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JUSTICE IN SENTENCING: OFFENDER PERCEPTIONS



Research
Reports of the
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JUSTICE IN SENTENCING: OFFENDER PERCEPTIONS

**John Ekstedt and Margaret Jackson
Simon Fraser University
1988**

This report was written for the Canadian Sentencing Commission. The views expressed here are solely those of the authors and do not necessarily represent the views or policies of the Canadian Sentencing Commission or the Department of Justice Canada.

Published by authority of the Minister of Justice and Attorney General of Canada

For additional copies, please write or call
Communications and Public Affairs
Department of Justice Canada
Ottawa, Ontario
K1A 0H8

(613) 957-4222

Catalogue No. J23-3/6-1988E
ISBN 0-662-15868-7
ISSN 0836-1797

Également disponible en français

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Printed in Canada

JUS-P-439

ACKNOWLEDGEMENTS

First mention goes to those sentenced persons who participated in this study. Obviously they deserve acknowledgement since, without them, there would have been no study. However, they deserve recognition on more complete grounds than that. It is difficult, particularly in settings of confinement, for sentenced persons to imagine that there is any value in "academic" exercises and particularly ones which hold out the promise that their views will be taken seriously. Coupled with that, of course, are the negative nuances arising from events in confinement, or in the program, which are unrelated to the research and which often result in a resistance or inability to participate "freely".

The impact of events and uncertainties of this nature are illustrated in the field notes which make up part of this research report. In the face of this, a large number of sentenced persons in British Columbia participated enthusiastically in this study. Their involvement is acknowledged with respect and thanks.

A large number of persons with administrative and managerial responsibility for both federal and provincial corrections assisted the research team. Some "eased the way" in obtaining access to correctional institutions and programs, others took the time to review our research strategy and instruments. The following are especially acknowledged:

Mr. Rheal LeBlanc, Commissioner of Corrections,
Canada
Mr. Bernard Robinson, Commissioner of Corrections,
British Columbia
Mr. James Murphy, Regional Director General,
Pacific Region,
Corrections Service of Canada
Mr. Ron Wiebe, Research Director, Pacific Region,
Corrections Service of Canada
Ms. Betty-Lou Edwards, National Parole Service,
Pacific Region
Corrections Service of Canada
Mr. John Konrad, Chairman, B.C. Parole Board
Mr. Michael Redding, Exec. Dir., B.C. Parole Board
Mr. Ted Harrison, Regional Director, Vancouver Region,
B.C. Corrections Branch
Mr. Robert Hagman, Director, Vancouver Pre-Trial
Services Centre
Ms. Charlene Howe, Creative Community Service Program

Additionally, the administrators and participating staff in each correctional setting sampled are acknowledged with thanks. Many correctional staff persons assisted in this research both directly and indirectly. Some went out of their way to help assure the success of this research effort. It is wished that all these persons could be known and individually recognized.

Finally, a note of thanks to Aileen Sams of the School of Criminology for her extraordinary effort in assisting the research team to pull all this together.

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SENTENCING STUDY - OFFENDER SURVEY

I. INTRODUCTION

In the Order in Council setting out terms of reference for The Canadian Sentencing Commission, the general areas of interest to be examined were briefly stated as follows:

1. An examination of the feasibility of minimum/maximum sentences developed relative to the seriousness of the offence;
2. A consideration of the efficacy of sentencing guidelines;
3. A discussion of the impact plea negotiation and prosecutorial discretion has upon the sentencing process, as well as;
4. The effect parole, mandatory supervision, and general remission revisions have on existing penal and correctional capacities; and finally,
5. A determination of what the fundamental principles and purposes of sentencing are perceived to be in light of recent legislation (Bill C-19) setting out these ideals.

It is of interest to note that the current mandate of the Sentencing Commission is not one of contemporary concern only; it reflects concerns which date back through many other commissions. Fair, equitable, and just sentencing appears to

have been a remarkably well-examined issue for Canadian legislators and criminal justice system administrators. Discussion about sentence disparity has been the form most often taken. For example, the Quimet Report (1969) addressed the topic in this manner:

...offenders who are sentenced by different judges and magistrates to different terms of imprisonment for what they may consider similar offences, are likely to meet eventually at a common place of detention. They will inevitably compare the kind of penalties imposed by judges for what they, within the prison sub-culture, consider to be identical crimes. A deep sense of injustice may then arise in their minds, because they may not be capable of appreciating the very real differences between the commission of one offence which is comparable to another. Therefore, they will normally feel aggrieved by such apparent inequalities or inequities and their rehabilitation may present additional difficulties.

Imbedded within this statement are three assumptions which the present study will attempt to probe. First, that the perception of the inmate/offender in the process is important. The appearance of justice being done remains significant not only for the general public, but for those of the public who are processed by the system. Next, sentencing disparities do exist. There is empirical evidence to back this assumption, and not all attribute disparities to "justifiable" reasons. Whether the disparities result from prosecutorial negotiation, prosecutorial or judicial discretion, or such factors as race, sex, and the socio-economic level of the offender, they are often perceived to be unfair by the offenders themselves. The third point, then, is that the experience of unfairness will affect the individual's rehabilitation; the assumption being that this is

one of the goals of sentencing. Of course, at present, section 645 of the Criminal Law Reform Act clearly states:

...a term of imprisonment should not be imposed or its duration determined solely for the purpose of rehabilitation (645)(1)(g).

Nevertheless, concern about the offender's perception of fairness can now be legitimized as serving the needs of (645)(1)(a):

...promoting respect for the law through the imposition of just sentences.

Therefore, the present study was undertaken for the purpose of investigating sentencing issues within the Commission's mandate. In order to gain some knowledge of the offender's attitudinal reactions to questions posed about sentencing practices within an individualized as well as a social context, both a structured questionnaire and a group interview schedule were developed. In an attempt to sample a wide-range of offenders in the Lower Mainland, individuals from various stages and types of facilities in corrections served as participants. Details will be provided in the next section on methodology.

The focus of the study will be upon the perceptions of the offenders themselves, the individuals most intimately involved in the sentencing process. It is not even currently known, for example, what offenders view as the goals of sentencing. A series of such questions emerge from the terms of reference which can be directed toward the offender. To what extent do the offenders perceive disparities in dispositions handed down by sentencing judges? Do female offenders feel they should receive

the same treatment in sentencing as males? Are sentences thought to be fair and equitable? Would offenders prefer mandatory supervision over parole or vice versa? Is there a difference between federal and provincial offender attitudes towards sentencing? Ironically, these provoking questions have not often been asked of the offender, but have been directed towards other actors in the process, judges for example. This study will allow some comparison with earlier research asking many of these questions of the primary decision-makers in the process. Perhaps judges have something to learn from those they sentence.

Finally, some questions will allow a comparison with a sentencing study done by the Australian Law Reform Commission in 1980, which also surveyed offenders. It will be of interest to see if the concerns of offenders translate similarly across countries.

II. RESEARCH METHODOLOGY

Objectives of the Study

The object was to survey as broad a spectrum of offenders in the Lower Mainland as possible, regarding their perception of sentencing practices. Seven areas were identified within the Commission's mandate which were subjected to enquiries through a questionnaire and group interviews:

1. Purposes and principles of sentencing: why do we sentence offenders?
2. Where is disparity most evident in sentencing practice? For this variable, socio-economic, geographical, judicial, racial, and sexual disparity, questions were posed;
3. Post-sentencing issues, including mandatory supervision, tariff sentencing, and preferences related to parole and mandatory supervision;
4. The need for sentencing guidelines for structured discretion;
5. Extra-legal factors in sentencing: what mitigates or aggravates sentence severity?;
6. The offence-sentence relationship, or "just deserts" model; and,

7. The importance of various actors within the sentencing process.

In order to collect opinions on the issues outlined above, two different methodologies were employed which seemed suited to the nature of the task: a questionnaire to furnish us with a "hard copy" of the responses to selected issues to produce empirical data capable of statistical analysis, and an informal group discussion around the specific topics which allowed for comparison as well as a form of internal reliability and external validity check of the questionnaire itself.

A structured questionnaire was developed with items created for each of the above areas, resulting in a total of 80, with 10 demographic questions also posed. The breakdown of specific questions to issue is given in Appendix A. After an examination and subsequent comments were made by the Sentencing Commission, a pretest was administered at the Vancouver Pretrial Services Centre (VPSC) on June 26, 1985. Following further revision, access and scheduling at the institutions began.

Initially, it was planned to draw random samples from the offender population and this was done for the majority of the institutions and facilities, but difficulties were encountered with a few. Some of these problems are detailed in the following footnote.¹

¹ 1) Despite the fact the prisoners are confined, they are often very difficult to locate. Some are in court, have been released on day parole and temporary absences, are serving time in segregation for disciplinary offences, are in "protective custody" and cannot mix with the general population, are in the prison's medical unit, or were not allowed to attend because

It was decided, therefore, to record the opinion of as many offenders as possible while adhering to the random sampling procedure where feasible.

However, it should be noted that opinions sampled should not be generalized beyond those institutions surveyed. Also, although strict random sampling could not be employed for all groups, inferential tests were still used to compliment the descriptive analysis (frequencies/means) in order to indicate general trends and associations, but no causal inferences are intended. Non-parametric tests were employed, primarily the Mann-Whitney and Kruskal-Wallis tests. These statistical procedures were applied through the Statistical Package for the Social Sciences (SPSSX).

Three research teams of male/female pairs attended the prison or community program where they spoke to offenders. They introduced themselves as researchers "on contract" for the Canadian Sentencing Commission and outlined the goals of the

1(cont'd) they were considered a security risk.

2) It was not always possible to ask inmates if they wanted to participate in the study. Frequently this was done by prison staff or other prisoners, therefore it is not possible to know how well the objectives of the study were communicated.

3) When a forum for presentation of the research plan was secured, many prisoners were simply not interested in being involved. This was especially the case with offenders under supervision in the community. "Captive audiences" were generally more receptive.

4) The prison administrations dealt with usually referred the researchers to inmate groups, or programs, that they felt would be open to the study's queries. Inevitably, this leads to bias. Many of the respondents were used to discussing sensitive topics and contributed richly during the open discussion. Others were silent during the open forums, but were able to record their opinions on the questionnaire.

project. Those who did not wish to participate were allowed to withdraw. Each participant was given the questionnaire with 80 items and 10 demographic questions which took about 20 to 25 minutes to complete. Afterwards, the researchers directed an open discussion that lasted from one to almost two hours concerning sentencing issues raised in the questionnaire. If time permitted, the groups were asked if they had any comments that they would like the Commission to consider beyond the research team's concerns. One member of the research team directed the discussion while the other recorded responses.

Participants and Locations

In the study, offenders from 12 distinct institutions or community programs participated, allowing for the collection of 165 questionnaires. One hundred and fifty-seven respondents participated in the interviews. The institutions and programs are identified as follows.

Provincial

Lower Mainland Correctional Centre (Oakalla), Vancouver - this institution is the major provincial correctional centre for British Columbia. It houses male prisoners on remand status and those serving provincial sentence. Designated capacity - 399 beds.

Lakeside Correctional Centre - Lakeside houses women remanded in custody and serving federal and provincial terms of incarceration. Designated capacity - 65 beds.

Vancouver Island Regional Correctional Centre - this institution houses male prisoners on both remand and sentence status. Designated capacity - 150 beds.

Allouette River Unit - this is a minimum security provincial facility providing an overall rehabilitation program for male offenders. Designated capacity - 119 beds.

Federal

Matsqui Institution - this is a medium security federal prison for male offenders. Designated capacity - 335 beds.

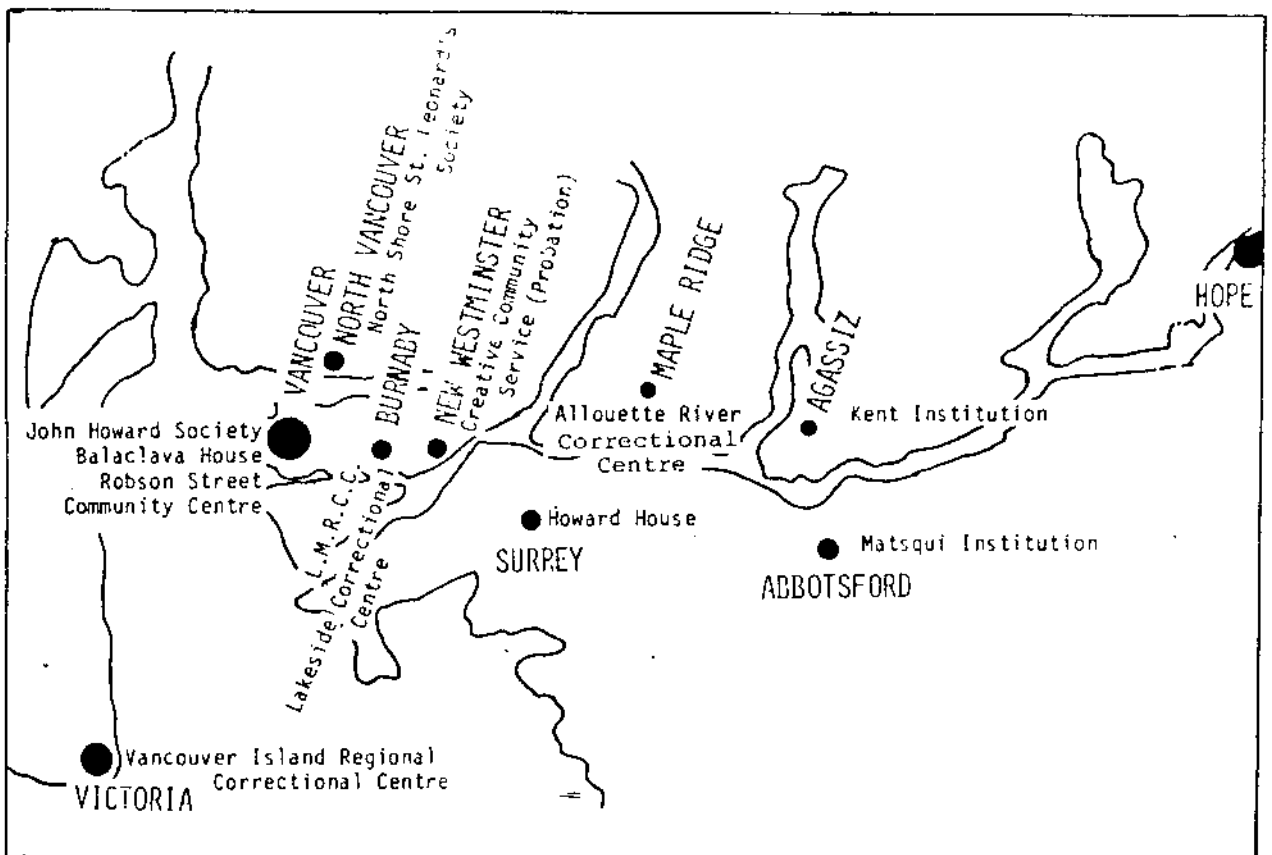
Kent Institution - this is a maximum security federal prison for male offenders. Designated capacity - 168 beds.

Robson Street Community Correctional Centre - this is a residence for day parolees serving federal sentences. Designated capacity - 119 beds.

Private Agency Programs

Balaclava House - this is a half-way house program for women operated by the Elizabeth Fry Society. Designated capacity - 12 women.

LOCATION OF INSTITUTIONS
AND PROGRAMS SURVEYED



Howard House - this is a half-way house run by the John Howard Society for federal offenders (male) released on parole or mandatory supervision. Designated capacity - 10 men.

John Howard Society, Sexual Offender Program - this is a mandatory counselling program for sex offenders released on mandatory supervision.

St. Leonard's Society - this is a federally funded half-way house program for male offenders released on day parole or mandatory supervision. Designated capacity - 7 men.

Creative Community Services, New Westminster - this is a private agency program operating under contract with the Provincial Government to supervise probationers receiving community work orders.

The groups spoken to included:

1. Provincial offenders (N=63) serving sentences in custody or awaiting trial, both male and female;
2. Provincial offenders on probation (N=10);
3. Federal offenders (N=63) incarcerated at S-3 to S-6 security levels, both male and female; and
4. Federal offenders on day parole (N=19) and mandatory supervision (N=10) both male and female.

Some of the sub-groups included prisoners from a compulsory alcohol-awareness program, sexual offenders in a mandatory therapeutic counselling session, women in a half-way house and members from a "lifer's organization". The breakdown is represented graphically in detail in Figure 1 and frequencies

given in Table 1.

After a preliminary description of the sample demographics, the results will be reported according to the seven topic breakdown. Within each of these, the questionnaire findings will be reported first, with additional statistics given where of interest; then the relevant interview responses will be considered. The format will include differences between groups such as federal/provincial, female/male, recidivist/first offender, parolee/non-parolee comparisons.

In the conclusions, the findings will be highlighted and interpreted.

Table 1
Locations and Frequencies of Offenders Surveyed

Institution or Program	N=	% of Sample
PROVINCIAL		
LMRCC, Main Jail	9	5.6
LMRCC, Westgate "B"	9	5.6
Allouette River Unit	12	7.5
Lakeside Correctional Facility*	20	12.5
VIRCC	23	14.4
Probationers	10	6.3
FEDERAL		
Kent Maximum Security	20	14.9
Matsqui Institution	34	21.2
Robson Centre Community Correctional Centre	6	3.7
Howard House	4	2.5
North Shore St. Leonard's Society	3	1.8
Balaclava House	5	3.1
Sexual Offenders	10	6.3
Total	165	100%

* Lakeside Correctional Centre contains women serving both federal and provincial prison terms.

Number of Provincial and Federal Persons Sampled at Each Location

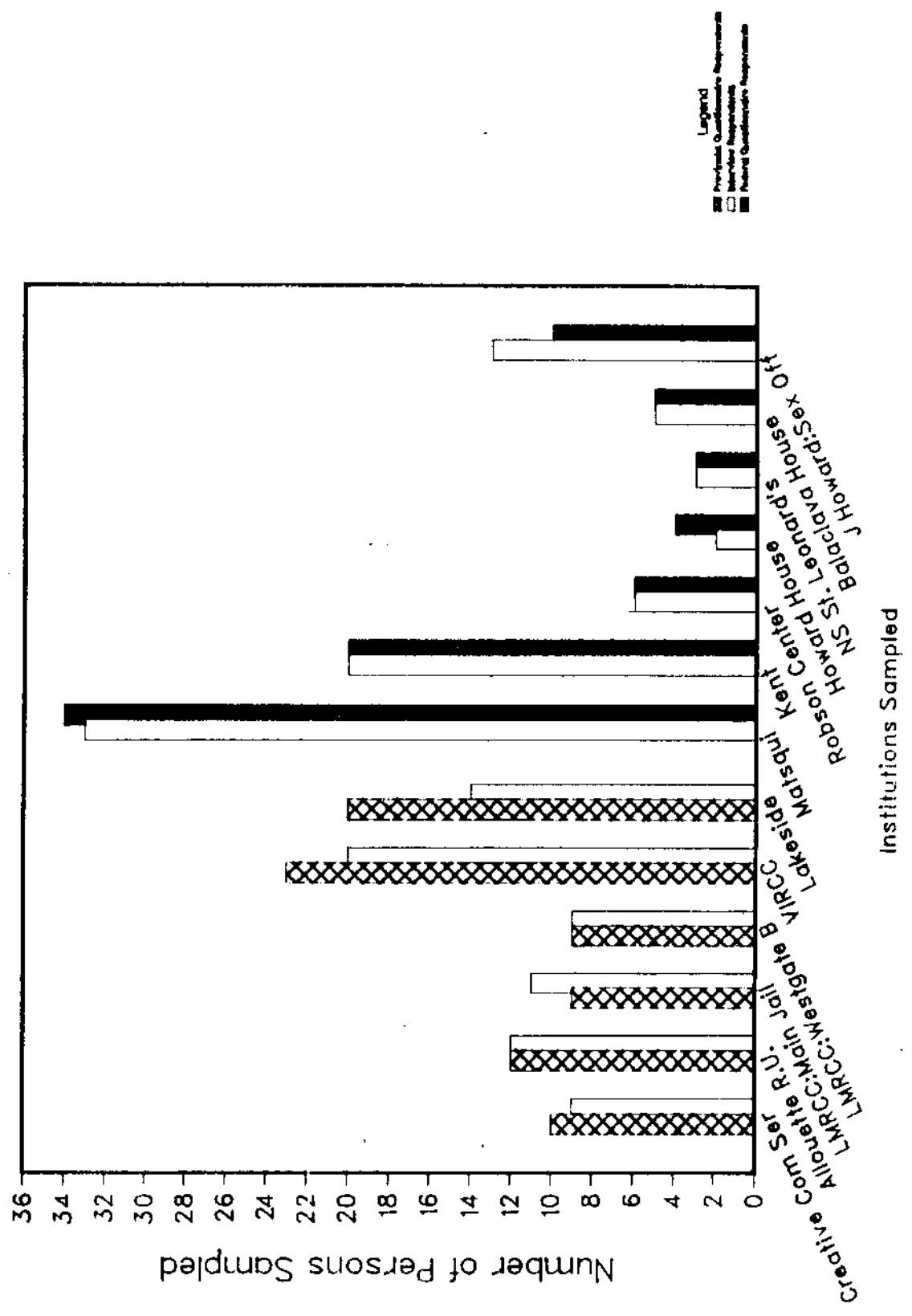


Figure 1

III. RESULTS AND DISCUSSION

A. Questionnaire - Summary Responses

Demographics

Comparing the demographic results with other statistical data² it is found that in terms of age and aggregate sentence, the provincial offenders sampled were comparable to the average for British Columbia. A profile of the "typical" offender in the present study is indicated in Table 2.

²Personal communication, Gregory Muirhead, Senior Research Officer, B.C. Corrections Branch, Victoria, B.C.

Table 2
Offender Profile

Age	= mean 31 years	
Current Offence	= robbery, murder, break and enter (most frequent)	
Previous Offences	= break and enter, drugs, impaired driving	
Level of Education	N	%
Less than Grade X	37	22
Less than Grade XII	29	18
High School Graduate	38	23
Some Post Secondary	44	27
Post Secondary Graduate	13	8
No Reponse	4	2
	<hr/>	
TOTAL	165	100
First Offender	= only 24%, 76% recidivists	
On Parole	= 38% have been, 62% have not	
Applied for Parole	= 59% have, 42% have not	
Total Sentence Length	= majority under two years (37%)	
Sex*	= 16% (25) Female, 84% (130) Male	

*Excluding probation

Purposes and Principles of Sentencing

It is appropriate to begin a discussion of the results with reference to the responses made to items enquiring into the purposes and principles of sentencing. The goal of rehabilitation has now officially been discarded (see Criminal Law Reform Act 1984, section 645), by those legislating sentence reform. But what of the perception of the offender? If she/he strongly believes that one of the outcomes of his/her sanctioning experience is rehabilitation, then failure to achieve this goal may lead to an increased bitterness and a true "hardening of the criminal".

The overall findings indicate there is no such illusion in the offender's mind. Of the six goals provided for consideration to the question,

Why Offenders are Sentenced?

"Punish the Offender" received an overwhelming 78% agreeing or strongly agreeing³ that this was the primary goal; protection of the public emerged as a second strongest response recorded with 69% agreeing or strongly agreeing.

There were no significant differences between groups on this issue, with the exception of the first offender/recidivist comparison. Here, in response to the proposed goal of sentence

³The categories of responses were five: strongly disagree, disagree, neutral (or no opinion), agree, or strongly agree.

"paying the victim back for the harm done", 40% of the first offenders and 24% of the recidivists agreed. Therefore, first offenders, as a group, were more inclined to view sentencing as a means by which victims can be compensated. This may be because first offenders are more likely to receive sentences of community work service and restitution-like dispositions than recidivists. The latter group is more likely to be sentenced for public protection than punishment reasons.

Responses to two other items relating to sentencing functions revealed, first, that offenders think

Individuals should only be sent to prison if they cannot learn from less severe sentences (such as fines, suspended sentences, probation)

with 65% agreeing or strongly agreeing with the statement. This is interesting in light of their stated belief that the primary purpose of sentencing is to punish. This seems to imply that there is a cognitive purpose of a lesson to be learned that is operational for them as well. Second, in response to the question as to whether judges should explain why they sentenced the way they did, 89% agreed or strongly agreed that they should. The judge should articulate what function is being served, whether deterrence, reformation, or other. Perhaps this clarifies for the offender what objective he or she should be keeping in mind while serving the sentence.

No inferential statistics were done for this section. Because of the high agreement, cross-tabs did not reveal any significant differences between any of the variables examined.

Sentence Disparity

The second area to be examined was that of disparity. As stated earlier, this has been the primary focus of most sentencing research and seems to have partly evolved from the concern for offender rehabilitation. Inequitable discretionary decisions arose in the past from the well-intentioned motive of providing individualized treatment to curb criminal tendencies. For example, a judge, upon being informed that a treatment program designed for offenders' needs was available, may set sentencing according to program length, rather than to other standardized sentences comparable for the same offence. But, more generally, sentence disparity is of concern when it arises from minority, socio-economic, or geographic biases. Women, native Indians, the poor, urban/rural individuals receive sentences differing from their counterparts. With the recent implementation of section 15 of the Charter of Rights, the equality section, sentencing reformers acknowledge a sensitivity to these disparities. Again, it has not been clear what constitutes sentence disparity for the offenders themselves. A number of questions focussed specifically on this issue. Twelve questions were included in five categories: socio-economic, geographical, judicial, racial, and sexual.

The offenders surveyed obviously believe in the power of money. Seventy-six percent disagreed or strongly disagreed that

Rich people receive the same sentence as others for the same crime

and 81% believed that

If a person can afford a good lawyer, their chances of getting light sentences are better.

While 74% felt that the same sentence should be handed down regardless of location, 54% indicated they did not believe the same sentences were being given throughout British Columbia. On the other hand, 34% were neutral on the last question.⁴

Racial sentencing disparity relative to native Indians was felt to exist for 59% of the offenders, while another 59% indicated women should receive the same sentences as men for the same offences. The last question produced an interesting male/female difference, although this was not significant. Females tended not to agree with their male counterparts ($p=.0982$) that their sentences should be the same (mean=64), as compared with the males (mean=79). Perhaps, and this is offered only as speculation, women feel their sentences are relatively more onerous to begin with, given their secondary role in society.

Most of the questions on the disparity topic were related to the role the judiciary played in sentencing. Judges did not emerge with the offenders' confidence. A summary of the findings indicate, first, that

⁴Based on comments during the interview, the B.C. geographic section may have been interpreted as a knowledge question rather than an attitudinal one. Those with little experience or knowledge of outside the Lower Mainland may have circled the neutral 'no opinion' category.

1. Participants believed some judges sent some people to prison more than other judges (98% agree/strongly agree).
2. It does not matter which judge you appear before, they are all the same when it comes to sentencing (90% disagree/strongly disagree).
3. The same judge may be, in sentencing, tough on some crimes but not so tough on others (92% agree/strongly agree).
4. In sentencing, the same judge may be hard on some offenders but not so hard on others (93% agree/strongly agree).

Responses were evenly distributed to the question,

5. Unjust short sentences are pretty rare (39% disagree/strongly disagree; 26% neutral; 35% agree/strongly agree).

But not to the question,

6. Unjust long sentences are pretty rare (76% agreed/strongly agreed).

Concluding this section, therefore, it appears offenders do not operate under the assumption that the judge is a neutral, objective arbiter, but instead they ascribe to him or her idiosyncratic decision-making and sentence formation. Again, the reality of this view is not at issue but rather the perception itself, as related back to the acknowledged importance of justice being perceived as being done.

Post-sentencing Issues

There has traditionally been concern on the part of the public over parole release procedures and a general misunderstanding about mandatory release and supervision procedures. Many conservative citizens do not want criminals back on the street, nor do they want sentences "cut" by corrections. Different worries are registered by the liberal citizenry who argue that these procedures and release decisions are discretionary, often not adhering to the rights of the offenders. These concerns translate into a chronic problem issue for corrections. It can be viewed as a management issue as well. Offenders who are unclear about when they will be released have greater stress, it has been argued, and less motivation to participate in the institution's programs. Since the criteria for release are not perceived to be consistently followed, sentences become a form of indeterminate sentence, relying upon biases of the parole board or institution staff. It will be seen in the conclusions that perhaps this uncertainty is not as justified a damnation as it originally appears to be, but first, it is of interest to note the perceptions of the offenders.

Beginning with the question

I would like to see prison sentences...

Five options were presented. The summary of responses is as follows:

- a. With straight time and temporary absences (no mandatory supervision, no parole) - (61% disagreed/strongly disagreed)

- b. With only mandatory supervision (no parole) - (68% disagreed/strongly disagreed)
- c. With only parole (no mandatory supervision) - (bimodel response: 51% disagreed/strongly disagreed; 35% agreed/strongly agreed)
- d. With mandatory supervision and with an early release through parole (like it is now) - (another bimodel response: 37% disagreed/strongly disagreed; 46% agreed/strongly agreed)
- e. The way it used to be with only parole and time off for good behaviour (no mandatory supervision) - (59% agree/strongly agreed).

Therefore it appears that mandatory supervision is not necessarily viewed as a positive procedure, with the offenders indicating a desire for a return to the old system without mandatory supervision.

When asked more specifically about who should receive mandatory supervision, an interesting breakdown occurred.

In response to

Mandatory supervision for violent offenders - (59% agreed/strongly agreed)

Mandatory supervision only for sexual offenders - (bimodel response: (59% agreed/strongly agreed; 42% disagreed/strongly disagreed)

Mandatory supervision only for property offenders - (46% agreed/strongly agreed)

Mandatory supervision for all offenders - (44% disagreed/strongly disagreed; 30% neutral; 25% agreed/strongly agreed).

But 59% of the offenders felt that mandatory supervision was helpful to long term offenders.

Therefore, while most offenders showed a distaste for the 'only mandatory supervision' option, they agreed that it should be used for violent offenders. This conforms with the interview data, which more pointedly indicates a dissatisfaction with mandatory supervision. Further, federal inmates were less in favour of only having mandatory supervision than any other groups ($p=.0068$).

Looking at the breakdown, a one-way ANOVA revealed that those on parole and mandatory supervision have a more negative outlook and are statistically different from provincial offenders on the question of whether mandatory supervision should be used to help long-term offenders ($p=.0425$). A t-test further indicates that those who have applied for parole also have a more negative attitude towards parole procedure. Parolees were less in favour of having the system remain the same, that is, mandatory supervision and an early release through parole ($p=.009$).

For the option 'only parole', not as many disagree. On the other hand, straight time with no parole or mandatory supervision leaves no hope or incentive, according to the interview data. And, as noted, parole is perceived as better than prison in any case.

Although the status quo received support, it was the option of parole and time off for good behaviour, with no mandatory supervision (in other words, the way it used to be), that received strongest support (59%). Those with more

experience in the federal system appear wary of mandatory supervision and this may account for the strong minority who disagreed with the present arrangement of mandatory and parole release (38%).

Parole did not appear without fault either, but 65% indicated that parole procedures were fair. This differs significantly from offenders surveyed in the Australian Law Reform Commission Study, 71% of whom indicated they thought the parole system was 'pretty unfair' or 'very unfair'. However, in the present study, the offenders believed parole chances were better if the prison staff supported them (58% agreed/strongly agreed). There was a bimodal split on whether it was clear what the parole board expects of the offender (43% agreed/strongly agreed; 45% disagreed/strongly disagreed). Fifty percent felt parole restrictions were unfair, but even so, 78% believed parole is better than prison. The majority of offenders believe that some kind of negotiated contract with the National Parole Board would be best to establish clear agreement about release conditions (87% agreed/strongly agreed). Overall then, parole received higher ratings than mandatory supervision.

The fact that most categories of offender surveyed do not agree with the question

When the Parole Board attaches special conditions, or restrictions on a parolee, they are usually fair, whether they are not on parole or have not applied for parole, indicates a general negative outlook which may

affect their attempts in applying for parole or their hopes of obtaining it.

As far as the perception of Parole Board expectations is concerned, it appears probationers have a more positive attitude about this than parolees and federal inmates ($p=.0183$). There is also a significant difference between the opinions of lifers and federal inmates with, as one might predict, the lifers having more negative attitudes about the expectations ($p=.001$). The interviews suggest that it is felt that the Parole Board makes its decisions inconsistently.

An analogous breakdown occurs with the question concerning the fairness of parole conditions; those having experienced parole being more dubious about its fairness. Comments in the interviews suggest that offenders feel the conditions are too stringent and are discretionarily enforced; therefore, the desire to structure by way of a negotiated contract. The exception here was with probationers ($p=.0127$) who seem to feel a contract is not necessary.

In concluding this statistical section, from the responses generated, it is found that parole is viewed as something potentially beneficial by most offenders, but the release procedures need redirecting toward assisting the offender rather than primarily controlling him/her.

Sentencing Guidelines

One of the major interests of the Sentencing Commission has been the idea of establishing sentencing guidelines for the Canadian judiciary to reduce disparity in sentencing. Therefore, each of the five questions referring specifically to guidelines will be detailed. These responses, along with those on disparity in the second section, strongly indicate offenders want structure and consistency, in other words, predictability and certainty. The questions were

- a. Some crimes are so serious they should be given a prison term - (74% agreed/strongly agreed)
- b. The law should give more direction to judges on how short or long a prison sentence should be - (68% agreed/strongly agreed)
- c. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases - (62% agreed/strongly agreed)
- d. Judges need to be guided by minimum and maximum sentences for each offence - (56% agreed/strongly agreed)
- e. Laws should be passed to prevent judges from giving too much prison time for some offences - (88% agreed/strongly agreed)

It appears that offenders would be supportive of the establishment of sentencing guidelines. Offenders are in favour of restricting judicial power to some extent through minimum and maximum sentences; although in the interview results it will be

seen that this question really should have been made into two. Offenders appear to support maximums, but only want minimums for certain very serious offences.

They seem also to support the idea of national standards but suggest the need for judicial discretion to consider the individual's circumstances surrounding each crime, as discussed in the next section. No differences of significance arose with this topic.

Extra-legal Factors

Another area of sentencing research often addressed in the literature is the impact extra-legal factors have upon sentencing outcome; but, again, this is not a mutually exclusive topic from other issues such as disparity. Hogarth brought this matter to the attention of the Ontario Provincial court judges in his 1969 survey and found his subjects agreed to the importance of factors other than strictly legal ones in forming appropriate dispositions. Such variables as guilty pleas, use of weapon, the offender's age, would direct the judge in making more suitable decisions.

Twenty-one items to be considered were presented to the offenders studied in the present study. The full responses can be seen in the frequencies reported in Appendix C. However, only responses of note will be presented here. For example, 59% of those surveyed felt judges did not take into consideration time

spent in custody before sentence. Eighty-eight percent believed police laid too many charges for a single offence.

For specific mitigating factors the categories always, sometimes, or never were employed in a check list manner.

Factors indicated to be of most importance were extent of harm to victim (66% always); if the crime was premeditated (70% always); if a weapon was used (67% always); the mental state of the offender (75% always); the time the individual spent in custody pre-sentence (73% always); and the role the accused played in the offence charged jointly with others (57% always). Where the crime was a frequent one in the community (22% always); or whether the offender saved the cost of a trial by pleading guilty (22% always); were not salient mitigating factors for most offenders.

A number of significant differences emerged between groups when looking at the extra-legal factors. Men more than women agreed that judges should take into account time spent in custody pre-sentence ($p=.0037$). As well, on the question whether the judge should take into account the offender's family background, men felt this should always be considered 45% of the time and women 68% of the time ($p=.028$).

With the first offender/recidivist breakdown, first offenders felt that one consideration should be whether the offender seems likely to commit an offence again with 74% indicating always; whereas with recidivists this was only 53% ($p=.015$); an understandable difference. Another factor with the

first offender/recidivist breakdown was whether the offender has repaid or in some way made amends to the victim; 33% of first offenders always felt this should be considered and with recidivists, 60% felt that this should always be considered ($p=.002$); not as clear a finding.

With parolees and offenders not on parole, one significant difference emerged from the question of whether the offender's ties with the community should be considered; 54% of the parolees felt this should always be considered, whereas for those not on parole this was 'always' true for 41% ($p=.047$). They differed as well on agreement as to the extent the criminal record should play in mitigating sentence; 25% of the parolees felt this should always be a factor and, for those not on parole, 50% felt this should always be a consideration ($p=.013$). The last difference was with the consideration of the offender's family responsibilities. Here 64% of the parolees indicated this should always be a factor and, for those not on parole, only 49% felt this the case ($p=.027$).

The family responsibility variable appeared the most interesting in the cross-tab results between lifers and other federal prisoners as well. A one-way ANOVA ($p=.0089$) produced significant differences between these two groups. Lifers appeared to be more in favour of this factor in sentencing than the other groups. It may be speculated that because lifers are forced to be distant from their families for such a long time, they are more sensitive to the fact that the remaining family

members may have to go on welfare, or at least must become completely self-sufficient as a result of the lifer's exit from their lives.

Although the interview results discussed below indicate offenders believe guidelines for plea negotiations would greatly improve the trial process, the responses to the two questionnaire items on this issue are not clear cut. Over one third of the offenders were neutral about whether a guilty plea should mitigate the sentence and it was a near split on whether one should accept a lawyer's deal for a lighter sentence or not (43% strongly disagreed/or disagreed; 38% agreed or strongly agreed).

Sentence-Offence Relationships

An intriguing question to ask offenders is what they themselves feel would be an equitable sentence for an offence. Since they are the ones enduring corrections sanctions, would they necessarily indicate more lenient sentences as the most appropriate and just? Therefore, with this in mind, the task of matching 10 offences with 12 possible dispositions was assigned the offenders. A comparison group with non-offenders was not incorporated, but the various sub-groups themselves could be compared.

Originally the first three dispositions listed by the offender were recorded for each offence. However, the

frequencies indicated that few people chose more than one sentence for each crime. Of those who did, there appeared to be little difference between the first, second and third choices, relative to the type of sentence given. Thus, the discussion following will focus on the first sentence recorded. For the purpose of analysis, the sentences were collapsed as noted in Table 3.

The responses provided a reliability check on the rationale used when constructing the questionnaire, that is, minor crimes received the least severe penalties, while major crimes received the most severe. White collar crimes, especially the most identifiable ones of polluting the environment, received minimal levels of sentencing; while sexual assault was rated as severe by the vast majority of respondents. This was also evident from the interviews. Impaired driving had an even distribution with many recommending sentences in the first two columns, but the majority preferring provincial time.

Table 3

Frequency of Sentences Chosen for Offence

Offence	Noninstitutional Sentence ¹	Monetary Sentence ²	Provincial Sentence ³	Federal Sentence ⁴
Break and Enter	51% (78)	16% (24)	28% (43)	6% (9)
Common Assault	61% (94)	10% (16)	25% (39)	3% (5)
Arson	12% (18)	11% (17)	31% (47)	45% (68)
Murder	.7% (1)	0% (0)	5% (8)	94% (139)
Impaired Driving	30% (45)	23% (35)	35% (53)	13% (20)
Bribery	39% (57)	21% (31)	29% (42)	11% (16)
Sexual Assault	3% (5)	3% (4)	7% (11)	87% (135)
Possession of Marijuana	70% (107)	24% (36)	6% (9)	.7% (1)
Polluting the Environment	41% (61)	31% (47)	16% (24)	12% (18)
Trafficking in Heroin	19% (29)	6% (9)	25% (38)	50% (77)

¹Includes: discharge with no conditions
discharge with conditions
suspended sentence
probation
community work order

²Includes: fine
paying money to the victim

³Includes: intermittent jail sentence
prison (less than 2 years)

⁴Includes: prison (2 to 5 years)
prison (5 to 10 years)
prison (more than 10 years)

A number of group comparisons revealed interesting differences according to the specific offence listed. For break and enter, for example, probationers tend to give lower sentences than parolees ($p=.0497$). This is consistent with probationers' more lenient positivistic attitude to sentencing overall, as seen in this study. For assault and impaired driving, property offenders gave more severe penalties than drug offenders ($p=.0438$). For polluting the environment, there was a significant difference between the most highly educated in their responses and those with less than Grade X education. The sentencing options seem to increase with education level, but this is not proven from the study. Lifers tend to give harsher sentences generally for this offence, but they also tend to be more educated as a group.

There are male/female differences for murder and heroin offences, with females giving more lenient sentences for both ($p=.0063$). Drug offences were an important issue in female prisoner populations generally. The women were concerned with the length of time drug offenders received. They did not tend to view the offence as a particularly onerous one. However, the number of women in prison for drug related crimes did not differ statistically from the number of men imprisoned for the same crimes in the study.

Finally, it was intriguing to note a number of non-significant differences. There were no significant differences, for example, between sex offenders and others on

their opinions about sexual assault sentencing; nor between lifers and other federal inmates on the issue of sentencing for murder; nor between sexes on the issue of sentencing for sexual assault, as might have been predicted.

Importance of Actors

The last section deals with the offenders' perceptions of the relative importance various actors play in the sentencing process. Here the category choices were four: not important, somewhat important, important, and extremely important. Since there were only seven parties listed, the 'extremely important' category responses will be provided for each:

Police Role - 34%
Prosecutor - 53%
Defence - 40%
Judge - 78%
Expert Witness - 26%
Offender - 36%
Victim - 31%

It can be seen that the judge is perceived as most important, with the Crown second in authority. The victim is only perceived as being of little more importance than the expert witness in the process; psychiatrists and technical

experts are apparently low in perceived influence, an interesting finding in the light of their proven impact on sentencing.

Also, the finding of the second place ranking of the Crown is of interest in light of the interview results. Although this lawyer is acknowledged to be of importance in plea negotiation, it appears the role of police is viewed as more significant from the standpoint of the concern about overcharging. The discussion about the relationship between plea-bargaining and police overcharging was well-articulated in the group discussions.

Statistics performed on the importance of the variable "offender" revealed a significant difference between post-secondary school graduates and high school graduates. The more educated the offender, the more importance seemed to be placed on the offender in the sentencing process. This may be a reflection of self-image; the more highly educated the individual, the more he/she might value his or her role of control in the trial process.

Finally, the question was posed as to the perceived justice of the offender's own sentence. Just as with the matching task of disposition to offence, the possibility existed that those being punished would not be able to acknowledge that their punishment was just. While the majority disagreed (or strongly disagreed) that their sentence was fair (48%), it was of interest to find out if there were identifiable groups of offenders who perceived their sentences to be fair. The question

to them was

The sentence I received was pretty fair - overall, 39% strongly agreed or agreed.

Those who answered agreed or strongly agreed to this statement came from the following subgroups and groups:

1. Subgroup	N	% of Group
Female	15	60
Male	64	46
First Offenders	22	63
Recidivists	50	44
Those on Parole	33	55
Not on Parole	44	44

2. Group	N	% of Group
Probation	6	60
Provincial Inmates	34	54
Federal Inmates	13	21
Mandatory Supervision	6	32
Parole	5	56

Considering the responses to questions concerning perceived fairness of parole, perceived disparities in sentencing generally, and the perceived goal of sentencing as punishment, it is surprising that the individual's perception of his/her own sentence is that it was fair. The differences of note are between probationers (60%) and federal inmates (21%), and a further breakdown indicating lifers differ from other federal inmates in a negative direction, again understandably. Probationers are the 'odd man out' group and it is hard to explain why their perceptions vary on this issue as well as early ones. Perhaps they are the least affected by the sentencing process and it is only with deeper involvement that perceptions are more consistently altered.

B. Interviews - Summary of Responses

Introduction

Group interviews were successfully completed in 12 settings. These included four provincial institutions (three male and one female), three federal institutions, and five private agency programs. The numbers interviewed in each setting are as follows (see p. 8 for setting descriptions):

PROVINCIAL

Lower Mainland Correctional Centre (Oakalla) - main jail, west wing (N=11) and Westgate B (N=9).

Lakeside Correctional Centre (N=14).

Vancouver Island Regional Correctional Centre (N=20).

Allouette River Unit (N=12).

FEDERAL

Matsqui Institution - general population (N=17) and Matsqui Lifer's Organization (N=16).

Kent Institution (N=20).

Robson Street Community Correctional Centre (N=6).

PRIVATE AGENCY PROGRAMS

Balaclava House (N=5).

Howard House (N=2).

John Howard Society, Sexual Offender Program (N=13).

St. Leonard's Society (N=3).

Creative Community Services (N=9).

The total number of sentenced persons who participated in group interviews was 157, including 26 who participated in the pretest of the questionnaire and interview format at the Vancouver Pre-trial Services Centre (see Figure 1, p. 14).

Methodology

Following the pre-test of the questionnaire and interview format at the Vancouver Pre-trial Services Centre, it was determined that the completion of the questionnaire and the follow-up interviews should occur as closely to one another as possible. It was therefore decided that (wherever possible) a random selection of offenders would take place and a time established for them to meet with the researchers. At this meeting, the offenders would be asked to complete the questionnaire and remain for a follow-up discussion. As a result, almost everyone who completed a questionnaire participated in an interview (157 of 165).

Five categories of questions were selected from the major elements of the questionnaire to direct the group interviews. These were:

1. Of the six items mentioned in question 1 (questionnaire), what seem to be the most important reasons for sentencing offenders? What might be added to the list?
2. Do you think there is inequality in sentencing? (If so, where?).
3. How do you feel about parole and mandatory supervision? Any suggestions for change? (Refer to question 25 - questionnaire).
4. (An example was provided of a crime where minimum and maximum penalties are written in law). How do you feel about maximum and minimum penalties? Should there be guidelines to restrict the length of sentences judges can give?
5. What do you think of plea-bargaining? Is police overcharging common? What do you think about it?

Interview Results

Opinions from the interviews are summarized according to the seven categories of interest outlined in the objectives of the study. Discussion did not occur in all of these areas for every group. As can be seen from the interview questions, the preponderance of discussion was likely to occur in the areas of purposes and principles, disparity, post-sentencing issues,

sentencing guidelines, the offence - sentence relationship, and extra-legal factors in sentencing. A summary of the general opinions expressed across all groups will be provided in each of the seven areas and differences between groups will be noted wherever they occur.

Purposes and Principles of Sentencing

The majority of comments in this area identified punishment of the offender as the most obvious purpose in sentencing. Public safety was regarded by most groups as a secondary, but important, purpose. In the public safety category, those who commented were consistent in their opinion that, while punishment could be considered a general goal applying to all categories of offensiveness, public safety should be regarded as a goal particular to the seriousness of the offence, or the character of the offender. Several groups identified violent offences and the sexual offender as the most obvious concerns related to public safety.

All groups appeared to be in general agreement that, wherever possible, alternatives to imprisonment (restitution, community service, etc.) ought to be used. Consequently, it was a general opinion that these programs should be increased. The goal of rehabilitation was consistently devalued in the group discussions. However, the idea that one could "learn from one's mistakes" and give evidence to this through effective community

service or restitution to the victim was consistently expressed. It would appear that the concept of rehabilitation was associated, by the majority of respondents, to prison programs. It appeared that most groups assumed that rehabilitation was considered by the judiciary as a legitimate objective in sentencing and that sentences of imprisonment could incorporate that objective. The objective of rehabilitation in relation to imprisonment was considered by the offenders to be naive and unworkable.

Sentencing Disparity

The issue of sentencing disparity generated considerable discussion in all groups. There were two matters related to sentencing disparity where all groups were in strong agreement. These were: socio-economic circumstances; and, subjectivity arising out of judicial bias or prejudice. It was strongly believed that the ability to employ defence council who are adept at "judge shopping" is directly related to the outcome in sentencing.

Examples were provided, by some groups, of disparity in sentencing as between men and women and as between urban and rural settings. It was generally believed that sentencing in rural areas is harsher than in urban areas and that men receive harsher sentences than women. There was strong agreement that native persons suffer discrimination in the sentencing process.

The opinion was expressed by several groups that crimes committed by police or law enforcement officials are treated much more leniently than for the "regular" citizen.

Post-sentencing Issues

Two issues dominated the discussion in this area: mandatory supervision and parole. The majority of opinion across all groups was that mandatory supervision should be severely modified or abolished and that the system for granting and administering parole should be reformed.

While a minority expressed the view that mandatory supervision might make sense for selected categories of offences and offenders (again, violent offences and sexual offenders were mentioned), the most consistent recommendation was for the abolition of mandatory supervision and a return to the "old" system of statutory and earned remission.

All groups appeared to support a concept of conditional release. However, the groups were unanimous in the expression of dissatisfaction with regard to the make-up of the Parole Board, the "arbitrariness" of the conditions attached to parole, the lack of clarity with regard to the criteria used in granting and revoking parole, and the lack of positive support and assistance while under supervision.

Most groups argued for changes in the composition of the Parole Board. Nearly all groups believe the Parole Board

appointments to be too "political", but there were differences of opinion with regard to whether or not the Parole Board should be "better trained" and more "professional". There was also some divergence related to whether there should be greater or lesser involvement or influence in the parole process by institutional authorities. Opinions were strongly expressed on both sides of these issues. Nearly everyone believed that the parole process should be more "open" and that reasons for decisions should be more effectively communicated to the inmate.

Sentencing Guidelines

There was general agreement across all groups that some form of sentencing guidelines should be provided. Most groups were very careful to qualify this response with the concern that the ability to consider individual circumstances be retained in the development of sentencing standards or guidelines.

With regard to the issue of whether or not minimum and maximum sentences should be provided in law, most groups expressed the opinion that maximum sentences should be prescribed in law, but that minimums should not be set except, perhaps, for very serious offences (again, sex offences became the example).

The opinion was expressed by several groups that the range of options for sentencing in relation to some offences is too broad (where current minimum/maximums exist) and there is a

greater need on the part of the offender for "certainty" and consistency with regard to the punishment for crime.

Extra-legal Factors in Sentencing

In the interviews, two matters were discussed related to this category of interest: plea-bargaining and police overcharging. There was general agreement that both plea-bargaining and overcharging are very common occurrences. These behaviours seemed to be accepted by most interviewees as "part of the system". The opinion was often expressed that plea-bargaining should be more "open" and that the judge should be party to any agreements made in the plea bargaining process. Those interviewed were generally clear about the relationship between overcharging and plea-bargaining. The suggestion was made that if overcharging were reduced then plea-bargaining would also be reduced to the extent that overcharging may be used for the purpose of effecting a bargain. However, there seemed to be a recognition that plea-bargaining involves more than simply a response to superfluous charges.

Several offenders related the phenomenon of plea-bargaining and overcharging to the requirement for adequate defence counsel and the opinion was expressed that, if such counsel cannot be obtained, then the accused is left at a significant disadvantage. Thus, plea-bargaining is unfair to the extent that the accused is not able to obtain defence counsel capable of

using this behaviour to the accused's advantage.

Offence-Sentence Relationship

In this category, comments in the group discussion tended to support the idea that the "punishment should fit the crime". Specific offence categories considered were sexual offences (believed to be too lenient), narcotics offences (believed to be too harsh) and murder (15 - 25 year minimum unreasonable). In this category, more so than the other categories, the discussion on the relationship of offence and sentence was very much directed by the circumstances in which the interviewees found themselves. Consequently, the Matsqui Lifer's Organization tended to concentrate on the factors related to life sentences, while the probation group advocated that restitution and community service orders be used more frequently and for a broader category of offences. Two groups (one provincial and one federal) offered the opinion that the death penalty ought to be reintroduced as a choice available to some offenders receiving a life sentence. Nearly every group expressed the opinion that long prison sentences are counter-productive regardless of the offence.

Importance of Actors

Judges were viewed as the most important actors in the sentencing drama. Several groups advocated the early retirement of judges and the opinion was commonly expressed that judges tend to develop bias arising from their total life experience which may make them prejudicial in relation to certain offences. Additionally, an opinion was expressed regarding the need for special training for judges to familiarize them with the conditions and programs associated with various sentencing options and to reduce the development of bias arising out of isolated and personal experiences. In the group discussions, defence counsel was frequently mentioned as an important actor. Many comments related to the requirement for experienced and adequate defence and the disadvantage of not being able to afford to acquire such a person.

A number of comments related to the influence of police in sentencing with most persons believing that police influence is too great. The use of overcharging was given as one example of inappropriate police power. This significance of the police for the offender was not evident from the questionnaire ranking the importance of actors, and represents one of the few inconsistencies between the two methodologies.

In at least one group, correctional administration was identified as important in that the recommendations of judges related to the purpose and place of sentence may not be

followed. Correctional administrators also were regarded as having significant power in relation to recommendations for release.

The influence on the public mood by the media was viewed as significant in that the media exerts both direct and indirect pressure on the judiciary.

Conclusion

Generally, the opinions expressed in these group interviews were consistent with regard to topic. Differences which occurred tended to relate to the location and, in some cases, the offence category of the respondents. For example, while the majority of groups believed sexual offenders were treated too leniently, the sex offender group at the John Howard Society expressed considerable frustration with the severity of conditions applied to them. Federal prisoners were very concerned about conditional release questions and most appeared knowledgeable with regard to the make-up of the Parole Board and the problems associated with both parole and mandatory supervision. The probation group and some provincial prisoners evidenced very little knowledge or concern in these areas. The probation group tended to concentrate much more on ideas related to the benefits of non-custodial options in sentencing. Therefore, the general difference across groups was the emphasis arising from their own situation rather than any significant differences of opinion on the sentencing questions.

IV. CONCLUSIONS

One of the worthwhile questions to pose at the end of a study concerning sentencing disparities and sentencing guidelines is why the topic was considered in the first place. Taking the issue of sentencing guidelines, for example, why has such a policy been put forth? This is probably not an idea arising from the judiciary, who possess understandable sensitivity to judicial independence in sentencing matters. Many judges express dissatisfaction with the legislative guidelines already in place, such as those stated in the Declaration of Principles for the Young Offenders' Act. The public, on the other hand, are unaware of sentencing disparities for the most part, except where profiled by the media. However, citizens are incensed by the perceived rise in crime. The general mood of the community has definitely moved away from the 1970's prisoners' rights era. In fact, the emerging philosophy behind the just deserts' model is the most probable explanation for the mandate and terms of reference set out by the Sentencing Commission. The goal of rehabilitation has proven itself worthless. The disparate sentencing resulting from that model is now unacceptable. The goals of sentencing have shifted.

An interesting comparison then, with which to begin the conclusions, is one between British Columbia offenders and British Columbia judges. Under the same mandate from the

Sentencing Commission, B.C. judges were also surveyed to determine their attitudes on sentencing practice. An intriguing difference to emerge is what each group considered to be the goal of sentencing. To illustrate the potential problem here, if judges sentence for deterrence, but offenders believe that it is for rehabilitation, the conflict concerning purpose might then affect the outcome. And, it is suggested, this is the long-term focus for the Sentencing Commission; that is, if sentencing practices are reformed then offenders will be better citizens emerging from the other end of the system, not necessarily rehabilitated in a medical model sense, but more law abiding.

The results unfortunately do not support the idea of a consistent outlook between judges and offenders. Almost 90% of the surveyed judges indicated a belief in the protection of the public as the underlying purpose of sentencing. The offenders, it will be recalled, listed that as a secondary goal of sentencing, after punishment of the offender. What results is a mismatch, which may explain some of the disparity concerns of the offenders. If judges sentence for the protection of the public, sentence length may vary according to the perceived dangerousness of the offender as opposed to the seriousness of the offence, or the deservedness of the penalty. It is clear from the questionnaires that offenders visualize a scale of punishment. This conclusion can be derived from the results of the task which matched sentences to a given list of offences as well as from their responses to questions concerning unjust

sentence length. Therefore, the perception of disparity in sentencing may, in fact, be a misperception related to purpose. It is suggested that the police perception of the goal of sentencing is also protection of society, as that is their primary professional function. Offenders perceived police as overcharging to get a conviction; and judges as attempting to get offenders "off the streets".

Therefore, offenders do not appear to believe a 'just' scale of punishment is in operation. This is also reflected in their responses to the 'lawyer' questions as well. If you are rich and hire a good lawyer, you will receive a lighter sentence regardless of what is deserved. But the offenders were ambivalent as to whether they should accept a lawyer's deal. The best indicator that the scale of justice is not perceived to work was the majority indication that offenders thought their sentence was unfair (48%). The stated principles of sentencing in the Criminal Law Reform Act are concerned with a "just deserts" model having sentences proportionate to the offence, employment of the least onerous alternative in the circumstances, the maximum punishment prescribed only in the most serious cases of the commission of the offence, and so forth. But perhaps these purposes are not conveyed or convincingly demonstrated to the offender in the courtroom. Once out of the courtroom and under supervision in the community or the institution, these ideals are never articulated for the offenders in their actual treatment, or in the reality of the

sanctioning process, therefore the resulting disillusionment. In any case, clarification of the purpose for the sentencing experience is indicated from the results.

Another area examined in the present study surrounded the parole and mandatory supervision release procedures. Offenders were concerned about the uncertainty of sentence length resulting from arbitrary parole and mandatory release decisions. In other words, offenders perceived their sentence as a form of indeterminate sentence, which was regarded as unjust. The offenders wanted more predictability about when they would be finished, in order to plan for their future, to have hope. Others, such as prisoners' rights groups, have advocated this for them as well.

Interestingly, a recent study was completed in the United States which evaluated determinate sentencing.⁵ It came to the striking conclusion that determinate sentencing did not affect prisoners' attitudes toward obeying the law, toward prisonization, stress levels, inter-personal conflict, institutional conflict and institutional misconduct when compared with the perception of inmates on indeterminate sentence. In fact, for program involvement, determinate sentenced inmates participated in fewer rehabilitation programs than inmates serving indeterminate sentences. Finally, the determinate disposition appeared to have no effect on the ways

⁵ Determinate Sentencing and the Correctional Process: A Study of the Implementation of Sentencing Reform in Three States, National Institute of Justice: Washington, October, 1984.

prisoners deal with their families and planned for their release. The findings directly contradict those who advocate certainty in sentencing as the panacea for institutional management control of offenders.

The researchers did conclude, however, that the determinant sentenced inmates felt both more certain about the release dates and more equitably treated in the sentencing process, but "that these perceptions apparently do little to influence the types of adjustment they made to prison life".

The implication this has for Canadian offenders in the present study who indicated they want more certainty and equitableness about release, is not immediately clear. However, it does suggest that those advocating for a more structured certainty in parole and mandatory release procedures, cannot use institutional management control as an argument. What is missing in the U.S. study, is the follow-up. Perhaps even though attitudes appeared not to change toward the idea of obeying the law, recidivism would be affected through the experience of being dealt with justly.

In any case, a primary finding from the B.C. survey suggests offenders do desire such certainty, whether it be in parole release dates or actual sentence. They equate certainty with justice. They support sentencing guidelines and a general reduction in judicial discretion. Yet it is clear offenders also want a balance to the guidelines which can be achieved through a consideration of mitigating case circumstances. Factors such as

the extent of harm to the victim, whether a weapon was used, if the crime was premeditated, the time spent in custody presentence, and the accused's mental state, are to be weighed in the structured guidelines. With the exception of time spent in custody presentence, these factors have been indicated in two earlier surveys of provincial court judges as important variables in arriving at sentences. It does not seem unreasonable to conclude that if both the judged and the judge agree upon these factors as mitigating ones, they should be equated in the sentencing formula.

What is needed perhaps, is not so much structured sentencing guidelines, but selective information provided on an ongoing basis about dispositions across Canada. In this way, judges can be made aware, not only of actual sentences handed down for similar offences, but the case facts surrounding each disposition. This information should be able to assist the judge in knowing what other judges across the country are sentencing for cases similar to those before his/her own docket. This differs from legislated sentencing guidelines, leaving more discretion in the judge's authority.

The issue of judicial disparity in sentencing is not just a concern for Canadian offenders. A number of questions were asked in the present study which in part replicate the Australian Law Reform Commission study of sentencing completed in 1980. The results were similar. For example, two questions about unjust long or short sentences being rare, produced the following comparative breakdown:

- B.C. Study - unjust long sentences are pretty rare:
 agree/strongly agree - 13%;
 neutral - 11%;
 disagree/strongly disagree - 76%
- Australian Study - unfairly long sentences are pretty rare:
 agree/strongly agree - 19%;
 neutral - 12%;
 disagree/strongly disagree - 70%.
- B.C. Study - unjust short sentences are pretty rare:
 agree/strongly agree - 26%;
 neutral - 35%;
 disagree/strongly disagree - 39%
- Australian Study - unfairly long sentences are pretty rare:
 agree/strongly agree - 37%;
 neutral - 22%;
 disagree/strongly disagree - 41%

Perceptions of disparities in other aspects of judicial discretion were also comparable between the two studies. Responses to similarly worded items indicated that all categories of offenders believed particular judges were "harder" or "softer" than their brother judges. However, again it is difficult to determine whether or not this is true, because of the non-existence of comparative research on sentencing dispositions across Canada. There is evidence that natives are sentenced disproportionately (Hagan, 1974). Other similar studies have indicated the impact of socio-economic factors on differential sentencing (Warner and Renner, 1978). But most of the evidence remains locally circumstantial and therefore, from the offender's perspective, mystified. Subsequently, the offender's impression must be formed from the lack of concrete

evidence around sentencing. It is now an acknowledged tenet in judgment/decision-making theory that in the face of insufficient information, judgments tend to be based on biased or stereotypic information. This tendency is attributed to judges' judgments by the offenders themselves. Therefore, a recurring message emerging from the study appears to be the need for additional information for all participants.

The final area touching upon judicial discretion in sentencing, is the use of alternatives to imprisonment. In the interviews, offenders raised alternatives as a needed development. Indeed, the stated purposes of sentencing (645)(1)(d)(e) advocate promoting and providing opportunities for redress to victims or the community and for offenders to become law abiding members of society. Given this authority, and the mandate to provide the least onerous alternative in the circumstances, more community programs would appear to be in order. This should be all the more pressing with concern over prison over-crowding and in the current period of financial restraint. Offenders indicated agreement with this principle in their response to the question about the use of prison as a last resort, after other attempts have been made at employing forms of sanctions in the community. Also, when discussing the assistance parole and mandatory supervision could provide, offenders expressed the need for programs to assist in re-entry; retraining for job skills, socialization, and transition programs generally. None of these suggestions is especially

unpredictable or radical in nature, but perhaps concrete documentation will provide the incentive for actual creation and implementation.

Finally, although the offenders across all categories in this study were concerned about how to limit the effect judicial discretion has on sentencing, it is not thought they want to eliminate that discretion entirely. Their expressed wish for a consideration of the mitigating circumstances of each individual case suggests this is true. Perhaps the primary conclusion to be reached can now be expressed in the following quotation by Norval Morris in his article, "The Sentencing Disease":

"Judicial discretion is essential to achieve the fine tuning needed in ascertaining punishment." There is a "...need to shape and control judicial discretion, not supplant it".

The offenders in the British Columbia study have now made their perceptions on sentencing practice known to the Sentencing Commission. It is hoped that their unique contribution will assist in determining the direction Canadian sentencing reform will take.

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APPENDIX A

Issues Raised in the Questionnaire

ISSUE	QUESTION NUMBER(S)
Purposes and Principles of Sentencing	1 (a to f), 18, 32
Disparity	
Geographical	8
Judicial	4, 7, 9, 11, 13, 15, 20
Racial	17
Sexual	22
Socio-economic	2, 6
Post-sentencing Issues	
Mandatory Supervision	24 (a to d), 31
Parole	14, 26, 27, 28, 29, 33
Parole and Mandatory Supervision	25 (a to e)
Sentencing Guidelines	3, 10, 16, 21, 23, 30
Extra-legal Factors in Sentencing	5, 12, 19, 34, 36 (a to g)
Offence-Sentence Relationship	37 (10 items)
Importance of Actors	35 (7 items)
Total Number of Items:	80



The Canadian
Sentencing Commission

APPENDIX B
Commission canadienne
sur la détermination de la peine

Thank you for participating in this survey. The Canadian Sentencing Commission is conducting a study to find out how you feel about some topics related to sentencing issues. Men and women serving sentences in the community and in both federal and provincial institutions are being asked to participate in this national study. Your identity and individual responses to this questionnaire will remain completely ANONYMOUS and CONFIDENTIAL.

The results will only appear in the form of summary statistics which cannot be traced to any participants. While we appreciate your taking part in this study, you should be aware that you are free to withdraw your participation at any time.

The Commission may be making recommendations with respect to the reform of some of our sentencing laws, therefore your input is very important. The questionnaire will take about 20 minutes to complete. Please try to be as accurate and honest as possible.

Should you have any questions regarding this study or how the information will be used, feel free to contact John Anderson or Liz Szockyj at 291-4762 or Dr. M.A. Jackson at 291-3515. Furthermore, if you would be interested in receiving a summary of the responses to this questionnaire when the study is completed in September, please fill out the form on the last page.

Questionnaire

We are interested in finding out how you feel about some of the following statements.

If you strongly disagree, please circle "SD"

If you disagree, circle "D"

If you have no opinion or feel neutral about the question, circle "N"

If you agree, circle "A"

If you strongly agree, circle "SA"

1. In your opinion, the reason why offenders are sentenced is to. . .

- | | | | | | |
|---|----|---|---|---|----|
| a) protect the public. | SD | D | N | A | SA |
| b) to punish them for what they have done. | SD | D | N | A | SA |
| c) to stop others from committing a similar crime. | SD | D | N | A | SA |
| d) to provide opportunities for them to improve themselves (through training or social programs). | SD | D | N | A | SA |
| e) to pay society back for the wrong done. | SD | D | N | A | SA |
| f) to pay back the victim for the harm done to them. | SD | D | N | A | SA |

2. Rich people receive the same sentences as others for the same offences.

SD D N A SA

3. Throughout Canada, similar crimes committed by similar types of persons (similar record, etc.) should get similar sentences regardless of where the person is convicted.

SD D N A SA

4. Some judges send people to prison <u>more</u> than other judges.	SD	D	N	A	SA
5. When sentencing, judges take into account time spent in custody during remand.	SD	D	N	A	SA
6. If a person can afford a good lawyer, their chances of getting a light sentence are better.	SD	D	N	A	SA
7. Unjust long sentences are pretty rare.	SD	D	N	A	SA
8. Offenders in the Lower Mainland get the same sentences as offenders in the rest of British Columbia.	SD	D	N	A	SA
9. Unjust short sentences are pretty rare.	SD	D	N	A	SA
10. Some crimes are so serious that judges should <u>not</u> be allowed to give anything <u>less</u> than a prison term.	SD	D	N	A	SA
11. The sentence I received was pretty fair.	SD	D	N	A	SA
12. The accused should be given a lighter sentence because he or she pleads guilty.	SD	D	N	A	SA
13. It <u>doesn't</u> matter which judge you appear before, they're all the same when it comes to sentencing.	SD	D	N	A	SA
14. Parole procedures are really pretty fair.	SD	D	N	A	SA
15. The same judge may be, in sentencing, tough on some crimes but not so tough on others.	SD	D	N	A	SA
16. The laws should give <u>more</u> direction to judges on how short or long a prison sentence should be.	SD	D	N	A	SA
17. Native Indians receive the same sentences as others do for the same crimes.	SD	D	N	A	SA
18. Offenders should only be sent to prison if they <u>cannot</u> learn from less severe sentences (such as fines, suspended sentences, probation).	SD	D	N	A	SA

19. To get a lighter sentence, the accused should accept a deal made between the Crown prosecutor and his or her lawyer. SD D N A SA
20. In sentencing, the same judge may be hard on some offenders but not so hard on others. SD D N A SA
21. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases. SD D N A SA
22. Women should receive the same sentences as men for the same offences. SD D N A SA
23. Judges need to be guided by minimum and maximum sentences for each offence. SD D N A SA
24. Every federal inmate may serve the last third of his or her sentence in the community under the supervision of a parole supervisor (mandatory supervision). In your opinion, mandatory supervision should be used for. . .
- a) violent offenders. SD D N A SA
- b) sexual offenders. SD D N A SA
- c) property offenders. SD D N A SA
- d) all offenders. SD D N A SA
25. I would like to see prison sentences. . .
- a) with straight time and temporary absences (no mandatory supervison, no parole). SD D N A SA
- b) with only mandatory supervision (no parole). SD D N A SA
- c) with only parole (no mandatory supervision). SD D N A SA
- d) with mandatory supervision and an early release through parole (like it is now). SD D N A SA
- e) the way it used to be with only parole and time off for good behavior (no mandatory supervision). SD D N A SA

- | | | | | | |
|--|----|---|---|---|----|
| 26. It is clear to offenders what the parole board expects of them to obtain an early release. | SD | D | N | A | SA |
| 27. If prison staff are backing an inmate, his or her chances of getting parole are good. | SD | D | N | A | SA |
| 28. When the parole board attaches special conditions or restrictions on a parolee, they are usually fair. | SD | D | N | A | SA |
| 29. Reporting to a parole supervisor and obeying the parole rules is <u>better</u> than being in prison. | SD | D | N | A | SA |
| 30. Laws should be passed to <u>prevent</u> judges from giving too much prison time for some offences. | SD | D | N | A | SA |
| 31. Mandatory supervision should be used to help those offenders who have been in prison for long periods of time. | SD | D | N | A | SA |
| 32. It is important that judges tell the offender exactly why he or she is getting a particular sentence. | SD | D | N | A | SA |
| 33. An inmate and the parole board should <u>work together</u> to establish a clear agreement (a contract) about release conditions. | SD | D | N | A | SA |
| 34. Police lay too many charges for a single offence. | SD | D | N | A | SA |

1 = not important at all
2 = somewhat important
3 = important
4 = extremely important

- | | | | | | |
|--|---|---|---|---|--|
| 35. How <u>important</u> is the role of these different parties in the sentencing process. . . . | | | | | |
| a) the police. | 1 | 2 | 3 | 4 | |
| b) the Crown prosecutor. | 1 | 2 | 3 | 4 | |
| c) the defence counsel. | 1 | 2 | 3 | 4 | |
| d) the sentencing judge. | 1 | 2 | 3 | 4 | |
| e) expert witnesses. | 1 | 2 | 3 | 4 | |
| f) the convicted offender himself or herself. | 1 | 2 | 3 | 4 | |
| g) the victim. | 1 | 2 | 3 | 4 | |

36. How often should the judge take the following factors into account when sentencing an offender?

	<u>Always</u>	<u>Sometimes</u>	<u>Never</u>	<u>Don't know</u>
a) the extent of harm to victim.	1	2	3	4
b) whether the crime was premeditated (planned).	1	2	3	4
c) whether the offender seems likely to commit an offence again.	1	2	3	4
d) whether this particular kind of crime is occurring frequently in the community.	1	2	3	4
e) whether the offender has repaid or in some way made amends to the victim.	1	2	3	4
f) the offender's age.	1	2	3	4
g) the extent of the offender's ties with the community.	1	2	3	4
h) personal circumstances - for example employment and educational history.	1	2	3	4
i) whether the offender saved the cost of a trial by pleading guilty.	1	2	3	4
j) extent of criminal record of the offender.	1	2	3	4
k) the offender's family background.	1	2	3	4
l) if the offender was drunk or high when he or she committed the offence.	1	2	3	4
m) if a weapon was used in the offence.	1	2	3	4
n) the role the accused played in the offence if charged jointly with others.	1	2	3	4
o) the offender's family and responsibilities.	1	2	3	4
p) the mental state of the offender.	1	2	3	4
q) the amount of time spent in jail before sentencing.	1	2	3	4

37. Pick the sentences (1 or more) which you feel is/are the most effective or appropriate for each of the following offences:

<u>OFFENCE</u>	<u>SENTENCE</u>
Break and enter _____	1. Discharge with no conditions
Common assault _____	2. Discharge with conditions
Arson _____	3. Suspended sentence
Murder _____	4. Probation
Impaired driving _____	5. Paying money to the victim
Bribery _____	6. Fine
Sexual assault _____	7. Community work order
Possession of marijuana _____	8. Intermittent sentence (less than 90 days to be served on weekends).
Polluting the environment _____	9. Prison (less than 2 years)
Trafficking in heroin _____	10. Prison (2 to 5 years)
	11. Prison (5 to 10 years)
	12. Prison (more than 10 years)

BIOGRAPHICAL SECTION: QUESTIONS ABOUT RESPONDENT

These are general questions about you. Please try to be as accurate as you can.

1. Year of birth is 19 I am _ _ years old.

2. Circle the highest level of education which you have completed.

<u>Less Than Grade 10</u>	<u>Less Than Grade 12</u>	<u>High School Graduate</u>	<u>Some College or University</u>	<u>College or University Graduate</u>
1	2	3	4	5

3. Offence(s) for which I am now serving a sentence are:

4. This is my first offence. Yes No

If NO, please answer question 5, then go on to question 6.

If YES, then go on to question 6.

5. Previous offences for which I have been convicted are:
(no more than your last 3)

6. Check the one(s) that apply to you.

I am presently. . .

on remand _____
on probation _____
on provincial parole _____
serving an intermittent sentence _____
serving a provincial jail term _____
serving a federal prison term _____
on mandatory supervision _____
on federal parole _____

7. I have now served ___ years and ___ months.

8. My sentence will be over in ___ years and ___ months.

9. Are you a Native Canadian? Yes No

10. Have you ever applied for parole? Yes No

11. Have you ever been on parole? Yes No

Feel free to express any suggestions you may have in regard to the present system and what you would like to see changed, if anything.

Comments:

 *
 * If you would like a summary of the results sent to you in *
 * September please detach and complete this section. *
 * *
 * *
 * NAME: *
 * *
 * *
 * ADDRESS WHERE IT MAY BE SENT: *
 * *
 * *
 * *
 * (YOU MAY MAIL THIS SEPARATELY FROM YOUR COMPLETED QUESTIONNAIRE) *
 * *
 * Address: John Anderson or Liz Szockyj *
 * Department of Criminology *
 * Simon Fraser University *
 * Burnaby, B.C. *
 * V5A 1S6 *
 * *

THANK YOU VERY MUCH FOR YOUR TIME AND COOPERATION

APPENDIX C

Questionnaire Response Frequencies

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
1. In your opinion, the reason why offenders are sentenced is to . . .					
a) protect the public.	4(6)	14(22)	14(21)	50(78)	19(29)
b) to punish them for what they have done.	3(5)	9(14)	10(16)	61(95)	17(26)
c) to stop others from committing a similar crime.	6(24)	27(42)	16(24)	33(50)	9(14)
d) to provide opportunities for them to improve themselves (through training or social programs).	42(63)	33(49)	13(19)	11(17)	2(3)
e) to pay society back for the wrong done.	22(34)	40(61)	14(22)	20(30)	5(7)
f) to pay back the victim for the harm done to them.	28(43)	36(55)	13(20)	18(27)	5(8)
2. Rich people receive the same sentences as others for the same offences.	65(104)	21(34)	6(9)	3(4)	6(9)
3. Throughout Canada, similar crimes committed by similar types of persons (similar record, etc.) should get similar sentences regardless of where the person is convicted.	6(9)	11(17)	10(16)	38(61)	36(57)
4. Some judges send people to prison <u>more</u> than other judges.	.6(1)	1(2)	.6(1)	46(76)	52(85)
5. When sentencing, judges take into account time spent in custody during remand.	20(32)	40(64)	19(31)	19(30)	3(5)
6. If a person can afford a good lawyer, their chances of getting a light sentence are better.	3(5)	4(7)	12(19)	37(60)	44(71)
7. Unjust long sentences are pretty rare.	34(56)	42(69)	11(18)	10(16)	3(5)
8. Offenders in the Lower Mainland get the same sentences as offenders in the rest of British Columbia.	20(33)	34(55)	34(55)	11(18)	2(3)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
3. Unjust short sentences are pretty rare.	11(18)	28(45)	26(42)	29(46)	6(10)
4. Some crimes are so serious that judges should <u>not</u> be allowed to give anything <u>less</u> than a prison term.	6(10)	11(18)	9(15)	49(80)	24(39)
1. The sentence I received was pretty fair.	30(49)	18(30)	13(21)	33(54)	6(10)
2. The accused should be given a lighter sentence because he or she pleads guilty.	7(11)	24(40)	32(52)	26(42)	12(19)
3. It <u>doesn't</u> matter which judge you appear before, they're all the same when it comes to sentencing.	52(85)	38(62)	4(7)	5(8)	.6(1)
4. Parole procedures are really pretty fair.	39(64)	25(41)	20(33)	13(21)	3(4)
5. The same judge may be, in sentencing, tough on some crimes but not so tough on others.	2(3)	2(3)	3(5)	68(111)	26(42)
5. The laws should give <u>more</u> direction to judges on how short or long a prison sentence should be.	7(11)	9(15)	17(27)	46(75)	22(35)
7. Native Indians receive the same sentences as others do for the same crimes.	23(38)	36(58)	24(39)	16(26)	1(2)
3. Offenders should only be sent to prison if they <u>cannot</u> learn from less severe sentences (such as fines, suspended sentences, probation).	4(7)	16(26)	15(24)	46(76)	19(31)
9. To get a lighter sentence, the accused should accept a deal made between the Crown prosecutor and his or her lawyer.	22(35)	22(35)	19(30)	32(51)	6(10)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
20. In sentencing, the same judge may be hard on some offenders but not so hard on others.	0(0)	1(2)	7(12)	67(109)	25(41)
21. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases.	3(4)	14(23)	22(35)	47(77)	15(24)
22. Women should receive the same sentences as men for the same offences.	7(11)	20(32)	15(24)	44(72)	15(24)
23. Judges need to be guided by minimum and maximum sentences for each offence.	7(12)	14(22)	23(37)	38(61)	19(30)
24. Every federal inmate may serve the last third of his or her sentence in the community under the supervision of a parole supervisor (mandatory supervision). In your opinion, mandatory supervision should be used for. . .					
a) violent offenders.	15(22)	10(15)	16(24)	38(56)	22(32)
b) sexual offenders.	33(50)	9(13)	9(14)	13(20)	36(54)
c) property offenders.	13(19)	18(27)	23(35)	33(49)	14(21)
d) all offenders.	22(34)	24(37)	30(47)	17(26)	7(11)
25. I would like to see prison sentences. . .					
a) with straight time and temporary absences (<u>no</u> mandatory supervison, <u>no</u> parole).	29(44)	33(50)	14(21)	16(25)	8(12)
b) with only mandatory supervision (<u>no</u> parole).	28(41)	50(73)	15(22)	7(10)	7(1)
c) with only parole (<u>no</u> mandatory supervision).	19(29)	33(49)	13(20)	27(41)	7(11)
d) with mandatory supervision and an early release through parole (like it is now).	16(24)	22(34)	16(24)	35(53)	11(17)
e) the way it used to be with only parole and time off for good behavior (<u>no</u> mandatory supervision).	4(7)	16(25)	20(32)	32(50)	28(44)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
26. It is clear to offenders what the parole board expects of them to obtain an early release.	20(33)	25(40)	12(20)	35(56)	8(13)
27. If prison staff are backing an inmate, his or her chances of getting parole are good.	5(8)	22(36)	15(24)	46(75)	12(19)
28. When the parole board attaches special conditions or restrictions on a parolee, they are usually fair.	14(22)	37(59)	24(38)	22(35)	4(7)
29. Reporting to a parole supervisor and obeying the parole rules is <u>better</u> than being in prison.	0(0)	7(11)	15(25)	40(65)	38(61)
30. Laws should be passed to <u>prevent</u> judges from giving too much prison time for some offences.	1(2)	1(2)	10(16)	45(74)	43(70)
31. Mandatory supervision should be used to help those offenders who have been in prison for long periods of time.	11(18)	13(21)	17(27)	44(71)	15(25)
32. It is important that judges tell the offender exactly why he or she is getting a particular sentence.	1(2)	3(5)	7(11)	54(87)	34(55)
33. An inmate and the parole board should <u>work together</u> to establish a clear agreement (a contract) about release conditions.	1(2)	2(3)	9(15)	56(90)	32(51)
34. Police lay too many charges for a single offence.	1(2)	6(1)	11(17)	38(61)	50(80)

	Not Important % (#)	Somewhat Important % (#)	Important % (#)	Extremely Important % (#)
35. How <u>important</u> is the role of these different parties in the sentencing process. . .				
a) the police.	13(21)	24(38)	29(47)	34(54)
b) the Crown prosecutor.	5(8)	13(21)	29(47)	53(84)
c) the defence counsel.	6(9)	27(43)	27(43)	40(62)
d) the sentencing judge.	1(2)	3(4)	18(28)	78(123)
e) expert witnesses.	11(18)	29(46)	34(53)	26(41)
f) the convicted offender himself or herself.	19(29)	22(35)	23(36)	36(56)
g) the victim.	13(20)	20(32)	36(56)	31(49)
36. How often should the judge take the following factors into account when sentencing an offender?				
	Always % (#)	Sometimes % (#)	Never % (#)	Don't know % (#)
a) the extent of harm to victim.	66(105)	29(46)	3(4)	3(5)
b) whether the crime was premeditated (planned).	70(113)	23(37)	3(5)	4(6)
c) whether the offender seems likely to commit an offence again.	54(85)	30(47)	12(19)	5(8)
d) whether this particular kind of crime is occurring frequently in the community.	22(35)	41(66)	30(48)	8(12)
e) whether the offender has repaid or in some way made amends to the victim.	51(81)	41(66)	4(7)	4(6)
f) the offender's age.	49(78)	43(69)	7(11)	1(2)
g) the extent of the offender's ties with the community.	45(71)	39(62)	15(23)	2(3)
h) personal circumstances - for example employment and educational history.	51(82)	39(62)	9(15)	.6(1)
i) whether the offender saved the cost of a trial by pleading guilty.	22(36)	43(69)	27(43)	8(13)
j) extent of criminal record of the offender.	40(64)	37(60)	21(34)	2(3)
k) the offender's family background.	48(77)	35(56)	16(26)	2(3)
l) if the offender was drunk or high when he or she committed the offence.	53(85)	37(59)	8(12)	3(5)
m) if a weapon was used in the offence.	67(108)	29(46)	3(4)	2(3)
n) the role the accused played in the offence if charged jointly with others.	57(92)	37(60)	5(8)	.6(1)
o) the offender's family and responsibilities.	52(84)	34(55)	11(17)	3(5)
p) the mental state of the offender.	76(122)	21(33)	2(3)	2(3)
q) the amount of time spent in jail before sentencing.	74(119)	20(32)	4(6)	3(5)