few offenders have family situations where there is constructive support.

<u>EDUCATION:</u>	College of Technical Program Completed (3)	High School Diploma/GED/ Vocational Training Certificate (2)	Incomplete (1)
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"Education" is the first of several proxies for social class contained in offenders' social history. If there is any validity to the assumption that members of the lower class are more likely to have an incomplete education (no high school diploma), then this item is skewed in favor of offenders from other social classes. Offenders who have failed to complete high school are given a score of 1, whereas those who have completed high school, received a GED, or completed a vocational school receive a score of 2. Offenders with some college or technical training are given a score of 3. Although the likelihood of objective decision-making is high for this item, there is a bias built into this item because education is related to social class (Bowles and Gintis 1976; Bowles 1977). The topic of education, as an influence upon the sentence recommendation process, frequently surfaced in the interviews with presentence investigators. Some investigators felt that prison was a benefit to some offenders who did not have a high school diploma. According to one, "They [offenders] have a great opportunity to get their GED in prison."⁴⁰ Others indicated that offenders with higher levels of education should receive harsher sentences because "They [offenders] should know better...they also have more

opportunities available to them than those [offenders] without an education."⁴¹

<u>EMPLOYMENT/PROGRAM:</u>	Continuous	Sporadic (2)	Almost Non-
	or Housewife (4)		Existent (0)

The "punishment factor" is extreme for this item. "Employment/Program," another item that contributes to social class bias in sentence recommendations, has three indicators which focus on offenders' past employment or program histories: The first, "Continuous or Housewife," has a score of 4. This indicator reflects that offenders have not had difficulties in obtaining or retaining employment. The second indicator, "Sporadic," with a score of 2, implies that offenders have worked, but have had difficulties maintaining steady employment. Finally, "Almost Non-Existent" signifies that offenders either have no marketable skills in legitimate job markets, are too old to work, are handicapped, or other reasons why they could not get a legitimate job. Nearly all investigators stated that most offenders "fit" into the "Sporadic" or "Non-Existent" categories. One investigator said,

The defendant who usually fits into the first category is either a white collar criminal or a child molester...Both of these types have squeaky clean records, and would have rosy prospects if it wasn't for the severity of their instant offense. On the other hand, most offenders who have no work record simply means they have chosen to work at crime. They just don't want legitimate jobs."⁴²

MILITARY: **Honorable Discharge/** **Other (0)**
 No Military Service (1)

The "Military" item is interesting, in that the criminal justice system has yet to recognize that military service has an effect on offenders' behavior. This is demonstrated in the many cases of Vietnam Veterans attempting, to no avail, to use Post-Traumatic-Stress-Disorder (PTSD) in their defenses in criminal court processes (Blank 1985). Moreover, it is clear that this item is not designed to reward offenders who have served in the military. In fact, military service only works against offenders through this item. Offenders who were never in the military receive a score of 1, and offenders who did serve "honorably" in the military receive the same score. On the other hand, offenders who served in the military but received any discharge other than honorable are given a score of 0.

EMPLOYABILITY: **Readily/Not** **Could be** **Unemployable (0)**
 Needed (2) **Developed (1)**

Closely associated with the employment/program item above, the "Employability" item also brings social class into the sentence recommendation arena. A close examination of indicators contained in this item and in the previous employment item reveals that in the latter case they reflect the past, while the employability indicators attempt to predict offenders future employment capabilities. In most cases it is safe to assume that if offenders have poor

employment histories, which are now compounded with a criminal conviction, their prospects for future employment are more dismal than for those with better employment histories.

For many offenders this item suggests, "since you are not able, or capable, of securing adequate employment we are obliged to give you a low score, and ultimately improving your chances of going to prison." I asked one investigator if it were possible to receive a low score on the employment/program item and receive a high score for the employability item. The investigator replied,

It is certainly possible--anything is possible--but it is unlikely. If they were too lazy to work before, there is no reason to believe they would work now if they received probation...Quite often, crime is considered employment for a lot of these defendants.⁴³

**FINANCIAL (Capable of Supporting
Self and/or Dependents):** Adequate (4) Could be Inadequate (0)
Developed (2)

The "Financial" item, and its indicators, are closely related to both employment items. If offenders score high on the first item, they will likely receive higher scores for employability, and subsequently, they will probably be capable of supporting themselves, as well as any dependents they may have.

SOCIAL DATA: COMMUNITY IMPACT

The "Community Impact" sub-section of offenders social data has two primary considerations. First, and foremost,

The rationale behind this item centers on whether or not offenders have established social ties within the community. Offenders who have local commitments are thought to be less of a "burden" to the community than those who have no ties. Local residency therefore becomes a critical issue in receiving higher score. Transients or others without local addresses are penalized. Hence, while length of residence is presented as a predictor of criminality, it is economic concern for the community which determines the score received by offenders for this item.

(Type of Adequate Programming): Pre-Determined/ Available (2)
 Not Needed (3)

Unavailable (0)

This item focuses on the ability of offenders to receive necessary programs or services through sources other than those funded by the community. Those offenders who have already begun to arrange or have arranged for particular services (e.g., drug rehabilitation), without any cost to

Three indicators characterize offender dispositions in relation to alcohol: "Non-Problematic," with a score of 3, "Problematic," with a score of 2, and "Excessive," with a score of 0. The criticism does not lie in the numerical value of these scores, but rests with the "methods" used to select an indicator. One investigator told me, "It is difficult to determine if some offenders are problematic or have excessive problems with alcohol. I don't drink so I am probably somewhat biased when I select a category."⁴⁴

SOCIAL DATA: PRE-SENTENCE ADJUSTMENT

The final sub-section for the PSP form is "Pre-Sentence Adjustment," which attempts to determine how much, or in what way, offenders have responded to circumstances surrounding their instant offense. Three items are included in this sub-section: "Honesty/Cooperation with Department," "Attitude Toward Supervision," and "Attitude Toward Offense." All three items are highly subjective because they are based solely on the investigator's perception of the convicted offender's responses to indirect questions. As one investigator stated, "Hell, I don't ask these assholes if they are being honest with me, I just know if they are or aren't."⁴⁵ Another investigator claimed, "It doesn't do any good to ask a defendant if he is a good candidate for probation. Unless he is imbecilic he will always say that he is."⁴⁶

**HONESTY/COOPERATION
WITH DEPARTMENT:**

Candid (2) Reluctant (1) Deceptive (0)

The "Honesty/Cooperation" item is based largely on whether or not the offender provided the investigating officer with a clear and concise presentation of past criminal and social behavior. This item is not forgiving to offenders who may have forgotten particular events in their past. Moreover, the difference between "Reluctant," which has a score of 1, and "Deceptive," which has a score of 0, may hinge on

personality differences between the investigator and the convicted offender. For instance, one investigator stated,

I view a defendant as being deceptive if he is a smart ass, and tries to hold information from me. If a defendant presents himself well and eventually comes clean, then I will more than likely give him a score of 1."⁴⁷

Clearly there could be more than one "definition" of a "smart ass." If an offender is perceived to be forthright he or she will receive a score of 2 for being "Candid."

ATTITUDE TOWARD SUPERVISION: Positive (2) Indifferent (1) Negative (0)

The offender's "Attitude Toward Supervision" can be measured in a number of ways, and I found that many investigators had their own tests of supervision "worthiness." Some investigators focus on the offender's posture during the formal interview, while other evaluate the "tone of voice" used by the offender when responding to questions. One investigator measured offenders' attitudes toward supervision by their response time when asked direct questions. There are three indicators contained in this item, "Positive," "Indifferent," and "Negative," with scores ranging from 2 to 0 respectively.

ATTITUDE TOWARD OFFENSE: Contrite (2) Reluctant (1) Denies (0)

The item "Attitude Toward Offense" is simply a more legalistic way of stating "remorsefulness" of the offender. If an offender entered a formal interview with a presentence

investigator and acted humble he or she would probably receive a score of 2 for being "Contrite." On the other hand, anything less than complete submission would probably result in a score of 1, for "Reluctance," or a score of 0, for "Denial." Although nolo contendere is a viable plea, recognized by the courts of Nevada, offenders who demonstrated such a plea in their "attitude" would be penalized for exercising that right. Moreover, many investigators agreed that some offenders plead guilty simply to get out of jail. Several investigators saw the irony of offenders pleading guilty to bogus charges, being honest about why they pled guilty, and then being penalized for exhibiting that honesty. In discussing the items contained within the Presentence Adjustment section with one administrator I was told that, "This is probably the only subjective portion of the PSP form, but then it only accounts for six points."⁴⁸ Of course six points may be a considerable amount if an offender's overall score was very close to being eligible for probation, or one-tenth of a point into the denial category.

Throughout this chapter I have attempted to demonstrate the fallacy of making claims of objective decision-making simply because the indicators are represented by numerical scores. The fact remains that individual decisions are made regarding the selection of those numerical scores, and often those decisions are based on individual investigators'

presumptions, intuitions, gut feelings, and other non-scientific factors. In the event that the NDPP was able to "program" its presentence investigators to be purely objective, who would insure that the pool of "objective" data, from which investigators would draw their conclusions, is immune from subjectivity? The gravity of the subjective nature of this instrument becomes apparent, beyond mere speculation, in the following chapter.

NOTES

1. Usually, reference to plea bargaining arrangements between the convicted offender and the District Attorney's office is noted on the non-trial dispositional memo. In most cases the department will comply with the plea bargaining agreement, although they are not bound by statute to do so. If, during the presentence investigation of the offender, the department finds that additional information (e.g., criminal convictions that the District Attorney's office was unaware existed) that would have possibly affected the negotiations, the department notifies the District Attorney's office. On some occasions the plea bargaining offer will be repealed and the case returns to the courtroom. Many times this is dependant upon the strength of the state's case against the offender. If the case is relatively weak, the plea bargain arrangement will likely be honored.

2. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

3. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

4. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

5. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

6. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

7. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

8. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

9. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

10. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

11. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

12. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

13. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

14. As a rule, the family structure is treated as less significant in cases where the offender is an adult, whereas considerable significance is given to cases involving juvenile offenders.

15. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

16. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

17. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

18. During the period of 1981-1983 the probation success probability form was tested by several presentence investigators. In the later part of 1983 the form was formally adopted and became standardized throughout the NDPP.

19. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

20. The investigator can, with justification, recommend a sentence outside the assigned categories but that decision must have supervisor approval. Most investigators indicated that if an offender's score is "firmly" situated in the Denial category it is rare that the offender will receive a recommendation for probation.

21. The prior criminal history sub-section excludes minor traffic violations.

22. Gross misdemeanors are offenses which do not meet the criteria of a felony, but are perceived to be more serious offenses than misdemeanor offenses.

23. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

24. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

25. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

26. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

27. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
28. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
29. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
30. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
31. See NRS 202.253 (Nevada Revised Statutes 1987-88) for complete definition of weapon.
32. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
33. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
34. Interview with inmate conducted in 1987 at Nevada Department of Prisons.
35. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
36. Reiman (1991) describes this as a "carnival mirror" in which the criminal justice system is able to project a distorted image of who "it" wants viewed as most culpable. This accomplished largely through the definitional aspect of crime. While the popularized image of youth (generally young black males) is perceived to represent the group most responsible for committing criminal offenses, more serious offenses committed by older males (white collar offenses) are usually trivialized by the criminal justice system.
37. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
38. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
39. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
40. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.
41. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

42. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

43. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

44. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

45. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

46. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

47. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

48. Discussion with administrator at Nevada Department of Parole and Probation.

CHAPTER 6

RESULTS OF A QUASI-EXPERIMENT

Presentence investigators who participated in this study were each provided a scenario set that contained two hypothetical criminal cases. They were asked to carefully review both cases, and then recommend sentences for the hypothetical offenders contained in each case. The participants were requested to use the same procedures for these cases that they would use in "real" criminal cases. After reviewing both scenarios, most participants stated that the cases were very realistic, and that the information provided was sufficient to arrive at a sentence recommendation.

Most participants, however, expressed concern about the inability to conduct a formal interview with the hypothetical offenders. The resources available for this study prohibited that much "realism." The closest this study was able to get to providing an interview was an "official" statement from each hypothetical offender for each participant to review. These statements included the instant offense, and the circumstances surrounding that offense. The offender's attitude toward the offense is also reflected in each "official" statement.

It is possible that some individual sentence recommendations might have been different if the

participants had been given the opportunity to conduct a formal interview with the hypothetical offender. However, there are at least three reasons which lead me to believe that, if interviews could have been conducted by the participants, the results of this quasi experiment would not have been significantly altered. This is particularly true, since the scope of this study is not based on individual sentence recommendations for the hypothetical offenders, but rather on the totality of sentence recommendations made by all participating presentence investigators.

First, administrators of the NDPP argued that the purpose of the formal interview with convicted offenders is to confirm information already known by presentence investigators. If this is correct, and I have no evidence which negates the administrators' interpretation of the interview' intent, the value of the formal interview with the convicted offender may be over-stated by presentence investigators. The second reason stems from research which found judges to be consistent in their individual sentencing practices, but when the study was expanded to compare sentencing practices among judges, it was found that the imposition of different sentences, for the same cases, was widespread (Horgarth 1971). The third reason takes into account both the dynamics of the NDPP interview process, and the whole debate over objectivity and subjectivity. There are no standardized interview procedures established for

presentence investigators by the NDPP. Moreover, interviews are conducted by presentence investigators in ways that accommodate the acquired interviewing skills and personalities of individual presentence investigators. Therefore, if interviews with convicted offenders do have a significant impact on the outcomes of sentence recommendations, the argument could be made that sentence recommendations are greatly influenced by investigators' subjective interpretations of criteria such as body language (e.g., maintaining eye-to-eye contact, body posture, etc.), and ways that offenders respond to questions (e.g., spontaneity, response rates, etc.), rather than by objective criteria. If this argument is valid, it is certainly reasonable to assume that, if the participants had had the opportunity to interview the hypothetical offenders, the results of the quasi-experiment may have revealed the subjective nature of decision-making in the presentence investigation process even more dramatically.

THE SCENARIO SET

Each hypothetical criminal case contained in the scenario set includes essential demographic data, a brief social and criminal history, circumstances surrounding the instant offense, "official" statements from both the offender and the arresting officer, and plea bargaining arrangements between the offender and the District Attorney's office. Manipulating the gravity of the instant offense in each

case, I created the first case in such a way that the recommendation for prison should have been unanimous among participants. The second case was constructed in such a way that the offender's score should have fallen in the borderline category, thereby forcing participants to weigh mitigating circumstances. I anticipated that probation would be the unified sentence recommendation for the second offender. Moreover, I reasoned that, if objective decision-making was employed by the participants, there would be three, and possibly four, mutually exclusive sentence recommendations submitted by my non-scientific sample of presentence investigators.

These conjectures were based on the appropriate criminal statutes which pertained to the selected criminal offense for each case, as well as on the overall construction and scoring process of the Probation Success Probability (PSP) form. To reiterate, these forecasts were contingent upon objectivity playing a key role in the decision-making process. There were, however, two factors that I purposefully ignored. First, I disregarded possible "unwritten" procedures which tend to have a covert influence on the process.¹ The second factor, which is actually a composite of several factors (e.g., racism, incorrect calculation of scores, misinterpretation of data, etc.), was participant bias.

There were 17 participants who completed the scenario set. Although there was not an established time limit for completion of the scenario set, participants were required to provide sentence recommendations for both hypothetical cases during the research interview period. No participant collaboration occurred during the "test,"² although it is certainly possible that presentence investigators, after completing their part in this study, may have discussed the hypothetical cases with prospective participants who had not yet taken part in the study. However, as the findings will reveal, if the quasi-experiment was contaminated by participant collaboration, the results of that "conspiracy" only confirm that subjectivity is much more prevalent in the decision-making process than is objectivity.

CASE NUMBER ONE: The first hypothetical case involves a 26 year old, white male, whose name is John L. Hennesey (See Appendix Two). He served time in the Nevada prison system for burglary. The employment history data of this offender, who is a high school graduate, indicates that he has had many jobs as a laborer in the construction industry (a common phenomenon for this occupation classification in the Las Vegas community). Nearly one-half of these jobs, however, resulted in the offender being terminated due to on-the-job alcohol consumption. At the time of his arrest, the offender was employed as a plumber's helper, and his supervisors indicate that he is a "good worker," whom they

would gladly rehire if probation is granted. Hennesey's only marriage resulted in divorce, leaving two children from that union. The court ordered Hennesey to pay \$300 per month child support, an order which the offender has largely ignored.

The offender's criminal records indicate that he has 14 criminal charges, excluding the charges associated with the instant offense. Five of those previous charges were drug related, but all were either dismissed or further adjudication was denied. He has two prior burglary convictions, and both resulted in a concurrent four-year prison sentence. After eighteen months of incarceration the offender was released on parole. On August 1, 1990, the offender received an honorable discharge for successfully completing that parole. Criminal records show that the offender was placed on probation for one year as a result of a juvenile conviction for possession of a controlled substance. He completed that probation successfully.

The arresting officer's "official" statement indicates that Hennesey was apprehended at his place of employment, and during the arrest process, one-half gram of cocaine was discovered on the offender. The arrest was conducted without incident. A search of the offender's residence resulted in the recovery of approximately \$1,900 worth of items that were reported stolen during the four burglaries with which Hennesey was eventually charged. The total value

of stolen property was estimated to be approximately \$12,000. Through plea bargaining negotiations with the District Attorney's office, the offender pled guilty to one count of burglary. All other charges, including the possession of cocaine, were dropped.

Hennesey's "official" statement to the NDPP indicates that he denies any involvement in either burglary. He states that he purchased, from someone he knew by the name of Mark, all the property that police recovered at his residence. He further points out that the only reason he pled guilty was because "I couldn't make bail and I was tired of sitting in jail." The offender reasons that his chances of "making probation" are greater if he pleads guilty to the charge of burglary. In part, his appeal not to be sent back to prison is based on the argument that he has two children to support. He also professes that, even though he did not commit the burglaries, he is willing to pay restitution for the stolen property if he is granted probation. As for the cocaine found on the offender, he says that he is sorry and that it will never happen again.

The important aspects of this case which should be emphasized include: (1) The offender had been free from supervision for 10 months when he was arrested for the instant offense. (2) The value of the stolen property from the burglaries was approximately \$12,000, of which approximately \$1,900 was recovered. (3) The offender denied

any involvement in the burglaries, even though he was in possession of some of the stolen property. (4) Nevada Revised Statute 205.060 states, "No person who is convicted of burglary and who has previously been convicted of burglary may be released on probation or granted a suspension of his sentence" (Nevada Revised Statutes 1987-88:593).

Burglary is one of the more common offenses in the "street crime" category of criminal offenses. Each presentence investigator is provided with a copy of Nevada's criminal statutes, complete with statutory description of optional and mandatory sanctions. Yet, nearly one-third (5) of the participating presentence investigators (17) recommended probation for this offender. Moreover, there were eight mutually exclusive sentence variations recommended for this offender, which tends to suggest there may be some inconsistency in sentencing recommendations at the NDPP.

CASE NUMBER TWO: The second case involves a 43 year old, black male offender, whose name is Robert W. Washington (See Appendix Two). This offender, in 1974, was sentenced to the Arizona prison system for six years for possession of a controlled substance. Employment history data reflect that Washington, a high school dropout with no G.E.D., has been employed as a laborer, porter, and kitchen worker. From 1980 to 1984, the offender worked as a laborer for the Las Vegas Convention Center, and since that time has held

several positions as a porter and kitchen worker at local hotels. There are no negative behavior terminations indicated in Washington's employment history data. Approximately one month before the commission of the instant offense, the offender was laid off at the Showboat Hotel where he has maintained steady employment for two years as a kitchen worker. The Food and Beverage Manager of this establishment confirmed that Washington had been laid off due to general personnel cutbacks, and not for disciplinary reasons.

Washington has been married three times. In the cases of his first two marriages, seven children, ranging in age from 14 to 20, are in the custody of the mothers or have reached the age of consent. The offender has three children, ages 3-7 years old, resulting from his current marriage of eight years. Prior to the arrest for the instant offense, and the subsequent confinement at the Clark County Detention Center, the offender resided in North Las Vegas with his family in a relatively stable environment.

The offender's criminal records indicate that he has been charged with criminal offenses on 16 occasions, beginning in 1973. Charges contained in the instant offense are not included. Eight of those previous charges were for possession of controlled substances, of which six were either dismissed, denied for further prosecution, or the offender was released for insufficient evidence.³ The

offender has one prior felony conviction and one technical parole violation. In 1974, Washington receive a 30 day jail sentence for possession of a controlled substance in Phoenix, Arizona, and later that year received a six year prison sentence for a similar offense. Since the offender's release from the Arizona prison system in 1980, he has had two convictions which were traffic violations (driving without a license in 1984, and basic speed violation in 1987). Washington's records also reflect that after two years of military service, he was given an undesirable discharge from the U.S. Army in 1971 for substance abuse.

The arresting officer's "official statement indicates that the offender was apprehended, without incident, several blocks from where he broke into a car and stole two cameras valued at approximately \$800. At the time of arrest, the offender was in possession of the two cameras. The arresting officer's report indicated that the offender had been stopped because he "fit" the description of a black male who, it had been reported a couple hours previous, stole a rack of dollar slot machine tokens (\$100) at the Horseshoe Casino on Fremont Street in Las Vegas. The rack of dollars was not recovered. However, following a routine search of the offender, one and one-half grams of cocaine were discovered by the arresting officer.

The offender's "official" statement to the NDPP indicates that he admits stealing the cameras from a parked car on 3rd

Street. He states that the car was unlocked at the time. He also admits stealing the rack of dollar slot machine tokens at the Horseshoe Hotel, but added that the rack was sitting between two slot machines that were not occupied by anyone at the time. He also pointed out that he had been laid off from work almost one month prior to committing the instant offense and had not been successful in securing employment since then. He fully expects to be sent to prison for the instant offense. No excuses were offered in explanation of why he committed the instant offense, other than "I just screwed up. It was a stupid thing to do."

Critical points of interest pertaining to this case include: (1) There is a period of over 11 years between the offender's release from prison and the commission of the instant offense. (2) the value of stolen property was approximately \$900, of which all but \$100 was recovered. (3) Without hesitation, the offender admitted to the charges contained in the instant offense. (4) the offender had a relatively normal work history for someone working in the hotel industry in Las Vegas. (5) the familial arrangement of the offender has been relatively stable over the past eight years. (6) Nevada Revised Statute 205.225 requires that anyone convicted of grand larceny must be fined, aside from other sanctioning alternatives provided by statute (Nevada Revised Statutes 1987-88:603).

More than one-third (6) of the 17 participants recommended prison for this offender. There were 13 mutually exclusive sentence recommendations submitted by participating presentence investigators. Moreover, only two participants demonstrated their knowledge of Nevada Revised Statute 205.225, with its provision mandating a fine for those convicted of grand larceny, in their sentence recommendation for this case.

There are undoubtedly many possible explanations for the astounding number of mutually exclusive sentence recommendations which emerged during this particular case. Fatigue may account for the inconsistency of sentence recommendations, since this case was, during all interview sessions, the second of two cases completed by participants. On the other hand, there is some evidence to indicate that the offender's skin color may have been a key factor. For example, one participant stated,

I knew this son of a bitch was a black the minute I read the name Washington. I wonder how many black fuckers there are in prison with the name Washington? This type of case is so typical of them [black offenders] too. The dumb son of a bitch deserves to go to prison, if for no other reason than being so fucking stupid.⁴

Another participant said,

I am going to recommend that this defendant [case number two] be sent to prison. Not because he deserves to go to prison, but because it is an unspoken policy around here that black males who are repeat offenders are to be recommended for prison. You won't find this policy in any books, and if you ask administrators about this policy they will all deny it. Some will become defensive because you even ask, but others will just deny the suggestion and continue talking about the weather. This policy is

reinforced subtly. Like, you recommend probation for one of these kinds of cases, and the supervisor keeps sending the paperwork back until you get it right-getting it right means recommend prison.⁵

One presentence investigator, openly discussing the topic of racial discrimination in sentence recommendation policies, pointed out,

We [presentence investigators] are expected to give recommendations for prison to blacks any time it can possibly be justified. Hell, when it isn't justified we simply do the paperwork over until it is justified. There are exceptions, but they are usually tailored to specific judges. Say for example there is this young, light-skinned, black female defendant. If she looks like a good fuck you recommend probation, but if she's dark-skinned and looks like a pig, then you get her off the streets...Someone should sit over in the courtrooms for several months and do a study on this, then you would see what I mean...Part of what we do here is anticipate what certain judges do and then we accommodate them with our recommendations.⁶

THE FINDINGS

The purpose of initiating this quasi-experiment was not to prove or disprove that objectivity is superseded by subjectivity in the decision-making process of determining sentence recommendations at the NDPP. The purpose of this approach was simply to compare "that which was 'stated' by participants" with "that which was 'demonstrated' by the same participants." I have not been overly concerned with the analysis of individual participants, although I have "borrowed" some of their comments to highlight particular points of interest. My major concern centers on participants as a "group," and I have attempted to identify inconsistencies in the decisions made by that group in this

chapter. Some of those inconsistencies seem to suggest that subjectivity supersedes objectivity in the process of recommending sentences for convicted offenders. I feel that some of the findings presented below raise issues about the notion that sentence recommendations are characterized by objective decision-making. On the other hand, I have pointed out items in which consistency among participants was quite strong. Throughout the following presentation of the results of the quasi-experiment, I have, when appropriate, compared the scores of both hypothetical criminal cases.

OFFENSE DATA

Scores for items contained within the offense data section of the PSP form, as a whole, were more consistent than those scores given for items contained within the social data section. The "Misdemeanor Convictions" item is characteristic of the inconsistencies among participants in their selection of indicators and their corresponding scores. In the first hypothetical case, the offender had five misdemeanor convictions, but two of these convictions were for minor traffic violations and should not have been included in the selection of the appropriate indicator for this item. Only nine participants selected the correct indicator, "1-3" with a score of 1. Analyzing the scores given to the second hypothetical offender, who had four misdemeanor convictions (two of which were for minor traffic

violations), I found that twelve participants had made the correct indicator selection of "1-3." Selecting any other indicator probably demonstrates participant carelessness more than anything else. I would assume that this error possibly would have been detected by a supervisor, although this is speculation on my part.

In the item "Juvenile Commitments," which is supposed to be ignored if the offender is over the age of 24, there were five participants who counted the juvenile conviction of the first offender, even though he was 26 years old. These same investigators included this offender's juvenile record in the "Prior Formal Supervision" item, resulting in a lower score for the offender. Again, carelessness by the participants is probably the best explanation for these errors.

Inconsistencies in the selection of an appropriate indicator of the "Financial Crime Impact Score" item were evidenced in both hypothetical cases. In the first case, nine participants selected the indicator "Moderate" with a score of 1. In the second case, there were also nine participants who selected this indicator. Seven participants selected the indicator "Excessive," with a score of 0, for the first offender, while two participants apparently felt that the second offender's crime represented an excessive financial impact. This item clearly represents an objective-subjective "issue." In the first case, after

recovering part of the stolen property, there was a \$10,000 net loss to the victims. However, in the second case, after allowing for recovered property, there was a net loss of \$100. Obviously there is a significant difference in gravity between the two cases.

Both offenders were found to be in possession of cocaine at the time of their arrest. However, when reviewing the "Controlled Substance" item there was evidence of inconsistency among participants in their selection of an indicator. For instance, in the first case, nine participants selected the indicator "Simple Possession," with a score of 2. In the second case, twelve participants selected the "Simple Possession" indicator. Whereas seven participants gave the first offender a score of 3 for "N/A," there were five participants who selected the same indicator for the second offender. The obvious question is raised, why did seven participants give the first offender a score of 3, when only five participants selected the same indicator for the second offense? The drug charge was dropped in both cases through plea bargaining. Whatever the reason for this inconsistency, it seems apparent that the selection of an appropriate indicator for this item is not directed by any standardized procedure.

The item, "Sophistication/Premeditation Score," is plagued with inconsistency when comparing the scores given by participants to the offenders in both hypothetical cases.

In the first case, which is characterized by the burglary of two businesses and two private homes, eleven participants selected the indicator "High," with a score of zero. In the second case, which is characterized by the spontaneous, and probably situational, acts of stealing two cameras from a parked car and theft of a rack of dollar slot machine tokens from a local casino, seven participants selected the same indicator, and gave the second offender a score of 0.

Inconsistency was also evident in the item "Plea Bargaining Benefits of Applicant Score." In the first case there were eight participants who gave the offender a score of 0 for "Significant" benefit. In the second case, seven participants gave the same score to that offender. Like the inconsistencies of previous items, it appears that individual perceptions of participants determines the appropriate indicator rather than any standardized procedure which is designed to delineate "benefit" differences.

Most of the other items contained in this section reflect higher degrees of consistency in the selection of indicators by participants. Nevertheless, it may be important to point out that most of these other items rely on more "objective" criteria in the indicator selection process. For example, the "Type of Offense Score" (i.e., property, person, drug sales, etc.), "Circumstances of Arrest Score" (i.e., resist arrest, voluntary arrest, etc.), and "Weapon Score" (i.e.,

had weapon, used weapon, no weapon), all provide few "gray areas" in determining an appropriate indicator for cases.

As pointed out in the previous chapter, the total raw score for each item contained in the offense data section, which accounts for 60 percent of the offender's total score, is multiplied by 1.2. The result is referred to as the adjusted score. The raw score for this section is transferred to a matrix (Offense Severity Scale) which determines the length of sentence, regardless of whether prison or probation is recommended (See Appendix four).⁷ The adjusted score is used to select the appropriate category to which all convicted offenders are assigned (e.g., prison, borderline, or probation).

Data from this quasi-experiment show significant differences between the high and low adjusted scores in each case. In the first case, the adjusted offense scores range from 25 (low) to 40 (high), revealing a range of 16 points from the lowest score to the highest score. The average score for this case is 30.5. In the second case, the adjusted offense scores range from 22 (low) to 39 (high), revealing a range of 18 points from the lowest to highest score. The average score for this case is 32.2. Ironically, considering the difference in gravity between the two cases, and the not so dissimilar criminal backgrounds of the two offenders, the second case received

the lowest score, while the first case received the highest score given by participants in this study.

Considering the higher level of "objective" criteria used to select appropriate indicators for items contained in the offense data section, I anticipated that the total scores for this section would exhibit the smallest range between the lowest and highest score for both offenders. This, however, was not the case.

SOCIAL DATA

Although the range between the high and low scores for both offenders is substantially lower in the social data section, the inconsistencies in selecting indicators for items contained in this section are greater. Moreover, these inconsistencies among participants in their selection of indicators are more profound in the first hypothetical case than in the second case.

In the first hypothetical case, most participants (9) found the "Family Situation Score" item to be signified by the indicator "Non-supportive/Non-existent," with a score 1. Five participants found the first offender's family situation to be "Moderately Supportive," although, given the information available to participants, it is extremely difficult to determine how this selection could be made. In the second case, fourteen participants found the offender's family situation to be "Moderately Supportive," while three

participants viewed his family situation to be "Constructively Supportive."

Most participants agreed that the first offender's "Employment/Program Score" was characterized as "Sporadic," giving him a score of 2. Two participants chose "Continuous," with a score of 3, as the best descriptor for this offender's employment/program score. Whereas seven participants selected the indicator "Continuous" for the second offender, ten felt that his employment program score was 2 for "sporadic." As I analyzed the scores received by the offenders for this item, I was forced to keep returning to the work histories that were provided in the scenario set. I tried to understand how three participants could have possibly selected the indicator "Continuous" for the first offender. More importantly, it was extremely difficult to comprehend the logic of most participants who characterized the employment/program score for the second offender, whose records indicate continuous employment since 1980, by the indicator "Sporadic." Analysis of the scores given by participants for this item does not support an argument which espouses objectivity in the sentence recommendation process.

Looking at the "Employability Score" item, there were nine participants who felt that the best indicator to describe the first offender's situation was "Readily/Not Needed,"

with a score of 2. Interview responses from participants suggest that the offender's education level probably plays a significant role in the decision about an appropriate indicator for this item. All but one participant felt that the second offender's score should be 1 for the indicator "Could Be Developed." Although it is certainly plausible to assume that, standing alone, the second offender's employability score may be characterized by the indicator "Could Be Developed," when compared with the first offender's work history, there seems to be a significant degree of inconsistency. On the one hand, there is an offender with a history of disciplinary terminations from employment while, on the other hand, there is an offender who has maintained steady employment for eleven years. The offender with the better employment record receives the lowest score. Of course I have failed to factor racial differences in my analysis.

Similar to the "Employability" item, discrepancies are evidenced in the "Financial Score" item. In the case of the first offender there were twelve participants who selected the indicator "Could be Developed." In the case of the second offender, all participants but one who selected the indicator "Inadequate" gave this offender a score of 2 for the indicator "could be developed."

Focusing on the "Substance Abuse (Alcohol) Score" item, six participants felt that the first offender had an

"Excessive" problem with alcohol, while ten participants gave this offender a score of 2 for alcohol being simply "Problematic." One participant, obviously viewing the first offender's job dismissals as a result of alcohol consumption, as well as one DWI conviction, as trivial, gave this offender a score of 3 for the indicator "Non-Problematic." Nearly all participants selected the indicator "Non-Problematic" for the second offender. Interestingly, one participant gave this offender a score of 2 for alcohol being "Problematic" even though there was no mention of alcohol in the scenario which pertained to this offender. Reviewing my notes during an interview, I found that this participant had stated, "There's no record of this defendant drinking, but if he does cocaine you can bet he has an alcohol problem too."⁸

The "Substance Abuse (Drugs) Score" item proved to be very interesting. In the case of the first offender, ten participants selected the indicator "Regular User," with a score of 0, and six participants selected the indicator "Occasional User," with a score of 1 for the first offender. One participant selected the indicator "Addict" in this case. Nine participants gave the second offender a score of 1 for being a regular user, and six participants gave this offender a score of -2 for being an addict. The first offender had never been convicted of a controlled substance violation. The second offender had been convicted of two

controlled substance violations, one of which was a misdemeanor. Given these "facts," it would appear that to surmise that either offender was a regular drug user involved stretching the facts. For any participant to consider either user an addict required a giant leap from facts to assumptions. Moreover, arrests are not the same as convictions. Based on a principle of guilt or innocence, the first offender had never been violated for substance abuse laws. It would seem that presentence investigators may be placing themselves on a jurist's bench when they consider legal factors which have not been determined in a court of law.

The final segment of the social data section is the "Pre-Sentence Adjustment" sub-section. There are three items contained within this sub-section, and the indicators are selected on the basis of the presentence investigator's perception and interpretation of the results of the formal interview with the convicted offender. As previously mentioned, one administrator, when asked about the subjective nature of this sub-section, admitted, "This is probably the one area where subjectivity enters the process of determining sentence recommendations." The same administrator quickly pointed out, however, that, "This part is only worth six points."⁹

The first item contained within the pre-sentence adjustment sub-section is "Honesty/Cooperation With

Department Score." This item addresses issues such as, did the offender offer information about which the department had no previous knowledge? or did the offender deny any of the information of which the department was aware? In the first hypothetical case, three participants gave the offender a score of 2 for being "Candid." Eleven participants thought the offender was "Reluctant," with a score of 1, while one participant thought this offender was "Deceptive" and gave him a score of 0. All participants, except one, who felt "Reluctance" was the best descriptor, gave the second offender a score of 2 for being "candid."

The second item contained in this sub-section is "Attitude Toward Supervision Score." Eight participants believed that the first offender's attitude toward supervision was "Positive," and gave him a score of 2. Nine participants, however, felt that this offender's attitude was "Reluctant," and gave him a score of 1. Thirteen participants gave the second offender a score of 2 for having a positive attitude toward supervision, but two participants felt his attitude toward supervision was "Negative," and gave him a score of 0.

The offender's "Attitude Toward Offense Score" is the final item on the PSP form. Presentence investigators select the appropriate indicator for this item on the basis of whether or not the offender admits to his or her involvement in the instant offense. Several investigators

indicated that they also look for the offender's remorsefulness when considering this item. All participants but one gave the first offender a score of 0 for denying his involvement in the instant offense. One participant, based on the information provided in the offender's "official" statement, felt that the first offender was being "Contrite," and gave him a score of 2. Ten participants selected "contrite" as the appropriate indicator for the second offender, while seven participants gave this offender a score of 1 for being "Indifferent" in his attitude toward the instant offense.

The total social data scores for the first offender range from 18 (low) to 27 (high), and the average score is 22.1. The total social data scores for the second offender range from 20 (low) to 29 (high), with an average score of 25.2. The range between the lowest and highest scores in both cases is 10.

The combined scores (adjusted offense score plus the social data score) determine the sentence recommendation category for convicted offenders. As noted in the previous chapter, if the combined score is between 0-54, probation is "Denied." If that score is 65-100, "Probation" is likely. However, if the combined score is between 55-64, or "Borderline," the sentence recommendation is left to the discretion of the presentence investigator. The decision, however, is subject to supervisor approval.

In the first case, the combined scores range from 44 (low) to 66 (high), with an average combined score of 52.8. Ten scores placed this offender into the denial category, six scores considered him a borderline case, and one score put him in the probation category. In the case of the second offender, the combined scores range from 46 (low) to 68 (high), with the average combined score of 56.9. Five combined scores placed the second offender in the denial category, three scores fell into the probation category, while nine scores reflected that this offender was a borderline case.

As pointed out earlier, there were an astonishing number of mutually exclusive sentences recommended for these hypothetical cases, particularly in the case of the second offender. In the first case there were twelve participants whose sentences fell into five mutually exclusive prison sentence combinations. These sentences ranged from 4 to 6 years and various restitution requirements. There were five participants whose sentence recommendations fell into three mutually exclusive sentence combinations for probation. These sentences ranged in recommended times of 3 to 5 years, and two participants recommended restitution, while the remaining three did not. The second offender received recommendations for probation from eleven participants whose sentence recommendations were a part of seven different

probation sentence structures. Six participants recommended six mutually exclusive prison sentence combinations.

These findings must not be construed as proof that the presentence investigation unit of the NDPP relies extensively on the subjective judgement of individual investigators in the process of recommending sentences for convicted offenders. These findings do, however, suggest that subjectivity does play some part in impacting the lives of offenders and, thus, that there may be a need for further research in the area of the subjective nature of decision-making in the process of sentence recommendations. There are a number of explanations for the sporadic scores. First, there may have been an inclination on the part of participants to trivialize the quasi-experimental segment of this study. Fatigue may have been a factor which surfaced in the wide-spread distribution of scores. Another possible but unlikely explanation may stem from the possibility that participants became confused working with two cases simultaneously, although this does not seem likely, since they work with 10-15 cases per week on a regular basis. It was not possible that they used data from the second hypothetical case to complete the first case. The reason I state this is because they were not given the second case until the first case was completed. However, it is possible that some information from the first case was carried over into the second case.

This quasi-experiment demonstrated that on a particular day, given information about two hypothetical offenders, seventeen participants who were "non-scientifically" drawn from a pool of approximately thirty presentence investigators failed to verify the widespread contention in the criminal justice system that objective decision-making is a major element in determining sentence recommendations.

NOTES

1. Several participants indicated that, although the combined scores of some convicted offenders may fall in the "Probation" category for sentence recommendation, it was a "general" policy of the NDPP, regardless of the score or Nevada Statutes, that prison would be recommended for prison sentences. While there are "safeguards" built into the process which prohibit such practices, as pointed out by administrators, some investigators indicated that in "special cases," those safeguards are circumvented. One way, explained one investigator, was to provide written justification that would justify deterring from "normal" sentence recommendations. One method was pointed out in a previous chapter--use graphic and shocking language that would distract the reader from other facts surrounding the case. Another investigator stated that "changing the original scores" used in the "first draft" of the PSP form was a method frequently used to insure that the sentence recommendation for certain offenders would be prison.

Throughout this study, I found several investigators who kept "running totals" of the scores as they completed the PSP form. This was particularly true for the second case. Five investigators changed the scores on the PSP form during their working of the second hypothetical case, compared to two participants changing scores for the first hypothetical case. Interestingly, those investigators who changed scores in the first case managed to give that offender a higher score, whereas those investigators who altered the scores in the second case always managed to arrive at a lower score.

2. Several presentence investigators seemed somewhat nervous about the prospects of recommending sentences for the hypothetical cases. Some of those participants stated that they viewed this process as a "test."

3. Sheldon and Brown (1991) found, during their study of a county detention center that often offenders were released for insufficient evidence in drug cases because the lab failed to conclude its analysis of the controlled substance in the legally prescribed time. However, they also found that, in some instances, offenders were arrested on a weekend, and with no evidence they were released on the following Monday.

4. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

5. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

6. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

7. The other factor which used in the completion of the Offense Severity Scale form is statutory prescriptions for length of sentences for specified offenses. This dimension establishes the statutory minimum and maximum lengths of a given sentence. The raw score, from the offense data section, is used to select one of five collapsed sentence variations within the statutory sentencing parameters.

8. Interview with presentence investigator conducted at Nevada Department of Parole and Probation.

9. Discussion with administrator conducted at Nevada Department of Parole and Probation.

CHAPTER 7

CONCLUSION: SOME REFLECTIONS ABOUT THE STUDY AND THOUGHTS ABOUT THE FUTURE

Crime has long been perceived as one of the crucial social problems facing society. The quandary of what to do with convicted criminal offenders is an extension of that problem. Probation has emerged as a viable sentencing option for a criminal justice system that is now experiencing fiscal restraints. Prison expansionism, an artifact of the Reagan era, is now experiencing funding problems that have plagued social programs throughout the 1980s. During the period between 1985 and 1990 prison populations in the United States increased from 424,193 to 643,555 inmates (Maguire and Flanagan 1991). During this period, the total number of adults under some type of correctional supervision increased by 44 percent. The total number of offenders on probation increased by more than 750,000 between 1985 and 1990 (Jankowski 1991). Problems associated with the institution of probation were compounded as state and federal budget reductions forced the elimination of many probation officer positions. For example, California reduced its number of probation officers by 30 percent at a time when probation populations increased significantly (Petersilia et al. 1985).

Nevada, as is true of many other jurisdictions, requires its Department of Parole and Probation to assist the courts in determining dispositions for these convicted offenders. In response to that requirement, the NDPP formed the "Presentence Investigation Unit." The purpose of this research has been to examine the objective/subjective nature of decision-making in the sentence recommendation process, a topic that had not previously been studied.

There are researchers within the social sciences who have always maintained a fascination with the methodological rigors of the physical sciences. However, the fundamental assumption that the world is a logical, coherent construct which can be understood through a strict application of the deductive method is being challenged (Gilsinan 1973). Epistemological disruptions within the physical sciences (e.g., in physics the debate in which it is argued that the reality of the world is contingent upon how the physical world is observed) demonstrate what Kuhn (1970) calls a "scientific revolution." This revolution has been produced by the inability of traditional science to explain new problems which have surfaced because understandings of the physical world have changed.

Often, survey research (e.g., telephone and/or mail surveys, face-to-face interviews, etc.) has been used by social scientists to determine attitudes and perceptions of their systematic, randomly selected respondents. Typically,

there are elaborate processes designed to draw samples which, according to many researchers, provide the means to make generalizations about the larger society. In many cases, these processes are replicated by other researchers who, if their findings are even remotely similar, frequently claim that an aspect of social reality has been identified. However, it is possible that all that has been identified is an accumulation of responses (e.g., yes or no, number 3 or number 5, strongly agree or strongly disagree, etc.) with no significant relevance to the social reality which is ostensibly being studied or identified.

Participants in this study agreed and disagreed with a number of concepts, and said yes or no to many questions that were raised. When issues like discrimination and prejudice surfaced, many participants were appalled that people actually thought these discretionary problems still existed in a contemporary criminal justice system. Some participants even became defensive when these, and similar topics, were explored during the interview process. When participants were asked if sentence recommendations were based on objective criteria, the vast majority said yes. When the same issue surfaced using other questioning techniques, most participants reaffirmed their initial responses that sentence recommendations were indeed based on objective criteria. However, statements made by participants during the quasi-experiment, as well as the

subsequent data which emerged from that method, raise serious questions regarding the whole idea of objective decision-making in the sentence recommendation process. As previously indicated, proof that subjectivity supersedes objectivity in the sentence recommendation process at the NDPP was not established in this exploratory study. Lofty claims about discovering the "reality" of decision-making in the sentence recommendation process at the NDPP cannot be made on the basis of my findings, but many questions surrounding the issue of the objective/subjective nature of decision-making are raised which suggest that further research is clearly required.

Although the causes of crime per se were not a significant concern of this study, the influence of selected criminological orientations on presentence investigation practitioners was an issue. Most presentence investigators, as in the case of most probation officers in general, obtained their academic credentials from a discipline within the social sciences, and most of these disciplines require students to become familiar with explanations of human behavior. Therefore, it seemed reasonable to assume that some of these practitioners, particularly in their ideas about convicted offenders, might exhibit their preference for one or more criminological theories which address the etiology of crime. Moreover, this study tried to determine if any criminological theories had an influence on the

decision-making process of determining sentence recommendations. As this study began to unfold it became apparent that, if any theoretical orientations were at all influential, they were limited to an indirect or relatively inconsequential role in that process.

In an earlier chapter, I indicated that this theoretical impotence may be attributed to the idea that criminological theories are not relevant to criminal justice practitioners. I further suggested that academia may have failed to provide practitioners with a practical understanding of these theoretical orientations during their education. I also posited the idea that perhaps criminal justice agencies and practitioners simply do not care why people become involved in crime. Of course, as I noted in Chapter Three, it may be any combination of these explanations, or it may be that all three share equal responsibility for the absence or near absence of criminological theory from the decision-making process. Of course, it is possible that the decision-making process has been politicized to the extent that criminological theories are unable to compete with the atheoretical/pragmatic perspectives that are embraced by policies that originate outside the NDPP. For example, the Chief Probation Officer of Nevada, a Governor appointed administrative position, is not likely to formulate departmental policies which are contrary to the political ideology of his or her appointor. This is especially true

if he or she wants to retain that appointed position. Presentence investigators, in positions similar to the Chief Probation Officer, are not going to act inconsistently with departmental policies if they want to keep "their" jobs. Decisions regarding sentence recommendations of offenders are not made in a vacuum. These decisions are made within structures that are formulated by departmental policies. And when those departmental policies stipulate, as in the case of the NDPP, that the principal responsibility of the department is to protect the public (Biennial Report 1990), criminological theories that focus on the etiology of crime are not likely to supersede those theories that focus on social control. This study has only touched on the relationship between criminological theory and the decision-making process of recommending sentences for convicted offenders. Future research is needed to develop a more comprehensive understanding of the role, if any, of criminological theory in this process, and more importantly to determine how criminological theory can "fit" into the criminal justice system. Such a study could possibly gain insight into how criminal justice department, in most cases, avoid grounding policies in criminological thought.

The core of this study centered on the Probation Success Probability (PSP) form and its role in the decision-making process of recommending sentences. According to one investigator, "the Probation Success Probability form was

part of a package from the federal government which also contained a sizeable grant." Although this claim was not verified, if the claim is valid it might explain why an instrument with so many obvious flaws has been employed for seven or eight years at the NDPP. Many items contained in this instrument were found to contradict other items, and the idea that the completion of this form was based solely on objective criteria is certainly questionable. Additional research that focuses on individual items contained within this instrument is strongly encouraged. The results of this study of an instrument which plays such a crucial role in the decision-making process are not sufficient to draw more than speculative conclusions. However, the critical analysis of this instrument did raise questions about and cast a doubt upon the claim made by NDPP administrators, and presentence investigators, that the PSP form is an objective approach to sentence recommendations.

The quasi-experiment segment of this study was extremely successful in developing an understanding of how many of the participants felt about individual items and indicators contained in the PSP form, as well as in revealing their perceptions of offenders. It also provided evidence which suggests that there are inconsistencies in selecting indicators and making sentence recommendations based on the PSP form. Furthermore, after reviewing data from the quasi-experiment, it seems that the whole assumption of

"quantification equals objectivity" should undergo continued social inquiry.

Insofar as the PSP form is concerned, it appears that there is a problem of simplicity. There are insufficient indicators for particular items. Many of the indicators, from which presentence investigators must select, are ambiguous, thereby forcing arbitrary selections in the decision-making process.

The scenario sets could assist NDPP administrators in increasing standardization in the sentence recommendation process. The results of this study, indicated by the participants' performance in completing the scenario set, suggest that standardization is a major deficiency in the sentence recommendation process. Scenario sets could be used to train new presentence investigators, as well as to evaluate the performance of veteran investigators. The use of scenario sets could be a valuable tool in demonstrating individual biases and then recommending ways to overcome them. Granted, it may not be possible to realize a process which produces purely objective sentence recommendations for convicted offenders, but it might be possible to construct a fairer method of evaluating those offenders than the one currently in use.

1. SEX: male female [Visual]
2. ETHNICITY: white
 black [Visual]
 hispanic
 other
3. EDUCATION LEVEL: (Specify) _____
4. DEGREE (DISCIPLINE): (Specify) _____
5. LENGTH OF EMPLOYMENT
 AT NDPP: (Specify in Years) _____
6. LENGTH OF EMPLOYMENT
 IN PRESENTENCE INVESTIGATION
 UNIT: (Specify in Years) _____
7. DID YOU WORK IN THE FIELD OF CRIMINAL JUSTICE BEFORE YOU
 BEGAN WORK AT NDPP?
 yes no

 IF YES, WHICH TYPE OF CRIMINAL JUSTICE AGENCY DID YOU
 WORK?
 (Specify) _____

 HOW LONG DID YOU WORK THERE? (Years) _____

 WHY DID YOU LEAVE? _____

8. CONSIDERING SOCIAL ISSUES, IN GENERAL, DO YOU CONSIDER
 YOURSELF A CONSERVATIVE OR A LIBERAL?

 conservative liberal
9. ON A SCALE OF 1-10, WITH 1 BEING ULTRA-CONSERVATIVE AND
 10 BEING ULTRA-LIBERAL, WHERE DO YOU THINK YOU FIT?

 01 02 03 04 05 06 07 08 09 10
10. CONSIDERING THE HANDLING OF CRIMINAL OFFENDERS, DO YOU
 SEE ANY MAJOR PROBLEMS WITHIN THE CRIMINAL JUSTICE
 SYSTEM?

 yes no

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

IF YES, WHICH AREA WITHIN THE CRIMINAL JUSTICE SYSTEM DO YOU SEE AS BEING MOST PROBLEMATIC IN THE HANDLING OF CRIMINAL OFFENDERS?

(Specify) _____

WHAT IS (ARE) THE SPECIFIC PROBLEM(S)? _____

11. ARE THERE CERTAIN KINDS OF OFFENSES THAT YOU FIND MORE APPALLING THAN OTHERS?

yes no

IF YES, WHAT KINDS OF OFFENSES DO YOU FIND MOST APPALLING?

(Specify) _____

DOES THE FACT THAT THIS (THESE) OFFENSE(S) IS APPALLING TO YOU HAVE ANY INFLUENCE IN YOUR SENTENCE RECOMMENDATIONS FOR SIMILAR CASES?

yes no

IF YES, HOW DO YOU HANDLE IT?

(Specify) _____

IF NO, HOW DO YOU AVOID THE INFLUENCE?

(Specify) _____

12. DO YOU THINK THAT BECAUSE AN OFFENDER IS A FEMALE THAT SHE IS ENTITLED TO SPECIAL CONSIDERATION IN THE SENTENCE RECOMMENDATION PROCESS?

yes no

WHY? _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

13. ASSUME THAT A FEMALE OFFENDER HAS DEPENDANT CHILDREN. SHOULD THIS BE A MAJOR CONSIDERATION IN HER SENTENCE RECOMMENDATION?

yes no

WHY? _____

14. IF MALE OFFENDERS HAVE DEPENDENT CHILDREN, SHOULD THIS SHOULD THIS BE A MAJOR CONSIDERATION IN HIS SENTENCE RECOMMENDATION?

yes no

WHY? _____

15. HOW MUCH WEIGHT DOES THE AGE OF AN OFFENDER HAVE ON THE SUBJECTIVE NATURE OF A SENTENCING RECOMMENDATION?

significant __ moderate __ very little __ none __

WHY? _____

16. HOW MUCH WEIGHT IS GIVEN TO THE OFFENDER'S TYPE OF EMPLOYMENT ON THE SUBJECTIVE NATURE OF A SENTENCING RECOMMENDATION?

significant __ moderate __ very little __ none __

WHY? _____

17. HOW MUCH WEIGHT IS GIVEN TO THE OFFENDER'S OVERALL EMPLOYMENT HISTORY ON THE SUBJECTIVE NATURE OF A SENTENCING RECOMMENDATION?

significant __ moderate __ very little __ none __

WHY? _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

18. NEVADA HAS ONE OF THE HIGHEST INCARCERATION RATES IN THE U.S. ALTHOUGH THAT RATE HAS DECREASED DURING THE PAST FEW YEARS, IT CONTINUES TO REMAIN HIGH. WHAT DO YOU THINK IS THE PRINCIPLE CONTRIBUTING FACTOR RESPONSIBLE FOR NEVADA'S HIGH INCARCERATION RATE?

(Specify) _____

WHY? _____

19. TO WHAT EXTENT DO YOU THINK DRUGS PLAY IN THE CURRENT CRIME RATE IN NEVADA?

(Specify) _____

WHY? _____

20. HOW DO YOU VIEW THE EXISTING DRUG LAWS IN NEVADA TODAY?

(Specify) _____

WHY? _____

21. THERE HAS BEEN A GENERAL CONCERN THROUGHOUT THE COUNTRY, INCLUDING NEVADA, ABOUT THE INCREASE IN JUVENILE GANG ACTIVITY IN CRIME. DO YOU THINK THIS IS A WELL FOUNDED CONCERN?

yes

no

WHY? _____

22. WHICH OF THE FOLLOWING DO YOU THINK IS THE PRINCIPAL FACTOR ASSOCIATED WITH INDIVIDUALS BEING MOTIVATED TO JOIN GANGS THAT ARE CRIME ORIENTED?

culture race economic individual excitement
 conditions pathology

other (Specify) _____

WHY? _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

23. WHAT WOULD BE THE SINGLE MOST EFFECTIVE WAY TO APPROACH THE GANG PROBLEM TODAY?

(Specify) _____

WHY? _____

THE FOLLOWING QUESTIONS FOCUS ON THE ACTIVITIES OF THE NEVADA DEPARTMENT OF PAROLE AND PROBATION IN RELATION TO YOU.

24. WHAT SPECIFIC ASPECT OF YOUR JOB DO YOU CONSIDER THE MOST REWARDING?

(Specify) _____

WHY? _____

25. WHAT SPECIFIC ASPECT OF YOUR JOB DO YOU FIND MOST DISTASTEFUL?

(Specify) _____

WHY? _____

26. GIVEN THE EXISTING GOALS AND MISSION OF THE NEVADA DEPARTMENT OF PAROLE AND PROBATION, WHAT COULD BE DONE TO IMPROVE THE REALIZATIONS OF THOSE GOALS?

(Specify) _____

WHY? _____

27. IN YOUR CAPACITY AS A PRESENTENCE INVESTIGATOR, WHAT, IF ANYTHING WOULD YOU LIKE TO SEE CHANGED IN THE DEPARTMENT OF PAROLE AND PROBATION?

(Specify) _____

WHY? _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

THE FOLLOWING QUESTIONS PERTAIN TO CRIME IN LAS VEGAS.

28. DO YOU THINK THAT CRIME IS ON THE INCREASE IN LAS VEGAS?

yes

no

IF YES, TO WHAT DO YOU ATTRIBUTE THIS INCREASE?

(Specify) _____

IF NO, WHAT MAKES YOU THINK IT IS NOT INCREASING?

(Specify) _____

29. WHAT DO YOU THINK THE SOLUTION TO COMBATTING CRIME IN LAS VEGAS IS?

(Specify) _____

THE FOLLOWING QUESTIONS FOCUS ON SOCIAL ISSUES CURRENTLY AT THE FOREFRONT OF DISCUSSION IN OUR SOCIETY.

30. I WOULD LIKE FOR YOU TO THINK ABOUT THE MOST IMPORTANT PROBLEM FACING OUR SOCIETY TODAY. WHAT IS THAT PROBLEM?

(Specify) _____

WHY? _____

31. WHAT OTHER PROBLEMS DO YOU THINK ARE IMPORTANT?

(Specify) _____

WHY? _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

32. WHAT IS YOUR PERSONAL POSITION REGARDING CAPITAL PUNISHMENT?

favor __ opposed __ not certain __ no position __
other (Specify) _____

I HAVE TWO QUESTIONS REGARDING CRIME IN GENERAL

33. BASED ON YOUR EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM, WHY DO YOU THINK MOST OFFENDERS BECOME INVOLVED IN CRIME?

(Specify) _____

34. YOU PROBABLY SEE A LOT OF DIFFERENT TYPES OF CRIMINALS IN YOUR LINE OF WORK. ARE THERE ANY PARTICULAR TYPES OF CRIMINALS THAT STAND OUT MORE THAN OTHERS?

yes no

IF YES, WHAT ARE THOSE TYPES?

(Specify) _____

WHAT IS IT ABOUT THEM THAT MAKES THEM STAND OUT?

(Specify) _____

THE FOLLOWING ARE A FEW DEMOGRAPHIC QUESTIONS:

35. ARE YOU MARRIED?

yes no

36. HAVE YOU EVER BEEN DIVORCED?

yes no

WHY WERE YOU DIVORCED?

(Specify) _____

Appendix One (Cont'd.)

INTERVIEW SCHEDULE

37. WHICH OF THE FOLLOWING APPLIES TO YOU?

own a home ____
own a condo ____
rent a house ____
rent an apartment ____
other (Specify) _____

38. DO YOU HAVE CHILDREN?

yes no

IF YES, HOW MANY CHILDREN DO YOU HAVE?

(Specify Number) _____

39. IS THERE ANYTHING ELSE THAT YOU THINK WOULD BE IMPORTANT
FOR ME TO HAVE A BETTER UNDERSTANDING OF THE SENTENCE
RECOMMENDATION PROCESS AT THE NEVADA DEPARTMENT OF
PAROLE AND PROBATION?

yes no

IF YES, WHAT? _____

Appendix Two

SCENARIO SET

CASE NUMBER ONE

NAME: Hennesey, John L

DOB: 11-23-64

AGE: 26

SEX: Male

RACE: White

EDUCATION: High School Graduate (1982)
Clark High School, Las Vegas, NV

MARITAL STATUS: Divorced. Subject was divorced in 1986. Custody of two children (6 and 8 years of age) was given to Brenda Hennesey (Spouse). Court ordered subject to pay child support payments of \$300 per month. Subject has demonstrated negligence in compliance with court order. Two years behind in payments.

OCCUPATION: Laborer, plumber's helper

EMPLOYMENT: Subject has been employed by Ajax Plumbing, Las Vegas, for 6 months prior to arrest for instant offense on June 1, 1991. Subject has had 12 jobs (laborer) in the construction industry during the three year period before his employment at Ajax Plumbing. Subject was terminated from 7 of those jobs for alcohol consumption on the job site. Supervisor at Ajax Plumbing states that subject is good worker and indicates that he would re-hire subject upon his release.

MILITARY: None

CRIMINAL HISTORY: Subject was placed on 1 year probation, as a juvenile, for possession of controlled substance in 1980. Completed probation successfully in 1981.

Appendix Two (Cont'd.)

SCENARIO SET

ADULT CRIMINAL RECORD

042483	BASIC SPEED	FINE	042583
060283	REF T/GIVE DL ON DEMAND	FINE	060383
092384	POSS NARCO PARAPHERNALIA	DENY	101784
092384	POSS CONT SUB	DENY	101784
110684	BASIC SPEED	FINE	110784
122984	POSS CONT SUB	DENY	011585
022085	OPERATE UNREGISTERED VEH	FINE	031885
022085	DWI	FINE	031885
051585	POSS STLN CC	DENY	053085
082085	LARC F/PER	DISM	090385
023086	ROBB	DENY	031786
052886	BURG 2CTS	CONCURRENT SENT 4YRS NSP	080486
092790	POSS CONT SUB	DENY	103290
012991	POSS CONT SUB	DENY	022791
060191	BURG 4CTS	I/O	
060191	POSS CONT SUB	I/O	

SUBJECT WAS PAROLED ON 032188 AND WAS HONORABLY DISCHARGED ON 080190.

SUBJECT PAID CHILD SUPPORT WHILE UNDER SUPERVISION, BUT HAS NOT MADE ANY PAYMENTS SINCE DISCHARGE FROM PAROLE.

CURRENT OFFENSE(S): Subject was originally arrested on four counts of burglary and one count of possession of controlled substance (Cocaine--1/2 gram).

PLEA BARGAINING: Subject pled guilty to one count of burglary (Store #1). All other charges were dropped.

OFFENSE SUMMARY: Subject was initially charged with the burglary of two appliance store, and two private homes.

APPLIANCE STORE #1

1) Two 19" Color Televisions	\$ 786.00
2) Three VCRs (Stereo)	1,698.00
3) One Stereo Receiver	<u>645.00</u>

TOTAL	\$3,129.00
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Appendix Two (Cont'd.)

SCENARIO SET

APPLIANCE STORE #2

1) One 27" Color Television	\$ 895.00
2) Two VCRs (Stereo)	<u>1,326.00</u>
TOTAL	\$2,221.00

HOME #1

1) One IBM (286) Computer	\$2,300.00
2) One CITH (D10-40) Printer	875.00
3) One 19" Color Television	<u>585.00</u>
TOTAL	\$3,750.00

HOME #2

1) One 357 (S&W) handgun	\$ 695.00
2) One 30" Stereo Television	<u>2,500.00</u>
TOTAL	#3,195.00

ARRESTING OFFICER'S STATEMENT

"I received anonymous information that subject had been involved in several burglaries. After obtaining warrant, a search of subject's residence at 2356 E. Jones (Apt B-1) was conducted. One stereo receiver from Store #1 (Value: \$645), one VCR from Store #2 (Value: \$663), and one 19" Television from Home #1 (Value: \$585) were recovered. Home #1 and Home #2 are located on the same block, and both were burglarized on the same night. Subject was arrested at Ajax Plumbing, Las Vegas, on June 1, 1991, at 1430 hours. A search of the subject produced a dark colored vial with approximately 1/2 gram of a white powdery substance--later found to be cocaine. Subject was booked into Clark County Detention Center at 1700 hours on June 1, 1991."

SUBJECT'S STATEMENT

"I was arrested on June 1, 1991, while I was at work. I've been in jail since then because I couldn't make bail. I pled guilty because I'm tired of being in jail--I also

Appendix Two (Cont'd.)

SCENARIO SET

figured that if I pled guilty I had a better chance of getting probation. I didn't take any of that stuff. Actually, I bought the stuff they found in my apartment from a guy I know. His name is Mark. I don't know his last name. He came around and told me that he was going to split to California and needed to get some money together so he could go. That's when I bought the stuff from him. I know I had the cocaine, and that was really dumb of me to have it on me at work. I am really sorry about the cocaine. Look, I did 2 years at Jean a couple years ago for burglary. I am not so dumb that I would commit burglary again. I learned my lesson. I don't want to go back to prison again. I was doing real good at my job and I want to go back to work. Besides, I got a couple of kids that I have to take care of. I know that everyone wants me to pay restitution for those burglaries, but I didn't do them. But if it means staying out of prison I will pay the restitution for all those burglaries. Like I said before, the cocaine was dumb and wrong, and I won't do no more cocaine again if I can get probation this time."

Appendix Two (Cont'd.)

SCENARIO SET

CASE NUMBER TWO

NAME: Washington, Robert W.

DOB: 03-18-48

AGE: 43

SEX: M

RACE: Black

EDUCATION: 10th Grade

MARITAL STATUS: Subject is currently married, but has been married and divorced on two previous occasions. Subject has 7 children from previous marriages (Ages ranging from 14-20). There is no known record of court-order child support for Washington's children from previous marriages. Subject has 3 children result from current marriage of 8 years (Ages 3, 5, and 7). Current marriage arrangement appears to be stable and spouse is supportive of subject.

OCCUPATION: laborer, Porter, Kitchen Worker

EMPLOYMENT: Subject has maintained steady employment for past two years at the Showboat Hotel as a kitchen worker. Due to personnel cutbacks, subject was laid off on May 15, 1991. Subject has been employed at 5 hotels in the Las Vegas area during the past 7 years. Prior to working in the hotel industry, the subject was employed at the Convention Center in Las Vegas from 1974-1984. The subject has no known employment dismissals for inappropriate behavior.

MILITARY: Subject was in the U.S. Army from 1969-1971. He received an Undesirable Discharge from the U.S. Army for substance abuse.

Appendix Two (Cont'd.)

SCENARIO SET

CRIMINAL HISTORY: Subject has no known juvenile record.

ADULT CRIMINAL RECORD

062373	POSS CONT SUB	DISM	07183	LA	CA
090273	POSS CONT SUB	NCF	091073	LA	CA
121973	BATT		122873	LA	CA
	6 DAYS LA COUNTY JAIL FINE SUSP.				
040174	POSS CONT SUB	DENY	042774	LA	CA
040174	POSS CONT SUB W/I SELL	DENY	042774	LA	CA
072074	POSS CONT SUB			PNX	AR
	30 DAYS MCOPA COUNTY JAIL				
110474	BURG			PNX	AR
110474	POSS STLN CC			PNX	AR
110474	POSS CONT SUB			PNX	AR
	6 YEARS AR ST PRISON				
021278	PAROLE VIOLATION (tech)				
021278	POSS CONT SUB	DISM	022478	TCN	AR
	REVOCATION (030278)				
092183	POSS STLN CC	DENY	100583	SF	CA
092183	POSS CONT SUB	DENY	100583	SF	CA
101184	DRIV W/O LIC	FINE	101584	MPD	
101184	XFEL FL CHG ADD	DENY	101384	MPD	
082987	BASIC SPEED	FINE	090387	MPD	
060691	BURG	I/O		MPD	
060691	GL 2 CTS.	I/O		MPD	
060691	POSS CONT SUB	I/O		MPD	

CURRENT OFFENSE: Subject was originally charged with one count of burglary, 2 counts of grand larceny, and one count of possession of a controlled substance (Cocaine 1.5 grams).

PLEA BARGAINING: Subject pled guilty to one count of grand larceny. All other charges were dropped.

OFFENSE SUMMARY: Subject was initially charged with 2 counts of grand larceny, one count of burglary, and one count of possession of controlled substance (Cocaine). The burglary charge was the result of the subject's forced entry into a parked vehicle at 270 S. Las Vegas Blvd. He removed to cameras from the front seat of

Appendix Two (Cont'd.)

SCENARIO SET

said vehicle after he pried open the front passenger door with a metal object (metal object was never found). The combined value of both cameras was \$800. The damage to the vehicle was \$250.00. Subject was apprehended 2 blocks from the scene of the burglary by MPD officers. Subject was also charged with a second count of grand larceny resulting from a positive identification by security guards at the Horseshoe Hotel and Casino, where the subject removed one rack of dollar slot machine tokens (\$100) from a slot machine that was being played by another customer.

ARRESTING OFFICER'S STATEMENT

"On June 6, 1991, at approximately 1600 hours, I received a report that a black male had recently left the Horseshoe Casino with a rack of dollar tokens that he had stolen from a customer. At approximately 1730 hours I saw a black male, fitting the earlier description, walking south at the 500 block of Las Vegas Blvd. I stopped the subject and asked for identification. He had two cameras in his possession. Several minutes later a man and woman approached me and said that this man had just broken into their car and stole two cameras. A search of the subject produced 2 vials of a white powdery substance, later verified as cocaine. The amount of cocaine was approximately 1 1/2 grams. The subject was arrested and booked into the Clark County Detention Center at approximately 1900 hours."

SUBJECT'S STATEMENT

"On June 6th of this year I was busted by two Metro cops. I was caught with 2 cameras that I stole from a car parked along the street. They say that I pried open the door and stole the cameras, but the door was unlocked. No one is going to take my word over their word though. I also took the rack of dollars from the Horseshoe Casino too. It was just sitting between 2 slot machines and I didn't see nobody around so I took them. I don't have no excuses for what I did. I been out of work for a while, but I know that ain't no excuse. I got a family and I needed the money. I know I

Appendix Two (Cont'd.)

SCENARIO SET

had some coke but it kind of makes me forget about being out of work. I just screwed up, that's all. I been in prison before and I know there going to send me back to prison again. I would like to get probation, get a job, and get back to supporting my family. I've looked every place I can to get a job, but I never found anything. My family's kind of hurting now, Because I been out of work for so long. I've been locked up the whole time because I can't make bail. Now its probably too late to do anything for them."

Appendix Three

PROBATION SUCCESS PROBABILITY FORM

OFFENSE DATA: (60%)

PRIOR CRIMINAL HISTORY (Excluding Minor Traffic Violations):Felony Convictions: None (1) One (0) 2 or More (-1) []Misdemeanor Convictions:

(Including Gross Misdemeanors) None (2) 1-3 (1) 4 or More (0) []

Pending Unrelated Cases: None (2) Misd. (1) Felony (0) []Subsequent Criminal History: None (2) Arrest/ Pending (1) Convictions (0) []Prior Incarcerations Times in Prison: None (3) One (1) 2 or More (0) []Times in Jail (Actual Convictions): None (2) 2 or less (1) 3 or More (0) []Juvenile Commitments (If defendant under 24): None/ or over 24 (2) One (1) Two (0) []Years in the Community Free of Conviction (Juvenile or Adult): Over 5 (4) 3-5 (2) Less than 3 (0) []Prior Formal Supervision (Include Juvenile if Under 24): None (2) One (1) More than 1 (1) []Criminal Patterns: None/ No Record (2) Random/ Decreased Severity (1) Same Type or Increased Severity History of Violence (-2) []PRESENT OFFENSE:Circumstances of Arrest: Voluntary (3) Non-Prob. (2) Resistive (0) Violent (-2) []Type of Offense: Victimless (Excluding Sales) (3) Property (2) Person (0) Sales (1) Mult. Pers (2 person) (-1) Multiple Person 3 or More (-2) []

Appendix Three (Cont'd.)

PROBATION SUCCESS PROBABILITY FORM

Psychological or
Medical Crime Impact: N/A (3) Minor/No Treatment (2) Required Medical Treatment/Psyc. (1)
 Disability (0) Death (-10) []

Financial
Crime Impact: N/A (3) Minimal or No Loss (2) Moderate (1)
 Excessive (0) []

Controlled Substance: N/A (3) Simple Possession (2) Poss for Sale/Minor Sales (0)
 Sales/Smuggling/Manufacturing (-2) []

Sophistication/Premeditation: None (2) Moderate (1) High (0) []

Plea Bargaining
Benefits to Applicant: N/A (2) Somewhat (1) Significant (0) []

Weapon: N/A (3) Implied/Concealed (0) Brandished (-2) Used (-4) []

Co-Offender: Follower (2) Equal Responsibility (1) Leader/Coerced Others or None (0) []

Motive: Unintentional (3) Situational (2) Under Influence/Alcohol or Drugs (1)
 Deliberate (0) []

TOTAL OFFENSE SCORE _____ **POINTS x 1.2=** []

SOCIAL DATA: (40%)**SOCIAL HISTORY:**

Age: 40 or More (3) 25-39 (2) Under 25 (1)
 Certified Adult (0) []

Family Situation
Immediate: Constructive Support (3) Moderately Supportive (2) Non-Supportive/Non-Existent (1)
 Disruptive (0) []

Appendix Three (Cont'd.)

PROBATION SUCCESS PROBABILITY FORM

Education: College or Technical Program Completion (3) High School Diploma/GED/Vocational Training Certificate (2) Incomplete (1) []

Employment/Program: Continuous (or Housewife) (4) Sporadic (2) Almost Non-Existent (0) []

Military: Honorable Discharge/No Military Service (1) Other (0) []

Employability: Readily/Not Needed (2) Could Be Developed (1) Unemployable (0) []

Financial (Capable of Supporting Self and/or Dependents): Adequate (4) Could be Developed (2) Inadequate (1) []

COMMUNITY IMPACT:

Commitments/Ties: Local/In State (2) Home State (1) None (0) []

Resource Availability (Type of Adequate Programming): Predetermined/Not Needed (3) Available (2) Unavailable (0) []

Substance Abuse (Alcohol): Non-Problematic (3) Problematic (2) Excessive (0) []

Substance Abuse (Drugs): No use (3) Occasional (1) Regular Use (0) Serious Abuser/Addict (-2) []

Mental Health or Substance (Abuse Program Participation): N/A (3) Completed (2) Planned/Current (1) Failure (0) Refused (-1) []

PRE-SENTENCE ADJUSTMENT:

Honesty/Cooperation With Department: Candid (2) Reluctant (1) Deceptive (0) []

Attitude Toward Supervision: Positive (2) Indifferent (1) Negative (0) []

Appendix Three (Cont'd.)

PROBATION SUCCESS PROBABILITY FORM

Attitude
Toward Offense: Contrite (2) Indifferent (1) Denies (0) []

TOTAL SOCIAL DATA SCORE _____ POINTS x 1= []

TOTAL OFFENSE AND SOCIAL SCORE COMBINED []

0-54 = DENIAL

55-64 = BORDERLINE

65-100 = PROBATION

Appendix Four

OFFENSE SEVERITY SCALE

CRIMINAL HISTORY/OFFENSE RAW SCORE: _____ Note: Circle Corresponding
Range of Years in
Matrix Below.

NRS SENTENCE

<u>IN YEARS</u> (Circle One)	<u>LOW</u> (39-49)	<u>MODERATE</u> (28-38)	<u>MEDIUM</u> (17-27)	<u>MEDIUM HIGH</u> (6-16)	<u>HIGH</u> (-5-5)
1 - 3	1	18 mo	2	30 mo	3
1 - 5	1	2	3	4	5
1 - 6	1-2	2-3	3-4	4-5	5-6
1 - 10	1-2	3-4	5-6	7-8	9-10
2 - 10	2-3	4-5	5-6	6-7	8-10
1 - 15	1-3	3-6	6-9	9-12	12-15
2 - 15	2-4	5-7	8-10	11-13	14-15
5 - 15	5-6	7-8	9-10	11-12	13-15
1 - 20	1-4	5-8	9-12	13-16	17-20
2 - 20	2-4	5-8	9-12	13-16	17-20
3 - 20	3-5	6-9	10-13	14-16	17-20
5 - 20	5-7	8-11	12-14	15-17	18-20
2 - 30	2-7	8-13	14-19	20-25	26-30

[] Check if LIFE is the maximum option.

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