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INDIVIDUAL DIFFERENCES IN THE SENTENCING TENDENCIES OF JUDGES

FREDERICK J. GAUDET, GEORGE S. HARRIS, and CHARLES W. ST. JOHN¹

This study was originally undertaken as a project having a much broader scope than that presented in this article. The authors had hoped to carry through an investigation which they had tentatively entitled, "A Study of Some Factors Other Than Guilt and Nature of Offense Which Determine the Length of a Prisoner's Sentence." It was their expectation to gather evidence which would show whether or not the severity of a prisoner's sentence was influenced by such factors as: his marital condition, his color, his race, his political affiliations, the judge who sentenced him, the imminence of a re-election or a reappointment of a judge, the age of the prisoner, his religion, general business conditions, etc. Because the authors were unable to secure enough money to carry on such a study it was necessary to stop after data embodying some seven thousand cases had been gathered. It is their hope to be able to continue this project when conditions shall have become more favorable. This article is the first of a series of studies of individual differences in the sentencing tendencies of judges based upon an analysis of the seven thousand cases already examined.

The study of individual differences, as conducted by psychologists for the past three or four decades, has clearly demonstrated that the popular conception, that most men do not differ widely in respect to their natural mental abilities, is one of our greatest fallacies. It is now known that men differ surprisingly in these respects and in the use of their abilities. Perhaps one of the most enlightening of these studies has been conducted in the measurement of individual differences in the marking of examination papers. The classic experiment of this type was conducted by asking one hundred and sixteen high school teachers of mathematics to grade one hundred and sixteen identical copies of the answers to an examination in plane geometry. To the amazement of all teachers, and to the consternation of those who had marked the papers, it was found that these teachers had

¹Messrs. Gaudet and St. John are of Dana College and Mr. Harris of the New Jersey Law School.

marked the same paper with scores that ranged all the way from 28 to 92.²

The interest in the present study arose from the fact that one of the authors of this paper wondered whether a similar technique could not be applied to the sentences given by judges. Of course, the authors were well aware of the fact that the constitution of the State of Massachusetts states that we have "a government of laws, and not of men," but they were well aware also of the fact that some judges have the reputation of being severe and others of being lenient in their sentencing tendencies. In a lecture last year, Chief Justice Hughes made the statement that "our government is one of laws, through men." The individual differences in the sentencing tendencies of judges are evidently recognized by many who are accustomed to observe this sentencing. The authors have been told by several lawyers that some recidivists know the sentencing tendencies of judges so well that the accused will frequently attempt to choose which judge is to sentence them, and further, some lawyers say that they are frequently able to do this. It is said to be done in this way. If the prisoner sees that he is going to be sentenced by Judge X, whom he believes to be severe in his sentencing tendency, he will change his plea from "Guilty" to "Non Vult" or from "Non Vult" to "Not Guilty," etc. His hope is that in this way the sentencing will be postponed and hence he will probably be sentenced by another judge.

When the authors were considering whether or not this study should be undertaken, a number of copies of an outline of the study were sent to individuals whom the authors believed to be competent to advise them in regard to the worth-whileness of such a research. One of these individuals, and fortunately the only one of more than half a score, said that he did not consider the study worth-while since everyone knew that what the judge had for breakfast frequently determined the length or kind of sentence he gave.

In spite of this implication that everyone realizes that the goddess of justice should not be represented as measuring out sentences by the use of a delicate balance, which incidentally, she is supposed to read with her eyes blindfolded, the authors decided to go on with the study with the hope of changing the status of this information from that of *opinion* to that of *knowledge based upon evidence*. They wished to know not only whether judges differ in their sentencing tendencies but also to how great an extent and for what reasons. The

²Monroe, De Voss and Reagan, *Educational Psychology*, Doubleday, Doran & Co., 1930, p. 322.

7442 cases involved in this study were taken from the court records of one county in New Jersey. All sentences which were given by six judges over a period of nine years for certain crimes³ were obtained. Since the rule is that there is no selection of the cases which the judge is to sentence but that the sentencing of a particular prisoner by a particular judge is a matter of chance (the judges rotate), it is obvious that, by chance, each judge should get an equal number of cases whose sentences would normally be long or short. In other words, given a sufficient number of cases, one could expect that two judges would give sentences whose average severity would be about equal (providing that the judges were influenced only by the circumstances of the crime and those of the prisoner). Conversely, given a sufficiently large number of cases, if one finds that the average severity of the sentences of two judges is appreciably different, one is justified in saying that the factors which determine this difference in the sentencing tendencies are to be found outside of the circumstances of the crime and those of the prisoner, and hence probably in the judge since he is the other factor which is always present. It is upon this assumption that this study is based and the value of the conclusions is dependent upon its validity.

The authors would like to point out that this study does not attempt to seek for evidence of condemnable factors involving the judge but merely to indicate that because they are human beings they show the same individual differences as are found in other lines of human endeavor. We all know that there are differences in the sentencing tendencies of honest and dishonest judges but this study does not have such factors as its primary interest.

The Results

The first part of the project was to determine the differences in sentencing tendencies of our six judges. This was done by calculating the percentage of sentences given by each judge which involved imprisonments, fines, probations and suspensions. The results of this investigation are shown in Graph A and in Table I. An examination of these results shows that these six judges have sentencing tenden-

³These crimes were chosen because of their relatively great frequency. The crimes which were used were: larceny; larceny and robbery; breaking, entering, larceny and receiving; breaking and entering; robbery; embezzlement; burglary; assault; battery and robbery; larceny from the person; assault and battery with intent to rob; violations of the Hobart Act (New Jersey's prohibition law); adultery; rape; assault, battery and rape; assault and battery with intent to rape; abuse; carnal abuse; and finally assault and battery with intent to abuse.

cies which differ markedly. Jail sentences are given in 57.7% of the cases when Judge 4 sits and 33.6% of the cases when Judge 2 sits. Again, Judge 6 gives 15.7% of his sentences in the form of suspended sentences, while Judge 2 gives more than twice as many, namely, 33.8%. It is interesting to note that Judges 1, 2 and 3 were sitting at the same time over a period of years. If these data are a true measure of the sentencing tendency of these three judges, a prisoner who was found guilty of any of these crimes will have about three chances out of ten of going to jail or penitentiary if sentenced by Judges 1 or 2, but will have six chances out of ten of being given some form of imprisonment (if sentenced) for the same crime and under the same circumstances, by Judge 3.

If all of these forms of punishment were equally efficacious as modes of punishment, as deterrents or as reformatory measures, the problem would not be serious. As to which is the best, we are unable to say with any appreciable measure of evidence. In fact we do not know how efficient any one of our various types of sentencing is. But while we are waiting for evidence regarding the efficacy of these various forms of sentences it is well to know what kind of machinery we are now using to allocate these sentences. Our data tend to show that the personal equation will have considerable influence if we use the present type of administration for meting out sentences.

The next undertaking was the determination of the relation between the severity of the judge's sentence and his length of service. Of course with such a small number of judges and with such a small number of years it is difficult to make generalizations. In any case these results are indicative of what experience does to the sentencing tendency of the judge. The percentage of jail and probation sentences given by each judge over a period of years is shown in Graphs B and C. It will be seen that there is no general decrease or increase in the severity of the sentencing tendencies of these judges as they gain experience.

Perhaps the most interesting thing to be noticed in these graphs is the fact that the sentencing tendency of the judge seems to be fairly well determined before he sits on the bench. In other words what determines whether a judge will be severe or lenient is to be found in the environment to which the judge has been subjected previous to his becoming an administrator of sentences. Of course, we are using the word *environment* in its broadest sense to include educational, religious, professional, social and similar influences which de-

termine or help to determine one's behavior. The behaviorists tell us that because of his (the criminal's) past environment an individual finds himself in a position where he is going to be sentenced by a judge. These data seem to imply that what determines the severity of the sentence he will receive is the past environment and heredity of the judge.

Another question which arose in the authors' minds in working with these data can be answered by an examination of these graphs. They wondered whether the imminence of a reappointment affected the sentencing tendencies of these judges. The following reappointments were made in the years covered by this study: Judge 4 reappointed year 5, Judge 3 reappointed years 2 and 7, Judge 2 reappointed year 8. It will be seen that these data do not show any influence in the sentencing tendencies due to future reappointments. It would be interesting to have more data on this problem from this state, where judges are appointed, and a similar amount for another state in which judges are elected, to compare the results.

The authors wish to point out that these results tend to show that some of our previous studies in the fields of criminology and penology are based upon very unreliable evidence, if our results are typical of sentencing tendencies. In other words the type of sentence received by a prisoner may be either an indication of the seriousness of his crime or of the severity of the judge. As an example of failing to take into consideration the tendencies of the sentencer, we may consider studies which have been made to determine whether city people are *worse criminals* than people who live in rural communities by comparing the number who had been in reformatories previous to the time at which the study was made.⁴ Conclusions from such data are of little value unless we are told whether the rural judges tend to send people to the reformatories as frequently or more or less frequently than the urban judges. Similar criticisms may be made of many other studies using the severity of the sentence as the only measure of the seriousness of the crime. Ignoring the sentencing tendency of the judge who imposed the sentence is as bad or worse than the procedure of the college registrar who admits students on their marks without *noting* the high school from which the individual graduated. Such studies are about as reliable as a study made by an educator who assumed that a student in the Eacum Secum High School receiving B in English had done as well as a student in a

⁴John F. Vuillenmier, A Comparative Study of New York City and County Criminals, *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY*, XI, (4), Feb., 1921. (This is an example of such a study.)

New York City High School who received a B in English in the same grade.

In conclusion, may the authors point out that they consider these data suggestive rather than conclusive. Their chief hope in the publication of this material, at present, is to offer it as a technique which they hope to have evaluated in this way. They plan to present further evidence of individual differences in the sentencing tendencies of these judges in the near future by the use of the same data in other ways. They will also study individual differences in the severity of probation and imprisonment sentences, the effect of the prisoner's plea upon the sentencing tendency of the judge, individual differences in the sentencing tendencies of judges in one or more kinds of crimes, the relation between the severity of the sentence for crimes against property, on the one hand, and business conditions on the other.

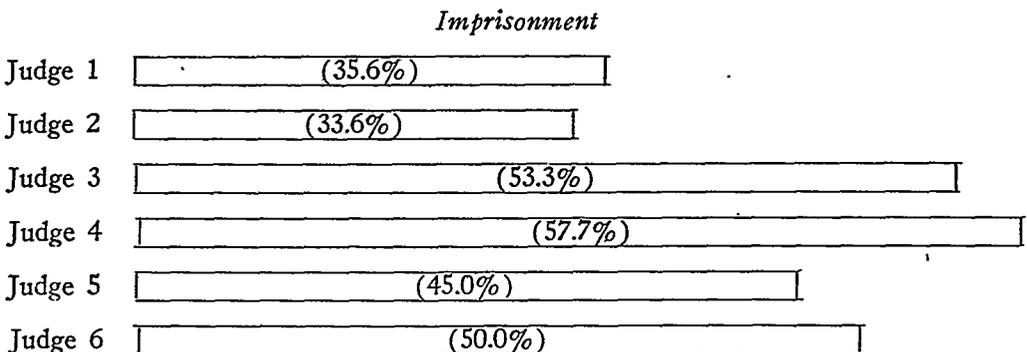
TABLE I

PERCENTAGE OF EACH KIND OF SENTENCE GIVEN BY EACH JUDGE

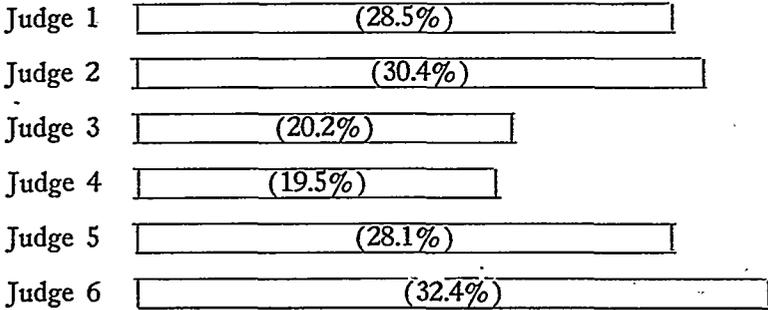
	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Judge 6
Imprisonment	35.6%	33.6%	53.3%	57.7%	45.0%	50.0%
Probation	28.5	30.4	20.2	19.5	28.1	32.4
Fined	2.5	2.2	1.6	3.1	1.9	1.9
Suspended	33.4	33.8	24.3	19.7	25.0	15.7
No. of Cases.....	1235	1693	1869	1489	480	676

GRAPH A

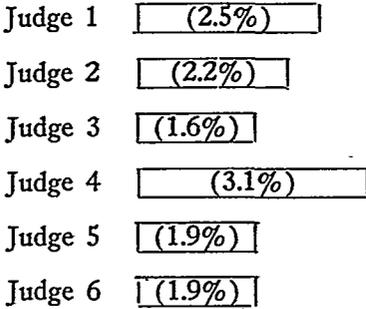
Percentage of Each Kind of Sentence Given by Each Judge



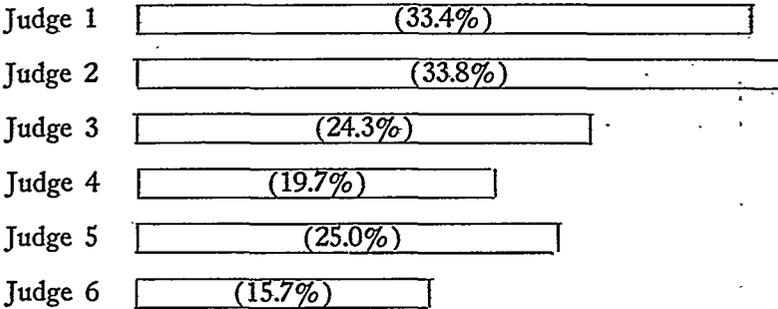
Probation



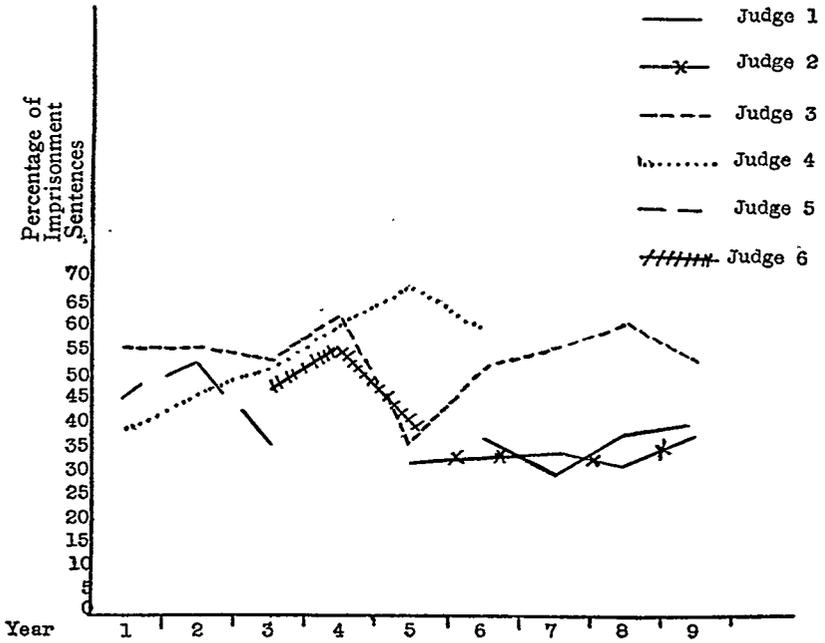
Fined



Suspended



Graph B
 Percentage of Imprisonment Sentences Given By Each Judge
 Over a Period of Years.



Graph C
 Percentage of Probationary Sentences Given By
 Each Judge Over a Period of Years.

