Chapter 3

FITTING PUNISHMENTS TO CRIMES

Introduction

What are the sentences Americans would give to those convicted of violating the federal criminal code? Answering that question is the central concern of this chapter. Of course, there is no single answer because there are many crimes defined in the federal statutes, varying in seriousness and in how those crimes affect the federal government, our major institutions, victims, and the general public. Furthermore, each crime defined in the statutes is described in a general way whereas concrete criminal actions falling into any one general category are quite diverse. For example, larceny is defined as the unrightful appropriation of property, but there are an almost infinite variety of properties and there are many ways of thieving. It is clearly impossible to ask a sample of Americans to consider every possible act that is defined as a crime in the federal criminal code: The best we can do is to provide a relatively small number of examples, hopefully characteristic of some major federal crimes.

The Commission staff chose a limited number of general crimes, 20 Crime Types in all, using criteria that included frequency of appearance on federal court dockets and policy significance. With advice from the Commission staff, descriptions were written of concrete actions believed to be clear examples of each of the types, 73 Crime Examples in all. The central feature of each vignette was a description of a Crime Example of which a person was convicted, along with some features of the criminal act and some characteristics of the criminal. As described in Chapter 2, most of the features of each crime and the characteristics of the criminal were randomly varied.

The 20 Crime Types and 73 Crime Examples are not representative samples of all federal crimes. They were not chosen to mimic either the distribution of criminal cases in the federal courts or the distribution of felonies recognized in the federal criminal code. For that reason the overall distribution of sentences given by the respondents is not of as much interest as the distribution of sentences given to specific Crime Types and Crime Examples.

Measuring how Americans wanted criminals punished was based on asking each respondent to "sentence" 42 vignettes, each describing a person convicted of one example of one of 20 Crime Types. The Crime Types and Crime Examples are presented in Figure 3.1.

Figure 3.1. Crime Types and Crime Examples Used in Study

> Roman numerals in bold face indicate Crime Types. Arabic numerals are
>   used for Crime Examples.
> The phrases describing each Crime Example are exactly as each appears
>   in the vignettes used.

I: DRUG TRAFFICKING

1. ..has been convicted with several others of taking part over a four-month period in the selling of powdered cocaine.
2. ..has been convicted with several others of taking part over a four-month period in the selling of crack.
3. ..has been convicted with several others of taking part over a four-month period in the selling of heroin.
4. ..has been convicted with several others of taking part over a four-month period in the selling of marijuana.

II: MINOR FRAUD

5. ..has been convicted of writing bad checks on an account opened using false identification.
6. ..has been convicted of using a stolen credit card.
7. ..has been convicted of soliciting donations for a non-existent charity.
*8. ..has been convicted of obtaining a mortgage by making false claims about assets and income. The defendant had no intention of paying back the mortgage.

III: MAJOR FRAUD

*9. ..has been convicted of obtaining a mortgage by making false claims about assets and income. The defendant intended to pay back the mortgage.
10. ..a company officer, has been convicted of making personal gain from inside information learned before the information was made public. The officer bought stocks for HIS/HER personal account knowing that the stock price would go up when the information was made public. [Gender varied according to offender gender chosen.]
11. ..has been convicted of being responsible for the failure of a savings and loan association by lending money to borrowers HE/SHE knew could not pay back. [Gender varied according to offender gender chosen.]
12. ..has been convicted of selling worthless stocks and bonds as valuable assets.
13. ..has been convicted of selling defective helicopter parts to the federal government endangering the lives of helicopter personnel and passengers. The seller knew the parts to be defective.
14. ..a doctor, has been convicted of submitting false Medicare claims to the government.

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* These two Crime Examples were misclassified as "minor" and "major" respectively. However, in the detailed analyses of Crime Examples we do not distinguish between "major" and "minor" fraud, minimizing the effects of this misclassification.

IV: FIREARMS

15. ..has been convicted of illegally owning a handgun because of a prior felony conviction for theft.
16. ..has been convicted of illegally owning a hunting rifle because of a prior felony conviction for theft.
17. ..has been convicted of possessing sawed off shotguns, a prohibited weapon.
18. ..has been convicted of selling firearms to a known felon.
19. ..a licensed dealer, has been convicted of selling firearms without maintaining required sales records.

V: LARCENY

20. ..has been convicted of stealing property
21. ..has been convicted of stealing mail containing checks
22. ..has been convicted of buying and selling goods HE/SHE knew were stolen. [Gender pronoun was varied to match gender of convicted offender.]

VI: IMMIGRATION

23. ..has been convicted of smuggling unauthorized aliens into the U.S. for profit.
24. ..has been convicted of smuggling family members who were unauthorized aliens into the U.S.
25. ..has ben convicted of illegally entering the U.S. using false papers.
26. ..has been convicted of illegally re-entering the U.S. after a previous deportation.
27. ..has been convicted of smuggling unauthorized aliens into the U.S. for profit in a way that endangered the safety of the aliens.

VII: BANK ROBBERY

28. ..has been convicted of robbing a bank. The robber gave a note to the teller demanding money but did not threaten any harm. The robber did not have a weapon.
29. ..has been convicted of robbing a bank. The robber pointed a handgun at a teller and demanded money. The gun was not fired.
30. ..has been convicted of robbing a bank. The robber pointed a handgun at a teller and demanded money. The robber fired the gun at the ceiling but no one was hurt.
31. ..has been convicted of robbing a bank. The robber pointed a handgun at a teller and demanded money. The robber fired the gun at the teller who suffered a minor wound.
32. ..has been convicted of robbing a bank. The robber pointed a handgun at a teller and demanded money. The robber fired the gun at the teller who was seriously wounded.
33. ..has been convicted of robbing a bank. The robber gave a note to a teller demanding money and threatening to blow up the bank. No one was hurt.

VIII : STREET ROBBERY

34. ..has been convicted of robbing a convenience store
35. ..has been convicted of taking a car by forcing the driver out of the car

IX: EMBEZZLEMENT

36. ..a bank employee, has been convicted of stealing bank funds.
37. ..a bank vice president, has been convicted of stealing bank funds.
38. ..a postal worker, has been convicted of stealing from the U.S. mails.

X: CIVIL RIGHTS

39. ..a police officer, has been convicted of beating [STATUS][a] motorist who was found driving a car with no registration and with expired license plates.
40. a police officer, has been convicted of beating a motorist who was found driving a car with no registration and with expired license plates. The motorist resisted the police officer's attempts to examine HIS/HER license and registration. (Gender pronoun varied to match gender of motorist.)
41. ..a police officer, has been convicted of beating a motorist who was found driving a car with no registration and with expired license plates. The motorist did not resist the police officer's attempts to examine HIS/HER license and registration. (Gender pronoun varied to match gender of motorist.)
42. ..has been convicted of trying to get [STATUS][a] couple who just moved into the neighborhood to move out by burning a cross on their lawn.
43. ..has been convicted of painting threats and obscenities on a [DENOMINATION][b].

XI: ANTITRUST

44. ..has been convicted of conspiring with other companies to fix prices for soft drinks.
45. ..has been convicted of agreeing with competitors to rig bids for government contracts in order to control the market and guarantee higher profits for the companies involved.

XII: FOOD AND DRUG VIOLATIONS

46. ..has been convicted of adding poison to 17 packages of over-the-counter drugs
47. ..has been convicted of putting a drug on the market falsely claiming that the drug was adequately tested and had no dangerous side-effects.
48. ..has been convicted of putting a new drug on the market, concealing evidence that the drug had potentially dangerous side-effects in users.

XIII: ENVIRONMENTAL VIOLATIONS

49. ..has been convicted of illegally logging on federal lands.
50. ..has been convicted of failing to install proper anti-pollution devices on factory smoke stacks.
51. ..has been convicted of killing a bald eagle, protected by law as an endangered species.
52. ..a plant manager, has been convicted of violating the terms of the plant's water discharge permit by discharging waste water into a stream that was 20 degrees warmer than allowed.
53. ..a plant manager, has been convicted of violating the terms of the plant's water discharge permit by discharging waste water containing a toxic chemical.

XIV: TAX
54. ..has been convicted of tax evasion for under-reporting income on tax returns
55. ..has been convicted of failing to file income tax returns
56. ..has been convicted of promoting an illegal tax shelter to the public

XV: EXTORTION AND BLACKMAIL
57. ..has been convicted of (either) a. extorting money from a victim by threatening to kill a family member. (or) b. ..blackmailing a prominent person by threatening to reveal a sexual indiscretion.

XVI: BRIBERY
58. ..a government purchasing agent, has been convicted of accepting a bribe to award a supply contract.
59. ..has been convicted of bribing a county commissioner to obtain a contract.
60. ..has been convicted of bribing a company purchasing agent to obtain a supply contract.
61. ..a county commissioner, has been convicted of accepting a bribe to award a contract.

XVII: DRUG POSSESSION

62. ..has been convicted of possessing a small amount of powdered cocaine for personal use.
63. ..has been convicted of possessing a small amount of crack for personal use.
64. ..has been convicted of possessing a small amount of heroin for personal use.
65. ..has been convicted of possessing a small amount of marijuana for personal use.

XVIII: FORGERY/COUNTERFEITING
66. ..has been convicted of counterfeiting US currency.
67. ..has been convicted of writing bad checks on an account opened using false identification.
68. ..has been convicted of making purchases using illegally obtained credit card numbers.

XIX: MONEY LAUNDERING
69. ..a rare coin dealer, has been convicted for failing to file forms required when receiving a cash payment of more than $10,000.
70. ..a rare coin dealer, has been convicted of arranging large cash purchases by criminals. The dealer provided the criminals with rare coins which they could then sell and appear to have earned the money lawfully.
71. ..a bank official, has been convicted of arranging deposits of large sums of money in ways that avoided the requirement that cash transactions of more than $10,000 be reported.

XX: KIDNAPPING
72. ..has been convicted of kidnapping a person, demanding ransom. The kidnaped person was not harmed.
73. ..has been convicted of kidnapping a person, demanding ransom. The kidnaped person was killed.

[a] In these vignettes, the minority status of the victim is systematically changed.
[b] In these vignettes, one of several denominational places of worship is shown.

Overall Sentencing Patterns

The sentencing task given to respondents assumes that issues of guilt or innocence have been previously resolved. The vignettes each describe someone who has been convicted of an act or pattern of action that is deemed criminal behavior in the federal code. The vignettes describe the crime in fairly specific behavioral terms without the general Crime Type involved being revealed. In addition, for all crimes, the convicted person is described in terms of gender, family status, employment status and previous record. An illustrative example of a vignette is shown in Figure 3.2.

Figure 3.2. Illustrative Vignette Rating Task

A man has been convicted of robbing a bank. The robber pointed a handgun at a teller and demanded money. The robber fired the gun at the ceiling, but no one was hurt. $19,000 was taken.

The defendant is married and has a spouse and two children. The defendant is currently unemployed and has served 2 previous sentences, each more than a year.

What sentence should be given in a case like this? **CIRCLE EITHER 1, 2, 3 OR 4:**

1 **PROBATION** No time in prison	2 **PRISON** Less than 1 year # Months ___	3 **PRISON** 1 Year or more # Years ____	4 **DEATH** Penalty

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Note that respondents were asked to indicate which of several alternative sentences should be given to the convicted person. The choices were as follows:

Probation - no time in prison

Prison term for less than a year and the number of months to be served

Prison term for one or more years and the number of years to be served

Death Penalty

In addition to these choices, some respondents wrote in "life" as the number of years to be spent in prison and a few entered "deportation" as the sentence to be given in response to some of the immigration law violations. Although interviewers were instructed to discourage such responses, some respondents seemingly had such strong preferences for "life" sentences that they could not be encouraged to convert those preferences into years of imprisonment. It is also possible that interviewers failed to detect such responses when they were written in. In any event, it appears likely that the proportion of "life" sentences

in this study is below what might have been obtained had we allowed for "life" sentences to be an acceptable alternative to specified years of imprisonment.

Table 3.1 presents the distribution of responses over the four choices as described above. In a very small proportion of vignettes, less than one percent, no responses were made at all. These non-responses most likely represent vignettes inadvertently skipped as indicated by their random distribution among Crime Types.[1] Imprisonment for a term greater than a year was clearly the most popular sentence, being given as a response in more than 70 percent of the vignettes. Probation and prison terms less than a year were given respectively to 14 percent and 12 percent of the vignettes. The least popular were death sentences, given in only three percent of the vignettes.[2]

Table 3.1 Distribution of Types of Sentences Given to All Vignettes.

Sentence given	Number	Percent
Unanswered	633	0.9
Probation	10,160	13.9
Prison Less than 1 year	8843	12.1
Prison: 1 Year or more[a]	51,379	70.4
Death Penalty	1915	2.6
Deportation	24	0.03
Total	72,954	100.0

[a] Includes life sentences written in by respondents.

Some vignettes were given prison sentences but the respondents did not indicate the prison term desired with the consequence that 801 vignettes could not be used when we consider the full distribution

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[1]In addition, there were 801 vignettes to which respondents indicated prison terms were to be given but the respondents neglected to write down the sentence lengths. Obviously, these vignettes also cannot be used in any analyses. Thus the overall valid response rate for vignettes was 98 percent: 71,470 usable vignettes out of a total of 72,594.

[2] A small number, 24, of the vignettes were given the write-in sentences of "deportation". We have chosen to treat these responses as equivalent to being placed on probation and hence as zero prison time. When life sentence was written in as a response, it was given a special code. There were 1,802 written in life sentences, covering 2.5 percent of all vignettes.

of the amounts of imprisonment, as shown in Table 3.2. Probation was given to slightly more than 14 percent of the vignettes and in another 19 percent prison terms of less than one year were meted out leading to about one in three of the vignettes being given the "minimal" sentences of either probation or prisons terms less than a year.   Indeed, half of all the sentences were three years or less, as indicated by the median sentence of 3.0. However, there were many longer sentences with 15 percent being over ten years, life, or death sentences. Life sentences were written in as responses to 2.5 percent of the vignettes and death sentences to 2.7 percent.

In order to calculate the mean or median sentence given, it was necessary to translate probation, life, and death into numbers of years of imprisonment. By definition, probation understandably represents zero years of imprisonment and was so coded. The other two qualitative responses, life and death, required making somewhat arbitrary judgments. Reasoning that the life expectancy at the time of conviction would rarely exceed 70 years, life sentences were coded as 70 years of imprisonment. Death sentences presented a greater translation problem. In a literal sense, a death sentence might mean a very short period of imprisonment until the sentence was carried out, but there is obviously no way a short sentence followed by release can be made equivalent to the same sentence followed by execution. Using the reasoning that a death sentence was a more drastic punishment than life imprisonment and hence should be represented by a higher number, death penalties were coded as 100 years of imprisonment, an admittedly arbitrary translation.

Using those translations, the mean sentence doled out to the vignettes was 10.29 years. The considerable difference between this number and the median, three years, reflects the heavy influence of extreme values in the calculation of the average of a highly skewed distribution. These distributional properties of the sentences given presents problems in how to summarize properly the findings. Ordinarily means are convenient summary measures but in this case the mean is far from the typical sentences given: more than 70 percent of the vignettes were given sentences that were smaller than the mean.

The mean sentence is highly affected by how life and death sentences are represented numerically. The decisions made, discussed earlier, are admittedly arbitrary: other choices would also affect the means. However, median sentences are unaffected by these decisions.[3] For that reason, much of the analysis in this report uses medians as central tendency measures.

Suspecting that a few respondents with highly divergent sentencing patterns were playing an important role in producing the skewed distribution, that possibility was investigated, finding a number of respondents who were either considerably more punitive or considerably more lenient than typical for all others. There were 34 respondents who gave out more than ten death sentences, a few giving as many as 30. At the other extreme, 23 respondents gave out more than 20 probation sentences. It is difficult to

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[3] Several alternative were tried: first, all life and death sentences were deleted resulting in a mean sentence of 6.2 years and a median of 3.0; and, second, we recoded all sentences above 39.2 years to that value, resulting in a mean of 7.2 years and a median of 3.0. Clearly the mean is strongly affected by how life and death sentences are translated into sentence years, although the medians remain identical. Note also that in either of these two alternative translation modes, means and medians are still very far apart.

imagine that either these very punitive or very lenient respondents had taken the sentencing task seriously,although we have no direct evidence to that effect.[4] All told, we identified 101 respondents — 5.8

Table 3.2: Distribution of Sentences Given (Unweighted)

Sentence Given	Percent	Cumulative Percent
Probation	14.2	14.2
1 year or less	19.2	33.4
2 years	9.6	43.0
3 years	7.0	50.0
4 years	2.5	52.5
5 years	14.1	66.6
6 years	1.3	67.9
7 years	1.1	69.0
8 years	1.4	70.3
9 years	0.2	70.5
10 years	10.7	81.2
11-19 years	4.2	85.5
20-29 years	6.4	91.9
30-39 years	1.4	93.3
40-49 years	0.5	93.8
50-69 years	1.0	94.8
Life	2.5	97.3
Death	2.7	100.0
Total N=	71,470[a]	

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[4] An alternative explanation is that these outliers did not completely understand the sentencing task.

percent of all respondents — whose patterns of responses to vignettes can only be regarded as bizarre. Removing these extreme cases from the data set noticeably lowered the resulting average to 9.11. In subsequent calculations, the 101 outliers are removed from the analysis.

These explorations into the nature of the sentences given leads to the conclusion that no single measure can provide a full appreciation of sentencing behavior. Accordingly, several measures will be used in describing how Americans would like to see convicted federal offenders punished.

As discussed in Chapter 2, the data are derived from an area probability household survey. Although a properly carried out area probability sample provides unbiased population estimates, some portions of the American population are disproportionately represented in the resulting sample. In particular, because we selected only one adult from each household, persons living in smaller households are over-represented compared to those living in larger households. In addition some population segments are over-represented because persons in those segments were more likely to give interviews. For these reasons it is necessary to weight the data to compensate for the patterns of representation in the sample.[5] Most of the findings we present in this and subsequent chapters are weighted.

A graphical representation of the overall sentencing pattern is given in Figure 3.3 as a "box and whisker" graph. The rectangular box spans the inter-quartile range, within which lies 50 percent of the sentences, in this case spanning from 0.83 to 10.0 years. The two lines within the box represent respectively the locations of the mean and median. The "whisker" extending from the top of the box marks the range over which sentences given are continuous and exceed the upper end of the inter-quartile range, and the bottom whisker does the same for sentences given that were below the bottom value of the inter-quartile range. Sentences above and below the two whiskers are not plotted.[6]

[5] The unweighted sample under-represents younger persons, males, minorities such as Hispanics and blacks, the less well educated and persons living in smaller places. Typically, weighted data and unweighted data produce findings that are close in value: For example, the unweighted mean of sentences is 9.12, not very different from 9.16 resulting from weighted data. See Chapter 2 for a fuller description of weights used.

[6] These sentences, amounting to about six percent of all vignettes, are omitted in the interest of simplifying the graph.

Figure 3.3. Box Plot of All Sentences Given
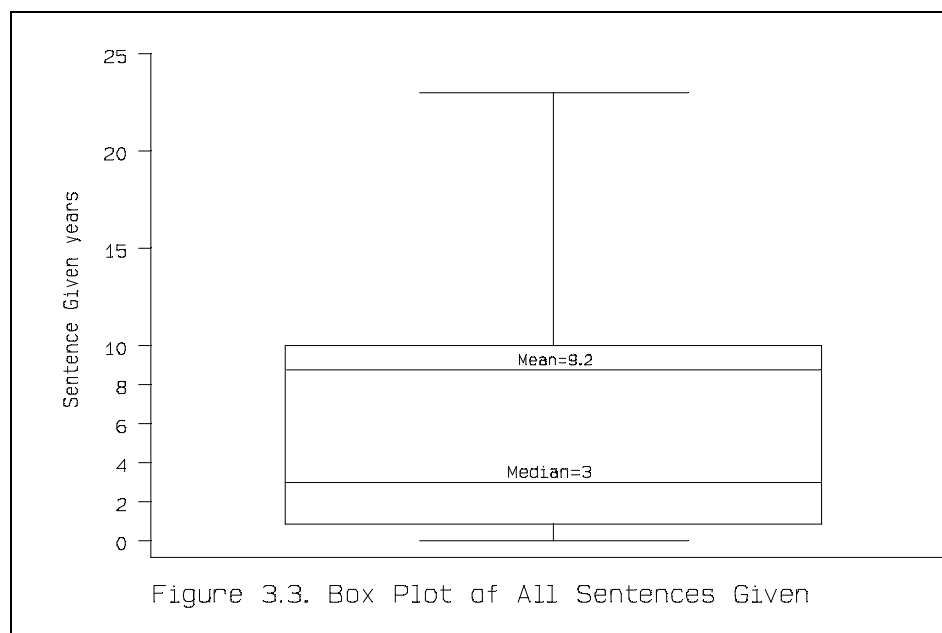
Crime Types

In Table 3.3, the sentences given to each of the general Crime Types are summarized, along with the sentences given to all crimes.   For each crime, six summary measures are shown: Median, mean, inter-quartile range,[7] percent given probation, percent given life sentences and percent given death sentences. The summary measures are given for all vignettes in the first row. Subsequent rows are arranged in order of decreasing median sentences, with ties broken by the average sentences.

There are several outstanding features in the findings of Table 3.3: First, respondents clearly differentiated among Crime Types. Kidnapping crimes receive the most severe punishments, with a median sentence of 25 years. At the other extreme, the possession of a small amount of illegal drugs received the least punishment, with a median punishment of .5 years (six months). All told, the 20 Crime Types account for about 21 percent of the variance in sentencing.[8] Second, Crime Types that resulted in the actual or potential death of victims were most severely punished. One of the kidnapping examples involved the death of the kidnaped person and one of the Food and Drug violations involved placing poison in over-the-counter drugs with a resulting death. These two Crime Examples raise the means considerably for those Crime Types. Third, the several summary measures of sentencing tend to be consistent. Crimes with high proportions of death penalties tend also to have high percentages of life sentences and very low percentages of probation sentences. Conversely, crimes likely to be given probation sentences are very unlikely to get long prison sentences. Fourth, the average sentences are consistently higher than median sentences, by

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[7] The inter-quartile range is defined as the scores within which 50 percent of the observations fall. The top of the range is the observation below which are 75 percent and the bottom is the point below which are 25 percent of the observations.

[8] When the sentences given are regressed on the 20 Crime Types represented by binary dummy variables, the resulting R^2 is .21.

magnitudes varying from about 1.5 to 3 or 4, indicating that for every Crime Type, there are always some, although usually very few, who want to give long prison sentences. Even for the drug possession Crime Type, there were a few who recommended the death sentence.[9] Finally, the inter-quartile ranges (the boundaries within which the middle 50 percent of the sentences fall) for the Crime Types are quite large, indicating that there are many departures from either the median or the mean sentence. In short, as far as generic Crime Types are concerned, there is no clear consensus on what the precise sentences given to convicted felons should be.

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[9]Note that Table 3.3 has been purged of the 101 outliers discussed earlier..

Table 3.3. Sentences Given to Crime Types: Outliers Removed and Responses Weighted[a]. Crime Types arranged in descending order of medians with ties broken by means.

R A N K	Crime Type	Sentences Given to General Crime Types						N
		Median Years	Mean Years	Inter-Quartile Range	Percent Probation	Percent Life	Percent Death	
	All Vignettes	**3**	**9.2**	**.83-10**	**13.8**	**1.7**	**2**	**67,209[b]**
1	Kidnapping	25	46	5-100	0.5	8.1	33.1	1,394
2	Food & Drug	10	21	2-20	5.2	5.1	8.9	1,985
3	Drug Trafficking	10	17.9	5-20	2.01	4.6	4.2	13,393
4	Street Robbery	5	11.3	3-10	1.1	2.2	1.1	1,327
5	Bank Robbery	5	11	3-10	1.9	2.7	1.3	5,496
6	Extortion/Blackmail	5	9.9	2-10	6.5	1.7	1.3	679
7	Counterfeiting/Forgery	5	6.4	1-10	5.2	0.5	0	2,045
8	Fraud: Major	3	6.7	.83-10	14.1	0.5	0.3	4,033
9	Money Laundering	3	5.2	.5-5	14.4	0.5	0.1	1,992
10	Larceny	3	5.1	.92-5	10.4	0.3	0.1	1,907
11	Antitrust	2	5.7	.5-5	16.8	0.1	0.2	1,350
12	Firearms	2	5.3	.5-5	16.3	0.5	0.5	3,368
13	Embezzlement	2	4.8	.83-5	9.8	0.2	0.1	1,942
14	Tax	2	4.7	.5-5	15.6	0.5	0.1	4,009
15	Immigration	2	4.7	.5-5	20.1	0.4	1.3	3,325
16	Fraud: Minor	2	4.5	.75-5	1.2	0.2	0	2,708
17	Environment	1	3.6	0-5	25.2	0.3	0.1	3,309
18	Civil Rights	1	3.5	.41-4	21.1	0.1	0.4	3,335
19	Bribery	1	3	.41-4	21.7	0.1	0	2,598
20	Drug Possession	0.5	2.1	0-2	41.9	0.1	0.1	7,009

[a] All respondents with outlying patterns of responses (N= 101) removed before calculations. Sampling weights applied before calculations. See text for explanation of outliers and sampling weights.

[b] Unrated vignettes not included. Note that these are weighted Ns and hence only approximate the number of actual vignettes rated.

A graphic representation of sentencing by Crime Types is shown in Figure 3.4. The distribution of sentences given to each Crime Type is displayed as a "box and whisker" graph, arrayed from left to right in order of decreasing sentencing severity.[10] Kidnapping is at the one extreme and Drug Possession at the other. Figure 3.4 shows in a more easily comprehensible fashion the wide range of sentences given to the Crime Types. It is especially noteworthy that Crime Types with high median punishments also tend to have longer boxes.
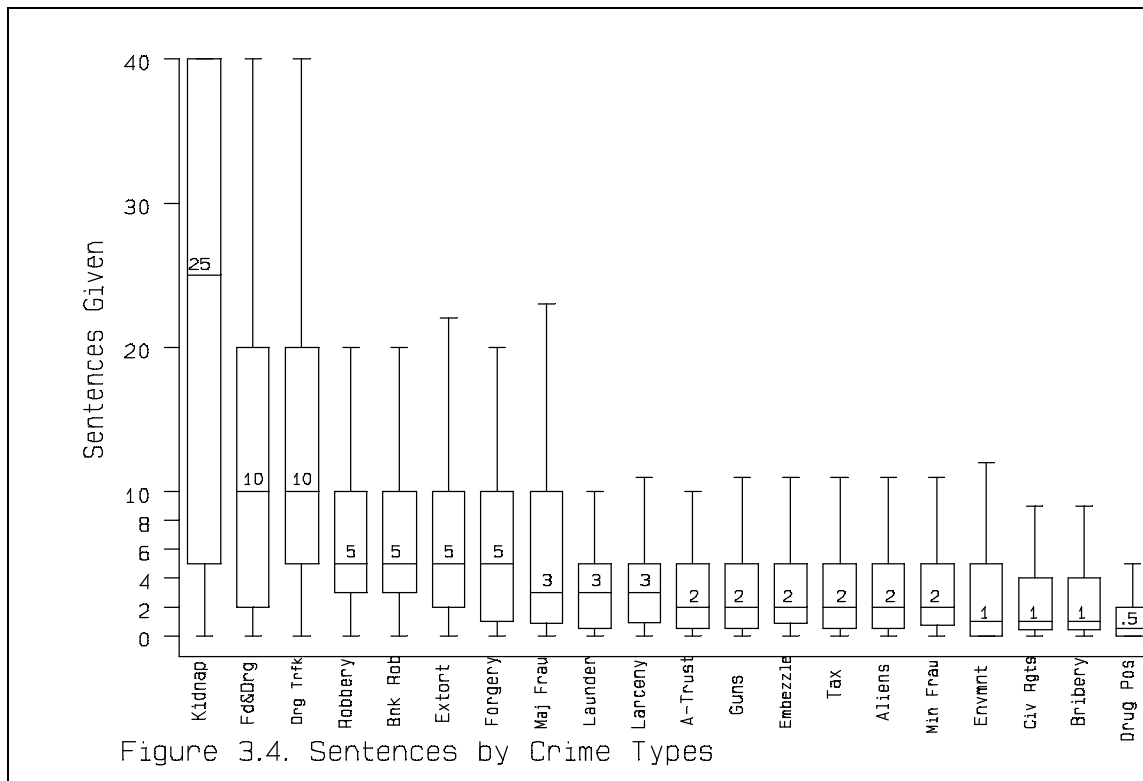

Figure 3.4. Sentences by Crime Types

Holding Crime Constant

Because each of the crime groups is made up of several examples and each vignette contains information in addition to the crime of conviction, clear consensus on the sentences to be given to crime groups is not to be expected. All of the vignettes contained information on the previous record of offender and many contained information on the gravity of the offense. For example, each of the fraud vignettes

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[10]The data used are purged of the 101 outliers discussed above and weighted to compensate for sampling disproportionalities. In addition, it was necessary to code the top sentences as 40 years because the full scale of sentences would have produced graphs that were unreadable.

contained information on the amount of money obtained fraudulently. These additional dimensions affected the sentence given to each vignette to some degree. The impact of such information on sentencing will be analyzed in detail in Chapters 5 through 9. We can anticipate those findings by indicating that the respondents did vary their sentencing behavior, as those descriptions varied.

Although 40 of the vignettes were constructed according to the procedure described in Chapter 2 in which the Crime Examples and other information were randomly assembled, there were two vignettes included in each booklet that did not vary from one vignette booklet to another.[11] The two standard vignettes differ in the gravity of the offenses described. One of the standard vignettes describes a person convicted of the possession of a small amount of marijuana "for personal use" and the other describes a bank robbery in which the offender threatens a teller with a handgun, and fires the gun with no resulting injury.

These standard vignettes provide an opportunity to examine the degree of consensus among respondents when confronted with identical crime descriptions. The sentences given to the two standard vignettes are shown in Table 3.4, along with the sentences given to those vignettes when used as randomly assembled vignettes. Contrasting the sentences given to the standard vignettes with the others of that Crime Type provides an appreciation of the amount of variation in sentencing behavior contributed by the descriptive dimensions added to each vignette. Figure 3.5 also provides a graphic view of the differences between standard and randomly constructed vignettes.

As expected, there was more consensus concerning the two standard vignettes than concerning the randomly constructed counterparts. Indeed, the standard marijuana possession vignette gets close to unanimity, with more than seven out of every ten vignettes receiving probation sentences. In contrast, less than half of the random marijuana possession vignettes are given probation sentences. Much the same can be said of the standard bank robbery vignettes. In short, although the crime itself may dominate the process, sentencing is responsive to other information about the crime and the criminal when included in the vignette descriptions.

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[11]The two standard vignettes (reproduced in Appendix C) were given on a sheet separate from the booklet containing the randomly constructed vignettes in order to orient the respondent to the sentencing task and to provide the interviewer with an opportunity to explain the task, if the respondent appeared uncertain about how to proceed, as described in Chapter 2. The standard vignettes were chosen to represent crimes differing widely in gravity in order to induce a common response set to the sentencing task.

Table 3.4. Sentences Given to Standard Vignettes and Randomly Constructed Vignettes of the Same Crime Type. (Weighted Data: Outliers Removed)

Vignette Type	Median (Years)	Average (Years)	Inter-Quartile Range	Probation Percent	Life %	Death %	N
Standard Marijuana Possession	0	0.44	0-.25	71.6	0	0	1,593
Random Drug Possession	0.25	1.6	0-2	45.3	0	0	1,365
Standard Bank Robbery	5	8.5	3-10	0.6	1.2	0.8	1,536
Random Bank Robbery	5	9.3	3-10	1.1	0.8	0.7	700

Figure 3.5. Standard and Random Vignettes Compared
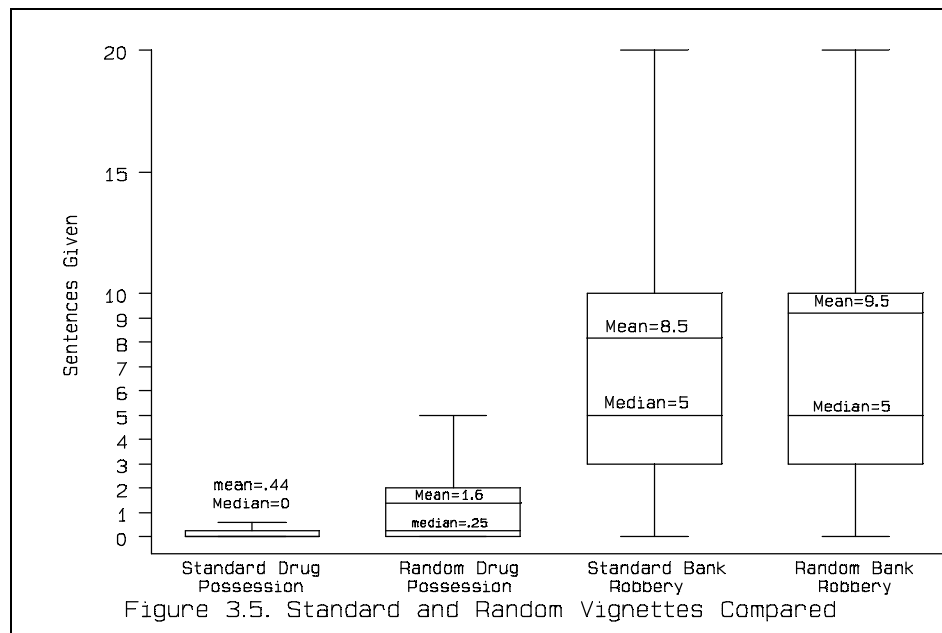
Some Sentencing Variations by Criminal Characteristics

Although most of the crime dimensions are specific to Crime Types, and will be discussed in later chapters, there are four which are included in all of the vignettes. The four all are concerned with describing the offender: previous criminal record, gender, family status, and current employment.

Each vignette was assigned a description of the felon's previous criminal record, with the exception of those crimes for which a previous record was implausible, such as those describing police officers or public officials.[12] Table 3.5 displays the distribution of sentences given to felons described as having no previous imprisonments, two previous imprisonments, and four previous imprisonments. All the imprisonments were described as "at least one year," indicating that they were felony convictions. Respondents clearly gave lighter sentences to those with no previous record: more than one in five (21%) were given probation (compared to less than eight percent probation given to those with previous records.) The median and mean sentences, two and seven years respectively, were also lower; fewer were given life sentences or death sentences. Respondents did not distinguish as sharply between those having had two and four previous imprisonments: median sentences (five years) were the same for both groups, although the average sentence for those with four imprisonments (12 years) was higher than for those with two (ten years.) The percentages given life imprisonment and death sentences were also higher for those with four previous imprisonments compared with those with two previous imprisonments. In short, felons with two or more punishments were given three to six additional years to their sentences and were more likely to face life sentences and death penalties. Although the previous record of a felon clearly makes a difference in the sentences received, such information played only a minor overall role, accounting for less than two percent of the variation in sentencing.

In principle, federal and state criminal law treat men and women alike when convicted of felonies. Some research has found that in practice women felons are often given more lenient sentences.[13] How does the American public regard gender as a factor in deciding on a sentence for convicted felons? Table 3.6 examines whether men and women felons were treated any differently. There were no gender differences in median sentences, and but slight differences on other measures. On the average, male felons received about six months longer sentences, were slightly more likely to get probation, and were slightly more likely to receive either life imprisonment or the death penalty. With the exception of slight differences in giving probation, respondents are clearly more lenient in sentencing women felons creating slight differences in treatment in their favor[14] but it must be emphasized that these differences are very slight.

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[12] In addition to police officers and public officials, no previous record was assigned to large scale frauds committed by corporate officials, anti-trust crimes, crimes committed by gun dealers, bank officials and other high corporate officials. These vignettes contained no information on previous record. We have interpreted those vignettes as indicating the absence of a previous record. To all other vignettes one of the following statements appeared: "..has never been imprisoned before."; "..has served two previous sentences, each more than a year.", and "...has served four prison terms, each more than a year."

[13] See, for example, Daly, Kathleen *Gender, Crime, and Punishment.* New Haven. Yale University Press. 1994.

[14] Gender differences are significant, mainly because of the large N, but account for less than one percent of the variance .

Table 3.5. Previous Criminal Record Effects on Sentencing

Previous Record	Median (Years)	Mean (Years)	Inter-Quartile Range	% Probation	% Life	% Death	N
No previous convictions	2	6.8	.5-5	20.7	0.9	1.3	31,862
Two Previous convictions	5	10.3	2-10	7.7	1.9	2.2	18,493
Four Previous convictions	5	12.4	2-10	7.6	2.8	3.0	16,853

Table 3.6: Effects on Sentencing of Gender of Felon

Gender of Felon	Median	Mean	Inter-Quartile Range	% Probation	% Life	% Death	N[a]
Men	3	9.3	.83-10	14.8	1.7	2.1	54,424
Women	3	8.6	.75-10	14.2	1.6	1.8	12,784

[a] Male was given as gender to 80 percent of the vignettes.

Although the federal guidelines state that the family and community statuses of felons should not ordinarily be taken into account in sentencing, the vignettes contained information about family status of the convicted felons. This information was used in the vignettes because it was thought that the public might believe that persons who are embedded in their communities, as shown by being employed and sharing in the responsibility of raising a family, should be given less harsh sentences. Perhaps the principle being followed is that those who are embedded in such relationships are less likely to commit additional crimes upon their release.

The findings show that respondents weakly subscribe to this principle in their sentencing practices, although family status counted more than employment. There were no differences in sentencing when the convicted felon was described as employed, compared to being unemployed. (The data on employment effects are not shown.) The results were mixed when a convicted felon was described as "married and has a spouse and two children" when compared to being described as "unmarried." Median sentences were

higher for married felons, four years versus three years, with a slightly higher chance of getting probation (14.3 percent vs 12.2 percent) but, according to all the other measures, offenders described as married were treated more leniently than when described as "not married," as shown in Table 3.7. Mean sentences were higher for the not-married by about six months (9.3 versus 8.8 years) and the not-married were slightly more likely to receive life imprisonment and death sentences. However, whichever part of the contradictory evidence one might choose to emphasize, family status is clearly not an important factor in sentencing.

Table 3.7. Effects on Sentencing of Family Status of Felon

Family Status	Median (Years)	Mean (Years)	Inter-Quartile Range	% Pro-bation	% Life	% Death	N[a]
Not married	3	9.3	.83-10	14.3	1.7	2.1	52,867
Spouse & 2 Children	4	8.8	1-10	12.2	1.6	1.7	14,341

[a] The family status "not married" was given to 80 percent of the vignettes.

Joint Effects of Gender, Family Status and Previous Record

Because the felon characteristics described earlier were randomly combined in forming vignettes, it is possible to look at their combined effects on sentencing. It may well be the case that having a family counts more in the sentencing of women than men and that the effects of both are stronger for persons facing their first imprisonment.

Table 3.8 presents the mean[15] sentences given to each of 12 combinations of gender, previous record and family status. The effects of each of the characteristics hold consistently throughout the table: men received longer average sentences than women; felons with families received smaller average sentences than those who were not married; and, felons with previous records received longer average sentences than those facing their first imprisonment. The effects also appear to be additive, with married women with no previous record receiving the lowest average sentences and single men with four previous imprisonments receiving the highest. Family status does not appear consistently to count more for women than for men and the effects of previous record are about the same for both genders.

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[15] Because crimes were assigned randomly to vignettes, any subgroup of the sample received equivalent samples of crimes making it possible to compare mean sentences calculated over all crimes.

Table 3.8: Combined Effects of Previous Record, Family Status and Gender on Average Sentences (Years)

Previous Record and Gender	Family Status			
	Not Married		Spouse & 2 Children	
	Percent	N	Percent	N
No previous Imprisonment				
Male	6.9	21,034	6.7	4,792
Female	6.5	4,852	5.9	1,203
Two Previous Imprisonments				
Male	10.7	10,823	9.6	4,358
Female	10.1	2,679	7.8	682
Four previous Imprisonments				
Male	12.7	10,825	11.9	2,654
Female	11.1	2,714	10.7	670

Crime Examples

We turn now to examine the sentences given to each of the 73 Crime Examples. Each describes a specific example of one of the 20 Crime Types discussed above. Thus, the Crime Type bank robbery is represented by six different Crime Examples each describing a bank robbery but varying in the robber's weapon use and threats made.

The sentences given to each Crime Example are shown in Table 3.9 arranged from top to bottom in order of decreasing median sentences, with ties broken by means. The sentence severity ranking of each example is shown in the first column.

Heading the table are kidnappings in which the victims are killed, with a median sentence of 100 years, reflecting the fact that more than three out of five (62 percent) of the respondents wanted a death sentence for this crime. Note that this kidnapping Crime Example received significantly greater punishment than the next in line. The second ranked crime, poisoning over-the-counter drugs, receives

a median sentence of 15 years, many years less[16] than kidnapping. At the other extreme is the possession of "a small amount" of marijuana with a median sentence of zero years, reflecting that about three in five respondents gave probation as a sentence.

Some general tendencies appear in the array. First, crimes involving the actual or potential death of victims or serious harm to victims tend to be at the top of the list, receiving harsher sentences.

Second, respondents apparently desire relatively harsh penalties for trafficking in illegal drugs, as shown by the four drug trafficking crimes being among the top ten crimes. In contrast, possession of small amount of the same illegal drugs for personal consumption is clearly viewed as among the least serious crimes, all four drug possession crimes appearing among the bottom thirteen least serious crimes.

Third, for most Crime Types, the specific examples belonging to the crime groups do not cluster closely together. For example, environmental crimes are distributed over a wide range, from rank 44 to 69; civil rights crimes ranks range from 41 to 71; and fraud crimes range from 8 to 72. Respondents apparently weigh heavily the consequences of a crime in their sentencing. Examples drawn from the same Crime Type that vary in their consequences for the safety of people are regarded more seriously. Accordingly, the fraud crime involving selling defective helicopter parts to the government is among the most serious of all crimes (rank 8) whereas making a false mortgage application with the intention of paying back is among the least serious (rank 72). Similarly, crimes that do not have specific victims or do not directly threaten the physical well-being of individuals are treated less harshly.

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[16] Because so many death sentences were given to kidnapping, arbitrarily given 100 years, this difference does not have any real meaning.

Table 3.9: Sentences Given to Crime Examples: Medians, Means, Inter-Quartile Ranges, Percent given Probation, Percent given Death Sentences. Crimes Arranged in order of Decreasing Median Sentences with Means Used to Break Ties: Outliers removed[a]. Statistics based on Weighted[b] responses.

R A N K	CRIME SHOWN IN VIGNETTE[d]	SENTENCES GIVEN BY SAMPLE					
		Median Years	Mean Years	Inter-quartile Range	Percent Probation	Percent Death	N
1	Kidnapping: victim killed	100	76.3	65-100	0	61.8	724
2	Poisoning "over-the-counter" Drugs	15	34	7-70	0.6	17.1	678
3	Bank robbery: Teller wounded seriously	15	23.7	9-25	0.8	4.8	632
4	Crack trafficking	10	19	5-20	1.5	4.6	3,275
5	Cocaine trafficking	10	18.8	5-20	1.7	4	3,384
6	Heroin trafficking	10	18.7	5-20	2	4.3	3,352
7	Bank robbery: Teller with minor wound	10	17.7	5-20	0	2.4	614
8	Selling defective helicopter parts	10	12.8	4-15	2.1	11.3	675
9	Marijuana trafficking	8	15.3	3-15	3.4	3.9	3,380
10	Kidnapping: Victim uninjured	6	13.9	3-15	1	2.6	671
11	Carjacking	6	12.1	3-15	2.1	1.6	731
12	Knowingly marketing dangerous drug	5	16.4	2-20	5.2	5.3	631
13	Marketing drug after false testing	5	12.4	1-10	9.8	4.2	678
14	Bank robbery: Bomb threat	5	9.9	3-10	2	0.6	669
15	Extortion or blackmail	5	9.9	2-10	6.5	1.3	680
16	Robbing convenience store	5	9.5	2-10	1.6	0.6	596
17	Bank robbery: Gun fired; no injury	5	8.7	3-10	0.8	0.8	2,237
18	Bank robbery: Gun brandished	5	8.7	3-10	1	0.2	683
19	Counterfeiting currency	5	8.1	2-10	3	0	703
20	Selling handgun to felon	5	8	1-10	8.4	1	657
21	Selling worthless stock	5	7.7	2-10	3.6	0.2	677
22	Smuggling aliens in unsafe manner	5	7.6	2-10	4.1	0	724
23	Coin dealer helping money laundering	5	7.2	2-10	7.7	0.2	669
24	Smuggling aliens	5	6.1	1-8	6.4	0.3	647
25	Doctor making false Medicare claims	4	7	1-10	7	0.1	683

R A N K	CRIME SHOWN IN VIGNETTE[d]	SENTENCES GIVEN BY SAMPLE					
		Median Years	Mean Years	Inter-quartile Range	Percent Probation	Percent Death	N
26	Using credit cards illegally obtained	4	6	2-5	5.3	0	662
27	Bank robbery: No weapon shown	4	5.9	2-6	3.2	0.3	660
28	Gun dealer keeping inadequate records	3	6.9	.75-10	14.4	1.1	723
29	S&L officer causing bank failure	3	6.2	1-10	9.8	0	658
30	Rigging bids for contracts	3	5.8	1-3	10.4	0.2	637
31	Postal worker embezzling postal funds	3	5.7	1-6	6	0.2	671
32	Stealing mail	3	5.3	1-6	7.3	0	636
33	Stealing property	3	5.2	.83-5	11.3	0.4	652
34	Forging checks on false accounts	3	5.2	1-6	7.4	0	680
35	Soliciting funds for false charity	3	5.1	.91-5	9	0	660
36	Possessing prohibited weapon	2	4.8	.42-5	21.3	0.3	669
37	Failure to file tax returns	2	4.8	.5-5	18.3	0.2	1,339
38	Writing bad checks on false accounts	2	4.7	.75-5	12.3	0	717
39	Illegal logging on federal lands	2	4.7	.67-5	14.6	0	650
40	Tax evasion	2	4.6	.5-5	15.3	0	1,339
41	Police brutality on unresisting motorist (minority status)[c]	2	4.6	.5-5	13.8	0.5	671
42	Promoting illegal tax shelter	2	4.6	.75-5	13.3	0	1,331
43	Failure to notify large bank deposits	2	4.6	.5-5	14.9	0	666
44	Factory discharging toxic waste in river	2	4.5	.5-5	21.3	0.2	662
45	Dealing in stolen goods	2	4.5	.75-5	12.5	0	619
46	Bank officer stealing bank funds	2	4.5	.67-5	9.6	0.2	607
47	Using stolen credit card	2	4.4	.83-5	10.7	0	702
48	Company officer insider trading	2	4.3	.5-5	15.9	0	661
49	Police brutality on resisting motorist	2	4.3	.5-5	13.4	0.6	710
50	Bank employee stealing from bank	2	4.1	.75-5	13.6	0	662
51	Coin dealer failure to notify large deal	2	3.9	.5-5	20.5	0	658
52	Felon illegally owning handgun	2	3.8	.67-5	12.7	0	693
53	Making false mortgage application	2	3.6	.5-5	16.4	0	627

R A N K	CRIME SHOWN IN VIGNETTE[d]	SENTENCES GIVEN BY SAMPLE					
		Median Years	Mean Years	Inter-quartile Range	Percent Probation	Percent Death	N
54	Factory illegally polluting air	1	3.9	.08-5	24.4	0	673
55	Smuggling alien family members	1	3.7	.17-5	24.1	0.2	666
56	Price fixing	1	3.6	.25-5	22.7	0.2	712
57	Bribing county commissioner	1	3.5	.5-5	16.7	0	688
58	Harassing family to get them to move	1	3.4	.41-5	21.9	0.3	648
59	Bribing purchasing officer	1	3.3	.5-4	20.4	0.2	657
60	Felon illegally owning rifle	1	3.1	0-4	25.5	0	624
61	Crack possession, small amount	1	3	0-3	25.2	0.1	1,360
62	Purchasing agent accepting bribe	1	2.6	0-3	25.2	0	639
63	County commissioner taking bribe	1	2.6	.08-4	24.9	0	614
64	Illegal re-entry of deported alien	0.92	3.1	0-3	29.6	0.7	629
65	Cocaine possession, small amount	0.92	3	0-3	30.5	0.1	1,324
66	Vandalism of place of worship	0.92	2.8	.08-3	23.5	0	671
67	Heroin possession, small amount	0.92	2.7	0-3	29.5	0	1,367
68	Killing bald eagle, protected species	0.92	2.6	0-3	28.4	0.1	666
69	Factory discharging hot water in river	0.75	2.2	0-3	36.5	0	659
70	Illegal entry of alien	0.5	2.5	0-3	37.9	0.4	659
71	Police brutality of resisting motorist	0.5	2.1	0-2	34.7	0.3	634
72	False loan application, intent to repay	0.5	2.1	0-2	46.2	0.1	676
73	Marijuana possession, small amount	0	0.98	0-.75	60.3	0	2,958

[a] Respondents who gave ten or more death sentences, ten or more life sentences, or 20 or more probation sentences are deleted.

[b] Weights were calculated to compensate for unequal sampling ratios, unequal household sizes and unequal response rates and used in this table.

[c] The motorist is described as one of the following: "an African American", "an Hispanic-American", "an Asian-American", o "homosexual"

[d] The exact wordings used are shown in Figure 3.1.

Summary

The overall sentencing patterns of the respondents were described in this chapter. Several important generalizations emerge, as follows.

Most respondents took the sentencing task quite seriously, making clear distinctions among Crime Types and Crime Examples in their sentencing of convicted criminals. There is some evidence that a small minority were very severe in imposing punishments on each Crime Type and Crime Example, making most members of the sample seem relatively moderate in comparison.

Although only the most serious and the least serious crimes received anything close to the same sentence from all respondents, nevertheless there was some degree of convergence among respondents, an issue which we will return to time and time again in the remaining chapters of this report.

Respondents saw many distinctions among specific criminal behaviors that are formally grouped together. Within Crime Types, specific Crime Examples often received widely different sentencing. It appeared that respondents were more sensitive to the consequences of crimes for the physical safety of victims than they were to the economic losses suffered. In short, any indication of violence to persons tended to be met with harsher sentences.

Although sample members treated first offenders more leniently than recidivists, the increases in sentences for the latter were not very steep.

Respondents were slightly more lenient in their sentencing of female as compared to male felons. They were also slightly more lenient toward felons who were married and had dependents.