Journal of Criminal Law and Criminology

Volume 74
Issue 2 *Summer*

Article 6

Summer 1983

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Stevens H. Clarke

Susan T. Kurtz

0091-4169/83/7402-476
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY
Vol. 74, No. 2

Printed in U.S.A.

CRIMINOLOGY

THE IMPORTANCE OF INTERIM DECISIONS TO FELONY TRIAL COURT DISPOSITIONS*

STEVENS H. CLARKE**
SUSAN T. KURTZ***

I. INTRODUCTION

"Interim decisions may be of greater consequence to discretionary justice than final decisions."[1] This observation by Kenneth Culp Davis constitutes the chief theme of this Article: the extent to which intermediate processes and decisions affect the criminal trial court's final disposition. The study presented here treats criminal court disposition not as a single decision but rather as the result of a number of separate administrative processes. The administrative processes on which the study focuses—jailing defendants before trial, providing defense service to indigent defendants, and plea bargaining—exhibit much variation, probably because they are largely exempt from any sort of review. The study compares the effect of these interim processes on the final disposition to the contribution of such "basic factors" as the defendant's characteristics and the strength of the legal case against him or her.

Section II of the Article outlines the data and methods used in the study. Section III provides a brief description of the defendants and the dispositions they received, as well as some material on plea bargaining

* The research on which this article is based was partially supported by a grant from the National Institute of Justice to the North Carolina Governor's Crime Commission. Neither agency is responsible for the contents of the article.

** Associate Professor of Public Law and Government, Institute of Government, University of North Carolina at Chapel Hill. LL.B., Columbia University, 1966; A.B., Harvard University, 1958.

*** Rand Corporation, Santa Monica, CA; formerly Research Coordinator, Institute of Government, University of North Carolina at Chapel Hill. Ph.D., University of North Carolina at Chapel Hill, 1983; M.A., University of North Carolina at Chapel Hill, 1978; B.A., University of California at San Diego, 1976.

[1] K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY 22 (1969).

laws and practices in the jurisdiction studied. Section IV presents regression models developed to measure the association of basic factors and administrative processes with court dispositions. Our findings are summarized in Section V. Section VI suggests some reforms that are consistent with the study results.

II. DATA AND METHODS

The data on which most of this Article is based were drawn from court and police records concerning the prosecution and court disposition of 1,378 defendants charged with felonies in twelve North Carolina counties during three months in 1979.[2] These twelve were chosen as a reasonable cross-section of the state's 100 counties.[3] The three urban counties—Mecklenburg, Buncombe, and New Hanover—dominate the data because they have many more felony defendants than the rural counties, but urban counties have a higher incidence of felony defendants throughout the state.[4]

Our aim was to identify factors that influenced, or at least were correlated with, the decisions made in the criminal process. Therefore, in collecting the data, we sought to reconstruct the information known to the various decision-makers—especially the police and the district attorney—at the time of prosecution. We searched local police and court records that were then accessible to the police and prosecutor. These records included: (1) the complaint file (the police or sheriff's record of the crime report); (2) the police or sheriff's record of the crime investigation, which was sometimes part of the complaint file, sometimes a separate record, and sometimes part of the arrest record; (3) the police or sheriff's record of the arrest; (4) the trial court record folder or envelope plus all of the papers it contained; (5) the trial court name index files,

[2] Most defendants' cases reached disposition in 1979, although a few remained pending until 1980. For Mecklenburg County, defendants whose charges were filed in January through March 1979 were studied; in the other eleven counties, we studied defendants whose charges were filed in April through June 1979.

[3] One urban county was selected from each region of the state—western, central, and eastern. The non-urban counties were grouped into twelve categories corresponding to the twelve cross-classifications of region, size of the court workload, and an assessment of overall court efficiency. One non-urban county was selected at random from each of these twelve categories. Later, to reduce travel costs, a non-urban county was eliminated at random from each region, leaving nine non-urban counties. The twelve counties varied greatly in geographical size and population. The 1980 populations ranged from 14,934 (Yancey) to 404,270 (Mecklenburg). BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION, Vol. 1, Part 35, Table 45, at 162 (1982).

[4] The breakdown of the 1,378 defendants in the sample by county was: Mecklenburg (including Charlotte)—35.8%; New Hanover (including Wilmington)—14.7%; Buncombe (including Asheville)—13.6%; Rockingham (including Reidsville)—10.1%; Craven (including New Bern)—6.1%; Harnett—5.9%; Rutherford—5.0%; Anson—3.0%; Cherokee, Granville, Pasquotank, and Yancey—5.8%.

searched to ensure that all of the defendant's companion cases were captured; and (6) the district attorney's files.

Our data do not completely describe what the police and the prosecutor actually knew at the time of prosecution for at least two reasons: they sometimes had important information not kept in any available record, and they may not have looked at all of the records that we examined. We believe, however, that information written in the records had an important influence on the outcome of prosecution, and our statistical analysis supports this belief.[5]

The unit of data in our analysis was the individual defendant. When a defendant had more than one felony charge—and 30% of the 1,378 defendants did (see Table 1)—all concurrently processed felony charges were traced through the records of both the district and superior court.[6] In collecting the data, the "principal" charge was emphasized, but some information was also collected on companion charges. The principal charge was the charge on which the defendant received the longest active (unsuspended) prison sentence; if acquitted, the principal charge was that with the longest statutory maximum sentence.

The data included:

- Characteristics of the defendant—age, race, sex, employment, residence, and criminal record.
- Important aspects of the case against the defendant—the number of felony charges, the principal charge, the number of codefendants, and information on evidence and extent of injury or damage caused by the crime.
- Information about the victim, including his or her relationship to the defendant.
- Details of the processing of the defendant's charges, with emphasis on the principal charge.

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[5] We regard these data as reasonably representative of felony prosecution and sentencing in North Carolina in 1979, even though they were not drawn from a random sample. The multivariate statistical methods we used, in which the simultaneous effects of a number of variables were taken into account, made it less likely that a finding regarding any single variable could be due to sampling bias.

[6] Data on accompanying misdemeanor charges were usually not collected, but such charges rarely had worse consequences than felony charges.

TABLE 1

TWELVE-COUNTY SAMPLE: DISTRIBUTION OF DEMOGRAPHIC AND CHARGE VARIABLES

	Percentage	(N)
Defendant's Age:		
Total	100.0	(1,378)
14-18 years	23.0	(317)
19-21	20.9	(288)
22-26	20.4	(281)
27-30	11.2	(155)
31-40	12.9	(178)
41 and over	9.1	(125)
Missing	2.5	(34)
Defendant's Race:		
Total	100.0	(1,378)
Black	47.5	(655)
Indian	0.2	(3)
Other minority	0.6	(8)
White	50.9	(702)
Unknown	0.7	(10)
Defendant's Sex:		
Total	100.0	(1,378)
Male	87.7	(1209)
Female	12.2	(168)
Unknown	0.1	(1)
Total Felony Charges:		
Total	100.0	(1,378)
One	69.6	(959)
Two	17.1	(236)
Three	4.6	(64)
Four or more	8.6	(119)
Total Number of Codefendants:		
Total	100.0	(1,378)
None	59.4	(819)
One	24.2	(333)
Two	9.6	(132)
Three or more	6.8	(94)
County Where Charge(s) Filed:		
Total	100.0	(1,378)
Anson	3.0	(42)
Buncombe	13.6	(187)
Cherokee	1.2	(17)
Craven	6.1	(84)
Granville	1.5	(21)
Harnett	5.9	(81)

TABLE 1 CONTINUED

	Percentage	(N)
Mecklenburg	35.8	(494)
New Hanover	14.7	(203)
Pasquotank	2.4	(33)
Rockingham	10.1	(139)
Rutherford	5.0	(69)
Yancey	0.6	(8)

Type of Principal Felony Charge	Percentage of Total	Percentage of this Class	(N)
Class 1 - Violent Felonies	23.6		(325)
Murder and manslaughter		8.6	(28)
Assault without intent to kill		31.7	(103)
Assault with intent to kill		19.7	(64)
Rape		9.5	(31)
Burning (includes arson)		5.2	(17)
Common law robbery		7.4	(24)
Armed robbery		14.2	(46)
Kidnapping		3.7	(12)
Class 2 - Felonious Larceny, Breaking or Entering, etc.	45.9		(633)
Burglary		3.8	(24)
Breaking or entering		13.3	(84)
Breaking or entering and larceny combined		45.8	(290)
Larceny		27.5	(174)
Possession or receipt of stolen goods		9.6	(61)
Class 3 - Fraud, Forgery, Embezzlement, etc.	11.9		(164)
Fraud (includes larceny by employee, embezzlement, false pretense, theft of credit card, etc.)		59.8	(98)
Forgery and uttering (passing) forged instrument		40.2	(66)
Class 4 - Drug Felonies	13.4		(185)
Manufacture, sale, or possession for purpose of sale of controlled substance		61.6	(114)
Possession of controlled substance		38.4	(71)

TABLE 1 CONTINUED

Type of Principal Felony Charge	Percentage of Total	Percentage of this Class	(N)
Class 5 - Morals Felonies			
(primarily crime against nature and indecent liberties with child)	1.9		(26)
Class 6 - Other Felonies	3.3		(45)
Felonious escape		57.8	(26)
Other (including felonious leaving scene of accident)		42.2	(19)
TOTAL - All Classes	100.0		(1,378)

The study used such techniques of statistical analysis as tabulations of means and proportions. Regression modelling was used to test the effect of each variable while controlling for others. This technique has the same limitation in the present study as it has in any study that is—and must be—an analysis of a "slice of history" rather than a controlled experiment; it is impossible to be certain that all extraneous factors of importance have been identified and properly measured. As a result, an apparently significant relationship between an independent variable and the dependent variable may in reality be attributable to some other unknown or improperly measured factor.[7]

III. DEFENDANTS AND DISPOSITIONS

A. DEFENDANTS AND THEIR CHARGES

The felony defendants in the twelve-county sample were mostly young males (see Table 1); only 12.2% were female. The median age was twenty-three, and half of the defendants were between nineteen and thirty years of age. Forty-seven and five-tenths percent of the defendants were black—more than twice the proportion of blacks in the general population.[8] Most defendants resided in the county where they were prosecuted; only 3.8% were out-of-state residents.

Defendants were divided into six classes based on the type of felony with which they were initially charged (see Table 1). The classes were

[7] In the regression analysis, we did not test for interaction effects. In fitting the models, we sought to obtain an estimated average effect of our variables, one that would lend itself to straightforward interpretation. We expected that if there were interaction effects, they would not be dramatic, and that at least the *direction* of each variable's effects would be the same over levels of other variables.

[8] In the twelve-county sample, the proportion of blacks was 47.5%; among male defendants aged 15 to 29, 48.2% were black. This last proportion was much greater than the proportion of blacks among males age 15 to 29 in the twelve counties in 1980—25.4%. BUREAU OF THE CENSUS, *supra* note 3, at 162-86.

Class 1—violent felonies (23.6% of the defendants); Class 2—felonious breaking or entering, larceny, possession and receiving of stolen goods, and related offenses (45.9%); Class 3—fraud felonies like forgery, obtaining property by false pretense, and credit card fraud (11.9%); Class 4—drug felonies (13.4%); Class 5—"morals" felonies (1.9%); and Class 6—other felonies (3.3%).

B. COUNSEL, PRETRIAL RELEASE, AND PRETRIAL DETENTION

Most defendants (86.2%) were known to have been represented by counsel; only 6.7% were known to have been unrepresented, and 7.1% had an unknown counsel status (see Table 2). Thirty-four percent paid for their own attorney; the courts found 27.9% indigent and appointed individual attorneys to represent them. Another 24.3% were found indi-

TABLE 2

TWELVE-COUNTY SAMPLE: ATTORNEY, PRETRIAL RELEASE, AND PRETRIAL DETENTION

	Percentage	(N)
1. Type of attorney:		
Total	100.0	(1,378)
No attorney	6.7	(93)
Public defender	24.3	(335)
Individually appointed	27.9	(384)
Private counsel	34.0	(468)
Unknown	7.1	(98)
2. Type of pretrial release:		
Total	100.0	(1,378)
Written promise to appear	4.5	(62)
Unsecured appearance bond	11.7	(161)
Third-party custody	12.0	(166)
Secured bond: cash deposit	2.5	(35)
Secured bond: real or personal property	1.7	(24)
Secured bond: accommodation bondsman	14.4	(199)
Secured bond: professional bondsman	27.0	(372)
Released but type unknown	1.6	(22)
Not released	22.5	(310)
Not arrested	0.9	(12)
Unknown	1.1	(15)

	N	Mean	Median	25th Percentile	75th Percentile
3. Days of pretrial detention	1,344	15.81	1.00	0.00	13.00

gent and were represented by a public defender. Public defender offices existed in only two of the twelve counties studied—Buncombe and Mecklenburg—but these two counties contributed half of the defendants in the sample.

All but twelve of the 1,378 defendants' prosecutions began with an arrest. About one-fifth (22.5%) of the arrested defendants were not released before trial (see Table 2). The remaining arrested defendants received some form of pretrial release.[9] Considering all of the arrested defendants together, the median time they spent in detention before their first release was one day, and the mean was 15.8 days. Twenty-five percent of the defendants spent thirteen or more days in pretrial detention.[10]

C. COURT DISPOSITIONS

Figure 1 depicts the various court dispositions for the 1,350 felony defendants whose cases began by arrest or summons, together with the median time from arrest or summons that elapsed in reaching each type of disposition. It excludes the twenty-eight defendants who were indicted directly and never passed through district court. The district court disposed of nearly half of these defendants without indictments.[11] This rate of pre-indictment felony disposition may seem high. Recent research[12] indicates, however, that disposition of felonies before indictment is common in other jurisdictions.

Twenty-six and two-tenths percent of all the defendants had all their charges dismissed in district court. The prosecutor entered most of the district court dismissals, accounting for 20.2% of the defendants' dispositions; the district court dismissed only 5.9% of the defendants for lack of probable cause. Pleas of guilty to lesser-included misdemeanor charges were also common in district court; 20.6% of the felony

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[9] Of the arrested defendants, 27.0% were released on an appearance bond secured by a professional bondsman, 14.4% on a bond secured by a nonprofessional surety such as a friend or relative, 2.5% on a bond secured by a cash deposit, and 1.7% on a bond secured by a mortgage of real or personal property. Another 11.7% of the arrested defendants obtained release on unsecured bond, 12.0% were released in the custody of a third party who agreed to supervise them, and 4.5% were released on a written promise to appear.

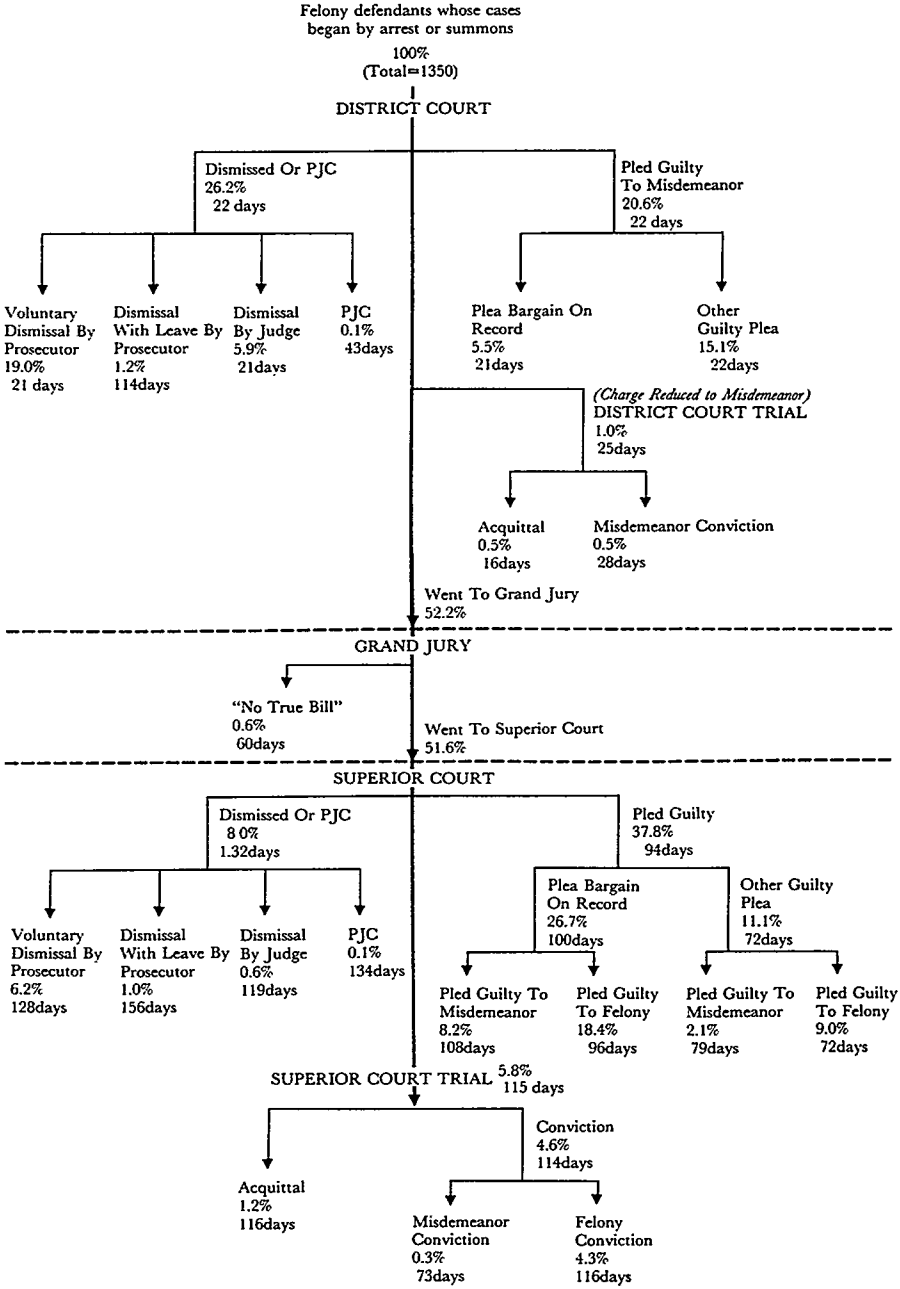
[10] The main North Carolina statutes on pretrial release are N.C. GEN. STAT. §§ 15A-521 to -544 (1978).

[11] If the defendant "appealed" his district court conviction and thereby received a trial de novo in superior court, or if he were indicted later after a district court dismissal for lack of probable cause, we collected data on the superior court disposition. Thus, these 47.9% *went no further* than district court—otherwise they would have been counted among the superior court dispositions.

[12] *See* K. BROSI, A CROSS-CITY COMPARISON OF FELONY CASE PROCESSING (1979), and sources cited therein.

FIGURE 1.

COURT PROCESSING DIAGRAM: TWELVE COUNTIES



prosecutions were disposed of in this way. Most of these district court misdemeanor pleas did not involve a recorded plea bargain, although they required the prosecutor's approval. A few felony defendants (1%) had their charges reduced to misdemeanors and were tried by a district court judge; half of these were acquitted.

A grand jury considered the cases of 52.2% of the defendants shown in Figure 1. Very few defendants, 0.6% of the total, were discharged by the grand jury's refusal to issue an indictment. The rest, 51.6%, were indicted and proceeded to superior court. At this point, a defendant's chance of having all charges dismissed was much lower than it had been in district court; only 8.0% of all defendants, 15.5% of those indicted, were so fortunate.[13] The most common outcome in superior court—accounting for 37.8% of all defendants and 73.3% of the indicted defendants—was a guilty plea. Usually this plea was part of a plea bargain whose terms were recorded on a form designed for that purpose. Most guilty pleas in superior court were to felony charges.

Only 5.8% of all the felony defendants described in Figure 1 received complete jury trials. Jury trials were rare and risky; conviction was four times as likely as acquittal, and the offense of conviction was almost always a felony rather than a misdemeanor.

Nearly two-thirds (63.7%) of all the felony defendants were eventually convicted; 32.5% of the total were convicted of felonies, and 31.2% were convicted only of misdemeanors (see Table 3). The district attorney dismissed all the felony charges of 27.4% of the defendants without further prosecution, and another 6.5% had all felony charges dismissed by a judge, producing an overall dismissal rate of 33.9%. The remaining 2.4% received trial acquittals, "no true bills" (discharges by the grand jury), or "prayer for judgment continued" (PJC).[14]

What about sentences? About one-third (36.3%) of the 1,378 felony defendants in the twelve counties were not convicted of any charge and thus received no sentence. Twenty-seven and four-tenths percent received active sentences—22.3% in the form of regular prison

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[13] Most of the superior court dismissals were by the prosecutor.

[14] A tiny proportion of the felony defendants (0.2%) received the dispostion of "PJC" ("prayer for judgment continued") in district court, and these dispositions were counted as dismissals. A "PJC" is a suspended imposition of sentence. State v. Miller, 225 N.C. 213, 215, 34 S.E. 2d 143, 144 (1945). It usually involves a plea of guilty by the defendant to a charge (in district court this would be a misdemeanor charge), after which the judge postpones imposition of sentence, sometimes on certain specific conditions. If the conditions are no more than payment of court costs, the PJC is not a judgment, N.C. GEN. STAT. § 15A-101(4a) (1978); if other conditions are imposed, it operates as a kind of probation without conviction. Although the judge may impose a sentence later if the defendant violates the conditions he has set, this rarely occurs.

TABLE 3

TWELVE-COUNTY SAMPLE: COURT DISPOSITION AND SENTENCE

	Percentage	(N)
1. Disposition		
Total	100.0	(1,378)
Voluntary dismissal by prosecutor	25.2	(347)
Dismissal with leave by prosecutor	2.2	(30)
Dismissal by judge	6.5	(89)
Prayer for judgment continued ("PJC")	0.2	(3)
Grand jury refused to indict ("No True Bill")	0.6	(8)
Plea bargain on record	32.7	(451)
Other guilty plea	25.9	(357)
Trial acquittal	1.7	(23)
Trial conviction	5.1	(70)
ALL DISMISSALS (includes 3 "PJCs")	34.0	(469)
ALL CONVICTIONS INCLUDING GUILTY PLEAS AND TRIALS	63.7	(878)
Conviction of felony	32.5	(448)
Conviction of misdemeanor only	31.2	(430)
ALL TRIALS	6.8	(93)
2. Type of Sentence		
Total	100.0	(1,378)
No conviction	36.3	(500)
Fine and/or costs	3.7	(51)
Restitution or restitution plus fine	0.4	(6)
Unsupervised probation	7.1	(98)
Supervised probation	25.1	(346)
Special probation (active time plus probation)	5.1	(70)
Active imprisonment	22.3	(307)*

	N	Mean	Median	25th Percentile	75th Percentile
3. Total active minimum prison term for defendants who received active time (in years)	377*	3.62	0.67	0.00	4.00
4. Total active maximum prison term for defendants who received active time (in years)	377*	7.14	3.00	0.50	7.00

*Active imprisonment in this table is not reduced by credit for pretrial detention. When such credit was subtracted, 365 (not 377) defendants actually had to serve time in prison or jail.

terms and 5.1% in the form of special probation (see Table 3).[15] Another 25.1% received supervised probation without imprisonment, and 7.1% received unsupervised probation. Four and one-tenth percent received neither probation nor prison but were ordered to pay a fine, court costs, or restitution.

For the 377 defendants who received active prison sentences,[16] the median length of the maximum prison term was 3.0 years and the median length of the minimum prison term was 0.7 years. The mean maximum sentence was 7.1 years and the mean minimum sentence was 3.6 years. Only 25% of the maximum sentences exceeded seven years.[17]

D. PLEA BARGAINING AND ITS RELATIONSHIP TO SENTENCING

Plea bargaining is firmly established in North Carolina. Legislation enacted in 1974 recognized the legitimacy of plea bargaining and set some rules governing the practice.[18] The prosecution and defense may discuss the possiblity that the prosecutor "will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence" in exchange for the defendant's plea of guilty to one or more charges.[19] The trial judge is authorized to participate in these discussions.[20] Before accepting a guilty plea pursuant to a plea bargain in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves of the bargain and will sentence the defendant accordingly. If the judge does not approve, neither the prosecution nor the defendant is

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15 Special probation is a suspended sentence with up to six months to serve in jail or prison as a condition of the suspension, usually followed by a period of probation supervision. *See* N.C. GEN. STAT. §§ 15A-1351(a), -1343(b)(16) (1978).

16 Lest these prison sentences seem lenient, it should be remembered that not all were imposed for felony convictions—26% were imposed for misdemeanor convictions.

17 It should be remembered that the full maximum sentence would rarely have been served, because of parole and credit for good behavior. Unpublished data recently obtained by the authors from the North Carolina Department of Correction concerning adult felons who were released from prison in 1981 indicate that the average felon served from one-fourth to one-third of his maximum sentence.

18 The intent of the 1974 legislation, according to the Criminal Code Commssion's official commentary, was "to bring plea negotiations out of the back room and put them on the record." N.C. GEN. STAT. ch. 15A, art. 58. Much variation in North Carolina plea bargaining practice has been noted in two previous studies. *See* Bond, *Plea Bargaining in North Carolina*, 54 N.C.L. REV. 823 (1976); Lefstein, *Plea Bargaining and the Trial Judge, the New ABA Standards, and the Need to Control Judicial Discretion*, 59 N.C.L. REV. 477, 489-94 (1981). New determinate sentencing legislation, not effective until after the study described here, could increase plea bargaining regarding the sentence, because it makes a plea-bargained sentence exempt from the requirement that the judge give written reasons for a non-presumptive felony sentence. *See* Comment, *Criminal Procedure—The North Carolina Fair Sentencing Act*, 60 N.C.L. REV. 631, 643 (1982).

19 N.C. GEN. STAT. § 15A-1021(a) (1978).

20 *Id.*

bound by the bargain; the defendant is then entitled to a postponement until the next session of court, when a new judge is presiding, and the parties may resume negotiations and try again.[21]

Of the 1,378 felony defendants in our twelve-county sample, 808 (58.6%) pled guilty to at least one charge; 28.2% pled guilty to at least one felony, and 30.4% pled guilty only to misdemeanors (see Table 4). Thus, more than half of the guilty pleas involved felony-to-misdemeanor charge reductions.

TABLE 4

TWELVE-COUNTY SAMPLE: PLEA BARGAINING AND SENTENCE RECOMMENDATIONS

1. Percentage of Defendants Who Pled Guilty to Misdemeanors or Felonies

	Percentage	Number
No plea	41.4	(570)
Plea to misdemeanor	30.4	(419)
Plea to felony	28.2	(389)
Total	100.0	(1378)

2. Type of Plea for Defendants Who Pled Guilty

	Written Plea Bargain		No Written Plea Bargain		Total (100.0%)
	Percentage	(Number)	Percentage	(Number)	
Plea to misdemeanor	44.6	(187)	55.4	(232)	(419)
Plea to felony	67.9	(264)	32.1	(125)	(389)
Total	55.8	(451)	44.2	(357)	(808)

3. Sentence Recommendations for Guilty Pleas to Either Misdemeanors or Felonies

	Percentage	Number
Specific sentence recommended in written plea bargain	27.0	(218)
No specific sentence recommended in written plea bargain	28.8	(233)
Plea without written bargain	44.2	(357)
Total	100.0	(808)

[21] *Id.*; N.C. GEN. STAT. §§ 15A-1023(b), -1021(c), commentary at 277-78, 280.

TABLE 4 CONTINUED

4. Consolidation for Judgment Recommendations for Guilty Pleas to Either Misdemeanors or Felonies

	Percentage	Number
Consolidation for judgment recommended in written bargain	6.2	(50)
No consolidation for judgment recommended in written bargain	22.2	(179)
No companion cases	27.5	(222)
Plea without written bargain	44.2	(357)
Total	100.0	(808)

5. Sentence Recommendations for Defendants Who Pled Guilty to Felonies

	Written Bargain		Plea With or Without Written Bargain	
	Percentage	(Number)	Percentage	(Number)
Specific sentence recommendation in written plea bargain	54.9	(145)	37.3	(145)
Consolidation of charges for judgment in written plea bargain	18.6	(49)	12.6	(49)
Total defendants who pled guilty to felonies	100.0	(264)	100.0	(389)

Of the 808 defendants who pled guilty, 451 (55.8%) did so pursuant to a written plea bargain—a recorded statement of a guilty plea and its terms and conditions. These written terms and conditions included the concessions granted by the state for the guilty plea; for example, the state would agree to accept a plea to a reduced charge, to dismiss a companion charge, or to recommend a particular sentence. The rest of the guilty pleas, 44.2%, did not involve a *quid pro quo* expressed in a written statement. But our count of written plea bargains conservatively estimates the number of *quid pro quo* situations. Many of the other guilty pleas probably involved unwritten understandings between the defendant and the prosecutor or the judge.

Of the defendants who pled guilty pursuant to a written plea bargain, 44.6% pled only to misdemeanors (see Table 4). Of those who pled guilty *without* a written bargain, a greater proportion, 55.4%, received a felony-to-misdemeanor reduction.

The data show a strong association between the dismissal of com-

panion[22] charges and pleading guilty pursuant to a written bargain, which suggests that multiple charges were a major advantage to the prosecution. Of the 419 defendants who pled guilty to misdemeanors, most were charged with only one felony. Consequently, only a small proportion of these defendants had companion charges dismissed. Table 5 shows the relationship between guilty pleas and dismissal of companion charges. The 389 defendants who pled guilty to one or more felonies were more likely to have companion charges, especially the 264 who pled guilty to a felony in a written plea bargain (of whom 63.6% had companion charges). Of these 264 defendants, 9.1% had one or more companion charges dismissed in district court, and 40.5% had companion charges dismissed in superior court. Of the 168 defendants who (1) had companion felony charges and (2) pled guilty in a written bargain to one or more felonies, many had companion charges dismissed—14.3% in district court and 63.7% in superior court. Most of these dismissals were part of the bargain.[23]

What about plea bargains regarding the sentence? Of the 808 felony defendants who pled guilty to some charge, 27.0% did so pursuant to a written plea bargain in which the prosecutor agreed to recommend a specific length or type of sentence (see Table 4), and 6.2% did so in a written bargain in which the prosecutor agreed to recommend consolidation for judgment of one or more companion felony charges with the principal felony charge.[24]

Considering just the 389 defendants who pled guilty to felonies (see Table 4), 12.6% agreed to plead guilty in exchange for the prosecutor's written agreement to consolidate two or more of their charges for judgment, and 37.3% had the prosecutor's written agreement to recommend a specific sentence. Of the 264 defendants who pled guilty to a felony pursuant to a written plea bargain, 54.9% did so in exchange for a prosecutor's recommendation of a specific sentence, with approval by the

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[22] If a defendant had other felony charges besides his principal charge, we called these "companion felony charges."

[23] A total of 157 defendants pled guilty to some charge pursuant to a written plea bargain and also had companion charges dismissed. In 116 (74%) of these written plea bargains, the dismissal of companion charges was specifically mentioned as a condition of the bargain.

[24] Consolidating the charges for judgment limits the sentence severity: if a prison sentence is imposed for the consolidated charges, it must be a single term no longer than the longest maximum authorized for any of the charges. State v. McCrowe, 272 N.C. 523, 524, 158 S.E.2d 337, 339 (1968).

TABLE 5

TWELVE-COUNTY SAMPLE: GUILTY PLEAS AND DISMISSAL OF COMPANION CHARGES[a]

	Defendants[b] Who Pled Guilty to One or More Felonies				Defendants[b] Who Pled Guilty to Misdemeanor(s) But No Felony			
	Written Plea Bargain		No Written Plea Bargain		Written Plea Bargain		No Written Plea Bargain	
1. Defendants Who Had No Companion Felony Charges	96	(36.4%)	78	(62.4%)	136	(72.7%)	191	(82.3%)
2. Defendants Who Had Companion Felony Charges								
a. Companion Charges Dismissed in District Court:								
None	144	(54.6%)	42	(33.6%)	34	(18.2%)	20	(8.6%)
One	15	(5.7%)	3	(2.4%)	15	(8.0%)	20	(8.6%)
Two or more	9	(3.4%)	2	(1.6%)	2	(1.1%)	1	(0.4%)
b. Companion Charges Dismissal in Superior Court:								
None	61	(23.1%)	34	(27.2%)	33	(17.7%)	40	(17.2%)
One	55	(20.8%)	7	(5.6%)	11	(5.9%)	1	(0.4%)
Two or more	52	(19.7%)	6	(4.8%)	7	(3.7%)	0	(0.0%)
3. Total Defendants Who Pled Guilty	264	(100.0%)	125	(100.0%)	187	(100.0%)	232	(100.0%)

[a]Sum of columns exceeds total defendants because it was possible for a defendant to have companion charges dismissed in district court or superior court or both courts.

[b]All defendants were initially charged with at least one felony.

judge.[25] Another 18.6% of these 264 defendants received the prosecutor's written agreement to consolidate two or more charges for judgment.

IV. MODELS OF COURT DISPOSITIONS

A. MODELLING STRATEGY

We used multiple regression to develop statistical models of the process that led to various trial court dispositions. Having hypothesized that a number of relationships could exist between various factors present in felony cases and the outcomes of prosecution, we then tested and measured all of these possible relationships simultaneously. The tests confirmed or supported some relationships; others were found not to be statistically significant and were rejected.

Separate analyses were done of defendants charged with the two most common types of felonies: Class 1—violent felonies—accounted for 24% of the defendants in the twelve-county sample; and Class 2—burglary, breaking or entering, larceny, and possession and receiving of stolen goods—accounted for 46% of the defendants. We expected that separate analyses would generate better estimates of various factors' effects on court disposition, because the type of offense charged could influence the impact of other factors.

When a defendant had more than one felony charge, his charges may have received different dispositions by the court. As the defendant's disposition, we chose the *worst* disposition received (from the defendant's point of view); the charge receiving the worst disposition was called the "principal" charge. We divided court dispositions into two primary categories—dismissal and sentencing. Dismissal simply meant that all of the defendant's felony charges were dismissed, usually by the prosecutor, and that no conviction of any charge resulted, not even a misdemeanor reduced from a felony. In the model, we used the logit (the logarithm of the odds) of dismissal as the dependent variable and employed a maximum likelihood method.[26]

Sentences were determined for all defendants who pled guilty to

[25] Of the 264 defendants who pled guilty to a felony with a written plea bargain, 25.4% received probation as recommended by the prosecutor as part of the bargain, and 29.5% received active prison sentences as recommended by the prosecutor. In collecting data on plea arrangements in which the state agreed to recommend a particular sentence, we counted only those that were approved by the sentencing judge pursuant to N.C. GEN. STAT. § 15A-1023(b) (1978).

[26] The odds of an event occurring (or the "odds ratio") are equal to the probability of its occurring divided by the probability of its *not* occurring. For example, if an event occurs with probablity .8, the odds of its occurrence are .8/.2 = 4, or "4 to 1." The maximum likelihood estimation procedure is explained in McFadden, *Conditional Logit Analysis of Qualitative Choice Behavior*, in FRONTIERS IN ECONOMETRICS 105 (Zaremka ed. 1973). We used the LOGIST

any felony or reduced misdemeanor or were convicted at trial, as well as the very few (twenty-three out of 1,378 defendants) who went to trial and were acquitted. The acquitted defendants were considered to have received "zero sentences" so that our analysis could account for the possible benefits as well as the possible disadvantages of going to trial rather than pleading guilty.

The sentence imposed on the defendant was expressed in three ways: (1) the odds[27] in favor of receiving any active imprisonment, (2) the total active maximum prison term imposed, and (3) the time until earliest possible release from prison on the term imposed.[28] When the defendant was either acquitted at trial or received a sentence involving no active imprisonment, both his total active maximum prison term and his time to earliest possible release from prison were considered to be zero.

The time to earliest possible release from prison on the defendant's sentence may be the best of our three measures of sentence severity. Presumably most defense attorneys, prosecutors and judges understand the basic rules of serving prison terms and take these rules into account in bargaining about the sentence. Conversations with practitioners suggest that the time to earliest release from prison may be the "coinage" of plea bargaining, because felony defendants considering a plea bargain involving imprisonment are most interested in how soon they may be released from prison.

In order not to confuse the effects of administrative variables with the effects of basic factors in the regression analysis, we used a hierarchical approach. First, the dependent variable in logarithm form was regressed on the basic factors; these included personal characteristics of

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procedure in the SAS language. *See* Harrell, *The LOGIST Procedure*, in THE SAS SUPPLEMENTAL LIBRARY USER'S GUIDE 3 (Reinhardt ed. 1980).

27 *See supra* note 26.

28 In the models of the last two sentence variables, the logarithms rather than the actual values were used to reduce the distorting effects of a few very severe sentences. One month was added to each value before computing its logarithm. If the defendant received a prison sentence, the time to earliest release from prison was computed as the least amount of time he could serve in prison before either becoming eligible for parole or being unconditionally discharged, whichever would come first. In a few instances, an inmate could be unconditionally discharged before becoming eligible for parole. When a defendant sentenced to imprisonment became eligible for parole immediately, we assigned a value of two months to his time or earliest release to allow for minimum administrative delay. (North Carolina's laws of parole eligibility are in N.C. GEN. STAT. §§ 15A-1371 to 1380.2, 148-49.15 (1978 & Supp. 1981).) The total maximum prison term was computed by selecting the longest of any group of concurrent prison terms, adding any consecutive terms, and then subtracting the time the defendant spent in pretrial detention, for which he must receive credit under N.C. GEN. STAT. ch. 15, art. 19A (1978). When the defendant received a nonprison sentence or was acquitted, both the total maximum prison term and the time to earliest release were considered zero.

the defendant—such as age, race, and sex—as well as aspects of the legal case against him—charge, criminal record, evidence, and victim-defendant relationships.[29] Next, basic factors not associated with the dependent variable at least at the .05 level were excluded. Then the dependent variable was regressed on the remaining basic factors plus administrative variables to form two additional models: (1) the "complete" model (including detention time, a binary attorney variable [assigned versus all other categories], and, if the dependent variable was sentence severity, whether the defendant went to trial or pled guilty); and (2) the "attorney differences" model (including a five-level attorney variable but excluding detention time and plea/trial). Before computing each model, we tested for multicollinearity; each independent variable was regressed using ordinary least squares on all other independent variables, and if the resulting R^2 exceeded .5, the variable was removed. In fact, the administrative variables (detention, attorney, and plea/trial) proved to have very little correlation with other independent variables.

Table 6 combines the results of all of these models, indicating the effects that tested significant at the .05 level, expressed as percentage increases (+) or decreases (−) for each unit increment in the corresponding independent variable.[30]

B. BASIC FACTORS

1. Defendant's Charge and Codefendants

As expected, the defendant's charge or charges and any codefendants influenced the final disposition. The seriousness of the initial principal charge, which we measured as the maximum prison term allowed by law for the offense, did not affect the odds that all of the defendant's charges would be dismissed, but it did significantly affect the severity of the sentence imposed on the defendant who pled guilty or went to trial. The sentence generally became more severe as the seriousness of the charge increased, for both Class 1 and Class 2 defendants (see Table 6). As more felony charges were initially filed against the Class 1 or Class 2 defendant, the odds that all charges would be dismissed decreased, and the likely severity of the sentence increased. We thought that the presence of codefendants would make dismissal more likely for each defendant, on the theory that there were more suspects available to "take the

[29] Although the county or prosecution was in a sense an administrative variable, it could not be "caused by" any other factor. It was included in the basic factors model.

[30] These percentages are actually the antilogarithms of the unstandardized coefficients, minus one. All binary independent variables had the value one when a condition was present and zero when it was absent.

TABLE 6

SUMMARY OF RESULTS OF MULTIVARIATE ANALYSIS OF COURT DISPOSITIONS IN TWELVE N.C. COUNTIES[2]

		COURT DISPOSITIONS							
		All Felony Defendants		Felony Defendants Who Pled Guilty or Went to Trial					
		Est. Effect on Odds of Dismissal		Est. Effect on Odds of Active Sentence		Est. Effect on Maximum Active Prison Term		Est. Effect on Time to Earliest Release from Prison	
		Class 1	Class 2	Class 1	Class 2	Class 1	Class 2	Class 1	Class 2
Explanatory Factors									
Charge and Codefendants	Seriousness of initial charge (each additional year of statutory maximum prison term)	b	b	+2.6%	b	+3.5%	+1.4%	+2.2%	+0.9%
	Each additional companion felony charge	−48.7%	−71.6%	+259.0%	+19.4%	+47.2%	+23.8%	+39.0%	+12.5%
	Each additional codefendant	+41.0%	b	b	b	b	b	b	b
Defendant's Criminal Record	Defendant on probation or parole	b	b	b	+346.7%	+193.0%	+211.3%	+114.3%	+81.7%
	Defendant had formerly served prison or jail sentence	m	m	m	m	m	m	m	m
	Each additional prior conviction in local court and police records	b	b	+26.5%	8.5%	b	+7.0%	c	+7.4%
Evidence and Injury	There was eyewitness available to testify against defendant	−70.3%	−56.5%	b	b	b	b	b	b
	Defendant confessed or made incriminating statement	−48.9%	−62.8%	b	−53.9%	b	−36.2%	b	−27.8%
	Stolen property was recovered	b	b	b	b	b	b	b	b
	There was some physical evidence against defendant	−43.0%	b	+219.5%	c	+110.4%	b	b	b
	No weapon was used (compared with firearm use)	b	x	+725.7%	x	+185.4%	x	b	x
	Weapon other than firearm used (compared with firearm use)	b	x	b	x	b	x	b	x
	There was physical injury to victim	−49.5%	x	b	x	b	x	b	x
	Each additional $100 of property loss or damage	b	b	c	b	−2.6%	b	b	c

TABLE 6 - CONTINUED

		COURT DISPOSITIONS							
		All Felony Defendants		Felony Defendants Who Pled Guilty or Went to Trial					
		Est. Effect on Odds of Dismissal		Est. Effect on Odds of Active Sentence		Est. Effect on Maximum Active Prison Term		Est. Effect on Time to Earliest Release from Prison	
		Class 1	Class 2	Class 1	Class 2	Class 1	Class 2	Class 1	Class 2
Victim	Victim was friend or relative of defendant	b	+174.3%	c	b	b	b	b	b
	Victim was female	b	b	b	b	b	b	b	b
	Victim was black	m	b	m	b	m	b	m	b
	Victim was under 18 years of age	b	x	x	x	x	x	x	x
Demographic Characteristics of Defendant	Age 21-25 (compared with under 21)	c	b	b	b	b	b	+64.8%	+35.7%
	Age 26-30 (compared with under 21)	b	b	b	b	b	b	b	b
	Age over 30 (compared with under 21)	b	+95.7%	−65.8%	b	b	b	b	b
	Defendant was black	b	b	b	c	b	c	b	c
	Defendant was female	b	b	x	b	x	b	x	b
	Defendant was local county resident	b	b	b	b	b	b	b	b
	Defendant was unemployed	b	b	b	b	b	b	b	b
	Defendant was married	b	b	b	b	b	b	b	b
County of Prosecution	Buncombe (compared with Mecklenburg)	b	b	−86.4%	b	b	b	c	b
	Craven (compared with Mecklenburg)	b	−69.8%	−83.9%	b	b	b	b	b
	New Hanover (compared with Mecklenburg)	−71.9%	−64.8%	b	b	b	b	b	b
	Rockingham (compared with Mecklenburg)	−95.0%	c	b	b	b	b	b	b
	Seven smaller (compared with Mecklenburg) counties	−61.2%	b	b	b	+150.7%	b	b	b
Administrative Variables	Pretrial detention time (each additional 10 days)	−17.1%	−9.8%	c	+10.0%	+7.4%	+10.0%	+5.7%	+5.2%
	Assigned attorney (compared with privately paid plus "none" plus "unknown")	b	−52.1%	c	+211.1%	c	+97.5%	c	+34.3%
	Defendant had complete trial (compared with guilty plea)	x	x	c	c	c	+78.4%	c	c

TABLE 6 - CONTINUED

	COURT DISPOSITIONS							
	All Felony Defendants		Felony Defendants Who Pled Guilty or Went to Trial					
	Est. Effect on Odds of Dismissal		Est. Effect on Odds of Active Sentence		Est. Effect on Maximum Active Prison Term		Est. Effect on Time to Earliest Release from Prison	
	Class 1	Class 2	Class 1	Class 2	Class 1	Class 2	Class 1	Class 2
Individual-appointed attorney[c] (compared with private attorney)	−60.0%	−47.2%	a	+285.9%	a	+132.5%	a	+42.2%
Public defender[c] (compared with private attorney)	a	a	a	+235.9%	a	+78.2%	a	+35.8%
No attorney[c] (compared with private attorney)	a	+170.0%	a	a	a	a	a	a
Unknown attorney status[c] (compared with private attorney)	+499.6%	+446.5%	x	a	a	a	a	a
Number[a] of Defendants (N)	(317)	(609)	(178)	(411)	(178)	(411)	(178)	(411)
Per Cent of Variance Explained[a] (R^2)	(22.5%)	(21.3%)	(26.7%)	(20.1%)	(56.7%)	(38.3%)	(58.6%)	(37.8%)

Legend

b = tested in "basic factors" model and found not to have significant effect
c = tested in "complete" model and found not to have significant effect
a = tested in "attorney differences" model and found not to have significant effect
x = not tested because inapplicable or too few defendants had this characteristic
m = not tested because of collinearity with other variables

[a]R^2 and N are given only for "complete" models as explained in text.
[b]All percentage effects shown are from "complete" model except for those in "attorney differences" model.
[c]Effects shown are from "attorney differences" model.

rap." We found the presence of codefendants to be significantly associated with greater odds of dismissal for Class 1, but not Class 2, defendants.

2. *Defendant's Prior Criminal Record*

A defendant's prior criminal record was not significantly associated with the likelihood that all charges would be dismissed, but it was associated with severity of the sentence he received if the charges were not dismissed. Being on probation or parole at the time of prosecution meant a much greater chance of receiving an active prison sentence for Class 2, but not Class 1, defendants. It also meant a longer maximum prison term and longer time to serve before earliest possible release from prison for both Class 1 and Class 2 defendants. Finally, the number of prior convictions was positively associated with severity of sentence; the more prior convictions, the greater the odds that a defendant would receive an active prison sentence. Moreover, for Class 2 defendants, as the number of prior convictions increased, so would the length of the likely prison term and the time to earliest possible release from prison.[31]

3. *Defendant's Social and Economic Characteristics*

The defendant's age evidently had little impact on the court's final disposition. The only clear effect of age was that defendants aged twenty-one to twenty-five received more severe sentences than defendants under twenty-one, not with respect to their likelihood of receiving an active prison term or the length of their maximum prison term, but with respect to the time to earliest release from prison.[32] Notably, other age groups—defendants twenty-six to thirty and those over thirty—did not differ significantly from those under twenty-one, with two exceptions: those over thirty in Class 2 were more likely to have their charges dismissed, and those over thirty in Class 1 were more likely to avoid imprisonment than those under twenty-one.

The chance that a defendant's charges would be dismissed was not significantly associated with the defendant's race, but if he was charged with a Class 2 offense, sentence severity was associated with race. Black Class 2 defendants received significantly more severe sentences than white Class 2 defendants; black defendants had a 73% greater chance of receiving a prison sentence, a 57% longer total maximum prison term,

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[31] Prior convictions were determined from the court records pertaining to the county of prosecution and also from local police files; the latter sometimes indicated convictions outside the county, but not consistently. These records were the best available indication of what the parties in the case knew about the defendant's prior convictions at the time of prosecution.

[32] Defendants under age 21 at the time of conviction could be sentenced as "committed youthful offenders," which would make them eligible for parole immediately. N.C. GEN. STAT. §§ 148-49.10 to -49.16 (1978).

and a 26% longer time to earliest release from prison.[33]

Black defendants suffered a disadvantage in sentencing apparently because blacks charged with Class 2 felonies, but not those charged with Class 1 felonies, were more likely than whites to have court-assigned rather than privately paid lawyers and spent a longer time in pretrial detention.[34] When type of counsel and detention time were added to the regression model for Class 2 defendants (see Table 6), the race effect disappeared. As a result, what at first appeared to be a racial effect may actually be due to blacks' lower incomes, which would have limited the type of counsel available to them and their opportunity for pretrial release.[35]

Other demographic characteristics, including the defendant's sex, marital status, residence within or outside the county of prosecution, and employment status, showed no significant relationship to court disposition.

4. Evidence Against the Defendant

A defendant charged with a Class 1 or Class 2 felony was significantly less likely to have all charges dismissed if (1) the prosecution could call an eyewitness or (2) the defendant had confessed or made an incriminating statement. Also, having confessed or having made an incriminating statement was associated with less severe sentences for Class 2 defendants. One possible explanation for this association is that a confession, like a guilty plea, may be regarded as a sign of contrition and therefore may lead the sentencing judge to reduce the defendant's sentence.

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33 These estimated race effects are not shown in Table 6 for reasons explained in the next paragraph.

34 *See infra* notes 40-48 and accompanying text.

35 No reliable data on defendants' incomes were available in the court and police records. The data on type of counsel and pretrial detention suggest that blacks' disadvantages were at least partly attributable to lower incomes. Among Class 2 defendants whose charges were not dismissed, the proportions who had assigned counsel were as follows: blacks, 81.6% (N=217); whites, 51.7% (N=207). The mean pretrial detention times for Class 2 defendants whose charges were not dismissed were: blacks, 27.1 days (N=211); whites, 12.8 days (N=198). We did not find such discrepancies between black and white defendants in Class 1. Among Class 1 defendants whose charges were not all dismissed, 63.6% of blacks had assigned counsel, compared with 67.1% of whites, and blacks spent an average of 32.7 days in pretrial detention, compared with 35.3 days for whites. One reason why the disparity in detention times between blacks and whites occurred in Class 2 but not in Class 1 may be that, in Class 2, blacks were, on the average, poorer than whites, but not in Class 1. We have no direct data on defendants' incomes; however, the figures just mentioned show that, for purposes of assigning counsel, in Class 2 the percentage of black defendants found indigent was greater than the percentage of white defendants who were found indigent, but the two percentages were approximately equal in Class 1. Another reason for the absence of the disparity in pretrial detention between blacks and whites in Class 1 may be that Class 1 (violent) felony charges were so serious that they overcame both blacks' disadvantages and whites' advantages.

For violent felony defendants in Class 1, the existence of any sort of physical evidence meant both a lower chance of dismissal and a more severe sentence. If the crime resulted in substantial physical injury to the victim beyond the minimum amount necessary to sustain the charge, the chance that Class 1 charges would be dismissed was reduced, but the effect on sentencing was nil.[36] The recovery by the police of stolen property and the extent of the property loss caused by the crime had no significant effect on either dismissal or severity of sentence. It should be remembered, however, that physical injury and property loss were to some extent correlated with the severity of the initial charge against the defendant, which *did* have an effect on sentencing, as explained above.

The regression analysis also indicated that for violent felonies, the defendant who had not used a weapon could expect a much more severe sentence; this defendant would likely be sentenced to lengthy imprisonment. Such a result seems absurd—the absence of a weapon would seem to be a mitigating, not aggravating factor. This peculiar result, however, is probably due to the particular type of violent offense charged. Class 1 defendants who did not use any weapon were much more likely than weapon-using violent felony defendants to have been charged with and convicted of rape, common law robbery, and arson or other burning crimes, which legally do not require a weapon. Defendants convicted of such crimes were more likely to receive prison sentences, and longer ones, than most other violent felony defendants.

5. Characteristics of the Victim

The chance that the Class 2 defendant's charge would be dropped increased if the defendant was related to or acquainted with the victim. We anticipated that the criminal court would tend to treat more leniently defendants who had some pre-existing relationship with their victims, because related victims would generally have been more reluctant to testify against the defendant than would unrelated victims, and also because a pre-existing relationship would have been associated with extenuating circumstances favorable to the defendant. Thus, we expected to find that such a relationship would work to the defendant's advantage in violent felony (Class 1) cases as well as in theft felony (Class 2)

[36] Determination of whether substantial physical harm was alleged was based on police and court records and was somewhat subjective. Coders were instructed to try to determine whether the degree of physical harm was substantially in excess of the minimum amount necessary to prove the elements of the offense charged. If homicide was charged, the killing had to be extremely brutal or cruel for the harm to be coded as "substantial." In other words, our intent was to measure a degree of harm more severe than that implied by the charge itself. It may be that the lack of statistical association between our physical harm variable and sentencing severity is simply due to inadequate information.

cases. Yet, we could confirm this effect only in the latter category. Nonetheless, victim-defendant relationships in Class 1 cases may have had an effect that was expressed at the initial decision about what crime to charge, which we did not study, rather than at the later decision to dismiss charges.

C. ADMINISTRATIVE FACTORS

1. County in Which Prosecution Occurred

The statistical analysis of the association between court disposition and county of prosecution illustrates that within the single jurisdiction of North Carolina local administrative practices and policies cause substantial variation in defendants' final dispositions. Previous studies of North Carolina support this point.[37]

Charges against both Class 1 and Class 2 defendants were generally more likely to be dismissed in Mecklenburg and Buncombe counties than in the other ten counties studied, when differences in the characteristics of cases were controlled for statistically. The greater dismissal rates in these two counties suggest that there was something distinctive about the handling of felony cases there.[38] The distinctive characteristic may well have been that their prosecutors, unlike prosecutors in the other ten counties, used formal systems to screen felony charges soon after arrest.[39]

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[37] Prosecutors' plea bargaining practices vary widely from district to district in North Carolina. *See* Bond, *supra* note 18, at 823, and Lefstein, *supra* note 18, at 489-94.

[38] Another factor may have been that in Buncombe County, the rate of dismissals of felonies by district court judges was high—15.6%, compared with 5.9% for all twelve counties. Does prosecutorial workload explain the higher dismissal rates in Buncombe and Mecklenburg counties? Perhaps, but only partly. Three measures of workload were developed: (1) the number of arrests for F.B.I. "index" crimes per prosecuting attorney; (2) the estimated number of felony arrests per prosecuting attorney; and (3) the total arrests per prosecuting attorney. These three measures, computed for 1979, produced very similar rankings for the twelve judicial/prosecutorial districts in which the twelve counties were located. Workload indices were then created by computing the ratio of each district's workload measure to the workload of District 1 which generally had the lowest workload measures. District 28 had the highest workload index; its felony arrests per prosecutor were 2.6 times as great as those of District 1. The workload of Mecklenburg County, District 26, however, was not especially high. It had a felony arrest workload 1.7 times as great as that of District 1, which placed it "in the middle of the pack" with respect to the twelve counties. Also, one might suppose that New Hanover County's low dismissal rate was the product of an exceptionally low prosecutorial workload, but this did not prove to be the case; the felony arrest workload of District 5, including New Hanover County, was 1.9 times as great as District 1's.

[39] New Hanover County's prosecution was distinctive in another way. Its prosecutors dismissed only 10.1% of the felony defendants' charges at the district court stage, compared with 20.2% in all twelve counties. Of New Hanover's defendants 76.7% went to the grand jury and superior court, compared with 51.6% in all twelve counties. Its felony guilty plea rate was higher than the rate for all twelve counties (40.1% compared with 27.4%), and its jury trial rate was nearly twice as high as the twelve-county rate (10.6% compared with 5.8%). But although tougher prosecution in New Hanover County apparently produced more con-

2. *Pretrial Detention*

As the Class 1 or Class 2 defendant spent more time in detention awaiting court disposition, it became less likely that the charges would be dismissed and more likely that the sentence would be severe. This result agrees with much research in other jurisdictions.[40]

Several factors may explain the link between pretrial detention and court disposition. First,[41] the defendant who is free before court disposition has certain potential advantages that the jailed defendant lacks: acquiring or maintaining a job, making restitution to the victim, and doing other things that may favorably impress the court. The free defendant can also help the defense attorney by obtaining favorable witnesses and evidence. All of these things will help the accused argue for dismissal, a beneficial plea bargain, or a lenient sentence. As the length of pretrial detention increases, the defendant is less likely to be able to do these advantageous things. In addition, it will be harder for his attorney to see the accused in jail—the lawyer will have to take valuable time to go to the jail, where there is often neither proper space nor atmosphere for a conference. Finally, the defendant may be more willing to accept a disadvantageous plea bargain offer after having spent a long time in jail.

Another factor contributing to the association between pretrial detention and the type of disposition the defendant receives is that releasing the defendant before disposition may weaken the prosecution by intimidating potential state's witnesses. But such intimidation probably

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victions, the regression analysis indicated that sentences were not significantly more severe for those convicted.

[40] Early studies showed that defendants released before trial were more likely to receive favorable court disposition than defendants who were not released, but these studies failed to control for other factors that might explain *both* detention and disposition. *See* Ares, Rankin & Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole*, 38 N.Y.U. L. REV. 67 (1963); Foote, *A Study of the Administration of Bail in New York City*, 106 U. PA. L. REV. 693 (1958); Foote, *Compelling Appearance in Court: Administration of Bail in Philadelphia*, 102 U. PA. L. REV. 1031 (1954); Rankin, *The Effect of Pretrial Detention*, 39 N.Y.U. L. REV. 641 (1964); Single, *The Unconstitutional Administration of Bail: Bellamy v. The Judges of New York City*, 8 CRIM. L. BULL. 459 (1972). William Landes' study was the first to (a) control carefully for other potential causal factors and (b) analyze the *time in detention* as well as whether the defendant was released. His study of New York City defendants found that pretrial detention time was positively associated with sentence length. *See* Landes, *Legality and Reality: Some Evidence on Criminal Procedure*, 23 J. LEGAL STUD. 287, 333-35 (1974). John S. Goldkamp, also using a multivariate technique, found in his analysis of Philadelphia cases that defendants who received no pretrial release were more likely to go to prison if convicted, and tended to receive a longer sentence, than those who did receive release. Goldkamp did not consider the time spent in detention. *See* Goldkamp, *The Effects of Detention on Judicial Decisions: A Closer Look*, 253 JUS. SYS. J. 234, 245 (1980).

[41] Our source for this explanation is conversations with defense attorneys in North Carolina, as well as AMERICAN BAR ASSOCIATION STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: PRETRIAL RELEASE § 10-1.1 and commentary (2d ed. 1980).

occurs only in a few cases involving serious violent crimes or defendants reputed to be dangerous. Many released defendants may be tempted to intimidate witnesses but are probably deterred from doing so by fear of exacerbating their position.

A third consideration is that the relationship between pretrial detention and court disposition could be explained by other factors—such as the defendant's charge or criminal history or the strength of the evidence against him—that affect *both* the conditions of pretrial release (such as the bail bond) and the defendant's eventual disposition.[42] This is a plausible explanation, but our data did not support it. We found that very little of the variation in pretrial detention time could be explained by seriousness of charge, prior convictions, evidence, and similar variables. In other words, it was common for two defendants to be alike with respect to charge, prior convictions, and other relevant criteria, but to spend very different amounts of time in pretrial detention. This point is illustrated by Table 7, which will be discussed presently.

Our analysis suggests that there was simply a good deal of random variation in the setting of pretrial release conditions. That such variation could occur is not surprising. Decisions about pretrial release conditions are made by a number of different officials (usually magistrates), are not closely supervised, and are almost never reviewed by appellate courts. Also, there is probably much random variation in the time required for courts to arrive at their final dispositions, which also affects the length of time spent in jail by detained defendants.[43]

Even though we found little relationship between pretrial detention time and other basic factors, our analysis was designed to neutralize the possible contribution of other factors. We measured the effects of pretrial detention, *controlling for* seriousness of charge, prior convictions, evidence against the defendant, and other variables that might possibly affect both pretrial detention and court disposition.

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[42] If the defendant has a serious charge or an extensive criminal history or if there is strong evidence against him, the magistrate may tend to set a high secured bail bond, and in later hearings the prosecutor may recommend either that a higher bond be set or that the original bond not be reduced. These same factors (serious charge, extensive record, and strong evidence) may also make it unlikely that the prosecutor will dismiss the defendant's charge and increase the probability that the defendant will receive a substantial active sentence.

[43] Another reason why the variation in pretrial detention could not be statistically explained well with our data is that our data—limited to court and police records—did not include all the information that in fact determined the pretrial release decision. To the extent that we inadvertently omitted legally relevant information from our data, our study was incomplete, but we do not regard omission of legally irrelevant information as a deficiency of the study.

TABLE 7

DISMISSAL AND SENTENCE BY DETENTION TIME, CONTROLLING FOR "RISK"[a]—CLASS 2 FELONIES

		All Defendants		Defendants Not Dismissed (Pled Guilty or Went to Trial)					
		(1.) Proportion with all Charges Dismissed	(N)	(2.) Proportion Receiving Active Time	(N)	(3.) Mean Total Active Maximum Sentence	(N)	(4.) Mean Time (Months) to Earliest Possible Release	(N)
Low Risk	All Low Risk Defendants	0.6087	(207)	0.1338	(142)	2.2304	(142)	0.3866	(142)
	No pretrial detention	0.7053	(95)	0.0976	(82)	1.5447	(86)	0.3846	(88)
	Low pretrial detention[b]	0.5507	(69)	0.1316	(38)	2.0322	(37)	0.3526	(37)
	High pretrial detention[b]	0.4857	(35)	0.4286	(14)	8.3598	(13)	0.6667	(12)
Moderate Risk	All Moderate-Risk Defendants	0.3088	(217)	0.3655	(145)	11.6258	(145)	2.3299	(145)
	No pretrial detention	0.3367	(98)	0.3077	(52)	10.8008	(46)	2.1002	(43)
	Low pretrial detention[b]	0.3036	(56)	0.3617	(47)	9.1421	(53)	1.7696	(51)
	High pretrial detention[b]	0.2593	(54)	0.4762	(42)	17.6092	(40)	3.4951	(45)
High Risk	All High-Risk Defendants	0.0574	(209)	0.7659	(141)	48.7152	(141)	10.8173	(141)
	No pretrial detention	0.0735	(68)	0.6818	(22)	31.1763	(24)	6.4772	(25)
	Low pretrial detention[b]	0.0727	(55)	0.6364	(44)	28.9723	(39)	4.7044	(41)
	High pretrial detention[b]	0.0256	(78)	0.8714	(70)	64.2988	(73)	16.2225	(69)

[a]"Risk" levels are defined in four different ways for the four columns of this table. Low, moderate, and high "risk" correspond to the first, second, and third tertiles of the values of log odds of dismissal (col. 1), log odds of active prison time (col. 2), log of total active maximum sentence (col. 3), and log of time to earliest release (col. 4) predicted from regression models which included all basic factors (offense severity, number of felony charges, prior convictions, evidence, etc.) but not attorney type, detention time, and plea/trial. (Separate risk scores using only basic factors significant at the .05 level were also computed. The two different risk scores were correlated between .92 and .96.)

[b]Low detention time includes all nonzero detention times not exceeding the median nonzero detention time (15 days) for this offense class.

The regression analysis indicated that each additional ten days of pretrial detention corresponds to lower odds of dismissal of all charges. The odds of dismissal were an estimated 17% lower per ten days detention for Class 1 defendants and 10% lower per ten days detention for Class 2 defendants. Each ten days of detention was also associated with increased sentence severity; this was reflected in higher odds of receiving an active sentence, a longer maximum prison term, and a longer time to earliest release from prison (see Table 6). Thus, the regression analysis tells us that when two defendants and their cases were alike, but one defendant spent more time in pretrial detention than the other, the former defendant was less likely to have his charges dismissed than the latter and was also more likely to receive a stiffer sentence if convicted.

The relationship between detention time and court disposition is illustrated in Table 7.[44] In the table, Class 2 defendants are divided into low, moderate, and high "risk groups," depending on the likelihood of dismissal, probablity of receiving an active sentence, expected maximum prison term, and expected time to earliest release from prison, as predicted from such basic factors as the seriousness of their charges, their criminal record, and the type of evidence against them. Within each "risk group," defendants were further divided into subgroups depending on how much time they spent in pretrial detention: "none" (or up to one day); "low" (not exceeding the overall median time of fifteen days); and "high" (more than fifteen days). Table 7 shows the totals in each group and subgroup in parentheses. An inspection of the subgroup totals indicates that, although high-risk defendants tended to receive longer pretrial detention, a substantial number of high-risk defendants spent little time in pretrial detention. Conversely, a substantial number of low-risk defendants spent much time in pretrial detention. This illustrates the point made earlier that similarly-situated defendants may spend quite different amounts of time in detention. Within each risk group, as detention time increased, (1) the proportion of defendants whose charges were dismissed decreased, and (2) the three measures of severity of sentence generally increased. The most pronounced differences can be seen by comparing high detention-time defendants with all other defendants in each risk group.

3. Type of Attorney

We hypothesized that a felony defendant would tend to be at a disadvantage if represented by assigned counsel rather than by private counsel. In North Carolina, assigned counsel may be either a full-time

[44] Table 7 deals only with defendants charged with Class 2 offenses. A similar table has been prepared for Class 1 defendants. Although not published in this Article, it is similar to Table 7 for purposes of the point made in this paragraph.

salaried public defender or an attorney in private practice individually appointed by the court.[45] We suspected that privately retained defense attorneys earned more, on the average, for their work than either individually appointed counsel or public defenders.[46] Also, privately retained attorneys may have had lower caseloads, and therefore could spend more time per case, than assigned counsel. Finally, we thought that privately retained counsel would tend to be more experienced than assigned counsel.

In the "attorney differences" regression model, each of the two forms of counsel for indigent defendants was compared with privately retained counsel, and each was compared with the other.[47] We expected that public defenders might prove more effective than individually appointed counsel because public defenders are full-time specialists who have the support of an experienced organization, while individually appointed lawyers may not do criminal work full-time and often do not have the support of a specialized criminal defense firm.[48]

We statistically compared the type of counsel with the defendant's

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[45] Attorneys are appointed pursuant to a plan adopted by the local district bar. N.C. GEN. STAT. § 7A-459 (1981); North Carolina State Bar Council, *Regulations Relating to the Appointment of Counsel for Indigent Defendants in Certain Criminal Cases* (N.C. GEN. STAT. Vol. 4A, Appendix VIII, Art. IV).

[46] The average individually-appointed attorney's fee in a criminal case was about $158 at the time of our study. *Annual Report of the [N.C.] Administrative Office of the Courts 1978-79*, at 59-62 (1980). This figure would be somewhat higher if only felony cases were considered in the computation. We have no information on the average private attorney's fees but believe them to be much higher. The average yearly salary of public defenders and assistants in 1979 was about $26,000, according to the Director of the Administrative Office of the Courts. While the public defenders' salaries were on a par with those of prosecutors, they probably earned less than many private defense attorneys. Also, attorneys whose work is mainly with defendants who pay them privately may have lower caseloads than attorneys who represent indigents and thus be able to spend more time per case.

[47] As Table 6 indicates, having no attorney and having an unknown attorney status were treated as separate factors in the statistical analysis. The analysis indicated that defendants were much more likely to have all their charges dismissed if they had no attorney or if their attorney status was unknown. This peculiar result is probably explained by the fact that when a defendant's charges were dismissed early in the district court stage of processing, very often either (a) there was not time to obtain an attorney, or (b) information on the attorney tended to be missing from the court records, and hence the attorney status was coded "unknown."

[48] A 1975 study by the North Carolina Bar Association Foundation found evidence that public defenders were more effective than individually appointed counsel, with respect to both conviction rates and the proportion of defendants receiving prison sentences. N.C. BAR ASSOCIATION FOUNDATION, FINAL REPORT OF THE SPECIAL COMMITTEE ON INDIGENT LEGAL SERVICES DELIVERY SYSTEMS (1976) [hereinafter cited as FINAL REPORT]. The Special Committee recommended a statewide criminal defense organization headed by a chief public defender as part of a non-profit corporation providing both civil and criminal services to indigents throughout the state. It also recommended that uniform fee schedules be set based on the type of proceeding rather than the current hourly rate; that public defender branch offices be implemented in urban areas where economically feasible; that the corporation board determine which areas should have defender branch offices, an individually-appointed counsel system, or a combination of the two; and that there be uniform financial guidelines

disposition (see Table 6). The likelihood that all of a defendant's charges would be dismissed was lower if the defendant was represented by individually appointed counsel than if he was represented by privately retained counsel. For Class 1 defendants the odds were an estimated 60% lower, and for Class 2 they were approximately 47% lower. But the odds did not differ significantly between defendants represented by a public defender and those represented by privately retained counsel. With regard to severity of sentence, the type of attorney apparently made no difference when the defendant was charged with a violent Class 1 felony. The defendant charged with a Class 2 felony, such as larceny or breaking or entering, was at a disadvantage in sentencing if represented by either form of assigned counsel rather than privately paid counsel; this defendant was more likely to receive a prison sentence, to receive a longer maximum prison term, and to serve more time in prison. The specific form of assigned counsel apparently did not affect sentence severity. In other words, for both Class 1 and Class 2 defendants, there were no significant sentence differences between those represented by individually appointed lawyers and those represented by public defenders. Thus, the analysis suggests that public defenders were more successful than individually appointed counsel in obtaining dismissals for felony defendants, but not in obtaining lenient sentences for convicted defendants.

4. Trial Versus Pleading Guilty

We expected that defendants who chose to plead guilty rather than go to trial would be likely to receive more lenient sentences because of (1) charge reduction, (2) favorable sentence recommendations by the prosecutor, or (3) favorable sentencing decisions by the judge. Concessions in charge and sentence are frequently offered as inducements to plead guilty and are recognized as legitimate forms of plea bargaining.[49] Conversely, we anticipated that the defendant who was convicted at trial would tend to receive a more severe sentence than the one who pled guilty, for several possible reasons. First, the tried defendant would be denied the customary reward for pleading guilty; second, aggravating

for determining indigency. *Id.*, Recommendations XVIII, XX, XXI, XXIII, and XXVI, at 23-32.

[49] The ABA Standards approve concessions for pleading guilty, but only where (1) the defendant is genuinely contrite, (2) the concession serves a rehabilitative purpose, (3) the defendant demonstrates consideration for the victim, or (4) the defendant assists the prosecution of other offenders. AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: PLEAS OF GUILTY, (2d ed. 1980) § 14-1.8, commentary at 14-17. In Brady v. United States, 397 U.S. 742, 750-53 (1970), the Supreme Court upheld the constitutionality of the state's granting a concession to the defendant who "in turn extends a substantial benefit to the State" by pleading guilty. *Id.* at 753.

factors could be brought out at trial that would not have emerged in plea bargaining, or the defendant could be penalized for what was perceived as lying testimony at trial; and finally, the court could tacitly punish the defendant for exercising the right to trial. Punishing the defendant for choosing a trial is clearly improper,[50] but the everyday experience of criminal trial lawyers suggests that it occasionally occurs.

In fact, there was a marked contrast between plea and trial sentences. For those Class 1 (violent felony) defendants who were convicted pursuant to a guilty plea, the proportion receiving active sentences was 56%; for those convicted at trial, the active sentence proportion was 77%. The median total maximum prison term was three months for those who pled guilty and seventy-seven months for those convicted at trial. Those Class 2 defendants who were convicted faced an active sentence rate of 40% when they pled guilty and 91% when they were convicted at trial. The median total active maximum prison term was zero months for those who pled guilty and thirty-six months for those convicted at trial. Apparently the more severe sentences for trial convictions were not due simply to the fact that only high-risk defendants went to trial. Regressing the decision to go to trial on "sentence risk" variables such as charge and criminal record, we obtained R^2 values of only .08 for Class 1 defendants and .09 for Class 2 defendants. For this reason, we do not believe that the decision to go to trial depended primarily on "sentence risk."

Further inspection of the data suggests that going to trial was associated with more severe sentences when the defendant was in a moderate- or high-risk group with respect to sentence severity.[51] Table 8 compares defendants who pled guilty to those who went to trial with respect to three measures of sentence severity: (1) percentage sentenced to active imprisonment; (2) mean total active prison term imposed; and (3) mean time to earliest release from prison. Class 1 and Class 2 defendants were compared separately and plea/trial comparisons were made within each risk group.

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50 AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: PLEAS OF GUILTY, (2d ed. 1980) § 14-1.8, commentary at 42-49. *See* State v. Boone, 33 N.C. App. 378, 380-81, 235 S.E.2d 74, 77, *aff'd*, 293 N.C. 702, 239 S.E.2d 459 (1977), which held that the defendant's right to trial was violated when the judge said on the record that he was imposing an active prison sentence because the defendant had refused to plead guilty, even though the judge was unfamiliar with the defendant's character and record.

51 "Risk" was determined, as in Table 7, from the seriousness of the charge, criminal record, and other basic factors.

TABLE 8

TWELVE-COUNTY SAMPLE: SENTENCE BY WHETHER DEFENDANT PLED GUILTY OR WENT TO TRIAL, CONTROLLING FOR "RISK"[a] (NS IN PARENTHESES)

		Percentage Receiving Active Time		Mean Total Active Prison Term in Months		Mean Time to Earliest Possible Release from Prison in Months	
		Class 1	Class 2	Class 1	Class 2	Class 1	Class 2
Low Risk	All Low-Risk Defendants	11% (61)	14% (142)	3.29 (61)	2.23 (142)	.46 (61)	.39 (142)
	Pled guilty or no contest	13% (52)	14% (137)	3.72 (54)	2.31 (137)	.47 (51)	.39 (139)
	Went to trial[b]	0% (9)	0% (5)	.00 (7)	.00 (5)	.40 (10)	.00 (3)
Moderate Risk	All Moderate-Risk Defendants	67% (61)	37% (145)	20.56 (61)	11.63 (145)	4.63 (61)	2.33 (145)
	Pled guilty or no contest	67% (45)	36% (137)	19.51 (46)	11.46 (137)	4.22 (47)	2.27 (134)
	Went to trial[b]	69% (16)	50% (8)	23.76 (15)	14.41 (8)	6.03 (14)	3.08 (11)
High Risk	All High-Risk Defendants	92% (60)	77% (141)	319.46 (60)	48.72 (141)	87.97 (60)	10.82 (141)
	Pled guilty or not contest	93% (45)	75% (122)	284.95 (42)	41.58 (122)	84.71 (44)	9.33 (123)
	Went to trial[b]	87% (15)	89% (19)	399.98 (18)	94.54 (19)	96.96 (16)	20.97 (18)

[a]See footnote 1 to Table 7. Excludes defendants whose charges were dismissed.
[b]Acquittal treated as "zero sentence."

Most defendants who went to trial were in the moderate- or high-risk categories. Thus low-risk defendants tended to plead guilty, and moderate- and high-risk defendants were more likely to go to trial. This suggests that low-risk defendants received more advantageous plea bargain offers, while moderate- and high-risk defendants were less likely to be offered an acceptable plea bargain and therefore were more likely to take a chance on trial.

The sentence comparisons among low-risk defendants differed from those for moderate- and high-risk defendants. In all six comparisons, low-risk defendants who went to trial received somewhat less severe sentences than those who pled guilty. In fact, they usually were acquitted or received probation without imprisonment. For moderate- and high-risk defendants, however, in eleven out of twelve comparisons defendants who went to trial received more severe sentences, even accounting for the few who were acquitted. Table 8 suggests an interaction effect: going to trial rather than pleading guilty may have meant a better outcome for the defendant if he was originally in a low-risk category, but a worse outcome if he was in a moderate- or high-risk category.

For a further test of the plea/trial sentence differential,[52] we regressed the various measures of sentence severity on the variable TRIAL, which was equal to one if the defendant completed a trial and zero otherwise, plus variables from the "basic factors" model, as well as pretrial detention time and type of counsel. In five out of six regression models (see Table 6), TRIAL's coefficient did not test significantly different from zero. These results suggest that, contrary to the sentence comparisons discussed above, there may have been no significant sentence advantage for the defendant who pled guilty, nor a significant sentence disadvantage for the defendant who went to trial. But we do not regard the regression results as conclusive for two reasons. First, the sample of defendants who went to trial was very small—only forty out of 182 in Class 1 and thirty-two out of 428 in Class 2. A larger sample might have revealed a significant difference. Second, the positive effect of trial on sentence severity for moderate- and high-risk defendants may have been partly offset by a negative effect of trial on sentences for low-risk defendants, as suggested by Table 8.

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52 In our regression analysis of sentence severity, the test for a possible plea/trial differential was a conservative one, in the sense that it reflected the possible *advantage* of going to trial as well as the possible disadvantage. The defendant who went to trial had the possible advantage of being acquitted. We included in the model the few defendants acquitted at trial along with those convicted at trial and those who pled guilty. Acquittal was treated as a "zero sentence."

5. *Comparison with Rhodes Study of Plea/Trial Sentence Differential: Further Reflections*

William Rhodes studied the dispositions in the Superior Court of Washington, D.C. of arrests made in 1974.[53] As in the present study, Rhodes followed defendants from arrest to their final trial court disposition. In his four separate analyses of defendants initially charged with robbery, larceny, burglary, and assault, Rhodes found a plea/trial sentence differential only with regard to robbery defendants, and not with respect to larceny, burglary, or assault defendants. Thus, his results were quite different from ours.

The gross disposition rates of the Washington defendants were quite different from the rates of the North Carolina defendants. The dismissal rate (rejection plus nolle prosequi) ranged from 60 to 70% for the groups of Washington defendants, while for the North Carolina felony defendants the dismissal rate was only 34%.[54] Trial rates were higher for the Washington defendants though, ranging from 9 to 11%, as compared with about 6% for the North Carolina defendants. Furthermore, the ratio of guilty pleas to trials was much lower for the Washington defendants, ranging from a low of 1.75 to 1 to a high of 2.78 to 1, compared with 8.33 to 1 for the North Carolina defendants. Prosecutors in Washington apparently disposed of a much higher proportion of defendants by dismissal than did North Carolina prosecutors, but the remaining defendants were much less likely to plead guilty thereafter and more likely to go to trial. Perhaps Washington prosecutors, unlike North Carolina prosecutors, gave defendants concessions "up front" by using their power to dismiss charges, but having accepted a case for prosecution, offered little inducement to plead guilty.

Rhodes compared sentences actually received by defendants who pled guilty to sentences received by those who were convicted at trial. For assault, larceny, and burglary defendants, Rhodes found almost no plea/trial difference in the severity of sentences, either in terms of the percentage receiving active prison sentences or in the length of active sentences, although the sentences of robbery defendants who pled guilty were considerably less severe than the sentences of those convicted at trial.[55] In contrast, the North Carolina data showed very large differ-

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53 W. RHODES, PLEA BARGAINING: WHO GAINS? WHO LOSES? (1978); Rhodes, *Plea Bargaining: Its Effect on Sentencing and Convictions in the District of Columbia*, 70 J. CRIM. L. & CRIMINOLOGY 360 (1979).

54 Note that Rhodes' "assault" and "larceny" categories probably included many charges that would be misdemeanors in North Carolina and thus would be excluded from our study.

55 Rhodes speculates that the reason why robbery defendants' situation was different was that they faced a high probability of active time if convicted at trial (about 75%) and thus their counsel negotiated more earnestly for a plea bargaining concession affecting the sentence. Assault, larceny, and burglary defendants, whose likelihood of an active sentence at

ences between plea and trial sentences for all these kinds of offenses.

Rhodes developed a regression model for sentencing severity, applying it only to those defendants who were convicted at trial. He then applied the model to defendants who pled guilty to estimate what sentences they might have received had they gone to trial. He concluded that (1) assault, larceny, and burglary defendants who pled guilty would have received sentences of nearly equal severity had they been convicted at trial, and (2) robbery defendants who pled guilty would have received considerably more severe sentences had they been convicted at trial. Rhodes' analysis indicates that Washington's prosecutorial practices differ from those of North Carolina, where very few felony defendants go to trial, and where those who choose trial may incur a substantial penalty.

Our approach to measuring a plea/trial sentence differential, as already explained, was quite different from Rhodes'. We treated plea/trial as a variable in analyzing sentencing for both guilty-pleading and tried defendants. Although the plea/trial coefficient was not significantly different from zero in the regression analysis, the comparison of defendant subsamples matched for levels of "sentence risk" suggested that for moderate- and high-risk groups, trial convictions resulted in more severe sentences than guilty pleas.

If our interpretation that there was a penalty for going to trial in North Carolina or a concession for pleading guilty is correct, then why did *any* North Carolina defendants go to trial? Our answer to this question is speculative. Perhaps a small proportion of those who chose trial were in fact innocent and somehow failed to obtain dismissal of their charges. Another small proportion might have had such strong cases against them, such serious charges, and such serious criminal records that the prosecutor left them no alternative to trial. We suspect, however, that most of those who chose trial did so not because of legally relevant factors, but because of "chance" variations in plea bargaining behavior by prosecutors or defense attorneys. In Washington, on the other hand, where Rhodes' analysis showed no real concession for pleading guilty except for robbery defendants, defendants were much more likely to go to trial than were their North Carolina counterparts. Thus, for Washington defendants, going to trial may often have been a deliberately chosen strategy.[56]

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trial was 22 to 50%, may have been less likely to struggle for a lenient sentence. *See supra* note 53.

[56] An interesting question that neither the Washington study nor the North Carolina study answers is what would happen to sentences if the number of defendants choosing trial increased substantially. This might very well make sentences more lenient. For example, a large increase in trial workload might force prosecutors to offer plea bargains much more favorable to defendants or it might weaken the strength of prosecution at trial and thus lead

V. SUMMARY OF FINDINGS

Our study of North Carolina felony defendants furnishes considerable evidence that, while intrinsic and legally relevant characteristics of the felony cases we studied affected their dispositions in trial courts, administrative variables such as plea bargaining, pretrial detention, and defense counsel service also affected the dispositions.

The likelihood that all of the defendant's felony charges would be dismissed, and the sentence severity if all charges were not dismissed, were correlated with basic characteristics of the case. For example, the analysis showed that the defendant's odds of dismissal of all charges were considerably less when an eyewitness was available to testify for the prosecution or when the defendant had made an incriminating statement to the police. If the charges were not dismissed, sentence severity increased with the seriousness of the initial charge and the number of concurrent felony charges.

The likelihood of dismissal and the severity of the sentence were also associated with administrative variables, including the type of attorney obtained by the defendant, the amount of time spent in pretrial detention, and whether final disposition was by plea or trial. These associations were independent of the basic factors in the case against him. If he had assigned counsel, the defendant charged with a Class 2 felony (such as larceny or breaking or entering) was less likely to have his charges dismissed than if he were represented by privately paid counsel. If his charges were not all dismissed, he was likely to receive a more severe sentence than if he were represented by privately paid counsel. The specific form of assigned counsel apparently made a difference: whether he was charged with a Class 1 (violent) or a Class 2 (theft) felony, the defendant was considerably less likely to have the charges dismissed if the defense attorney was individually appointed rather than privately paid. The chance of dismissal, however, was about the same for defendants represented by a public defender and those represented by privately paid lawyers. The amount of time the defendant spent in

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to more acquittals, more convictions of reduced charges, and more lenient sentences. For a substantial increase in trials to occur, however, defendants and their attorneys would have to operate in concert. This is unlikely to occur, we think, for a number of reasons. Defense attorneys would be reluctant to make the first move in the direction of increasing trials, knowing that they would have to work much harder and that their first few clients affected by such a move might well pay a high price for it. Also, attorneys may be unwilling to "rock the boat" and incur the enmity of judges and prosecutors. Finally, many attorneys may simply lack confidence in their ability to try a case. When plea bargaining was banned in Alaska by the state's attorney general, defense attorneys continued to enter guilty pleas for their clients almost as frequently as before the ban. There was a slight increase in trials for felony defendants, but only trial convictions, not acquittals, increased. *See* M. RUBINSTEIN, S. CLARKE & T. WHITE, ALASKA BANS PLEA BARGAINING (1980).

pretrial detention was found to be consistently associated with court disposition: the more time the defendant spent in detention, the lower were the odds of dismissal convictions, and the more severe the sentence would be if the defendant were convicted.

These two administrative factors—the type of attorney and the amount of time spent in pretrial detention—apparently had an independent influence on court disposition. Pretrial detention time and type of attorney varied almost independently of other factors we were able to measure, such as charge, evidence and prior record. Moreover, as these factors varied, they affected the defendant's ultimate fate in the trial court, independent of the other characteristics of the case against him. One result of the association of detention and type of attorney with court disposition was that black defendants were placed at a disadvantage, because they were more likely to have assigned counsel than white defendants and tended to spend more time in pretrial detention. This was perhaps due to the fact that blacks had lower incomes than whites and therefore had more difficulty raising bail money and paying private lawyers.[57]

Discretionary action by prosecutors also had a major impact on the dispositions of the felony defendants we studied. In fact, a third of the defendants had all their felony charges dismissed (usually by the prosecutor) without further court action, half never reached the indictment stage, and 59% pled guilty. The substantial variation in defendants' prospects for disposition among the twelve counties studied showed the strong effect of local prosecutorial practices. For example, two counties had systematic post-arrest screening of felony charges, which probably accounted for the high probablity of dismissal in those counties. In sharp contrast, a third county had a very low dismissal rate and a high rate of indictment on felony charges, leading to a much higher proportion of felony convictions than that observed in the other counties.

Plea bargaining was extensive. Nearly three-fifths of the 1,378 felony defendants we studied pled guilty to at least one charge, and more than half of these guilty pleas involved a felony-to-misdemeanor reduction. The majority of defendants who pled guilty did so pursuant to a written plea bargain stating a *quid pro quo*. These written plea bargains often involved a reduction of all charges to misdemeanors or the outright dismissal of one or more companion felony charges (see Tables 4 and 5). In nearly half of the written plea bargains the prosecutor promised to recommend a specific sentence, such as probation or a specific prison term or range of terms.

Comparison of the sentences received by defendants who pled

[57] No reliable data were available on defendants' financial means.

guilty and those convicted at trial revealed that sentences were much more severe for those who were convicted at trial. To analyze this plea/trial sentence differential further, defendants were matched on "sentence risk" as predicted from such basic factors as charge seriousness and prior criminal record. Sentences of those who pled guilty were then compared with sentences of those who went to trial, within each of three "risk groups" (see Table 8). This comparison suggested that the defendant who went to trial tended to receive a more severe sentence than one who pled guilty, even taking into account the possibility that he could be acquitted at trial. This result, however, held true only for defendants with a moderate-to-high level of sentence "risk" in terms of charge, criminal record, and other basic factors. The existence of a plea/trial sentence differential was not confirmed by significance tests in multivariate regression models of sentencing severity.

The defendant's decision to go to trial rather than plead guilty was not associated to any great extent with the intrinsic characteristics of his case. We suspect that administrative variation[58] in plea bargaining—like administrative variation in pretrial detention and quality of defense counsel service—was responsible for many of the plea/trial decisions defendants made.

VI. How Can "Interim Decisions" Be Improved?

The criminal court reform efforts of the 1970's did not pay enough attention to "interim decisions," which consist of such intermediate processes as pretrial detention, defense counsel service, and plea bargaining. For example, the advocates of determinate sentencing focused on the final act of sentencing and tended to treat it as if it were independent of earlier decisions made by the court. As the results of the present study suggest, however, these intermediate processes have a strong impact on the court's ultimate disposition.

Much variation in the criminal process apparently is attributable to intermediate processes. As our study shows, the wide variations in processes such as pretrial detention are partly responsible for the injustices in the criminal process, including the apparent discrimination against black defendants. Without removing all discretion from these processes and making them strictly mechanical, there is ample opportunity to reduce their variation, to channel and regularize the discretion involved, and at the same time, to make the processes work better from both the defendant's and the public's point of view.

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58 Earlier studies in North Carolina have shown variations in prosecutors' plea bargaining practices among judicial districts and even within a single district attorney's office, as well as variations among judges' practices. *See* Bond, *supra* note 18, at 823; Lefstein, *supra* note 18, at 489-94.

How can opportunities for pretrial release and defense service be regularized and improved? How can plea bargaining become a more consistent process, one that is less sensitive to variations in philosophy and personality among individual prosecutors and judges? In sketching some answers to these questions, we are especially conscious that the 1980's are a time of shrinking governmental expenditures, and that reform proposals requiring additional funding or the creation of new agencies are not likely to be adopted.

Turning first to pretrial release and detention, there seem to be several ways of improving and regularizing bail opportunity and also of minimzing the risk of nonappearance. Despite two decades of bail reform efforts, secured bail bond still plays a major role in determining pre-trial release. Bail bond's effectiveness in controlling bail risk is debatable,[59] but it is quite effective in keeping defendants in jail.[60] If secured bond is to continue as the mainstay of pretrial release, it should be subject to reasonable guidelines. A project is now underway in Philadelphia to test this approach.[61] Alternatives to secured bail bond include unsecured bail bond and release on recognizance ("ROR"), which may be accompanied by post-release supervision of the defendant. Research in Charlotte, North Carolina[62] has also shown that existing court personnel can expand the use of these forms of pretrial release quite successfully without hiring special project staff.[63] The key to controlling nonappearance, and to improving pretrial release opportunities, may be

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59 Myers' study of New York City defendants indicated that their probablity of nonappearance decreased by about five percentage points for each additional thousand dollars of bond. Myers also found, paradoxically, that release on recognizance with a zero bond was associated with a lower chance of nonappearance, other things being equal. Myers, *The Economics of Bail Jumping*, 10 J. LEGAL STUD. 381 (1981). The ABA Standards commentary declares that "monetary conditions [of pretrial release] are singularly ineffective," but the Standards also declare that monetary conditions are appropriate "in cases in which no other conditions will reasonably ensure the defendant's appearance." AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: PRETRIAL RELEASE (2d ed. 1979), § 10-1.3, commentary at 14-17.

60 In a study of indigent New York City defendants, Landes found that, other things being equal, a $100 increase in bond meant a 27% reduction in the probability of pretrial release. Landes, *Legality and Reality: Some Evidence on Criminal Procedure*, 3 J. LEGAL STUD. 287 (1974). In a study of Alaska felony defendants, Clarke and Emerman found that each additional $1,000 of bond cost the defendant 1.4 additional days in detention if he was not indigent, and 3.1 days if he were indigent. S. CLARKE & R. EMERMAN, A STUDY OF PRETRIAL RELEASE IN ANCHORAGE, FAIRBANKS, AND JUNEAU 17, Table 2 (1980).

61 *See* J. GOLDKAMP, M. GOTTFREDSON & S. MITCHELL-HERZFELD, BAIL DECISIONMAKING: A STUDY OF POLICY GUIDELINES (1981).

62 S. CLARKE, THE BAIL SYSTEM IN CHARLOTTE, 1971-73 (1974).

63 Recent research in several sites across the country suggests that ROR projects have improved opportunities for pretrial release although they had not led to more effective control of failure to appear in court. M. TOBORG, PRETRIAL RELEASE: A NATIONAL EVALUATION OF PRACTICES AND OUTCOMES (1981). Few states, however, may be able to find funds for specially-staffed ROR programs at the present time.

to put a single official in charge of pretrial release at the local court level. This official could monitor all forms of pretrial release including secured bond. A fairer, more systematic allocation of pretrial release opportunity to defendants would not necessarily increase the total released, but at least it would reduce a source of considerable variation in court disposition. If the total number of defendants released were increased, a net saving in jail costs might eventually result.

As for defense counsel, a recent report by the American Bar Association finds that defense counsel for the indigent defendant—a constitutional right—is quite inadequate. "Indeed, public defender and assigned counsel programs experience virtually every imaginable kind of financial deficiency. There are neither enough lawyers to represent the poor, nor are all the available attorneys trained, supervised, assisted by ample support staffs, or sufficiently compensated."[64] Our study demonstrates the consequences of this inadequacy: the indigent felony defendant represented by a public defender or an individually appointed lawyer is at a disadvantage in sentencing. Our study, as well as a previous study by the North Carolina Bar Association,[65] indicates, however, that the public defender system may well be more effective than the individual appointment system in avoiding conviction. Furthermore, in North Carolina at least, the public defender system is considerably cheaper than the individual appointment system.[66] If this cost advantage holds true in other states, expansion of public defender systems would be appropriate.

How can the variation in the quality of defense counsel service be reduced? It might be reduced by increased integration of criminal defense services in each state, aimed at meeting model national standards such as those of the American Bar Association. This does not necessarily mean creating an expensive new agency; a state bar association, court administration, or other existing state agency or organization could administer this process. An integrated approach might well produce efficiencies and net savings, in addition to equalizing opportunities for defense services.

Despite recent research, much remains to be learned about how plea bargaining may respond to reform efforts. Still, we believe that two

64 N. LEFSTEIN, CRIMINAL DEFENSE SERVICES FOR THE POOR 56 (1982).

65 FINAL REPORT, *supra* note 48, at 77-83.

66 A statewide comparison in North Carolina in fiscal year 1981 indicated that the cost per case, including personnel and all other support costs, was $181 for individually-appointed counsel and $130 for public defenders. These figures include felony, misdemeanor, and juvenile delinquency cases. Cost Comparison Study of Public Defenders and Appointed Counsel for Indigent Criminal Defendants (unpublished report prepared by Leslie R. Stevens of the North Carolina State Budget Office at the request of the North Carolina Courts Commission, presented in Raleigh, November 5, 1982).

changes could help to make plea bargaining more rational and even-handed. One is to require judicially supervised plea negotiation along the lines suggested by Norman Lefstein.[67] Lefstein recommends that at the defense's request, the court should convene a plea conference with the prosecutor at which the trial judge would preside. The judge would neither encourage nor discourage a plea. The defendant would have a right to appear and speak and the conference would be recorded verbatim. The judge would be required to disclose the sentence that would be imposed if the defendant pled guilty, and also the sentence the defendant could expect if convicted by trial, assuming that no additional facts adverse to the defendant were revealed at trial. Another improvement would be to require that prosecutors issue written guidelines generally describing their plea bargaining policies, including what kinds of offers presumptively will be made, and to which defendants. The response from prosecutors and judges to such proposals may well be that they would make it harder to plea bargain, and therefore increase the number of trials. We doubt very much that trials would increase, since they would still be considerably more costly than guilty pleas, in terms of time, work, and risk, to both prosecution and defense.[68] Regardless of whether trials would increase or not, reforms of the criminal process will fail unless they come to grips with the plea bargaining process, which lies at its heart.

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67 Lefstein, *supra* note 18, at 518-22.

68 Guilty pleas proved very durable in Alaska when plea bargaining was banned there. M. RUBINSTEIN, S. CLARKE & T. WHITE, *supra* note 56. Trials increased from 6.7 percent to 9.6 percent of felony dispositions, but the entire increase occurred in trial *convictions*, which certainly would not have discouraged guilty pleas. Guilty pleas, which had been 41.0% before the ban, dropped only slightly to 37.7% afterwards. *Id.* at 146-52.