"HE TAKES SOME OF MY TIME; I TAKE SOME OF HIS": AN ANALYSIS OF JUDICIAL SENTENCING PATTERNS IN JURY CASES

THOMAS M. UHLMAN*
N. DARLENE WALKER

The jury has been widely credited with contributing to the best elements of the American judicial system. Utilizing computerized case histories of 29,000 felony defendants in an urban trial court, this article examines an important aspect of the jury process—judicial sentencing following jury trials. The data show that the sentencing cost of pursuing constitutionally guaranteed jury trial rights is high: jury defendants are punished with substantially greater harshness than are plea and bench convictees in essentially similar criminal cases. Regardless of sentencing philosophy, virtually every judge who sentenced jury, bench, and plea defendants sentenced jury defendants far more harshly and sent them to jail more frequently. Stiffer penalties for jury defendants appears to be the operational, though unstated, judicial policy, exercised out of the apparent administrative interest in reducing the number of lengthy jury trials.

Blackstone called the jury "the glory of the English law." In the American context, the jury has been widely credited with contributing to the best elements of the judicial system. Juries serve as the community's conscience, bringing its norms to bear on the resolution of conflict. The collective wisdom and strength of the jury protect defendants against arbitrary action by the state. Juries have come to be widely regarded as the means by which the law is humanely individualized.

Ironically, the idea that the criminal court penalizes individuals who pursue their constitutionally guaranteed right to a full jury trial has become part of the conventional wisdom of the streetwise defendant. Barristers in every big city, like the members of Detroit's "Clinton Street Bar," regularly assess the cost of a jury trial and recommend that criminal defendants

* We gratefully acknowledge Professor Richard J. Richardson's contributions to this paper. We would also like to thank Carol W. Kohfeld, C. Moore Muffin, and anonymous reviewers for their helpful suggestions in the preparation of this manuscript. Research support from the University of Missouri-St. Louis and the University of Houston Limited Grant-in-aid Program is also gratefully acknowledged.

LAW & SOCIETY REVIEW, Volume 14, Number 2 (Winter, 1980)

"cop out" (Newman, 1966; Downie, 1971: 18-51; Casper, 1972). Judges themselves, often facing crowded dockets, have been known to dispense such wisdom. As a Chicago judge told one defense attorney: "He takes some of my time; I take some of his. That's the way it works" (Alschuler, 1976: 1089; cf. Downie, 1971: 24).

A recent study of sentencing in the federal courts found that conviction by a jury inevitably leads to a more severe sentence than conviction by a judge alone (Tiffany *et al.* 1975). This study of sentencing patterns in bank robbery convictions and Cook's (1973) earlier work on the sentencing behavior of federal judges in draft cases both show consistently stiffer sentences for jury defendants.

Despite the hypotheses suggested by conventional wisdom and those borne out, in part, by empirical studies of the federal courts, knowledge of sentencing patterns in state criminal courts remains limited. As Alschuler (1976: 1085) has recently noted:

> Detailed analyses of state court sentencing patterns are generally unavailable, and although I suspect that most state courts penalize defendants somewhat less severely than most federal courts for exercising the right to trial by jury; it is impossible to confirm that hypothesis empirically.

Information on sentencing patterns in state courts is important from a number of perspectives. First, sentencing is a policy output of the legal system, analyses of which are necessary in understanding the overall distribution of justice in a community. Second, dispositional procedures have, in recent years, taken on constitutional importance. The Supreme Court has indicated continuing concern that both defendants who pursue full trial rights and those who waive them in favor of a plea or bench trial, do so knowingly (Rotenberg, 1975: 61-64)—that is, that they be informed of the consequences of the decision. To understand these consequences, court personnel and ultimately defendants must be able to estimate the real sentencing differences attached to jury versus nonjury resolutions of criminal cases (Alschuler, 1976: 1103-1108).

Hence, both because of the importance of the topic and the dearth of empirical attention to state courts, this article examines the proposition that jury defendants in an urban trial court are sentenced more harshly than nonjury defendants. Specifically, we will:

(1) Analyze the overall relationship between the mode of case disposition and sentencing for major felony crimes, controlling for case seriousness;

(2) Examine the sentencing patterns of individual judges by dispositional mode, controlling for criminality.

I. METRO CITY: THE COURT AND THE DATA

This project draws upon case histories of 29,295 convicted felons in a major eastern community referred to as Metro City.[1] The defendants were found or pleaded guilty to one of 15 serious felony offenses[2] between July, 1968 and June, 1974 in the trial court of general jurisdiction, which, while sharing a limited portion of its caseload with a lower court, has the primary responsibility for trying felony cases. The Metro City court has had to contend with a large and ever-increasing caseload; in 1972 with over 5,000 cases awaiting disposition, the court's annual report touted its progress in reducing the backlog by 1,000. For this court, as for so many others, not falling further behind was considered progress.

This study focuses upon those found guilty in jury trials. A small 2.1 percent (619) of the 29,295 guilty verdicts followed jury trials; over 50 percent (14,797) were the result of a plea of guilty to a criminal charge; the remaining 47 percent (13,879) were found guilty in bench trials.

---

[1] Anonymity for the court as well as for individuals was required as a precondition for using these confidential case histories. Each computerized record contains validly coded dispositional and defendant data. This information includes: a specific criminal charge falling within one of 15 more general felony crime categories; the statutory maximum sentence that could be imposed upon conviction on this charge; an unambiguous guilty verdict and sentence; the defendant's race, age, sex, pretrial release status, and type of counsel.

Cases with apparent coding errors or inconsistencies in the disposition record (e.g., a not guilty verdict but a sentence) were omitted along with cases decided by visiting and/or semi-retired judges. Few cases containing missing data remain in the sample. Defendant race, sex, and counsel data are complete, while information on the age of convicted offenders is available in all but 895 cases (3.1 percent of the sample) and defendant pretrial status in all but 458 cases (1.6 percent). There is no indication that either the cases omitted or the small amount of missing data has systematically biased the resulting sample. Finally, Metro City's computerized data processing system, praised as a model for other jurisdictions, increases the reliability of case information. A uniform coding scheme was used throughout the period studied. Case records were frequently updated and rechecked while a file was active, increasing the likelihood that errors would be found and corrected.

Although the study focuses on a single community, therefore limiting generalizations, many of the problems besetting both the city and the court are characteristic of their urban counterparts elsewhere. See Uhlman (1979) for a more comprehensive discussion of the research setting and data base.

[2] Each of the 15 felony offense categories included in the analysis contains 1 percent or more of the total criminal docket in the 1968-1974 period. They are: murder, manslaughter, robbery, aggravated assault, burglary, minor assault, larceny, auto larceny, stolen property, forgery/counterfeiting, rape, other sex crimes, drug offenses, weapons offenses, and driving under the influence.

Only 2.5 percent of the felony defendants during this time period had full jury trials; 61 percent were disposed of at bench trials;[3] approximately 37 percent pleaded guilty.[4] The dismissal rate before juries was 34.2 percent, a rate which is exceeded by the 40.2 percent acquittal rate in bench trials.[5]

Although the number of jury trials is small relative to other dispositions, Metro City is not atypical. In most jurisdictions, full jury trials comprise a small proportion of the total docket. Jury trials consume valuable time, personnel, and resources. The average length of a felony jury trial in Metro City ranges from 3 to 6 days. Keeping the number of jury trials down is critical. As the chairman of the Criminal Justice Section of the Metro City bar said, "If every defendant asked for a jury trial, the system would break down. We just don't have the courtrooms or the personnel."[6] Invariably, those involved in court activity attributed the Metro City success in limiting the number of jury cases to the harsh sentencing philosophies of judges assigned to the jury trial courtrooms.[7] As one prosecutor observed, "Jury judges tend to be 'heavy hitters.' They are tough sentencers right down the line." A defense

[3] In many jurisdictions, bench trials are simple variants on the plea, a ritualized and very brief trial or submission of transcript inevitably ending in a "slow plea" of guilty (Mather, 1974; Levin, 1977). In Metro City, however, an acquittal rate of 40 percent and interviews with court personnel both suggest that bench trials are something more than a matter of ritual. The bench trial preserves the possibility of being found legally or factually innocent and leaves appeal rights intact. See Uhlman and Walker (1979) for an extended discussion of plea and bench dispositions.

[4] In Metro City there are two major variations on the guilty plea, both of which occur with relative frequency. The first is a guilty plea that results from an explicit bargain arranged by the defense counsel and the state and later ratified by the court. "Open pleas," on the other hand, occur when the defense anticipates that there are greater sentencing advantages to be gained for a plea before the judge alone than from negotiations with the prosecutor (see Uhlman and Walker, 1979).

[5] This exceptionally high acquittal rate before judges may account for the large percentage of Metro City defendants who opt for this abbreviated trial form.

[6] Extensive background interviews designed to gain an understanding of the Metro City court were conducted with 20 members of the city's legal establishment (judges, court administrators, prosecutors, defense counsel, bar association officials, and private attorneys) in the summer of 1978. Specialized telephone interviews, designed to probe the operation of the trial processes and to examine the sentencing of jury defendants, were also conducted with three court administrators; two public defenders; three members of the prosecutor's staff, including the chief trial prosecutor; one member of the probation research and planning staff; and three judges, including the court's chief judge during the time the data were collected. Follow-up telephone interviews were also utilized to answer questions which were raised during the analysis of the data.

[7] Sentencing in Metro City is the primary responsibility of the trial judge. Only in first-degree murder cases do juries participate, deciding whether the defendant is to be given the death penalty or life imprisonment. In all other cases the judge is solely responsible for imposing sentence within the minimum-maximum range established by the state legislature.

attorney added, "The court administrator has to dispose of cases quickly and efficiently, so harsh judges are put in the jury rooms. If you put tough judges in waiver rooms, everyone would ask for a trial."

Although Metro City is one of only a few larger cities that make such intensive use of bench trials (waiver rooms), its felony courts are in most ways similar to other urban courts. Caseload pressures, demands to ease crowded dockets, and speedy trial considerations are common to almost all big city courts; the relatively infrequent use of jury trials here is typical.[8] The large number of bench and plea defendants and the still sizable number of jury cases provide the opportunity to examine jury sentencing vis-a-vis both of these other dispositional modes. These factors, plus the availability of an extensive computerized data base containing the necessary sentencing information make this an excellent court in which to examine the jury process.

II. DATA ANALYSIS AND FINDINGS

Two indicators of sentencing are employed to explore the impact of disposition mode on case outcome: jail sentences versus less serious forms of punishment, and actual sentence severity. There is an important qualitative distinction between an active jail term and a nonprison sanction (suspended sentence, probation, fine). This critical sentencing outcome for each defendant is measured by the dichotomous variable jail/no jail. The second measure of sentencing severity de-emphasizes the difference between prison and non-imprisonment and instead taps subtleties along a broader sanctioning continuum. Past theory and practice (Administrative Office, 1972; Cook, 1973; Eisenstein and Jacob, 1974) combined with detailed sentencing documentation results in a 93-point severity scale that differentiates between and among degrees of deprivation of individual freedom and the varying severity of nonprison sanctions (Appendix).

The scale is divided according to the following general categories in increasing order of severity: suspended sentences, fines, suspended sentences and fines, probated sentences and probated sentences along with fines, active jail sentences.[9] The scale, though most precisely ordinal, is open to

[8] Prosecutors may demand jury trials in serious felony cases, though they rarely exercise this option.

[9] Suspended sentences usually involve little or no supervision and are infrequently revoked. They are generally considered the least serious

interval interpretations and the use of stronger statistical techniques such as regression analysis (Blalock, 1964: 34-35; Shively, 1974: 71-76). All but two of the 93 categories are used to sentence defendants in Metro City, indicating that judges are aware of and take advantage of the variety of sentencing options available to them. Jail rates are reported in simple percentage terms, while sentencing scores are described in scale units ranging from 1 to 93.

These two dependent variables complement each other. Previous sentencing scales have been criticized as being somewhat artificial primarily because diverse punishments do not lend themselves to precise ordinal or interval rankings. A jail/no jail classification has been considered too crude a measure to capture the wide range of sentencing variations that exist in trial court dispositions. Independently each may have drawbacks; together they broaden analytical capabilities while serving as validity checks on each other.

An initial examination of the Metro City data shows that the 619 defendants convicted by a jury received radically stiffer penalties than did nonjury defendants. The average sentence length in a jury case (63.1 scale units) is 144 percent above the overall mean sentence (25.8 scale units). By contrast, the average sentences of plea (24.9 scale units) and bench (25.1) defendants are both close to the overall mean and to each other.

Similarly, jail sentences were handed down to 87 percent of jury convictees compared to only 39 percent of those found guilty at bench trials and 34 percent of those who pled guilty. Jury defendants were more than twice as likely as other defendants to receive the harsher jail sanction.[10]

These large sentencing differences could reflect the effect of dispositional mode alone; or they could be partly or wholly attributable to other factors systematically associated with disposition mode or sentence. Research in other settings suggests that sentencing differences between jury and nonjury trials may be accounted for by case or defendant

punishment. Fines are a material deprivation, but no potential for incarceration exists. Probationary sentences are listed next because they are conditional and do restrict the offender. These sentences vary and often are handed down along with fines, making it appropriate to differentiate among them on the sentencing scale. Because actual time served is usually closer to the minimum than the maximum sentence, active sentences are initially distinguished by sentence minima. When minimum sentences are equal, sentence maxima are used as secondary criteria to differentiate punishments.

[10] Measures of statistical significance are not reported with the aggregate data because with samples this large, virtually every relationship is highly significant statistically. Interpretations of significance in these instances must remain substantive.

characteristics (Eisenstein and Jacob, 1977). Metro City prosecutors, judges, and defenders contend that the most serious cases are most likely to come before juries; many believe that sentencing differences can be explained by these case differences alone. Indeed, our data do show that the overall severity or "badness" of a case, including crime and defendant characteristics, is strongly related both to dispositional forum and sentence.

One measure of case seriousness, charge severity, is the maximum sentence that could be given a defendant convicted on the stated charge or charges.[11] This variable is operationalized as the legislated maximum sentence (in years) that could be imposed for the most serious guilty charge, regardless of the ultimate sentence. Defendants convicted by jury in Metro City were charged with crimes carrying an average maximum sentence of 21.7 years—a figure more than twice the average in other cases (Table 1).

Table 1. Disposition Mode and Criminality Factors

Criminality	Disposition Mode		
	Guilty Plea	Bench Trial	Jury Trial
	(N=14,797)	(N=13,879)	(N=619)
Mean Charge Severity (Years)	10.9	9.6	21.7
Mean Number of Guilty Charges	2.0	2.0	3.1
Percentage of defendants in pretrial detention (prior record surrogate)	42.4	38.9	80.0

A second dimension of criminality is the breadth of a case, measured by averaging the number of *guilty* charges per case in each disposition mode. Again, jury cases appear to be more serious; jury defendants were convicted of an average of three separate criminal charges compared to a two-charge average for bench and plea defendants.

Prior record is a third criminality factor that may affect both disposition mode and sentencing. Defendants with "priors" may opt for a jury trial more often if a criminal history precludes striking a favorable plea bargain with the

[11] The unit of analysis is the individual defendant. A criminal case includes the defendant and one or more separate criminal charges upon which he/she was convicted. The principal charge for purposes of classifying the crime is the one that received the harshest sentence. If several received equal sentences, the key charge is the one that carried the longest maximum sentence as defined by statute.

prosecution. Or a defendant with a prior record or "back-time" to serve if convicted may feel there is little to lose by seeking a jury trial. The overall result may well be that prior record defendants are more willing than first offenders to gamble on a jury acquittal.

Regrettably, a direct indicator of defendant prior record has not been coded in these data. However, an alternative measure is available—pretrial custodial status. A defendant's pretrial custodial status (detained or released) is very likely to be highly correlated with prior record, for the following reasons. First, prior convictions make a defendant in Metro City ineligible for either recognizance release or nominal bail. Second, judges base monetary bail on a defendant's prior record and the nature of the crime. Thus the higher bail associated with a prior record is more likely to lead to pretrial detention as defendants become increasingly unable to meet the bail requirement estabished by the court. The 1974-1975 Court Report on Metro City's R.O.R. Program confirms this reasoning when it states, "The detention center is populated with a high percentage of persons having detainers because of parole or probation violations."[12]

Jury trial defendants (80 percent) are much more likely to be detained prior to trial than are those who plea bargain (42 percent) or go before a judge alone (39 percent). Besides supporting our use of this variable as a surrogate for prior record, this pattern suggests that jury cases also are substantively different from others. Jury defendants are charged with more serious crimes; they are convicted on a greater number of charges; and the data suggest that they have more extensive prior records.[13]

---

[12] The component of pretrial status *not* directly linked to prior record is, in all likelihood, related to a defendant's socioeconomic status, another characteristic whose impact on sentence one wishes to disentangle from disposition mode. Many of the defendants remaining in pretrial custody probably have a double burden to bear—a history of prior convictions and limited financial resources. See Flemming, Kohfeld and Uhlman (1979) for a discussion of bail practices in Metro City.

[13] While the data allow us to control for many case-related variables, we are unable to examine the effects of evidentiary factors. Mather (1974) suggests that strength of evidence is important. While we would indeed expect strength of evidence to affect both mode of disposition and probability of conviction, it seems less likely that evidentiary factors play a major role in post-conviction sentencing considerations.

Metro City legal personnel also mentioned a number of other unmeasured variables that could relate to sentencing. There was some suggestion, for example, that the jury process itself might, by increasing the time devoted to a defendant and emphasizing his/her involvement in the crime, tend to work against the defendant. One courtroom participant indicated that the jury trial may make the crime more vivid in the judge's mind than is the case in a bench trial. Another suggested the judge might become irritated and bored by the lingering trial process. Most conceded, however, that theoretically at least, the trial also presents a forum for mitigating as well as aggravating factors to be

Defenders of current jury practices contend that these criminality factors "explain away" the strong, but spurious, disposition-sentencing relationship illustrated by the data presented above. Such a possibility must be carefully considered. The magnitude of the correlation between two of the three criminality measures and sentence severity is high (the defendant's pretrial status and sentencing $r = .45$; charge severity and sentence $r = .55$; number of guilty charges and sentence $r = .20$). Based on these figures, jury convictees indeed would be expected to receive substantially harsher sentences given the more serious nature of their cases. Therefore, the independent effects of the jury versus other forums on sentencing only can be gauged accurately by controlling for criminality.[14]

The regression model described in equation (1) will enable us to distinguish the effects of different disposition modes and criminality on sentence:

$$Y = b_0 + b_1X_1 + b_2X_2 + b_3Z_1 + b_4(\bar{Z}_2) + b_5(\bar{Z}_3) + e \text{ where:}$$

Y = sentence severity (scale scores from 1-93).

X_1 = bench trial dummy variable (1 = bench disposition).

X_2 = jury trial dummy variable (1 = jury disposition).

Z_1 = pretrial status dummy variable (1 = pretrial detention).

$\bar{Z}_2$ = mean charge severity (in years).

$\bar{Z}_3$ = mean number of guilty charges.

e = error.

The three-category disposition variable is operationalized as two dummy variables (X_1, X_2). The parameters to be estimated are b_i. The intercept (b_0) displays the independent effect of a plea bargain disposition controlling for the three criminality factors, while b_1 and b_2 present bench and jury trial effects also controlling for criminality. The appropriate null hypothesis of $b_0=b_1=b_2=0$, if retained, would indicate that sentencing is unaffected by dispositional forum. The other parameters (b_3, b_4, b_5) display the influence of each of the three components of criminality while controlling for the other criminality variables and disposition mode.

---

presented, and those interviewed were reluctant to conclude that all factors, when taken together, would always or usually work to penalize a jury defendant.

[14] A similar analysis was also undertaken utilizing other defendant characteristics included in these data. Defendant sex, age, race, and type of attorney were not found to be systematically related to dispositional mode and, therefore, are not included as control variables in the subsequent analysis.

The parameter estimates in the Metro City data are given in equation (2):

$$Y = 10.4 + 1.5X_1 + 25.1X_2 + 10.3Z_1 + .8(\bar{Z}_2) + .9(\bar{Z}_3) \quad (R^2 = .45) \quad (2)$$

As expected, with the large sample (29,295), every variable has a highly significant ($p > .001$) statistical impact on sentencing. The model as a whole is associated with 45 percent of the variance in sentence scores. All three "heaviness" factors have independent effects on sentence severity in the hypothesized direction. Defendants in pretrial detention (those likely to have a prior record) are given sentences 10.3 scale units harsher than those on pretrial release. Charge severity adds an average of 8.4 scale units to the overall sentence [$.8(\bar{Z}_2)$ where $\bar{Z}_2 = 10.5$], while the number of guilty charges contributes an additional 1.8 units [$.9(\bar{Z}_3)$ where $\bar{Z}_3 = 2.0$]. Most important for our purposes is the fact that even after criminality is controlled, jury convictees still receive much harsher sentences than do other defendants (25.1 scale units).

The intercept value ($b_0 = 10.4$) represents the sentence score attributable to a plea disposition, while b_1 and b_2 are sentencing scores added to the intercept value if a case is decided at a bench trial (b_1) or jury trial (b_2). The coefficient b_2 reveals that, after controlling for criminality, jury trial defendants still average sentences ($b_0 + b_2 = 35.5$) that are nearly three times as harsh as those of either plea ($b_0 = 10.1$) or bench defendants ($b_0 + b_1 = 11.9$). This disparity stands in marked contrast to the relative closeness of the plea and bench sentences.

The sentencing variations between the three dispositional modes are perhaps best appreciated in Table 2. Mean charge severity ($\bar{Z}_2$) and mean number of guilty charge ($\bar{Z}_3$) values have been included in equation (1) to predict average sentence severity for detained and released defendants in each disposition mode. For example, the predicted sentence for detained bench defendants is 34.5, the sum of $b_0 + b_1 + b_3 + b_4(\bar{Z}_2) + b_5(\bar{Z}_3)$. Substituting parameter estimates and means in this manner results in a predicted sentence of 47.8 scale units for the jury defendant on pretrial release (no prior record) and a sentence of 58.1 if he/she had been detained (probable prior record). These sentences are 98 percent and 68 percent harsher than comparable bench trial dispositions and 110 percent and 76 percent more severe than similar plea bargained sentences.

Table 2. Average Sentence Severity (in scale units) by Disposition Mode Controlling for Criminality[a]

Pretrial Status	Disposition Mode		
	Guilty Plea	Bench Trial	Jury Trial
Released	22.7	24.2	47.8
Detention	33.0	34.5	58.1

[a] The charge severity ($\bar{Z}_2$) and number of guilty charge ($\bar{Z}_3$) constants have been included in each average.

While allowing us to examine sentencing differences with precision, the sentence severity scale may lack a certain intuitive appeal, since scale scores must be interpreted relative to each other. This fact, coupled with the greater confidence that comes with examining multiple indicators of the same phenomenon, makes an examination of jail rates a valuable addition to the analysis.

It is apparent in Table 3 that greater case criminality is positively associated with the likelihood of a jail sentence (rather than some lesser punishment such as a suspended sentence, fine, or probation). Detained defendants go to jail much more often than those released prior to trial, and defendants convicted of the more serious felonies wind up in jail more often. Of the two criminality variables that act as controls here, pretrial detention status (prior record) has a greater impact on the jail/no jail decision.

Table 3. The Frequency of Jail Sentences (%) by Disposition Type Controlling for Criminality

Criminality[a]	Disposition Mode		
	Guilty Plea	Bench Trial	Jury Trial
Defendant Status[b]/ Charge Severity[c]			
Released/Not Serious	10.5 (5218)	14.9 (5962)	30.2 (53)
Released/Serious	20.2 (3299)	30.9 (2514)	76.1 (71)
Detained/Not Serious	50.2 (2653)	59.0 (2394)	80.6 (67)
Detained/Serious	66.6 (3627)	77.1 (3009)	96.5 (428)

[a] The number of guilty charges has been omitted as a control because it is least strongly associated with sentence severity, and including it would have made a parsimonious presentation of these data difficult.

[b] Released v. detained.

[c] Not serious v. serious. Cases have been dichotomized into charges carrying a maximum possible sentence greater than five years ("serious") or those with maximum five years or less ("not serious"). Grouping cases using a 10-year maximum sentence as the cutoff between "serious" and "not serious" felonies does not alter the findings significantly.

Most importantly, the data clearly indicate that jury defendants are much more likely than other defendants to receive a jail sentence even when the effects of the criminality factors are controlled. The largest disparity—45 to 55 percent—occurs in cases where a released defendant was charged with a serious felony. In the remaining categories the difference is a still sizable 15 to 30 percent. Apparently the pattern in meting out jail sentences is close to overall sentencing outcomes in this court. Both analyses demonstrate that jury defendants are punished with substantially greater harshness than are plea and bench convictees in essentially similar criminal cases.

Does this pattern represent a policy decision by the judges on the Metro City bench to penalize jury defendants? Or is this pattern solely the product of structural and personal variables that, working together, produce a group of judges who specialize in jury cases and have developed sentencing policies harsher than those of other judges? While the effect on the defendant is the same, a clear demonstration that individual judges, regardless of sentencing philosophies, systematically sentence jury defendants more harshly than other defendants would be an indication that they act purposefully (and possibly vindictively) when sentencing those convicted at a jury trial.

Courtroom personnel almost uniformly believe that if jury sentences are longer it is because judges with the stiffest judicial philosophies naturally migrate to the jury room. A judge noted, "If you put a heavy hitter in the waiver room, everyone goes to trial." Similarly, a prosecutor told us:

> I don't think that anyone is penalized for exercising his right to a jury trial, but some defendants are rewarded if they don't ask for one. This evolves from the practical necessity of disposing about 46,000 cases a year; no case can be delayed more than six months, otherwise charges are dropped automatically. As a result, tough judges end up in the jury courtroom and lenient judges sit in waiver rooms.

Significantly, nowhere in the interviews is there the suggestion that individual judges act to penalize jury defendants. When asked if they assessed sentencing penalties to jury defendants, most judges said no. A long-time Metro City judge told us, "I can't say it doesn't pass through my mind to take this into account when a defendant wastes our time, but I don't think I use it as a basis for sentencing." Another noted: "Our sentencing guidelines state specifically that defendants should not be deterred from seeking a jury trial." A third judge said, "My evaluation is very individual; I consider the defendant and the case. . . I don't think there is any intent to punish [the jury defendant], but if you reward the guy who doesn't demand a trial, I guess the effect is the same."

In order to examine this question more carefully, a sample of judges who had sentenced at least 10 cases in each dispositional mode was selected. Of our original 95 judges, 15 met this criterion.[15] Together these judges heard approximately one-half of the original group of 619 jury cases.

An examination of the data based on the subsample using the same regression model as before (1) shows that the overall explanatory power of the model is quite impressive (Table 4).

Table 4. Sentence Severity and Disposition Controlling for Judge and Criminality Factors

	Disposition Mode			Criminality Factors			
Judge	Guilty Plea (b_0)	Bench Trial (b_0+b_1)	Jury Trial (b_0+b_2)	Pretrial Status (b_3)	Charge Severity ($b_4\bar{Z}_2$)	No. Guilty Charges ($b_5\bar{Z}_3$)	Model R^2
A (N=86)	13.9 (3.8***)	7.4 (1.9)	31.0 (3.0***)	11.0 (3.3**)	1.2(16.5) (10.2***)	1.1(1.6) (.7)	.79
B (N=66)	11.8 (3.7***)	18.4 (2.0*)	35.3 (4.8***)	10.0 (2.9**)	1.1(13.9) (8.6***)	.6(2.2) (.7)	.81
C (N=61)	2.9 (.8)	13.0 (2.9**)	17.0 (3.7***)	12.9 (3.7***)	1.4(16.4) (11.7***)	2.1(1.8) (1.3)	.87
D (N=162)	9.8 (3.0**)	16.5 (2.0*)	37.6 (7.0***)	13.5 (3.9***)	1.1(17.3) (10.1***)	.8(2.6) (1.4)	.73
E (N=207)	13.1 (4.7***)	12.7 (.1)	32.3 (4.4***)	15.9 (5.8***)	.8(13.1) (7.0***)	1.3(2.3) (2.0*)	.51
F (N=266)	7.7 (4.2***)	10.5 (1.5)	22.5 (4.8***)	8.2 (4.4***)	1.3(9.8) (10.7***)	1.6(2.2) (3.2**)	.51
G (N=89)	15.9 (3.9***)	13.9 (.8)	29.7 (2.5*)	3.8 (1.0)	1.2(16.7) (8.9***)	2.3(1.7) (1.6)	.74
H (N=334)	8.0 (4.9***)	5.8 (1.4)	16.1 (3.0**)	4.4 (2.8**)	1.3(10.7) (17.6***)	1.9(2.0) (4.1***)	.64
I (N=69)	13.6 (3.0**)	27.5 (2.4*)	34.5 (4.0***)	12.4 (2.7**)	1.2(22.2) (7.4***)	.3(4.0) (.7)	.75
J (N=46)	7.6 (1.1)	14.2 (1.0)	30.7 (3.0**)	23.5 (3.4**)	.5(18.6) (1.9)	1.0(2.4) (.8)	.59
K (N=171)	9.3 (3.3**)	14.9 (2.2*)	33.0 (6.3***)	9.9 (3.9***)	1.2(13.2) (10.7***)	1.0(2.3) (1.6)	.69
L (N=59)	6.4 (2.1*)	3.6 (.7)	7.5 (.2)	13.0 (2.2*)	1.0(7.2) (2.8**)	4.5(2.2) (3.7***)	.67
M (N=56)	14.1 (3.0**)	8.5 (1.2)	25.0 (2.0*)	10.2 (2.3*)	.7(11.9) (2.4*)	2.6(2.6) (2.4*)	.49
N N=71)	4.2 (1.0)	5.0 (.2)	12.0 (1.5)	13.2 (3.7***)	.8(13.4) (4.6***)	2.6(2.2) (2.2*)	.52
O (N=85)	13.1 (3.1**)	19.4 (1.5)	23.6 (2.0*)	14.9 (3.5***)	1.3(13.4) (5.6***)	.3(3.1) (.5)	.56

* p>.05
** p>.01
*** p>.001

[15] These 15 judges are probably not representative of the entire bench, given that they are almost uniformly categorized as tough sentencers by court observers. How a group of regular judges would sentence jury convictees is not an issue, because they rarely do.

The percentage of the total variation in judges' sentencing accounted for by disposition forum and criminality ranges from a low of 49 percent to a high of 87 percent.

Criminality factors affect sentence severity as anticipated. Without exception, the more serious cases get harsher sanctions. What is interesting, however, are the differences in the particular mix of criminal characteristics that the judges respond to. Either pretrial status (prior record) or charge severity is significant in sentencing for all the judges. Both factors influence some judges, while for a few the number of guilty charges acts in conjunction with pretrial status or charge severity. These patterns along with the overall harshness of sentence do reveal rather distinct sentencing "philosophies" on the part of the trial court judges.

Significantly, regardless of overall sentencing philosophy, judges who sentenced all three types of defendants uniformly gave harsher sentences in jury cases, even when controlling for the seriousness of the criminal case. As indicated by the t-scores below the variables in each regression equation, these differences are statistically significant for 13 of the 15 judges. Dispositional forum makes little difference at all for only one judge (Judge L). Judges who, on balance, are both harsh and lenient mete out by far their toughest sentences in jury courtrooms. The sentencing impact of the jury forum does, however, vary considerably by judge. Among the 13 where the difference is significant, the jury "effect" ranges from 17.0 (Judge C) to 37.6 (Judge D) scale units. Overall, jury sentences again appear to be about twice as harsh as sentences meted out in other forums.

The relatively small number of jury cases makes a comparison of individual jail sentencing rates among this group of judges impossible while also trying to control criminality factors. A workable compromise is to examine the frequency of jail sentences across the entire subsample (Table 5). In only one of the four criminality categories is disposition forum not significant and a jury verdict not most likely to mean a jail sentence. The appropriate measure of association, Cramer's V, understates the impact of a jury disposition in the second and third categories because of the relatively large number of plea and bench cases and the closeness of their averages.

Table 5. Jail Sentence Rates (%) by Disposition Among a 15-Judge Subsample Controlling for Criminality

Criminality Defendant Status Charge Severity	Disposition Mode Guilty Plea	Bench Trial	Jury Trial	Cramer's V
Released/Not Serious	18.6 (264)	20.4 (309)	20.8 (24)	.02
Released/Serious	41.1 (129)	42.6 (101)	71.4 (28)	.19*
Detained/Not Serious	53.4 (148)	55.9 (136)	77.4 (31)	.14*
Detained/Serious	80.7 (197)	80.8 (229)	96.6 (234)	.22**

* p>.05
** p>.001

Only in less serious felony cases (five years or less maximum sentence) among the group of released defendants (no prior record) does a jury disposition become indistinguishable from bench and plea cases. In the other three criminality categories, jury defendants are 15 to 30 percent more likely to be sentenced to jail. This disparity stands in marked contrast to the remarkable similarity in jail sentence rates between plea and bench dispositions across all four criminality categories. In addition to knowing that individually these judges sentence jury defendants more harshly, we can conclude that as a group they are more likely to send these defendants to prison in nearly every type of case.

III. CONCLUSIONS

The cost of a jury trial for convicted defendants in Metro City is high: sentences are substantially more severe than for other defendants. Jail sentences are much more likely to be given to jury defendants, and the sentences meted out are uniformly more serious. It is ironic that the element of the legal system expected to individualize and moderate justice is transformed into the vehicle by which the most severe criminal sanctions are applied.

Virtually every judge examined in Metro City who had experience in sentencing jury, bench, and plea defendants sentenced jury defendants most severely and sent them to jail most often. Even when criminality characteristics were controlled, the jury "effect" was still significant for nearly every judge. Given the democratic roots of the jury system, and the attendant norms of "trial by peers" and "justice tempered with mercy," the harsh penalties given jury defendants are cause for concern.

The empirical data certainly suggest that the stiffer penalties accruing to jury defendants cannot be attributed solely to the judicial philosophies of judges in the jury rooms. Even lenient judges deal more harshly with jury defendants. One possible reason is that the necessity for keeping down the number of jury trials influences sentencing considerations of jury room judges. Stiffer penalties for jury defendants does appear to be the operational, though unstated, judicial policy.

The Supreme Court has expressed concern that criminal defendants be informed of the consequence of waiving or pursuing trial rights—that decisions made by defendants be knowing and voluntary (Alschuler, 1975). If Metro City defendants were to be informed of the probable sentencing differences in jury versus nonjury convictions, it is questionable whether decisions made by defendants thereafter could be considered purely voluntary. The realities of this situation are such that the judges in Metro City place a significant penalty on the exercise of trial rights. This is an example of a court setting that may preclude the waiver of trial rights made both knowingly *and* voluntarily.

Apart from other considerations, the direct empirical demonstration that an agency of the state tolerates a practice which systematically penalizes the exercise of a constitutionally guaranteed right might be grounds for declaring such a practice unconstitutional. However the Supreme Court has issued no condemnation of the practice in noncapital cases. The Court's controlling statement came in *Jackson* v. *United States* (1968), where it held that the federal kidnapping statute unfairly required a defendant to choose between the right to a jury trial and exposure to the death penalty.

Some lower courts have extended the philosophy of this doctrine to other capital punishment situations. For example, rape statutes which permitted only a jury to impose the death penalty were, in a number of separate cases, declared invalid

by the lower federal courts on the authority of *Jackson Springfield* v. *United States* (1968). Provisions of the federal juvenile delinquency act, which required a juvenile defendant to waive the right to a jury trial in order to proceed under the act (*Nieves* v. *United States*, 1968), were also overturned. And, most relevant to the findings of this study, a federal court commented dubiously on a judge's sentencing statement which said: "I announce at this time that anyone else that is convicted by a jury before me of armed robbery of this nature may expect a similar sentence." This statement, the court said, created "constitutional difficulties" in discouraging assertion of Sixth Amendment rights (*United States* v. *McCoy*, 1970).

The Court has also expressed concern with "penalizing" the right to appeal by permitting higher sentences upon retrial and conviction.[16] But it has not uniformly prohibited higher sentences in all circumstances. If the Court is willing to countenance higher sentences after a successful appeal in concrete cases in which the appeal cost to the defendant is inescapably clear, it is unlikely to worry much about a *class* of jury tried defendants, in some courts, whose contention is only that, as a group, they have received harsher sentences than defendants who elected to forego a jury trial. In *Ballew* v. *Georgia* (1978), which invalidated the five-person jury in state criminal cases, Justice Blackmun's careful parsing of social science evidence about the impact of jury size was contemptuously labeled "numerology" by some of his colleagues. The Court's general reluctance to base constitutional rulings on mere statistical evidence makes it unlikely that the practices documented in this paper, absent more direct evidence, will encounter constitutional barriers.

These data show that individual judges, regardless of sentencing philosophies, systematically sentence jury defendants more harshly than nonjury defendants who had pled gulity or elected a bench trial. These data suggest, but cannot show directly, that sentencing judges are acting purposefully, and possibly vindictively; and such a demonstration may be required to sustain a constitutional attack on the practice. Attempting to answer that question, therefore, deserves a high priority on the research agenda.

---

[16] *North Carolina* v. *Pearce* (1969).

APPENDIX

Sentence Severity Scale

Scale Values	Sentences
1	Suspended Sentence
2-6	Fines only (<$50; 51-100; 101-500; 501-1000; 1001+)
7-11	Suspended sentences plus 5 fine categories (above)
12-31	Probation of from 1 to 9 years and probation plus a fine in any amount
32-43	Minimum sentence 1 year or under; maxima from under 1 to 10 years
44-53	Minimum sentence 2 years; maxima from 2 to 20 years
54-63	Minimum sentence 3 years; maxima from 3 to 20 years
64-71	Minimum sentence 4 years; maxima from 6 to over 20 years
72-77	Minimum sentence 5 years; maxima from 8 to over 20 years
78-82	Minimum sentence 6 years; maxima from 10 to over 20 years
83-85	Minimum sentence 7 years; maxima from 12 to 20 years
86-87	Minimum sentence 8 years; maxima to over 20 years
88-89	Minimum sentence 9 years; maxima to over 20 years
90-91	Minimum sentence 10 years; maxima to over 20 years
92	Minimum over 10 years; maxima over 20 years
93	Life Imprisonment

REFERENCES

ADMINISTRATIVE OFFICE OF THE U.S. COURTS (1972) *Federal Offenders in the U.S. District Courts, 1970*. Washington, D.C.: U.S. Government Printing Office.

ALSCHULER, Albert W. (1968) "The Prosecutor's Role in Plea Bargaining, Part I," 36 *University of Chicago Law Review* 50.

——— (1975) "The Supreme Court, The Defense Attorney and the Guilty Plea," 47 *University of Colorado Law Review*.

——— (1976) "The Trial Judge's Role in Plea Bargaining," 76 *Columbia Law Review* 1059.

BLALOCK, Hubert M., Jr. (1964) *Causal Inferences in Nonexperimental Research*. Chapel Hill: University of North Carolina Press.

CASPER, Jonathan D. (1972) *American Criminal Justice: The Defendant's Perspective*. Englewood Cliffs, N.J.: Prentice-Hall.

COOK, Beverly B.. (1973) "Sentencing Behavior of Federal Judges: Draft Cases—1972," 42 *University of Cincinnati Law Review* 597.

DOWNIE, Leonard (1971) *Justice Denied*. New York: Praeger.

EISENSTEIN, James and Herbert JACOB (1974) "Measuring Outputs of Urban Criminal Courts," 54 *Social Science Quarterly* 713.

——— (1977) *Felony Justice*. Boston: Little Brown.

FLEMMING, Roy B., C. W. KOHFELD and Thomas M. UHLMAN (1980) "The Limits of Bail Reform: A Quasi-Experimental Analysis," *Law and Society Review*, forthcoming.

LEVIN, Martin (1977) *Urban Politics and the Criminal Courts*. Chicago: University of Chicago Press.

MATHER, Lynn (1974) "Some Determinants of the Method of Case Disposition: Decision-Making by Public Defenders in Los Angeles," 8 *Law and Society Review* 187.

NEWMAN, Donald J. (1966) *Conviction: The Determination of Guilt or Innocence Without Trial*. Boston: Little Brown.
ROTENBERG, Daniel (1975) "The Progress of Plea Bargaining: The ABA Standards and Beyond," 8 *Connecticut Law Review* 44.
SHIVELY, W. Phillips (1974) *The Craft of Political Research*. Englewood Cliffs, N.J.: Prentice-Hall.
TIFFANY, Lawrence, Y. AVICHAI, and Geoffrey PETERS (1975) "A Statistical Analysis of Sentencing in Federal Courts: Defendants Convicted After Trial 1967-1968," 4 *Journal of Legal Studies* 369.
UHLMAN, Thomas M. (1979) *Racial Justice*. Lexington, Mass: Lexington-Heath Books.
UHLMAN, Thomas M. and N. Darlene WALKER (1979) "A Plea is No Bargain: The Impact of Case Disposition on Sentencing," 60 *Social Science Quarterly* 218.
"United States v. Anderson—The Plea Bargain as an Agreement to Become and to Remain Convicted" (1975) 17 *William and Mary Law Review* 383.

CASES CITED

Ballew v. *Georgia*, 435 U.S. 223, 1978.
Jackson v. *United States*, 390 U.S. 570, 1968.
Jackson Springfield v. *United States*, 403 F2d 572, CADC, 1968.
Nieves v. *United States*, 280 F. Supp. 994, 1968.
North Carolina v. *Pearce*, 395 U.S. 711, 1969.
United States v. *McCoy*, 429 F2d 739 CADC, 1970.