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The Relation Backgrounds, IDEological Orientations, and Perceptions of the Judicial Role to Variation in Criminal Sentencing

Maureen E. McCully
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THE RELATION OF BACKGROUNDS, IDEOLOGICAL ORIENTATIONS, AND PERCEPTIONS OF THE JUDICIAL ROLE TO VARIATION IN CRIMINAL SENTENCING

by

Maureen E. McCully

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Submitted to the
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of the
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Maureen E. McCully
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# TABLE OF CONTENTS

**LIST OF TABLES** ................................................. v

**Chapter**

**I INTRODUCTION** ........................................... 1

Statement of the Problem .................................. 2

**II REVIEW OF THE LITERATURE** ....................... 7

Frederick J. Gaudet ........................................... 7

Tanenhaus and Associates .................................. 9

Edward J. Green .............................................. 11

John T. Hawthorne .......................................... 12

Social Backgrounds .......................................... 15

Ideological Orientations ............................... 18

Perception of the Judicial Role .................... 19

Hypotheses .................................................. 21

**III METHODOLOGY** ................................. 26

Sample ..................................................... 30

Statistics .................................................. 31

**IV ANALYSIS OF THE DATA** ..................... 34

Background Characteristics .......................... 34

Ideological Orientation .............................. 40
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>41</td>
</tr>
<tr>
<td>Student's &quot;t&quot; Test Used to Test Differences in Scale Scores Received on the Radicalism-Conservatism Test</td>
<td>41</td>
</tr>
<tr>
<td>2</td>
<td>43</td>
</tr>
<tr>
<td>Spearman's $r_s$ for Judge Means Against Radicalism-Conservatism Scale Scores</td>
<td>43</td>
</tr>
<tr>
<td>3</td>
<td>47</td>
</tr>
<tr>
<td>An Index of Spearman's Coefficient of Correlation on the Role Definition Items</td>
<td>47</td>
</tr>
<tr>
<td>4</td>
<td>51</td>
</tr>
<tr>
<td>Mean Sentences and Judges' Awareness of Variances</td>
<td>51</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

Over the past 40 years there has been a considerable amount of research done in an attempt to identify disparity among judges in the sentencing of criminal defendants at the trial court level. The only explanation for sentence disparity offered by these researchers has been the individual personality characteristics peculiar to each judge.

Although research has been done on the backgrounds and attitudes of judges at the Supreme Court and Appellate Court levels and their relationship to judicial decision-making, no such research has been reported at the trial court level. The goal of the present study is to provide the first example of such research.

An attempt will be made to determine the extent to which the background characteristics, ideological orientations, and role perceptions of judges are related to the disparate sentencing patterns of such judges. Specifically, this research seeks to determine whether any of these variables can account for one judge in a circuit having a significantly different sentencing pattern than the other judges in that circuit.
Statement of the Problem

Several potential influences on the sentencing decisions of judges come to mind when the subject of differing sentencing patterns arises. Especially when dealing with multi-judge circuits, one must consider the potential for sentences to be affected by the pressure from the judge's collegial brothers. Logic, however, suggests that if such pressure were brought to bear, its thrust would be toward conformity within the circuit and only in the rare circumstance of antithetical behavior on the part of the judge so influenced would it serve as even a partial explanation of divergent sentencing. Insofar as the multi-judge circuit may be considered a "system" within the theoretical structure devised by David Easton,¹ sentence disparity might be expected to result from differences in the input functions upon which the judge is expected to act in passing sentence on a convicted offender. Such differences, however, could provide expectations of disparity in sentences only in those cases where the input information provided one judge in the circuit was substantially different from that provided another judge in the circuit.

Another factor which might be expected to influence judicial

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sentencing decisions to the point where significant disparity in sentences could be explained is public pressure, either from the general public or by leading spokesmen in the community such as public officials, news media or other persons or agencies whose opinions are recognized as influential in the community. Before this variable could be expected to result in disparity there would have to be a recognizable difference in the susceptibility and responsiveness to such pressure among judges.

Another area potentially influential enough in the decision-making of the court to bring about sentence disparity is that which might be exerted by lawyers operating within the circuit. Again, several preconditions would have to be met before the influence could be expected to result in sentence disparity. These preconditions include the necessity for such influential lawyers being highly influential with one judge in the circuit while having either no influence or a negative influence with other judges in the circuit and that these influential lawyers would have to exert their influence in a given direction in most, if not all, of the cases sentenced in the circuit.

Although these possible influences on judicial decision-making have either obvious shortcomings or complicated preconditions, three other variables have been identified, yet left unexplored, in judicial behavior literature.
It has been noted by Glendon Schubert, in his introductory note to the section entitled, "Social Psychology and Judicial Attitudes" in his reader Judicial Behavior,¹ that trial court judges are decision-makers who produce what might be viewed psychologically as a large volume of responses to a narrow range of stimuli; and the obvious question that arises is: how consistent are such judicial responses . . . The studies in judicial sentencing behavior seek to ascertain whether significant differences exist, and if they are observed, how they best can be explained.

Among the studies in disparate sentencing by Green,² Gaudet,³ and Tanenhaus and associates,⁴ the researcher's conclusion in each case was that the sentencing patterns were, in fact, disparate and that the disparity resulted from differences in judges' attitudes. None of the researchers attempted to isolate exactly what attitude or attitudes affect a judge's sentencing behavior nor what effect on sentencing could be expected from the holding of a given attitude.

Other areas of inquiry which have been opened by the research but


left unexplored are the possible effect of common or disparate social backgrounds on the sentencing of criminal defendants at the trial court level and the effect of the ideological orientation, as indicated by a score achieved on a test designed to measure such a variable, of the various judges on sentencing patterns.

These variables, then, will be the concern of this study. Hypotheses generated from the authors' suggestions that there may be a significant correlation between personal characteristics and mean differences in sentences will be tested. Personal characteristics for this study will include judge's background, ideological orientation, and the judge's perception of his judicial role. The mean sentence to be used will be the mean sentence recorded in the most significant category of crime in those circuits where the Hawthorne\(^1\) study established differences between the sentences imposed by one judge as compared with those imposed by other judges in the same circuit. That is, the data collected for this study will come from those multi-judge circuits in the state of Michigan where the variance in means was found by Hawthorne to be statistically significant at the .05 level. If more than one

category produced a significant F value in that research, the category with the greatest F value will be selected, since the greater the F value, the more pronounced the variance between the judges.

An attempt was made to collect detailed personal information from each of the judges in the six circuits with significant sentencing variation in at least one crime category; a total of 23 judges. Collection of this detailed personal information was accomplished through the use of a two-part questionnaire. The first part consists of five pages that the judge filled out and the second part of three pages of open-ended questions asked and recorded by a trained interviewer.

The questionnaire and the interview schedule will be described in Chapter III. A detailed discussion of the statistics used to analyze the data will also be reported in that chapter. The analysis of the data will be described in Chapter IV.
CHAPTER II

REVIEW OF THE LITERATURE

Frederick J. Gaudet

Frederick J. Gaudet, in his article "Individual Differences in the Sentencing Tendencies of Judges," collected his data from
the records of the Court of Common Pleas of one county in New
Jersey over a ten-year period. There were data collected on six
judges but during most of the period studied only three were sitting
on the bench at any one time.

The prisoners sentenced by these judges were assigned to the
decision by the prosecutor on a rotation basis, save for two excep-
tions.

Where it is found that the Defendant has previously been
before the court, any indictment returned against such
defendant is assigned to the same judge who therefore had
contact with the prisoner. Where an assistant prosecutor
has for any reason had personal contact with a case, by
reason of having conducted an investigation therein, such
case is naturally assigned to the Court in which the assistant
prosecutor appears.²

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¹Gaudet, op. cit.
²loc. cit., p. 17.
The offenses selected for consideration were divided into four categories and comparisons were made with these categories serving both as dependent and independent variables. These four categories are: 1) crimes against property; 2) crimes against property accompanied by violence; 3) sex crimes; and 4) violations of the Hobart Act. In this study Gaudet proceeds on the assumption that "the same proportion of criminals who have committed severe or minor crimes should appear before each judge." ¹

The results of this study are reported by Gaudet as comparisons among the sentencing tendencies of judges. These results are reported in terms of the relative severity of sentences. This severity is measured in terms of the proportion of defendants given incarceratory sentences versus those defendants given non-incarceratory sentences.

In the Summary and Conclusions, Gaudet states that the data indicate the following specific points:

1) Judges do differ considerably in their sentencing behavior as measured by the type of sentences which they impose upon prisoners. In certain instances, one judge may give almost twice as many penal sentences as his colleagues.

2) Although the judges maintain their relative positions on the scale of severity for most types of crimes, they often display idiosyncrasies with respect to certain types of crimes.

¹loc. cit., p. 10.
3) In spite of fluctuations which occur from year to year in the sentencing patterns of these judges, most of them seem to maintain a certain relative consistency which differentiates the severe from the lenient judge.

4) Considering the short period of time covered by this study, the evidence indicated that experience on the bench is not the determining factor in the differences which are mentioned above. Judges come on the bench with certain sentencing tendencies that remain at a certain constant level.

Gaudet then concludes that experience on the bench, the imminence of reappointment or the change in business conditions have no observable effect on the judges he studied. He then suggests that the differences that do exist between judges in his study probably can be accounted for by use of the general term "personality."

Tanenhaus and Associates

"Aspects of Judicial Sentencing Behavior"\(^2\) by Sommit, Tanenhaus and Wilke reports the results of an investigation which was designed to test two hypotheses: 1) that considerable variability of sentencing behavior will be found among judges handling essentially similar cases, and 2) that however the sentencing patterns of a judge may differ from those of his colleagues, his own

\(^1\)loc. cit., p. 55.

\(^2\)Tanenhaus, et al., op. cit.
behavior in a given type of case will remain generally self-consistent over any appreciable period of time.

In order to test these hypotheses the authors recorded two million cases decided in the New York City Magistrates' Court over a fifteen-year period (1915-1930). Only those judges who handled more than 500 cases apiece annually for each type of offense were selected. The offenses selected were 1) intoxication, 2) sanitary law violations, and 3) speeding violations. It was decided by the researchers that such a number of cases was large enough to insure a highly stable and reliable measure for each magistrate.

Because of the jurisdictional limitation on the Magistrates' Court, all the two million cases reviewed were misdemeanors.

To test the first hypothesis that considerable variability was identifiable among judges handling essentially similar cases, the authors determined what percent of the two million cases were discharged, fined, or suspended for each judge in a given year.

The degree of variability in judicial conduct was determined by computing Pearson's coefficient of variability (v) in each of these three categories among all the judges. The resulting "v's" were directly comparable. Comparisons were made to determine that the relative dispersion in intoxication cases was four times greater than in sanitary law cases, and two and one-half times greater than in speed ordinance cases.
Edward J. Green

In another study of judicial attitudes in sentencing, Edward J. Green identifies three criteria for sentencing. He considers, first, "statutory factors" which consist of the "formal set of standards provided by the penal code for the determination of the relative gravity of crimes and laws providing additional penalties for recidivists." Secondly, he offers "discretionary criteria." These criteria are standards available to the judge for determining the penalty in a given case. They emanate from the "ethical and moral order of which law is a part but which the law can imperfectly mirror, particularly in a rapidly changing society with a diversity of regional and local cultural traditions." They pertain to the circumstances of the criminal act, the characteristics of the defendant, and the attitudes and sentiments of the community toward certain types of crimes or criminals. "Legally irrelevant criteria" include political or journalistic pressures, public hysteria, prejudice against minority groups, and the personality of the sentencing judge—"factors which are discordant with the

1Green, op. cit.

2loc. cit., p. 4.

3loc. cit., p. 5.
proper goals of criminal justice.¹

Green's sample was made up of 1,437 convictions recorded in a volume of the docket of a non-jury prison court of the Philadelphia Court of Quarter Sessions. The cases were tried within a period of 17 months (1956-57). This sampling technique, considering the arrangement of Philadelphia courts, automatically eliminated from consideration all persons released on bail pending trial and/or persons convicted after a jury trial.

The researcher used a classification of severity of crimes as the independent variable and analyzed the data by treating the type of sentence imposed as the dependent variable, either imprisonment, probation, fined or suspended sentences. Through application of statistical tests such as chi-square and rank-order correlation between severity of crime and severity of sentence, Green reached the conclusion that the basic factor affecting variation in the severity of the sentence is the offense. He ranks the various offenses according to the severity of the sentences determined by the maximum penalty allowed by statute.

John T. Hawthorne

A somewhat different approach to the question of disparity in

¹loc. cit., p. 40.
judicial sentencing behavior was taken by John T. Hawthorne in his study of multi-judge trial courts in Michigan.\textsuperscript{1} Hawthorne began by isolating 14 circuit courts in the state of Michigan which had two or more judges. The records of each of these circuits were analyzed for the years of 1965-69 and all sentences imposed for four different crime categories were recorded for each judge. The four categories--auto crimes, breaking and entering, larceny, and forgery--were chosen for several reasons. First, all crimes included in each of the categories contained similar elements; second, most of the crimes included in each category had relatively similar maximum sentences; third, none of the crimes involved physical injury to the victims and therefore avoided judicial empathy with the victims of the crimes insofar as it could be avoided, and finally, because crimes included in these categories made up a substantial proportion of crimes charged in the state of Michigan during this time period.

The research design called for the collection of the first fifty sentences in each crime category passed by each judge after January 1, 1965. The fifty case limit was arbitrarily set as a number which would produce an "N" large enough to permit statistical testing yet small enough to be collected within the limits of

\textsuperscript{1}Hawthorne, op. cit.
finances and manpower available. The result was 5,016 cases from 13 circuits totaling 40 judges. To qualify for inclusion in the study, a sitting judge had to be on the bench January 1, 1965, or to have joined the court before January 1, 1966.

The sentences were divided into incarceratory and non-incarceratory categories, much as had been done in the studies reviewed above, and the results of this categorization subjected to the chi-square test of significance.

With the non-incarceratory sentences removed, the remaining sentences were subjected to the Fisher analysis of variance test to identify circuits with significant variances within them. Actual length of sentence was used as (x) in the F test.

Finally, those circuits which displayed significant variance were subjected to analysis using the Student's "t" test to identify the judge or judges whose variance from his colleagues was responsible for the significant variance established by the F test.

Despite the research that has been done by these authors in studying variation among judges in their sentencing behavior, none has made any attempt to identify causes for the existing disparity. Filling the void of "why the disparity" is the goal of this study. Because the Hawthorne study deals with sentencing behavior on the part of the judges in terms of the length of the individual prison sentences imposed, it will best lend itself to the study
proposed herein. If any other study was used, comparisons between judges would be limited to statements such as, "Judge A sentences a greater percent of criminal defendants to prison than does Judge B because . . . ", where by using the Hawthorne study as a base, not only should this study allow the determination of why one judge sentences people to prison, but also why a judge sentences people to prison for a longer period of time for a crime than does another judge in the same circuit for the same crime.

An additional reason for using the Hawthorne study is that all the other studies reviewed were completed from ten to forty years ago. The likelihood of successfully completing personal interviews with judges sitting from ten to forty years ago is doubtful.

Social Backgrounds

Several authors have suggested that social backgrounds are manifested in decision-making. Although to this date there has been no empirical research attempting to relate the social backgrounds of judges to their sentencing decisions, John Schmidhauser\(^1\) has investigated the social backgrounds of judges. Although Schmidhauser's analysis is of the patterns of recruitment

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of Supreme Court Justices in relation to interest group activity and elite theory, both the social and political background factors are emphasized to help clarify the position of the Supreme Court.

Although, as Schmidhauser points out,

Explanations based entirely upon the causal influence of such factors as family, economic and social status, ethnic background or religious affiliation could scarcely take into account such important considerations as the impact upon individual justices of the traditions of the Supreme Court itself, or that interaction of intelligent and frequently forceful personalities. . . . Complete dependence upon background factors would also ignore the complexity and subtlety of intellect and motivation of the collective picture . . . 1

It seems reasonable to expect that the social background of trial court judges could explain some of the variance in sentencing behavior although it may not be the most important variable in accounting for such disparity.

Perceptions of judicial role, as well as ideological orientation, could also offer reasonable explanations for sentencing disparity. As Stuart S. Nagel points out in "The Relationship Between the Political and Ethnic Affiliation of Judges and their Decision-Making" 2

If one finds that certain background characteristics . . . have a significant relation to certain judicial propensities, then one can better demonstrate the need for making judges

1loc. cit., p. 232.

more representative of the people over whom they judge with regard to these characteristics. Finally, an analysis of these relations can provide some data which can be helpful to voters in the selection of judges and to lawyers in the selection of jurors.

Donald Matthews in *The Social Background of Political Decision-Makers* reports that "the conviction that the political decision-maker's behavior and discussions are influenced by his personal life experiences not only has a long and honorable history but also is substantiated by modern psychological and sociological research."

In a poll published in *Look Magazine* it was stated that "human beings are selective in what they perceive, or experience through their senses, and that identical events or facts have different meanings for different people."

Matthews further suggests that the world we experience is influenced by our parents and friends, by group membership and formal education. Those variables considered by Matthews to be crucial to background studies are father's occupation, race, ethnic origin, religion, education and occupation. These variables were

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3 op. cit., p. 4.
selected for testing in the present study. (See Appendix A) The results of this measurement, when used in conjunction with the results from other sections of the instrument, were expected to produce an explanation of sentence disparity between judges.

Ideological Orientation

The second variable to be considered in this study is the attitude systems represented by ideological orientation of the judges and their relation to the judge's sentencing behavior.

Frames of reference and attitudes are influenced not only by previous experiences but also by the frames of reference and attitudes of the society in which the person lives. These things combined help to develop tendencies called "attitudes"-to react in a certain way to certain stimuli. ¹

The device selected to measure these attitudes among the judges in this study is a radicalism-conservatism scale developed by H. J. Eysenck and modified by Stuart S. Nagel. This particular test was chosen for the following reasons:

1) It has items relating to all eight of the sub-attitudes of liberalism.

2) It has been subjected to a factor analysis that determined that all of the items were measuring the same underlying

¹loc. cit., p. 3.
factor.

3) It provides for the Likert method of scoring which is easy for respondents and test interpreters to handle.

4) Its items are worded relatively concisely, unambiguously, and maturely.

5) It clearly distinguished British Socialists and Communists on the one hand from British Conservatives and Fascists on the other hand as a test of its validity.

6) It is relatively free from being time-bound or culture-bound in its terms.

7) It has enough items to produce a meaningful scale.

8) It has some items worded in a liberal direction and some in a conservative direction.

9) It has a high internal consistency between its items as measured by split-half reliability coefficient.¹

Nagel's modification of Eysenck's scale was chosen over Eysenck's original scale because judges would be more likely to respond to Nagel's 24 question than they would be to Eysenck's 40 questions. There were eight sub-attitudes investigated by Eysenck's 40 questions and with Nagel's modification there were still three items for describing each of these sub-attitudes. A list of the items used by Nagel will be found in Chapter III.

Perception of the Judicial Role

It is assumed that if two or more people proceed from the

¹Nagel, loc. cit., p. 10.

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same role perception their responses to a common stimulus would be similar.

Isaak, in his book *Scope and Methods of Political Science* tells us that the primary objective of role theory is that the primary objective of role theory is that

If we know the societal expectations, internal perceptions of the expectations, and interpretation of the role by the role occupant, we should be able to predict and explain the behavior of the role occupant with some degree of confidence.

The literature in judicial behavior discloses no study which purports to have discovered what Eulau in *The Legislative System* calls "a coherent set of norms of behavior which are thought by those involved in the interaction being viewed, to apply to all persons who occupy the position..." which is said to make up "role." Nagel reports that the only studies of "judicial attitudes" have been studies of "on-the-bench attitudes as manifested in the judge's decisions." This would appear to be the equivalent of saying that disparity in sentencing existed between two judges and

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3 loc. cit., p. 9.
concluding from this disparity that there was a similar disparity in the view of the judicial role held by the judges.

A more objective test of disparity in role perception would appear to be the one employed in this study where an outside stimulus is provided as a necessary check on the function of role in the sentencing process.

The basic assumption of the present method is that if differences in sentencing patterns between two judges emanate from differences in the perceptions of the judicial role, these same differences in perception will engender differing responses to other stimuli requiring individual decisions to be made by the judges.

In this study the external stimuli were nine questions, each requiring the judge to rank seven to nine responses in order of importance. From this test we would expect that, if perceptions of judicial role could explain disparity in sentencing patterns, the same difference would be demonstrated in the answers to these questions. Conversely, those judges with no significant disparity in sentencing patterns should have no significant difference in response to the stimulus questions.

Hypotheses

Gaudet concludes that "the differences between judges which
were found in the types of sentences given... are real personality differences."\(^1\) He also tells us that "the judge is subject to the same human motives as the average man in his decisions."\(^2\)

These conclusions follow the line of thinking of noted judicialists such as Cardozo and Frank\(^3\) who insist judges are human and have values which are shaped by their backgrounds and which are manifested in their decisions. "Judges really are human, and inescapably subject to all the ills (as well as the satisfactions) to which flesh is heir." Directly related to these personality differences is a statement by Glendon Schubert\(^4\) that:

The personality structure which will affect one's choice-making are ideology and role. The former is his pattern of beliefs, expectations, obligations and related knowledge about life and the world and the latter is his understanding of other's expectations, and his own expectations, concerning how he shall make his choices and what they should be.

Green further tells us that:

Ruling out the likelihood that individual prejudice against certain categories of the population is a significant factor, two alternative, though not mutually exclusive, interpretations of disparity remain: individual differences among the

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\(^2\) Ibid.


judges in the (1) scales of penal values and (2) in their impressions of the seriousness of the cases. With reference to the former, there is little doubt that differences in social background, personality, and penal philosophy make individual judges react differently to cases of equivalent gravity. But to what extent we cannot say, since we have not analyzed the individual sentencing records with respect to these factors.¹

In view of this recognition that differences in social backgrounds have not been tested to see if there is an existing relationship between judges' backgrounds and how they react to cases of equivalent gravity we will hypothesize that:

where one judge can be identified as the significant² judge, that judge will have background characteristics peculiar to him and those remaining non-significant judges will hold characteristics in common not shared by the significant judge.

Tanenhaus and his associates tell us that "we must concede that the actions of judges are influenced by such determinants as psychological traits."³ Ideological orientations being one such trait, we hypothesize that:

¹op. cit., p. 102.

²The "significant" judge will be that judge whose sentencing pattern differs to a statistically significant degree when he is paired with each other judge in the same circuit as demonstrated by the Student's "t" test.

³op. cit., p. 613.
among judges who differ significantly in the severity of the mean sentence they impose for a given crime, the judge with the more liberal ideological orientation will have the lower mean prison sentence.

Gaudet says that all sentencing disparity is related to personality differences. Schubert claims that role and ideology are the two crucial factors in choice-making. Therefore, if different sentence means among judges are caused by personality differences in which ideology is a part, we can hypothesize that:

judges who have a significant difference in their mean sentences as established by the Hawthorne study will also have a significant difference in their liberalism-conservatism scale score.

All of the above-mentioned citations indicate that judges do differ in their personalities and really are human. It has been suggested that these personality differences are reflected in the decisions of these judges. We would therefore propose the following hypothesis:

where judges in the same circuit differ significantly in sentence patterns for a given crime, those judges will also differ in their perception of the judicial role.

Preliminary discussions with several circuit judges prior to the design of this study indicated that judges do not formally dis-
cuss sentences with each other and are under the impression that they think alike and sentence alike. With no formal opportunity for discussion, the likelihood that the judges would be aware of differences in sentencing, if they did exist, is not expected. We will, therefore, hypothesize that:

judges who differ significantly in that they have a more severe mean sentence than their brothers will not be aware of the disparity and will, in fact, believe that they sentence the same as all other judges in that circuit.
CHAPTER III

METHODOLOGY

The data to be used in this study were collected through a two-part personal contact inventory. Each judge was asked to complete, in the presence of the interviewer, a three-part questionnaire. The first part of the questionnaire was an inventory of personal and professional information. The second part contained the Eysenck radicalism-conservatism scale as modified by Stuart Nagel for use in his widely-reported study of off-the-bench judicial attitudes.\(^1\) The third part had to do with the judge's perception of the judicial role.

The personal and professional information requested tapped such information as race, religion, party affiliation, father's occupation, public offices held and where his education was received.

The original Eysenck scale,\(^2\) developed in 1947, contained 40 questions designed to place the respondent accurately on a

\[^{1}\text{op. cit.}\]

continuum from the 'radical' left to the 'conservative' right in political ideology. To validate his scale, Eysenck administered it to a sample of 750 persons divided into groups of 250, each balanced for age, sex and education. The groups were made up of socialists, liberals and conservatives with group assignment based on votes cast in the last election. The results were tested with a regression-correlation statistic and produced a correlation coefficient of .98 between each scale item with the factor of liberalism. Nagel considered several similar scales for use in his study, but settled on the Eysenck scale because it offered an interrelated set of eight sub-measures not offered by the other scales. Nagel reduced the 40 questions to 24 to obtain a "less bulky questionnaire and thereby presumably a higher rate of response." The reduction was achieved by taking three questions in each of the original eight sub-categories of Eysenck's scale. The particular three items chosen to represent each sub-attitude were those three items which had the highest correlation with the factor of liberalism. Nagel's scale included the following items:

1. Colored people are innately inferior to white people.
2. Present laws favor the rich as against the poor.
3. War is inherent in human nature.
4. Our treatment of criminals is too harsh; we should try to cure, not to punish them.
5. In the interests of peace, we must give up part of our national sovereignty.

6. Sunday-observance is old-fashioned, and should cease to govern our behavior.

7. It is our right that men should be permitted greater sexual freedom than women by society.

8. Unrestricted freedom of discussion on every topic is desirable in the press, in literature, and on the stage.

9. More collectivism, like the TVA, should be introduced into our society.

10. Conscientious objectors are traitors to their country, and should be treated accordingly.

11. Only by going back to religion can civilization hope to survive.

12. Marriages between white and colored people should be greatly discouraged.

13. There should be far more controversial and political discussion over the radio and television.

14. Divorce laws should be altered to make divorce easier.

15. Nationalization in any industry is likely to lead to inefficiency, bureaucracy, and stagnation.

16. It is right and proper that non-sectarian religious education in schools should be compulsory.

17. Men and women have the right to find out whether they are sexually suited before marriage.

18. The principle 'Spare the rod and spoil the child' has much truth in it and should govern our methods of bringing up children.

19. Women are not the equals of men in intelligence and organizing ability.
20. The Jews have too much power and influence in this country.

21. Differences in pay between men and women doing the same work should be abolished.

22. Birth control, except when medically indicated, should be made illegal.

23. The death penalty is barbaric, and should be abolished.

24. Only people with a definite minimum of intelligence and education should be allowed to vote.¹

The third section of the questionnaire concerning the judges' perception of their role included nine groups of role definition items cited frequently in journals of law and judicial studies. Some items with little or no relevance to the question were introduced as an internal test. No effort to rate the importance of the items was made since the goal of the questions was to determine whether the judges would respond similarly or divergently to a common stimulus. The items included ranking responses to questions such as:

1. If you were in a position to select a trial judge, which of the following factors would be most important?

2. Rate these potential uses for legal precedent in criminal actions.

3. Which of the following is the most appropriate goal for sentencing?

4. Which is the more important reason why sentences for a given crime, assuming common backgrounds for defendants will differ substantially from one judge to another?

5. In your opinion, which of the following selection methods provides the "best" judges?

6. The judge's primary responsibility is to fairly and impartially apply the law of the land. In so doing, his first concern should be which of the following?

7. What importance to judicial success would you consider each of the following backgrounds?

8. Considering the environment and the nature of the judicial task, in what order would you rate the following preparation?

9. If any particular family background would be helpful to the performance of the judicial task, how would you rate those below as to helpfulness?

After the completion of this portion of the instrument, the judge was asked to respond orally to a series of questions bearing on the judge's relations with his fellow judges, the judge's perceptions of possible causes of sentence variation and related information. (See Appendix A)

Sample

The population from which the sample was selected for this study included the 40 judges observed in the Hawthorne study. These 40 judges occupied the bench in 13 different circuits. The Hawthorne study concluded that there was a significant difference

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in the sentencing patterns of 23 judges in seven circuits out of the 13. Of the seven circuits where the judges had significant sentencing disparities, one two-judge circuit had one judge deceased which made impossible a comparison between the two judges. Another judge was found to be deceased in a three-judge circuit, but with two of the three judges still sitting a comparison was still possible. This left a total of 21 judges to be contacted. Each of these judges was invited to participate. Two of the judges flatly refused to participate, one from a policy of long-standing non-participation in such studies, the other at the end of an irate tirade against such "impertinent and irrelevant" questions that "have nothing to do with sentencing." Another judge indicated willingness to participate but refused to make an appointment with the interviewer, pleading a "heavy workload." A final judge agreed to see an interviewer at the end of a three-hour drive, then refused to answer the questions. Not too surprisingly, two of the four judges refusing to cooperate were the judges identified in the Hawthorne study as the significant judge when paired with their brethren. Although not all interviews were complete in all facets, the remaining 17 judges all met with an interviewer.

Statistics

The statistics to be used in the analysis of the data produced
by the collection methods outlined above include Spearman's rank-order correlation coefficient and the Student's "t" test.

To use Spearman's rank-order correlation technique (r_s) we treat the data as ordinal in nature. When r_s is used, we will rank the judge's means as (x) and the judge's score on the radicalism-conservatism test as (y) and perform the statistical test on these rankings. On the perception of the judicial role questions the judges' responses were stated as ranks so a Spearman's r could be run on each possible pair of judges within a circuit on each question. One judge's responses to a question would serve as (x) and the responses of the judge with whom he is paired will serve as (y).

The final statistic employed was a Student's "t" test. This test was designed as a small sample analysis of variance test between means of two samples. In this study, Student's "t" is used to measure variance in radicalism-conservatism scale scores between all possible pairs of judges within each circuit. A result of this test which is statistically significant at the .05 level would indicate a difference in ideological orientation which explains or might explain differences in means. The "t" score values will be

used in conjunction with the "t" scores obtained in the Hawthorne study.

Each of these statistics will be reviewed briefly in Chapter IV in the context of its application to specific data with the meaning of possible results explained.
CHAPTER IV

ANALYSIS OF THE DATA

Background Characteristics

Although there are no statistical tests appropriate for measuring the relationship between the data collected to support the hypothesis that:

where one judge can be identified as the significant judge, this judge will have background characteristics peculiar to him and those remaining non-significant judges will hold characteristics in common not shared by the significant judge,

and sentencing patterns, a discussion of the findings is appropriate.

Using the Hawthorne study to determine which judges were the significant judges, comparisons were made between the non-significant judges, considered as a group, and the significant judge to determine if there were background characteristics peculiar to each. In Oakland County, it was found that the significant judge was neither born nor raised in Oakland County while three of the four non-significant judges were raised in Oakland County.

The significant judge's father received a B.A. degree from
Northwestern while none of the non-significant judges' fathers received college degrees. The significant judge's father was a professional while none of the non-significant judges could claim this about their fathers.

The block of judges which are not significant have a range of mean sentences of five months, from a low of 24.48 months to a high of 29.43 months. The range between their lowest mean (24.48) and the mean of the significant judge is 12 months, more than double the entire range shared by the group of non-significant judges.

While only one of the four non-significant judges in Oakland County had prior judicial experience on an appellate court (Michigan Supreme Court for one year), the significant judge had 25 years of prior judicial experience as a probate judge in the same county.

Of the five judges in Oakland County, the significant judge was the oldest when elected to the circuit court bench (63) and is presently the oldest of the five judges on the bench. It is interesting to note here that the significant judge has explained why his sentences compare as shorter than those handed down by the other judges in that circuit. Starting in 1965, the significant judge gave all convicted defendants that he had decided must go to prison the minimum sentence. His
reported goal was to prod the Crime Commission to push for indeterminate sentencing. This failed, so starting in January of 1970, he began a new policy of sentencing to the maximum sentence less six months for the minimum. For example, a defendant would get four and a half to five years now from this significant judge where he may have been sentenced to a year in prison in earlier years for the same crime from this same judge. The significant judge includes an order in every sentence that any recommendation by the Crime Commission that a prisoner be released before his minimum term is up would be honored by him, the judge. So, in Oakland County the disparity really exists because the significant judge chooses to experiment with people's lives and time taken away from them.

In Genesee County, the major point to be considered is that the non-significant judges are all males, married, have raised families, and are all younger than the significant judge who is a female, unmarried and has never raised a family. She is the oldest judge of the four, both presently and at the time she was elected. Any further comparisons are impossible because this significant judge refused to respond to the questionnaire.

The "t" test performed on the data in the Hawthorne study revealed that in the three-judge circuit of Kalamazoo County the...
significant judges were I and II with no indication as to which judge was responsible for the variance. When Judges I and II are paired with Judge III, no significant variation results. Therefore, the variance that exists in Kalamazoo County will be explained in terms of differences between Judge I and Judge II.

To explain a mean difference of 8.22 months between these two judges in the prison auto crime category, we might consider that Judge I had prior judicial experience as a probate judge for three years while Judge II had no prior judicial experience.

Judge I held public office as a county prosecutor where Judge II held no public office. Judge I was the youngest judge at election, by ten years, and is presently the youngest judge in Kalamazoo County, nine years younger than Judge II. Judge I was born and raised in Kalamazoo County while neither is true of Judge II. Judge I's father held a public office while Judge II's father did not.

The significant judge in the only significant category, larceny, in Macomb County had no prior judicial experience before joining the circuit bench, whereas both the non-significant judges did have prior judicial experience, one as a municipal judge and

1"Significant" category refers to those categories of crime in which statistically significant disparity in sentences has been demonstrated.
the other as a justice of the peace.

The significant judge was younger than the two non-significant judges when he was elected and he has served as a circuit judge for 41 years while his two non-significant brothers have served for 15 years and 6 years. It is interesting to note here that the two non-significant judges were law partners before one of them joined the bench.

The significant judge in Macomb County was the only judge born and raised in Macomb County. Neither of the non-significant judges were born in Macomb County, although one was raised there.

The significant judge was the only judge to get his law degree from the University of Michigan. The two non-significant judges received their degrees from Detroit College of Law before practicing law together.

The significant judge's father was a lawyer by occupation while neither of the non-significant judges had professional fathers.

Circuit 18, Bay County, is a two-judge circuit, so the significant variance established cannot be traced to one judge. In this circuit, Judge I was a probate judge for six years prior to serving as a circuit judge while Judge II had no prior judicial experience. Judge II was formerly a county prosecutor where Judge
I was not. The judge with the highest mean sentence was older when he was elected and is presently the older of the two. Judge I was born and raised in the same county while Judge II was not. Judge I's father is a bank manager with an LLB degree while Judge II's father is a clerk with no college education.

Ingham County is also a two-judge circuit so the variance here will also be discussed in terms of the differences between judges.

Judge II has been a circuit judge ten years longer than Judge I, who has served for 13 years. Judge II was a county prosecutor with the highest mean sentence, while Judge I was never a county prosecutor and whose mean sentence is 15 months less than Judge II. Judge I and Judge II attended different law schools in different parts of the country, with Judge I in the East and Judge II in the Midwest.

Although there is no method of measuring these differences between judges to determine whether they are statistically significant, it should be apparent from the above discussion that in most circuits the significant judge does have background characteristics peculiar to him and that the remaining non-significant judges do hold characteristics in common that are not shared by the significant judge.
Ideological Orientations

The second hypothesis states that:

judges who have a significant difference in their mean sentences as established by the Hawthorne study will also have a significant difference in their radicalism-conservatism score.

This hypothesis deals with a proposed relationship between the results of a "t" test performed on all pairs of judges' mean sentences and a "t" test performed on all pairs of judges' scores on the radicalism-conservatism scale. It will be noted in Table 1 that five pairs of judges have achieved a significant "t" value. This is an indication that when the radicalism-conservatism scale scores for that particular pair of judges was compared, there was a significant difference. Those pairs of judges which achieved significant "t" values in the Hawthorne study are so indicated with an asterisk on Table 1.

Analysis of Table 1 shows that only judges 4 and 5 in Macomb County had significant differences in their mean sentences as well as significant differences in their radicalism-conservatism scale scores. Therefore, we must conclude that those judges, who, when paired, have established significant variation in sentences do not necessarily have significant variations in the scores achieved on the radicalism-conservatism scale.
TABLE 1

STUDENT'S "t" TEST USED TO TEST DIFFERENCES IN SCALE SCORES RECEIVED ON THE RADICALISM-CONSERVATISM TEST

<table>
<thead>
<tr>
<th>Pairs of Judges</th>
<th>t Value</th>
<th>Significance</th>
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</thead>
<tbody>
<tr>
<td>Oakland</td>
<td>1.46887</td>
<td>N.S.</td>
</tr>
<tr>
<td>1 &amp; 4</td>
<td>.57161</td>
<td>N.S.</td>
</tr>
<tr>
<td>3 &amp; 4</td>
<td>1.96184</td>
<td>+.05</td>
</tr>
<tr>
<td>Genesee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 &amp; 2</td>
<td>2.33429</td>
<td>+.05</td>
</tr>
<tr>
<td>1 &amp; 3</td>
<td>4.11685</td>
<td>+.01</td>
</tr>
<tr>
<td>2 &amp; 3</td>
<td>1.68520</td>
<td>+.05</td>
</tr>
<tr>
<td>Kalamazoo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 &amp; 2*</td>
<td>.99399</td>
<td>N.S.</td>
</tr>
<tr>
<td>1 &amp; 3</td>
<td>1.03607</td>
<td>N.S.</td>
</tr>
<tr>
<td>2 &amp; 3</td>
<td>.11953</td>
<td>N.S.</td>
</tr>
<tr>
<td>Macomb</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 &amp; 4*</td>
<td>.66509</td>
<td>N.S.</td>
</tr>
<tr>
<td>1 &amp; 5</td>
<td>.66255</td>
<td>N.S.</td>
</tr>
<tr>
<td>4 &amp; 5*</td>
<td>1.70636</td>
<td>+.05</td>
</tr>
<tr>
<td>Bay</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 &amp; 2*</td>
<td>.81069</td>
<td>N.S.</td>
</tr>
<tr>
<td>Ingham</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 &amp; 2*</td>
<td>.12385</td>
<td>N.S.</td>
</tr>
</tbody>
</table>

* Those pairs of judges who achieved a statistically significant "t" value in the Hawthorne study.
The third hypothesis, which also deals with the variable of ideological orientation, states that:

among judges who differ significantly in the severity of the mean sentence they impose for a given crime, the judge with the more liberal ideological orientation will have the lower mean prison sentence.

To test this hypothesis, the mean sentences of the judges in each circuit were ranked with the highest mean being ranked (1). The same consideration and conversion was given the scores achieved by each judge in the circuit on the Eysenck radicalism-conservatism scale, with the lowest score ranked (1). The relationship between these variables was then tested with Spearman's Coefficient of Correlation. To support the hypothesis, the data should produce perfect positive correlations with a value of +1.00. The expectation was that conservative scoring judges would give longer sentences and radical scoring judges would give shorter sentences, i.e., positive correlation between these variables was possible and should be expected.

Table 2 shows that the desired coefficient was achieved in Kalamazoo County where the means for forgery crimes were paired with the radicalism-conservatism scores and the +1.00 correlation was also obtained in all the significant categories in Ingham County (30).
<table>
<thead>
<tr>
<th>Circuit</th>
<th>Judge</th>
<th>Significant Crime</th>
<th>Mean Sentence R</th>
<th>Scale Score R</th>
<th>rs</th>
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<tr>
<td>6</td>
<td>1</td>
<td>B &amp; E</td>
<td>(1) 14.67</td>
<td>118 (2)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>3</td>
<td></td>
<td>(2) 12.67</td>
<td>144 (3)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>4</td>
<td></td>
<td>(3) 7.95</td>
<td>106 (1)</td>
<td>-.5</td>
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<td></td>
<td></td>
<td>Overall Prison</td>
<td>(1) 25.62</td>
<td>144 (3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2) 24.14</td>
<td>106 (1)</td>
<td>+.5</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>Prison</td>
<td>(3) 25.42</td>
<td>118 (2)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>3</td>
<td>B &amp; E</td>
<td>(1) 29.43</td>
<td>144 (3)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>4</td>
<td></td>
<td>(2) 26.14</td>
<td>106 (1)</td>
<td>+.5</td>
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<tr>
<td>7</td>
<td>1</td>
<td>Larceny</td>
<td>(3) 10.60</td>
<td>123 (1)</td>
<td></td>
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<tr>
<td>7</td>
<td>2</td>
<td></td>
<td>(1) 19.40</td>
<td>164 (2)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>3</td>
<td></td>
<td>(2) 11.50</td>
<td>187 (3)</td>
<td>-.5</td>
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<td></td>
<td></td>
<td>Overall Prison</td>
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<td>123 (1)</td>
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<td>(1) 35.05</td>
<td>164 (2)</td>
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<td></td>
<td></td>
<td></td>
<td>(3) 32.50</td>
<td>187 (3)</td>
<td>+.5</td>
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<tr>
<td>9</td>
<td>1</td>
<td>Auto</td>
<td>(1) 12.52</td>
<td>161 (3)</td>
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<tr>
<td>9</td>
<td>2</td>
<td></td>
<td>(2) 8.33</td>
<td>141 (1)</td>
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<tr>
<td>9</td>
<td>3</td>
<td></td>
<td>(3) 4.54</td>
<td>143 (2)</td>
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<td>(1) 24.58</td>
<td>161 (3)</td>
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<td></td>
<td>(3) 16.36</td>
<td>141 (1)</td>
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<td>(2) 20.20</td>
<td>143 (2)</td>
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<td></td>
<td></td>
<td>Forgery</td>
<td>(3) 13.70</td>
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<tr>
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<td></td>
<td>(1) 24.65</td>
<td>141 (1)</td>
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<td>(2) 15.50</td>
<td>143 (2)</td>
<td>+1.00</td>
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TABLE 2--Continued

<table>
<thead>
<tr>
<th>Circuit</th>
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<th>Significant Crime</th>
<th>Mean Sentence R</th>
<th>Scale Score R</th>
<th>r_s</th>
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<tr>
<td>16</td>
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<td>(1) 29.91</td>
<td>128 (2)</td>
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<td>16</td>
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<td>18</td>
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<td>30</td>
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</tr>
<tr>
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<td>2</td>
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</tr>
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<td>1</td>
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<td>(2) 10.62</td>
<td>120 (2)</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>2</td>
<td></td>
<td>(1) 25.80</td>
<td>118 (1)</td>
<td>+1.00</td>
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Unfortunately for the goals of this study, a similar test incorporating the ranks of mean sentences for the prison auto category in Kalamazoo County (9) with the ranks of the same radicalism-conservatism scores produced exactly the opposite result as the above pairings did. There was found to be a negative correlation or a perfect inverse correlation of -1.00 between the mean prison auto sentences of the judges in this circuit and the scores these judges achieved on the radicalism-conservatism scale.

It should be noted that Bay County, Circuit 18, produced perfect inverse correlations in three significant categories. The remaining circuits produced inconclusive correlations of +.5 and a -.5 in all tests.

On the basis of these data, we conclude that in some circuits a high degree of correlation exists between the sentencing tendencies of judges and the degree of radicalism demonstrated by that judge on the radicalism-conservatism scale. When these conclusions are contradicted by other data for the same circuit, the explanatory power of the analysis is seriously impaired and we must assume that at least one other intervening variable is operative.

1Spearman's Coefficient of Correlation.
On the whole, however, we must conclude that the relationship to the radicalism scale score alone is not sufficient to reject the null hypothesis and our results regarding the relation of ideology to the mean sentence imposed by a judge is, at best, inconclusive.

Sentencing and Role Perception

The fourth hypothesis states that:

where judges in the same circuit differ significantly in sentence patterns for a given crime, those judges will also differ in their perception of the judicial role.

The items, as listed on Pages 29-30, were designed to provide a constant scale against which the similarities and disparities of
the judges' opinion of the importance of the individual items may be compared.

To test the hypothesis, all possible pairs of judges were compared using the ranks they assigned each of the role definition items. The rankings were used along with the rank of the mean sentence recorded for the judge to achieve a measure of correlation between the sentence means and each of the ranked role responses. The results of that test are reported in Table 3.

If the hypothesis is to be perfectly supported, all pairs
which include the significant judge in the circuit should produce a value of -1.0 and all pairs of judges in which the significant judge
TABLE 3

AN INDEX OF SPEARMAN'S COEFFICIENT OF CORRELATION ON THE ROLE DEFINITION ITEMS

<p>| | | | | | | | | | | |</p>
<table>
<thead>
<tr>
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<tr>
<td>Oakland</td>
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<td>.086</td>
<td>.810</td>
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* Significant pairs of judges as established by the Hawthorne study.
is not included should produce a value of +1.0. Failing this
degree of perfection, the hypothesis would anticipate that all
pairs in the former category would have a negative value and all
pairs in the latter a positive value, with the relative strength of
the relationship indicated by the value. As the value increases,
the strength of the relationship should increase.

In the first circuit tested, Oakland County, the significant
judge declined to participate in the study. The five remaining
judges made possible six pairings, all of which should produce
positive values under the hypothesis. Instead, Table 3 discloses
that positive values were achieved in the first three items, the
seventh and the ninth items. The fourth, fifth, sixth and eighth
items produced a negative association in 50 percent or more of
the pairings.

In the second circuit, Genesee County, where again the signi-
ficant judge declined to participate, we would again expect each
of the three possible pairs to provide positive relationships in
each of the items. Again, we are disappointed in our expecta-
tions as the second, third, fifth and sixth items provided nega-
tive values in over 50 percent of the pairs. Only the paired
responses to the first question provided all positive values in
this circuit.

The third circuit, Kalamazoo County, shows that the
circumstance discovered in the first two counties is reversed. Here, the significant judge responded to the scale items and was expected to provide negative values when paired with each of the other two judges. As Table 3 shows, this expectation was met in only one of the nine items. Even the value of this finding is suspect considering that another pair of judges, not including a significant judge, also produced a negative value. All remaining items in all pairings produced positive values.

In Macomb County, the fourth circuit considered in Table 3, the results are mixed. Although one pair of judges including the significant judge produced negative values in two items, similar negative values were produced when the non-significant judge from that pair was paired with another non-significant judge. Similarly, when the significant judge was paired with a different non-significant judge, only positive values were produced. This, contrary to the hypothesis, suggests that it is the rankings of the non-significant judge which produces the negative values when paired with any other judge, significant or non-significant.

The final two circuits, Bay and Ingham, both are two-judge circuits. This made possible only one pairing which had to include the significant judge. The first of these produced negative values to only two items while the other circuit produced negative values in the last four items and a weak positive value.
in one other cell. The remaining items produced positive values in both circuits.

Considering these results, the null hypothesis of no relation between this measure of role definition and variance in sentence means cannot be rejected, and we must conclude that perceptions of role, at least as measured in this study, cannot successfully explain sentence disparity.

One of the critical questions that bears on sentencing disparity, as it has been shown to exist in a number of jurisdictions, is "if there is disparity, do the judges recognize it?" The question that presents itself here is whether judges perceive it as part of their role as a judge to discuss sentencing with their colleagues. As was mentioned in the last chapter, judges do not discuss sentencing of criminal defendants formally and yet the majority do believe that there is no disparity in their sentencing.

On the basis of this information, we hypothesized that:

judges who differ significantly in that they have a more severe mean sentence than their brothers will not be aware of the disparity and will, in fact, believe that they sentence the same as all other judges in that circuit.

In Table 4 the judge with the asterisk beside his name has the highest mean sentence. Four of these 12 judges have indicated that they think their average mean sentences are the same when compared with other judges in their circuit. Of the
<table>
<thead>
<tr>
<th>Circuit</th>
<th>Judge</th>
<th>Significant Crime</th>
<th>Mean Sentence</th>
<th>How Length of Prison Sentences Compare</th>
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<tr>
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* Judge with the highest mean.
remaining eight judges with high mean sentences, six have either failed to answer the question or admitted that they have no idea how their sentences compare. So we have ten judges out of 12 with high means that have indicated that they are not aware of any disparity. It would be safe to conclude then, on the basis of 83 percent of the judges responding as we hypothesized they would, that judges do not, in fact, recognize existing disparity.
CHAPTER V

SUMMARY AND CONCLUSIONS

There have been numerous studies done in the area of judicial sentencing behavior. Among these are studies establishing disparity between judges on the basis of comparisons between the proportion of criminal defendants sentenced to prison by one judge, and the proportion of defendants sentenced to prison by another judge in the same jurisdiction for the same crime.¹ Additional research has been done which establishes disparity in judicial sentencing by comparing cases that resulted in non-incarceration to determine what percent a judge fined, discharged, or suspended as compared to the same for another judge in the same circuit for the same crime.²

The first studies mentioned created problems in that a claim to have measured disparity in sentencing was made while what was measured was the disparity in proportions of defendants sentenced to prison. The research completed that deals with disparity in terms of non-incarceratory sentences states conclusions

¹Gaudet, op. cit., and Green, op. cit.
²Tanenhaus and Associates, op. cit.
in terms of disparity in sentencing. Whether this is legitimate is questionable.

The objections raised by these pieces of research are met by the Hawthorne study in that sentences are compared between judges on the basis of actual length of prison sentence.

Because the data used in the Hawthorne study is the most recent and, in addition, because of the imprecise nature of the data in the other studies mentioned above, the Hawthorne study was chosen to work from in an attempt to study the relationship between background characteristics, ideological orientation, perception of the judicial role and disparity in the sentencing behavior of judges.

This study proposed to test the above-stated relationship. Data were collected from all those multi-judge circuits in the state of Michigan where significant sentencing disparity had been established by the Hawthorne study. The instrument used was a four-part questionnaire which consisted first of background data; second, a test of radicalism-conservatism; third, a test of a judge's perception of the judicial role; and last, a set of open-ended questions which attacked the problem of disparity and asked the judges if they knew it existed, how they could explain it.

An 80 percent return rate on the collection of this data
allowed the testing of the following hypotheses:

1) Where one judge can be identified as the significant judge, this judge will have background characteristics peculiar to him and those remaining non-significant judges will hold characteristics in common, not shared by the significant judge.

2) Among judges who differ significantly in the severity of the mean sentence they impose for a given crime, the judge with the more liberal ideological orientation will have the lower mean prison sentence.

3) Judges who have a significant difference in their mean sentences as established by the Hawthorne study will also have a significant difference in their liberalism-conservatism scale score.

4) Where judges in the same circuit differ significantly in sentence patterns for a given crime, those judges will also differ in their perception of the judicial role.

5) Judges who differ significantly in that they have a more severe mean sentence than their brothers will not be aware of the disparity and will, in fact, believe that they sentence the same as all other judges in that circuit.

The first hypothesis allowed for comparisons between the significant judge and all other non-significant judges as a group in a circuit to determine if the significant judge had background characteristics peculiar to him and if the non-significant judges had characteristics peculiar to them. As there were characteristics peculiar to both the significant judge and the non-significant judge or judges in each circuit, we were able to reject the null hypothesis that there will be no characteristics peculiar to the significant judge or the non-significant judge or judges. Although
there is no statistical proof, there is at least an indication of a relationship between backgrounds and sentence disparity.

When testing the second hypothesis the mean sentences were ranked as well as the scale scores. A Spearman's Coefficient of Correlation was used to determine if there was a relationship between the rankings of these two variables. Out of 17 possible correlations, five were perfect correlations at +1.00, four were perfect inverse correlations at -1.00, and the remaining categories were inconclusive. We were, therefore, left in the position of concluding that the relationship of sentence means to scores achieved on the radicalism-conservatism scale was not strong enough, so we were not able to reject the null hypothesis and our results were, at best, inconclusive.

The third hypothesis deals with a proposed relationship between the results of a "t" test performed on all pairs of judges' scores on the radicalism-conservatism test. Out of 14 pairs of judges, five achieved a significant "t" score value both when mean sentences were compared (as recorded in the Hawthorne study) and when their radicalism-conservatism scale scores were compared for a significant difference. We, therefore, concluded that those judges who, when paired, had established significant variation in sentences did not necessarily have significant variation in the scores they achieved on the radicalism-conservat-
The fourth hypothesis proposing a relationship between mean sentences and different perceptions of the judicial role, although supported by the data in some cases, did not significantly correlate in a sufficient number of cases to allow us to reject the null hypothesis. We therefore concluded that judges' perceptions of role, at least as it was measured in this study, cannot successfully explain disparity.

In the fifth hypothesis we suggested that the judge with the highest mean sentence would not be aware of disparity and would think that his sentences were the same as his colleagues. It would be safe to conclude then, on the basis of 83 percent of the judges responding in the direction we proposed, that the null hypothesis that judges are aware of disparity and know how their sentences compare can be rejected.

Although it was not mentioned before, it would be interesting to note here that four out of the six judges who had the highest mean sentence in their circuit had also been former county prosecutors. This would suggest that further and more detailed study might explain why judges who have formerly been county prosecutors have sentences that are longer than their colleagues.

Many, if not all, of the judges who were interviewed indicated that the most important single item, or one of the most
important items, considered when arriving at a "just" sentence is the pre-sentence investigation report. Several judges indicated that in about 90 percent of the cases they sentence, they use the sentence recommended by the probation officer who made the report. Several judges indicated that they relied heavily on the report even so far as to give the defendant the sentence recommended by the probation officer because the judge felt that the officer knew the defendant better and would therefore be better able to determine the appropriate sentence necessary. Having had this information indicated, it was decided to have two interviews with different Chief Probation Officers in different circuits.

It was discovered that methods for training and selecting probation officers varied between the two circuits. In one circuit, the Chief Probation Officer was the only person who had any contact with the judge concerning the pre-sentence investigation reports, i.e., the probation officer who made the report out never had an opportunity to discuss it in any detail with the judge assigned to the case. In the other circuit, the probation officer who made out the report had a 30-minute interview with the judge immediately before the session in which the defendant was to be sentenced.

In view of the importance of the probation officer's contri-
bution to the criminal sentencing practices and the apparent
difference in the techniques discovered in superficial contacts
with probation officers, it appears both important and urgent
that further, in-depth research be done into the part played by
probation officers in the creation of sentencing disparity.

In summary, it appears that although three of the five hypoth­
eses tested in this study have not been supported by the data, the
potential for explaining sentence disparity may still rest in the
area of social backgrounds, ideological orientations, perception
of the judicial role, and other elements subsumed under the
broad heading of "personality." Other research, using other
instruments and perhaps more sophisticated approaches, would
seem justified if sentence disparity is to be fully explained.
APPENDIX

Name____________________________________Date of Birth ___/___/___
Place of Birth: City/Township__________County___________
State______________________________
Age at (Appointment) (Election) ____Ethnic Origin____________

Residence
Have you lived in this county all your life? Yes____No____
(If no) Where else have you lived? _______________/_____________
_____________________/________________

Religion
Protestant____Catholic____Jewish____Other____None____
Active member? Yes____No____

Education
Colleges Attended                  Degree Obtained                  Date
__________________________________                                  __________
__________________________________                                  __________
__________________________________                                  __________

Law School Attended                  Date Graduated
__________________________________                                  __________

Occupation
Was there any occupation you were involved in at any time outside the practice of Law?
__________________________________

Admitted to Practice? Private? Yes____No____
Corporate? Yes____No____Other (Specify):_____________________
Sole Practitioner? Yes____No____Partner? Yes____No____
Position in Firm: __________________Location of Firm:____________
Speciality: ______________________Trial Work: Yes____No____
Criminal Work? Yes____No____

Politics
Party Affiliation: Republican____        Party Offices Held:
Democrat ______                                  ______________________
Other _____                                  ______________________
None ____                                     ______________________
Public Offices Held: ______________ From to ______________
From to ______________
From to ______________

Prior Judicial Experience
____________________________ From to ______________
From to ______________
Marital Status
Married___ Separated___ Divorced___ Widowed___ Single___
Children: ______ Boys Ages ______
________ Girls Ages ______

Father's Background
Religion: Protestant___ Catholic___ Jewish___ Other___
Active Member? Yes___ No___

Education: Colleges Attended Degrees Obtained
____________________________

Occupation: Professional ___ Managerial ___
Manual ___
Time in same Field ___

Party Preference: Republican___ Democrat___ Other___
Active in Party? Yes___ No___
Party Offices Held: Yes ___ No ___
From to ______________ From to ______________

Public Offices: ______________ From to ______________
From to ______________
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<td>2</td>
<td>Present laws favor the rich as against the poor</td>
<td>+</td>
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<tr>
<td>3</td>
<td>War is inherent in human nature</td>
<td>0</td>
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<tr>
<td>4</td>
<td>Our treatment of criminals is too harsh</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>In the interests of peace, we must give up part of our national sovereignty</td>
<td>--</td>
</tr>
<tr>
<td>6</td>
<td>Sunday-observance is old-fashioned, and should cease to govern our behavior</td>
<td>++</td>
</tr>
<tr>
<td>7</td>
<td>It is right that men should be permitted greater sexual freedom than women by society</td>
<td>++</td>
</tr>
<tr>
<td>8</td>
<td>Unrestricted freedom of discussion on every topic is desirable in the press, literature, and the stage</td>
<td>++</td>
</tr>
<tr>
<td>9</td>
<td>More collectivism, like the TVA, should be introduced into our society</td>
<td>++</td>
</tr>
<tr>
<td>10</td>
<td>Conscientious objectors are traitors to their country, and should be treated accordingly</td>
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<tr>
<td>11</td>
<td>Only by going back to religion can society survive</td>
<td>++</td>
</tr>
<tr>
<td>12</td>
<td>Marriage between white and colored people should be greatly discouraged</td>
<td>++</td>
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<tr>
<td>13</td>
<td>There should be far more controversial and political discussion over the radio and television</td>
<td>++</td>
</tr>
<tr>
<td>14</td>
<td>Divorce laws should be altered to make divorce easy</td>
<td>++</td>
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<tr>
<td>15</td>
<td>Nationalization in any industry is likely to lead to inefficiency, bureaucracy, and stagnation</td>
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</tbody>
</table>
16. It is right and proper that non-sectarian religious education in schools should be compulsory

17. Men and women have the right to find out whether they are sexually suited before marriage

18. The principle "Spare the rod and spoil the child" has much truth in it, and should govern our methods of bringing up children

19. Women are not the equals of men in intelligence and organizing ability

20. The Jews have too much power and influence

21. Differences in pay between men and women doing the same work should be abolished

22. Birth control, except when medically indicated, should be made illegal

23. The death penalty is barbaric, and should be abolished

24. Only people with a definite minimum of intelligence and education should be allowed to vote
If you were in a position to select a trial judge, which of the following factors would be most important? (Rate them in importance from 1, most important, to 7)

- Trial Experience
- Continuing Scholarship
- Objectivity
- Residing in District
- Knows about people
- Sound legal education
- Previous trial court experience

Rate these potential uses for legal precedent in criminal actions from 1, most appropriate, to 6.

- Justification of decisions
- Consistency in the Law
- None at all
- Fitting the law to the case at bar
- Consistency in Sentencing
- Avoiding Reversal of Appeal

Which of the following is the most appropriate goal for sentencing? (if more than one, indicate order of importance)

- Deterrent effect
- Protection of society
- Punishment
- Rehabilitation
- Socialization
- Vocational Training

Which is the most important reason why sentences for a given crime, assuming common backgrounds for defendants, will differ substantially from one judge to another? (if more than one give order of importance)

- Judges attitudes on particular crimes
- Police Pressure
- Probation officers recommendation
- Public Pressure
- Prosecutors recommendation
- Influence of News Media

In your opinion, which of the following selection methods provides the "best" judges? (indicate order of preference)

- Popular Partisan Election
- Popular Non-Partisan Election
- Committee of Lawyers Selects
- State Supreme Court Selects
- Gubernatorial Appointment
- Committee Nomination/State Supreme Court Selects
- Gubernatorial Appointment
What importance to judicial success would you rate each of the following backgrounds. (1, highest to 6, lowest)

City Attorney
Municipal Judge (District)
County Prosecutor
Probate Judge
Defense Attorney
Corporate Attorney

The judge's primary responsibility is to fairly and impartially apply the law of the land. In so doing, his first concern should be which of the following? (If more than one indicate the order of importance)

Maintenance of Law and Order
Protection of Society
Rehabilitation of Criminal Defendants
Maintaining Superiority of the Law
Humanistic Concerns
Support the Law Enforcement Agencies

Considering the environment and the nature of the judicial task, in what order would you rate the following preparation? (Rate from 1, highest to 8, lowest)

Sole Practitioner, General Practice
Sole Practitioner, Specialized Practice
Two-member firm, General Practice
Two-member firm, Specialized Practice
Multi-member firm, General Practice
Multi-member firm, Specialized Practice
Member, Corporate Law Department
Director, Corporate Law Department

If any particular family background would be helpful to the performance of the judicial task, how would you rate those below as to helpfulness? (Rate from 1, most helpful, to 6, least helpful)

Father was:
Small Businessman
Corporate Executive
Professional Man
Salaried Employee
Academic
Hourly Worker
Statutory considerations aside, which of the following four crimes do you consider most serious? (Rank order from 1, most serious, to 4, least serious)

Auto Crimes _____  Breaking and Entering _____
Larceny Crimes _____  Forgery Crimes _____

Why do you consider (1) _____ crimes the most serious?

Have you or members of your family or close friends ever been victims of any of these four crimes?  Yes____  No____

Which crime?  ______________  When?  ______________

To the best of your knowledge, have the other judges of this circuit, their families, or their friends ever been victims of any of these crimes?  Yes____  No____

Which judge?  ______________  Which crime?  ______________  When____

According to our records, you were a colleague of Judges A_____, B_____, C_____, D_____, E_____

Is this correct?  _____ How long did you share the bench with each of these judges?  Judge A_____, Judge B_____, Judge C_____, Judge D_____, and Judge E_____

If you recall, were your personal relations with each of these judges about the same?  Same_____ Different _____

If they were the same, how would you characterize those relations?

If different, how would you characterize your relations with

Judge A
Judge B
Judge C
Judge D
Judge E
We are sure you are aware that not every person committing the same crime receives the same sentence nor do we believe this is desirable, but we are interested in the reasons for the presence or absence of difference. Can you give us any reason why the sentence you would give a defendant for a crime would differ substantially from that which the same defendant would receive from Judge __________ for the same crime?

________________________________________________________________________

________________________________________________________________________

Thank you. Now, to look at the other side of the coin, can you give me the reason or reasons you would expect that you and Judge __________ would give similar sentences in this same circumstance.

________________________________________________________________________

________________________________________________________________________

Would these reasons hold true for similar sentencing without modification if the crime charged was an Auto Crime?
Yes ________ Modification __________________________

Breaking and Entering?
Yes ________ Modification __________________________

Larceny?
Yes ________ Modification __________________________

Forgery?
Yes ________ Modification __________________________

Can you suggest any reason why a felon appearing before one judge in this circuit might have a greater chance of receiving probation than if he appeared before another judge?
________________________________________________________________________

How do you expect that the length of prison sentences you find necessary to impose compare, on the average, with those imposed by other judge(s) in this circuit?

Same ________ Longer ________ Shorter ________
(If longer or shorter) which judge would you expect to have a pattern of sentence most different from yours?

Judge ______________________

Why would you expect this to be true? __________________________

Have you ever discussed sentencing practices or specific sentences with Judge ______________________ (named above)  Yes ___ No ___

If yes, what has been the effect of such discussion on your sentences?
______________________________________________________________

On his?
______________________________________________________________

Can you tell me, beginning with the most important item, those things which you use to arrive at a just sentence?
______________________________________________________________

Are these items regularly used by other members of this circuit?  Yes ______ No ______

If no, what other items might other judges consider or exclude?
______________________________________________________________
BIBLIOGRAPHY

Books


**Articles and Periodicals**


Unpublished Material

