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SOME FACTORS IN SENTENCING POLICY

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In their paper the authors present a documented conclusion that will undoubtedly be a surprise to many jurists, lawyers, and criminologists with respect to the disparities in the sentences imposed by federal district court judges.

The probation officer as a member of the court staff has two major functions to fulfill. The first is to conduct an investigation of an offender which culminates in a presentence or probation report. This report is frequently accompanied by a recommendation to the court as to the selection of an appropriate sentence. The second function is to provide supervision for offenders placed on probation or some other form of conditional liberty. Despite the recent focus of correctional interest and attention, and a considerable volume of literature, the terms and conditions of these functions remain relatively vague. It is proposed to examine here a segment of one of these, namely the presentence report recommendation and its relationship to the court disposition. Our purpose is not so much to provide data, but to make explicit some questions about presentence report recommendations and their relation to court dispositions.

Even though corrections is a relatively new field in the United States, some of its components have already become so institutionalized that they form a cornerstone for the development of a correctional folklore or mythology. In essence, it appears that the increasing problem of crime and delinquency is being addressed by the application of principles and practices which have not been substantially modified, or even questioned, since their inception. Yet, the correctional systems must change if for no other reason than that of the increasing number of offenders processed. Tradi-

tion would have it that the changes be in the direction of increased probation and parole staff, prison personnel, new institutions, and related services. If these be the sole nature of the changes—more of what already exists—there will be a reliance upon a view of the past without a realistic vision of the future.

CASE LOAD SIZE

The fifty-unit workload as the standard for probation and parole supervision is an example of one of the myths. Where did this number come from? On what empirical data is it based? Is it an appropriate limitation of case load size? If it is not appropriate, what should be the workload for corrections? A search of the literature dates the fifty-unit concept back to at least 1922, when Charles L. Chute, then President of the National Probation Association, observed: "To this end fifty cases is as many as any probation officer ought to carry."¹ The fifty-unit concept found its way in the prestigious academic literature when Sutherland² in 1934, and Tannebaum³ in 1938, suggested that fifty cases "is generally regarded as the maximum number" and "the best practice would limit the caseload of a probation officer to

¹ Chute, *Probation and Suspended Sentence*, 12 J. CRIM. L. & C. 562 (1922).

² SUTHERLAND, PRINCIPLES OF CRIMINOLOGY 359 (1934).

³ TANNENBAUM, CRIME AND THE COMMUNITY 462 (1938).

fifty cases". The concept of fifty entered the professional literature when the American Prison Association in 1946 indicated that a probation officer "should not have more than fifty cases under continuous supervision."⁴ An almost identical statement appears in the 1954 revision of the Manual of Correctional Standards.⁵ Not until 1966, (while still suggesting a fifty-unit workload) did the American Correctional Association indicate that "where methods of classification for case loads have been developed through research, varying standards of workloads may prevail".⁶

The institutionalization of the fifty-unit concept is now firmly entrenched. Budgets for operating agencies, testimony before legislative bodies, standards of practice, and projections for future operational needs all center about this number. There is no evidence of any empirical justification for fifty, nor for that matter, any other number.

The following discussion relates mainly to the federal probation system, and we are indebted to the Administrative Office of the United States Courts for furnishing pertinent data. Information has also been drawn from the San Francisco Project, a study of the federal probation system, supported by the National Institute of Mental Health.⁷ It should be noted that these data cover different populations over different periods of time, and are not to be seen as interesting in themselves, but as throwing light on the presentence report recommendation and court disposition.

RECOMMENDATIONS AND DISPOSITIONS:

THE RELATIONSHIP

The presentence report is a document basic to the functioning of both judicial and correctional administrations. The contents of the report, including the recommendation, assist the court in making a judgment consistent with its dual responsibilities to society and the defendant. Within the federal system the report aids the institutions within the Bureau of Prisons in determining classification and treatment programs and also in planning for subsequent release. The report provides information to the Board of Parole,

⁴ *Manual of Suggested Standards for a State Correctional System* (Am. Pris. Assn.) 13 (1946).

⁵ *Manual of Correctional Standards* (Am. Corr. Assn.) 43 (1954).

⁶ *Ibid.* 109 (1966).

⁷ See Lohman, Wahl & Carter, *A Non-Technical Description of the San Francisco Project*, The San Francisco Project series (April 1965).

furnishing information believed to be pertinent to its deliberations. Furthermore, the report contributes to the probation officer's rehabilitative efforts while an offender is under his supervision.⁸

In February, 1965, with the publication of a 39 page monograph entitled *The Presentence Investigation Report*, a standard outline and format was adopted for the preparation of presentence reports in the federal courts.⁹ The final paragraph headings of the report are "Evaluative Summary" and "Recommendation". The importance of these paragraphs is recognized by the American Correctional Association which includes among its standards for the preparation of presentence reports a "recommendation for or against probation, or for other disposition according to court policy."¹⁰

The fact that there is a substantial number of sentencing alternatives available to federal judges also means that an equal number of possible recommendations may be considered by the probation officer. The selection ranges, of course, from probation with or without a fine or restitution, and/or a jail sentence, and imprisonment under various statutes which determine parole eligibility, to other dispositions which include commitment for observation and study and continuances for community observation.

Because of this variety of available disposals, the relationship between a recommendation and a disposition may be more simply considered from one of two directions. The first method would be to contrast recommendations for probation made by probation officers with actual court dispositions resulting in probation. The second would be from an opposite direction, viewing recommendations against probation (or for imprisonment) with actual court dispositions for probation.

Data developed during the San Francisco Project contrast recommendations and dispositions for 500 consecutive cases processed through the United States District Court in the Northern District of California between September 1964 and August 1965.¹¹ These data indicate that:

... there is a close relationship between the

⁸ The federal probation officer supervises persons released on parole or mandatory release from federal correctional institutions or the United States Disciplinary Barracks.

⁹ *The Presentence Investigation Report* (Adm. Off. U. S. Cts.) (1965).

¹⁰ *Manual of Correctional Standards* (Am. Corr. Assn.) 521 (2d ed. 1959).

¹¹ Carter, *It is Respectfully Recommended* . . . , 30 Fed. Prob. 2 (1966).

TABLE I

PERCENTAGE OF PROBATION OFFICER RECOMMENDATIONS FOR PROBATION FOLLOWED BY CALIFORNIA SUPERIOR COURTS

1959	95.6%
1960	96.4%
1961	96.0%
1962	96.5%
1963	97.2%
1964	97.3%
1965	96.7%

Source: State of California, Department of Justice. *Delinquency and Probation in California*, 1964, p. 168; and *Crime and Delinquency in California*, 1965, pp. 98-99.

TABLE II

PERCENTAGE OF PROBATION OFFICER RECOMMENDATIONS FOR PROBATION FOLLOWED BY TEN JUDICIAL CIRCUITS, FISCAL YEAR 1964

First Circuit.....	99.4%
Second Circuit.....	96.0%
Third Circuit.....	93.2%
Fourth Circuit.....	93.3%
Fifth Circuit.....	95.2%
Sixth Circuit.....	93.9%
Seventh Circuit.....	89.9%
Eighth Circuit.....	95.0%
Ninth Circuit.....	93.5%
Tenth Circuit.....	97.8%
Overall.....	94.1%

Source: Data furnished by the Administrative Office of the United States Courts.

recommendation of probation and the actual granting of probation. Probation was recommended in 227 cases and was granted in 212 of those cases. If the 7 cases of "observation and study" are not included, probation was granted, when recommended, in 212 of the 220 cases or in 96 percent of the cases. In only 2 of the 227 cases was there a substantial difference between the probation officer's recommendation and the court's disposition of the cases. In these instances, prison sentences were ordered where probation had been recommended.¹²

These data closely parallel the California data. The percentages of probation officer recommenda-

¹² *Ibid.* 41.

tions for probation followed by California Superior Courts, for the years cited, are shown in Table I.

Data on the federal system, arranged by the ten judicial circuits, indicate the relationship, shown in Table II, between probation officer recommendations for probation and such dispositions in court for Fiscal Year 1964.

The patterns in these first two tables exhibit almost total agreement between a probation officer's recommendation for probation and an actual disposition of probation. However, this trend appears less stable when viewed from the opposite perspective—the relationship between recommendations against probation (or for imprisonment) and court dispositions of probation. California data reveal, in Table III, the per-

TABLE III

PERCENTAGE OF PROBATION OFFICER RECOMMENDATIONS AGAINST PROBATION NOT FOLLOWED BY CALIFORNIA SUPERIOR COURTS

1959	13.5%
1960	12.8%
1961	14.8%
1962	17.4%
1963	21.6%
1964	21.1%
1965	19.9%

Source: State of California, Department of Justice. *Delinquency and Probation in California*, 1964, p. 168; and *Crime and Delinquency in California*, 1965, pp. 98-99.

TABLE IV

PERCENTAGE OF PROBATION OFFICER RECOMMENDATIONS AGAINST PROBATION NOT FOLLOWED BY TEN JUDICIAL CIRCUITS, FISCAL YEAR 1964

First Circuit.....	7.3%
Second Circuit.....	9.5%
Third Circuit.....	27.4%
Fourth Circuit.....	31.8%
Fifth Circuit.....	11.5%
Sixth Circuit.....	19.3%
Seventh Circuit.....	15.9%
Eighth Circuit.....	16.5%
Ninth Circuit.....	23.3%
Tenth Circuit.....	9.2%
Overall.....	19.7%

Source: Data furnished by the Administrative Office of the United States Courts.

TABLE V
PROBATION OFFICERS' RECOMMENDATIONS
AS TO SENTENCE
Northern District of California
September 1964 to February 1967

Recommendation	Total	Percent of Total
All Cases.....	1,232	100.0
No recommendation.....	67	5.4
Mandatory sentence (Under certain narcotic law violations).....	45	3.6
Probation.....	601	48.9
Regular.....	(284)	(23.1)
With Fine and/or Restitution....	(197)	(16.0)
Split Sentence (Imprisonment up to Six Months Followed by Probation).....	(49)	(4.0)
Under Youth Corrections Act....	(71)	(5.8)
Fine only.....	38	3.1
Jail only.....	35	2.8
Imprisonment.....	334	27.1
Parole Eligibility After 1/3 Sentence.....	(234)	(19.0)
Parole Eligibility At Any Time....	(64)	(5.2)
Under Youth Corrections Act....	(36)	(2.9)
Observation and study.....	51	4.2
Adult.....	(39)	(3.2)
Youth.....	(12)	(1.0)
Continuance for 90 days observation.....	16	1.3
Deferred prosecution.....	3	.2
Commitment under federal juvenile delinquency act.....	2	.2
Other recommendations.....	40	3.3

Source: Unpublished San Francisco Project data.

centages of "against probation" recommendations and probation dispositions in court.

It is noteworthy that California authorities indicate the "superior court judges are more lenient than probation officers as to who should be granted probation."¹³ This pattern has already been observed by one of the authors,¹⁴ and by others,¹⁵ in respect to the federal probation officer. Further confirmation of this pattern is found throughout the federal system as indicated by a review, in Table IV, of "against probation" recommendations and probation dispositions according to the ten judicial circuits for Fiscal Year 1964.

¹³ *Delinquency and Probation in California, 1964* (Calif. Dept. of Justice) 166 (1964).

¹⁴ Carter, *supra* note 11.

¹⁵ Lohman, Wahl & Carter, *San Francisco Project series* (Report #2) 8 (Berkeley: June 1965).

As already indicated, the probation officer has a wide latitude in his choice of a recommendation. Table V presents data on the specific recommendations of probation officers in the Northern District of California between September 1964 and February 1967, and shows the wide variety of possible recommendations.

Table VI presents overall data on the relationship between recommendations and dispositions of 1,232 cases processed through the District Court in Northern California. The reader will note that of 601 cases recommended for probation, 15 were ordered imprisoned; of 334 cases recommended for imprisonment, 31 were placed on probation.

These data seem to support certain generalizations about the nature of the relationship between probation officer recommendations and court dispositions. We have seen that there is a very strong relationship between recommendations *for probation* and court dispositions of probation, an average agreement of about ninety-five percent. It has also been observed that the strength of the relationship diminishes slightly when recommendations *against probation* (or for imprisonment) are contrasted with court dispositions of probation. Thus, it may be concluded that where disagreements exist between recommendations and dispositions, they occur when the officer recommends imprisonment. In a sense, if this relationship measures "punitiveness" then it may be concluded that the probation officer is more punitive than the judge.

OUTCOME OF SUPERVISION ACCORDING TO THE RECOMMENDATION

Very limited data are available on the outcome of supervision, i.e., the violation rate, according to recommendations of probation officers. The 1964 cohort study of Davis¹⁶ examined the violation status of 11,638 adult defendants granted probation in California Superior Courts between 1956 and 1958. Davis showed that 27.1 percent of the defendants recommended for and placed on probation were "revoked," while 36.7 percent of the defendants placed on probation against the recommendation of the probation officer were revoked. Davis concluded that the "difference in revocation rates was very significant and indicates that the two groups were not alike in their tendency to recidivism".

¹⁶ Davis, *A Study of Adult Probation Violation Rates by Means of the Cohort Approach*, 55 J. CRIM. L., C. & P. S. 70 (1964).

TABLE VI
 PROBATION OFFICERS' RECOMMENDATION AND SUBSEQUENT COURT DISPOSITIONS
 Northern District of California
 September 1964 to February 1967

Recommendation	Disposition									
	Total	Mandatory	Probation	Fine Only	Jail Only	Imprisonment	Observation and Study	Continuances	Deferred Prosecution	Other
All Cases.....	1,232	45	671	30	27	337	73	18	2	29
No Recommendation.....	67	—	44	2	2	14	1	—	—	4
Mandatory.....	45	45	—	—	—	—	—	—	—	—
Probation.....	601	—	551	5	3	15	17	2	—	8
Fine Only.....	38	—	14	22	—	1	—	—	—	1
Jail Only.....	35	—	5	1	19	8	2	—	—	—
Imprisonment.....	334	—	31	—	2	281	13	5	—	2
Observation and Study.....	51	—	3	—	—	9	38	1	—	—
Continuances.....	16	—	6	—	—	—	—	10	—	—
Deferred Prosecution.....	3	—	—	—	—	—	—	—	2	1
Federal Juvenile Delinquency Act.....	2	—	1	—	—	—	—	—	—	1
Other.....	40	—	16	—	1	9	2	—	—	12

Source: Unpublished San Francisco Project data.

It is questionable that this single explanation for the ten percent differential in revocation rates occurs simply because of differences in the two groups. There are two other possible explanations for this. One explanation may be that subtle differences exist in the supervision provided by a probation officer who may feel "resentful" in having an individual placed on probation against his recommendation. The second possibility is that the defendant's attitude toward a probation officer who recommended that he be imprisoned instead of placed on probation may affect the outcome of supervision. While there are no measures of these two negative factors, it is possible that they account for a large portion of the observed differential. There are other interesting studies which support the hypothesis of self-fulfilling prophecies.

Another way of viewing Davis' data is to emphasize that 63.3 percent of those who received an unfavorable probation recommendation but were placed on probation completed their probation without revocation. Thus, to deny probation to all those with negative recommendations from probation officers would suggest that approximately two out of every three defendants with such recommendations would be denied the opportunity to complete probation successfully. Davis inquired

as to the number of defendants who, denied probation on unfavorable recommendations, would have succeeded on probation if given the opportunity. There are, at this time, no data to answer this question.¹⁷

Other data are available from the Administrative Office of the United States Courts which indicate that despite considerable variation in the use of probation, the overall violation rates, or the rates broken down by "major," "minor," or "technical" are almost identical. Table VII of the Administrative Office report is reproduced here to show probation violation rates for 1965, according to the actual percentage of persons placed on probation by the 88 U.S. District Courts, arranged by quartiles.

The data in Table VII reveal that approximately 19 percent of those placed under probation supervision violate the terms of this conditional liberty, regardless of the percentage of the offender population on probation.

FACTORS AFFECTING THE AGREEMENT BETWEEN RECOMMENDATIONS AND DISPOSITIONS

Reverting to the possible explanations for the high degree of agreement between probation

¹⁷ Wilkins, *A Small Comparative Study of the Results of Probation*, 8 *British J. Crimino.* 201 (1958).

TABLE VII

(Table A 18 of the Administrative Office of the U. S. Courts covering 88 United States District Courts)
 COMPARISON OF THE USE OF PROBATION IN DISTRICT COURTS, BY TYPE OF VIOLATION, FISCAL YEAR 1965
 (Excludes violators of immigration laws, wagering tax laws and violators of Federal regulatory acts)

Item	88 District courts	Quartile Groups of District Courts			
		First 22 District courts	Second 22 District courts	Third 22 District courts	Fourth 22 District courts
<i>Average</i>					
Actual percent placed on probation.....	49.0	65.9	53.8	47.2	36.9
Total removed.....	11,259	2,263	2,759	3,678	2,559
No violations.....	9,157	1,843	2,267	2,973	2,074
Violated probation.....	2,102	420	492	705	485
Technical violation.....	344	78	85	106	75
Minor violation.....	577	111	120	216	130
Major violation.....	1,181	231	287	383	280
<i>Percent</i>					
Violated Probation.....	18.7	18.5	17.8	19.2	18.9
Technical violation.....	3.1	3.4	3.1	2.9	2.9
Minor violation.....	5.1	4.9	4.3	5.9	5.1
Major violation.....	10.5	10.2	10.4	10.4	10.9

Source: Administrative Office of the United States Courts, *Persons Under the Supervision of the Federal Probation System*. (Washington, D.C.: 1965), p. 33.

officer recommendations and court dispositions, it is possible that four factors, operating independently, but more probably simultaneously, account for this relationship:

- 1) The court, having such high regard for the professional qualities and competence of its probation staff, "follows" the probation recommendation—a recommendation made by the person (probation officer) who best knows the defendant by reason of the presentence investigation;
- 2) There are many offenders who are "obviously" probation or prison cases;
- 3) Probation officers write their reports and make recommendations anticipating the recommendation the court desires to receive. (In this situation, the probation officer is quite accurately "second-guessing" the court disposition);
- 4) Probation officers in making their recommendations place great emphasis on the same factors as does the court in selecting a sentencing alternative.

Data from the San Francisco Project confirm

the fact that probation officers and judges apply approximately equal significance to similar factors.¹⁸ Examination of 500 probation officer recommendations according to the major categories of recommendations for probation and recommendations for imprisonment (or against probation), produced data on the legal and demographic characteristics of the offender population which had an important effect upon the recommendation selected. In general terms, the proportion of recommendations for probation increased with the number of years of education, average monthly income, higher occupational levels, residence, marital and employment stability, participation in church activities, and a good military record. Recommendations for imprisonment (or against probation) increased proportionately when offenders exhibited such characteristics as homosexuality, alcoholic involvement, the use of weapons or violence in the commission of the offense, the existence of family criminality, and drug usage. Age (in the range examined) did not

¹⁸ See Lohman, Wahl & Carter, *San Francisco Project series* (Reports 4 and 5) (Berkeley: December 1965, February 1966).

significantly distinguish between the two recommendations, and racial and religious affiliation differences were absent. The female, however, was more likely to be recommended for probation than the male offender.

Certain offense categories (e.g. embezzlement, theft from interstate shipments or theft of government property, and false statement) usually produced recommendations for probation, while other offense categories (e.g. bank robbery, the interstate transportation of stolen motor vehicles [Dyer Act], and National Defense law violation) usually resulted in recommendations for imprisonment. Offenders who entered a plea of guilty, retained their own attorneys, or who were released to the community on bail, bond, or personal recognizance while the presentence investigation was being conducted, had significantly greater chances of being recommended for probation. It is recognized, or course, that a recommendation for or against probation is generally based upon some combination of characteristics—some obvious, others subtle—rather than upon any single characteristic or piece of information.

It is apparent that not all factors are of equal significance in determining the probation officer's recommendation. Accordingly, statistical computations produced a general ranking of the significance or importance of various factors.¹⁹

A further examination of the 500 cases was made, reviewing the selection of the sentencing alternative by the court. Again, statistical computations were completed and a second rank order of the significant or important factors was produced.

These two sets of data—one relating to the recommendation, the other to the disposition—are summarized in Table VIII. The rankings were based on probability and contingency coefficient values. A correlation was computed and a significant value of .90 was obtained. These data indicate that there is considerable agreement between probation officers and judges as to the significance of certain factors and characteristics for decisions relating to probation or imprisonment recommendations and dispositions.

Another possible explanation of the close agreement between recommendations and dispositions is certainly that some cases are clearly probation or imprisonment cases. However, there are no "hard" data to identify which cases are "clearly" probation or prison cases. An actual, but extreme

TABLE VIII

RANK OF DEMOGRAPHIC FACTORS UTILIZED BY PROBATION OFFICERS FOR RECOMMENDATIONS AND DISTRICT COURT JUDGES FOR SENTENCING ALTERNATIVES, ACCORDING TO PROBABILITY AND CONTINGENCY COEFFICIENT VALUES

500 Federal Offenders

Northern District of California
September 1964 to August 1965

Demographic Factors	Probation Officers' Ranking	District Court Judge's Ranking
Prior Record.....	1	3
Confinement Status.....	2	2
Number of Arrests.....	3	4
Offense.....	4	1
Longest Employment.....	5	5
Occupation.....	6	8
Number of Months Employed.....	7	6
Income.....	8	10
Longest Residence.....	9	7
Military History.....	10	9
Number of Residence Changes.....	11	17
Distance to Offense.....	12	14
Number of Aliases.....	13	24
Marital Status.....	14	11
Legal Representation.....	15	13
Weapons and Violence.....	16	15
Family Criminality.....	17	21
Plea.....	18	18
Education.....	19	12
Church Attendance.....	20	16
Narcotics Usage.....	21	23
Sex.....	22	19
Alcoholic Involvement.....	23	25
Crime Partners.....	24	20
Homosexuality.....	25	26
Race.....	26	28
Age.....	27	22
Religion.....	28	27

Source: Joseph D. Lohman, Albert Wahl and Robert M. Carter. *San Francisco Project* series, Report 5, (Berkeley: February 1966), p. 68.

Spearman's $\rho = .90$

example of an "imprisonment case" is the bank robber who, armed with an automatic pistol and with an accomplice waiting in a stolen automobile, robbed a bank of \$35,000, pistol-whipped a teller, and in the flight from the scene, engaged in a gun battle with pursuing police. It is doubtful that probation officers or judges would be inclined to see probation as a suitable disposition for such a case, regardless of any other factors involved. An

¹⁹ *Id.*

TABLE IX

PERCENTAGE USE OF PROBATION IN TEN FEDERAL JUDICIAL CIRCUITS

First Circuit.....	53.0%
Second Circuit.....	45.2%
Third Circuit.....	63.8%
Fourth Circuit.....	60.8%
Fifth Circuit.....	44.8%
Sixth Circuit.....	44.3%
Seventh Circuit.....	44.4%
Eighth Circuit.....	49.9%
Ninth Circuit.....	49.0%
Tenth Circuit.....	43.7%
Overall.....	49.0%

Source: Administrative Office of the United States Courts. *Persons Under the Supervision of the Federal Probation System, Fiscal Year 1965*, pp. 103-105.

example of the "probation case" is the young married offender, who, unemployed prior to the Christmas season, made a false statement to the Post Office for employment, concealing a prior misdemeanor arrest. In general terms, this type of offender would normally be seen as a suitable candidate for probation.

From observation and conversations with judges and probation officers during the past years, it appears that judges do indeed have a high regard for their probation staff and value their professional judgment as to the disposition of a case. It is suspected that this is especially true in the federal system in which probation officers are appointed by the court and serve at its pleasure. This esteem for probation officers and their services by the court may also contribute to the high agreement between recommendations and dispositions, even though there are no statistical data to support this.

The fourth potential explanation for the close agreement between recommendations and dispositions—probation officers anticipating the recommendation the court desires—is now to be discussed.

VARIATION AMONG PROBATION OFFICERS AND PROBATION OFFICES

Disparities in sentencing have been of considerable interest in recent years and attempts to reduce these frequently observed differentials have normally been focused on judges. For example, sentencing institutes for judges have been

developed at the federal and state level, as well as training programs for newly appointed or elected judges. That attention should be directed toward judges—for they impose the sentences—is certainly normal and, on the surface, a logical approach to resolving disparities. However, this pattern ignores one of the facts of community life—in this case the judicial community and its social system—that many persons play a part in the functioning of the community. Included in the judicial community are probation officers, prosecutors, defense attorneys, perhaps to a lesser extent the law enforcement agencies, and other judges on the same bench.

It seems to have been generally assumed that the judges are solely responsible for the disparities and that the remainder of the judicial community plays only a minor role which remains constant, neither supporting or contributing to the disparities. Although we do not have complete data upon which a judicial "community-effect" can be shown to be a basis for disparities, there are data available which demonstrate the supporting role of at least one member, namely the probation officer.

If we assume that probation officers are "constant" and that judges are "variable", we would expect to find significant differences in the relationship between officer recommendations and court dispositions as we move toward extremes in the use of probation or imprisonment. We would not, in the federal system for example, expect to find the more than 94 percent agreement between recommendations and dispositions spread uniformly throughout the system, for some courts use probation frequently, others infrequently. In Fiscal Year 1965, individual federal courts had a range of probation usage in excess of fifty percent, with one court using probation for 23.8 percent of its cases, another for 75.7 percent of its cases. The percentage of defendants on probation in Fiscal Year 1965 by the ten judicial circuits is shown in Table IX.

Thus, on a circuit-wide basis, there is a high of 63.8 percent in the usage of probation ranging to a low of 43.7 percent, an overall spread of twenty percent, and as noted above, the variation is even more marked among individual courts. Six of the eighty-eight district courts used probation in excess of seventy percent for their defendants; twelve courts used probation for less than forty percent of their defendants.

TABLE X
 USE OF PROBATION AND RECOMMENDATIONS FOR AND AGAINST PROBATION BY SELECTED UNITED STATES DISTRICT
 COURTS FISCAL YEAR 1964

	Percentage Use of Probation	Recommended for Probation			Recommended Against Probation			Recommendations Given by Probation Officers: Percent of Total Cases
		Number of Defend- ants	Number Granted Probation	Percentage Granted Probation	Number of Defend- ants	Number Granted Probation	Percentage Granted Probation	
A	78.3	147	143	97.3	55	20	36.4	73.2
B	71.4	144	137	95.1	90	31	34.4	88.0
C	70.7	27	26	96.3	7	0	—	82.9
D	70.4	20	19	95.0	11	2	18.2	43.7
E	70.2	125	125	100.0	28	1	3.6	77.3
F	50.8	106	100	94.3	112	17	15.2	89.3
G	50.0	16	16	100.0	17	1	5.9	82.5
H	50.0	152	145	95.4	149	19	12.8	80.9
I	50.0	14	13	92.9	9	0	—	60.5
J	49.7	12	12	100.0	36	6	16.7	15.4
K	49.6	29	28	96.6	36	0	—	47.4
L	36.8	28	28	100.0	19	0	—	13.6
M	36.5	61	61	100.0	117	14	12.0	73.0
N	35.6	158	148	93.7	310	21	6.8	87.8
O	28.5	92	82	89.1	74	25	33.8	35.1
P	26.3	44	38	86.4	174	24	13.8	90.8
Total for all District courts	50.2	6868	6463	94.1	7691	1518	19.7	63.1

Source: Data furnished by the Administrative Office of the United States Courts.

Despite the variation among courts, individually or circuit wide, the relationship between probation officer recommendations and court dispositions is generally quite constant, whether there is high, moderate, or low usage of probation. This may be seen more precisely in Table X which provides data for Fiscal Year 1964 on sixteen selected federal courts: the five with the highest usage of probation, the five with the lowest use of probation, and the six courts which were within one percent of the national average for use of probation.

It will be seen, for example, that in District A, probation was recommended for approximately three of each four defendants (147-55); in District H, the recommendations are about equal (152-149), while in District N, probation is recommended for about one defendant in three (148-310). However, the "agreement" rate between probation recommendations and dispositions in District A is 97.3 percent, in District H, 95.4 percent, and in District N, 93.7 percent.

These data indicate clearly that the recom-

mendation-disposition relationship does not vary greatly from court to court, and that disparities in sentencing are supported, at least in terms of recommendations, by the probation officer member of the judicial "influence group". To be sure, there may be differences in the Districts which justify high or low use of probation, but thus far these have not been demonstrated. These data raise some interesting and important questions regarding the utility of sentencing institutes for judges, by themselves, as the solution to disparities, and suggest that probation officers, and perhaps prosecuting and defense attorneys, be included in such institutes.

The data in Table X have indicated that there is considerable variation in officer recommendations for or against probation in different Districts, but that rate of agreement between recommendations and dispositions is relatively constant between Districts. Accordingly, we would expect to find a common frame of mind, or "influence group set", among officers in a single District

TABLE XI
INDIVIDUAL PROBATION OFFICER RECOMMENDATIONS
FOR PROBATION AND IMPRISONMENT
Northern District of California
September 1964 to February 1967

Probation Officer	Number of Recommendations	Number of Probation Recommendations	Number of Prison Recommendations	Percentage of Probation Recommendations
1	55	40	15	72.7
2	39	25	14	64.1
3	46	21	25	45.7
4	57	35	22	61.4
5	16	14	2	87.5
6	20	13	7	65.0
7	55	22	33	40.0
8	38	22	16	57.9
9	22	17	5	77.3
10	58	46	12	79.3
11	59	32	27	54.2
12	57	35	22	61.4
13	54	42	12	77.8
14	36	17	19	47.2
15	56	34	22	60.7
16	46	31	15	67.4
17	60	43	17	71.7
18	18	16	2	88.9
19	42	24	18	57.1

Source: Unpublished San Francisco Project data.

which leads to the agreement in that District, regardless of the frequency of probation or imprisonment dispositions. Thus, where probation is used frequently, we would expect the officers in that court to be sympathetic to such usage and we would anticipate that little variation would exist among officers. If this is the case, we would not expect to find much significant variation among probation officers in a single District. We would not expect to find large differences among colleagues appointed by the same court, operating in a similar fashion as regards court and office policies and directives, appointed under uniform standards, paid identical salaries, and theoretically sharing similar views of the correctional process.

Let us return to our data on the 1,232 recommendations made by the probation officers in the Northern District of California as shown in Table V. By restricting ourselves to a probation-imprisonment dichotomy, we observe that probation was recommended 64.3 percent of the time (601 of 935 cases) and that imprisonment was recommended 35.7 percent (334 of 935 cases). The

recommendations of 19 probation officers in Northern California for probation or imprisonment are presented in Table XI. (Officers who made less than 15 recommendations are excluded.)

The percentage of recommendations for probation is almost 50 percent—from a low of 40.0 to a high of 88.9 percent. Three officers recommended probation for less than 50 percent of their cases; three officers between 50 and 60 percent, six between 60 and 70 percent, five between 70 and 80 percent, and two in excess of 80 percent.

While this individual variation may be attributed, in part, to the geographic basis for assignment of cases or to other administrative reasons, it is statistically significant and suggests that probation officers, even in the same District do not view the correctional process from identical perspectives.

What accounts for this variation among officers? In part, administrative and geographic considerations may be an explanation. There may be differences in probation-suitability among persons from metropolitan areas, (e.g., San Francisco-Oakland) and less developed or rural areas such as the northern coast or central valleys of California. But it is equally possible that these variations are due to personal characteristics, including academic training, age, and vocational background. Some general, but not conclusive observations can be made based on the probation officers in Northern California. For example, probation officers with graduate training or graduate degrees in social work or social welfare recommended probation for 56.3 percent of their cases; officers with graduate work or graduate degrees in criminology in 69.6 percent of their cases, and officers with graduate work or graduate degrees in sociology in 67.7 percent of their cases. Officers with the longest service recommended probation for 54.0 percent of their cases, while the "newer" officers recommended probation for 68.4 percent. Three hypotheses are suggested by these and other data:

- 1) Some of the variation in probation officer recommendations is a product of the individual background of the officer and includes vocational experience and academic training.
- 2) The differences or variations tend to diminish with the period of employment; that is, officers with different backgrounds are far more dissimilar upon entering the probation service than after exposure to the agency.
- 3) With an increase in the period of service (i.e., more experience) there is a decrease in

TABLE XII
RECOMMENDATIONS FOR AND AGAINST PROBATION ACCORDING TO UNITED STATES DISTRICT COURT JUDGES
Northern District of California
September 1964 to February 1967

Judge	Number of Cases Disposed of in Court	Number of Recommendations for Probation	Number of Recommendations Against Probation	Percentage of Cases Recommended for Probation	Number of Cases Granted Probation	Number of Cases Denied Probation	Percentage Agreement Between Probation Recommendations and Dispositions
Total	831	527	304	63.4	512	278	97.2
1	64	40	24	62.5	38	23	95.0
2	58	30	28	51.7	29	23	96.7
3	160	103	57	64.4	99	53	96.1
4	156	114	42	73.1	111	38	97.4
5	88	57	31	64.8	57	30	100.0
6	100	58	42	58.0	56	36	96.6
7	60	39	21	65.0	38	18	97.4
8	73	46	27	63.0	44	26	95.7
9	72	40	32	55.6	40	31	100.0

Source: Unpublished San Francisco Project data.

recommendations for probation. This may represent a more "realistic" or less "optimistic" view of the benefits of probation treatment for a greater number of offenders, than was the view held by the officer earlier in his professional career.

"SECOND-GUESSING" OR "FOLLOWING"

There is, in our search for variation, the possibility that the probation officer attempts to second-guess the court by making recommendations which are anticipated to be those desired by the court. If this were the case, one measure of this factor would be that different judges receive different rates or percentages of probation or imprisonment recommendations. Thus, properly "second-guessing" a punitive judge would require a larger proportion of imprisonment recommendations; second-guessing a "lenient" judge would require more probation recommendations. Returning to the data on the 1,232 cases in the Northern District of California, and again restricting ourselves to a probation-imprisonment dichotomy, we find some, but not significant variation in the percentage of probation recommendations to individual judges. These data are in Table XII. Since none of these judges has a reputation of being punitive or lenient, we can only surmise that in this District, there is little if any second-guessing.

A review of Table XII will also indicate that individual judges are equally receptive to recommendations for probation; the relationship between recommendations for probation and such dispositions being 97.2 percent over-all and constant between judges.

It appears that judges "follow" probation officer recommendations; there is no other ready explanation of the individual officer variation in probation recommendations and the high overall relationship between recommendations and dispositions. This also tends to confirm the observation that probation officers contribute to the problems of disparities in sentencing. From these data, all four previously suggested explanations of the close agreement between recommendation and disposition (probation officers and judges giving approximately equal weight to similar factors, the "following" of recommendations by the court, the presence of "obvious" probation or imprisonment cases, and some "second-guessing") appear appropriate.

SUMMARY

In this paper, some of the dangers of continued reliance on tradition and the development of a body of correctional folklore have been pointed out. It has been determined that the relationship between recommendations for and dispositions of probation are high and that the relationship di-

minishes when viewed from the recommendations against and the subsequent grant of probation perspective. Limited data on the outcome of supervision by recommendation and by percentage use of probation are provided. We have inquired into the reasons for the close agreement between recommendation and disposition and suggest that four factors, in varying degrees, account for it. We have observed that the overall relationship between recommendation and disposition does not vary from District Court to District Court, but rather remains relatively constant, regardless of the percentage use of probation. We suggest that disparities in sentencing are supported by the probation officer and it appears that these differences, in part, are a reflection of the officer's individual academic training and experience. Length of service brings about a trend toward conformity with colleagues and the development of a more conservative perspective toward the use of probation.

There are other segments of the presentence report process to which questions should be addressed. These include operational and administrative considerations, the decision-making processes of probation officers, and an examination of the nature and impact of the social system of correctional agencies. Within the operational considerations would be inquiries as to the role of subprofessionals in presentence investigations, the rearrangement of the standard presentence

format to provide a developmental sketch instead of the current segmented report, a determination as to the appropriateness of "confidential" presentence reports, the collection of presentence data in a fashion which allows computer analysis, and the separation of the investigation and supervision functions. Although some examination has been made of the decision-making process,²⁰ we need additional information about the sequence of data collection, the relative importance of certain kinds of data, and the eventual use of the data for decision-making within the correctional system. We find almost a complete void in knowledge on the social systems of correctional agencies, although available data indicate that the system itself has a profound influence on job behavior, beliefs, values, and the definition and achievement of correctional goals. Indeed, we know more about the social systems of the offenders with whom we deal than about the systems of the agencies which provide correctional services.

There are vast gaps in our knowledge about the entire correctional process, but these gaps may be closed by imaginative, innovative, and creative research and operational designs and programs. This requires a willingness to subject our current traditional, correctional models to scrutiny and a willingness to set aside those features, cherished though they may be, which are inefficient and ineffective.

²⁰ *Id.*