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IMPACT OF THE PRESENTENCE REPORT
ON SENTENCING

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INTRODUCTION

The sentencing process occupies a pivotal position in the criminal justice system as it is the vehicle through which the state's response is made to the individual convicted of a criminal act. The impact of sentencing is felt not only by the offender, who may be deprived of his liberty, assessed a fine, or otherwise censured by the court, but also by the community, the nature and degree of the impact dependent upon the type of judicial disposition.

The importance of the process would appear to demand a more thorough understanding than is currently provided in the literature. Of the factors which prevent such understanding, none are more resistant to reconciliation than the many diverse and often conflicting goals of the process itself. Just as the substance of criminal law has expanded and contracted over time in its definition of those activities to be labelled as crimes (6,15), so too has the purpose of sentencing changed in response to the prevailing social climate. In dealing with those who commit crimes, society has been concerned to varying degrees with the protection of society, retribution, deterrence, denunciation, punishment and reformation of the offender.

Perhaps the most fundamental controversy, which has permeated debates concerning the legitimate goals of sentencing for many centuries, revolves around the issue of determining whether the punishment or sanction should fit the 'crime' or the 'criminal' (3). In tracing the evolution of criminological theory, Kellogg (8) notes that the retributive theory of criminal law that measured punishment arbitrarily through ill-defined processes was displaced during the Age of Enlightenment by the 'classical' movement in criminology with its utilitarian view of man. According to classical theory, the individual is responsible for his actions and is equal, no matter what his rank, in the eyes of the law. Punishments must be proportional to the interests violated by the crime (12). Commenting on the classicists avoidance of the issue of criminal motivation, Vold notes that:

> "This was the classical conception of justice - an exact scale of punishments for equal acts without reference to the nature of the individual involved and with no attention to the question of special circumstances under which the act came about" (13,p.23)

In the late nineteenth century, with the concurrent developments in biological evolutionary thought and the rise of the Italian/anthropological/positivist school, the Lombrosian 'triumph' emerged as the 'positivist' movement in criminology (11). The positive school was characterized by a primary emphasis upon understanding the criminal (13) and led to the emergence of treatment-orientated discretionary individualization (1).

This individualization of criminal justice has not been without critics in recent years: some claim that since the theoretical foundation of positivism, i.e. behavioristic determinism, has fallen into disrepute, the entire concept is suspect (8). Others attack the theory on the basis of the dysfunctional aspects of its application, specifically, the disparity in sentencing it permits (14,1).

Notwithstanding the many criticisms which have been levied against the notion of individualized justice, it is widely acknowledged that this concept is indeed 'the ideological spring from which almost all actual and proposed reform in criminal justice has been derived' (1). Kellogg summarizes the importance of this concept as follows:

> "Though it may have failed to explain and cure crime, positivism established a lasting concern with individual circumstances: the interests harmed by the offence, aspects of the offender's background, character and motivation, and the different correctional alternatives most suited as a response" (8, p.189)

This 'lasting concern with individual circumstances' can be viewed as posing a dilemma for the judiciary. At the foundation of our criminal law is the belief that people must be treated as responsible individuals with rights and obligations, who may choose to do wrong and risk the consequences (2). The importance of the nature of the criminal act in determining sentence is reflected in the Canadian Criminal Code provisions for maximum and minimum penalties for certain offences and the constraints imposed on the utilization of dispositions such as absolute and conditional discharges. Immersed within this legal tradition, it appears unlikely that the judiciary would be inclined to consider an abandonment of freewill principles for wholesale acceptance of the deterministic behaviourism espoused by the positivists. It is not surprising, therefore, when theorists such as Taylor (12) describe courtroom procedures as being dominated by the neo-classical model since the end of the nineteenth century. Although the neo-classicists hold the classical view that man is responsible for his actions, the offender's past and present experiences are felt to be relevant factors in the decision to impose a particular judicial sanction. The importance of the nature of the criminal act in determining sentence is clearly articulated, but unlike the classicists, neo-classicists maintain that the characteristics of the offender should be considered, if only because a given sentence would have different effects on different individuals (12).

The task of sentencing, which involves a consideration of the goals of the sentencing process itself, the nature of the criminal act and the individual circumstances of the offender is clearly a difficult one. This complex task is seen as being even more formidable with the acknowledgement that very little is known about the actual impact of specific sanctions on the post-sentence behaviour of offenders (9,4,5,10). In wrestling with these problems inherent in the sentencing process, judges are assisted minimally by the law expressed in legislation and reported cases (7) which results in their exercising wide discretionary power. In the absence of clear-cut guidelines regarding sentencing, the judges must look to the information available during the trial and sentencing hearing as the primary basis for decision making.

This study is concerned with an examination of the role played in the sentencing process by one of these sources of information: the presentence report. This document presents to the court information concerning not only the offence and the offender's prior criminal involvement, but also a profile of his socio-economic background and present circumstances. If the principle of individualized justice is indeed being applied at the sentencing hearing, we would expect that the variation in sanctions imposed would reflect differences in the personal characteristics of the offender and that such variation would not be a result solely of gradations in offence severity. After controlling for offence type, we explore the basis for variations in sentencing in order to determine to what extent the differences observed can be attributed to legal variables (e.g. nature of the prior record) and to socio-economic variables. Finally, we turn to an examination of the nature of the presentence report, the vehicle through which the offender is characterized or individualized for the court. We will consider whether the tone of the report (the manner in which the facts concerning the offender are presented to the judge) has a significant impact on sentencing. We will also examine the extent to which the factors considered most important to the judiciary in determining sentence are also relevant to the Probation Officer in determining the tone of the presentence report.

A summary of the literature is presented in Chapter I. Recent studies which attempt to describe the relationship between certain offender attributes and sentencing outcome are reviewed, as well as the research which pertains specifically to the impact of the presentence report on sentencing.

The methodology employed to determine the impact of the presentence report is described in Chapter II. The sample consisted of 95 presentence reports completed by the Halifax Probation office for male offenders convicted of Break, Enter and Theft during 1976 and 1977. The contents of the presentence report were portrayed along three dimensions consisting of legal variables, socio-economic variables and report tone variables.

In Chapter III we present a summary of the analysis of the impact of the presentence report variables on sentencing outcome and the relationship between offender characteristics and tone of the report.

Finally, a discussion of the results of the study appears in Chapter IV, providing the basis for some comments about the application of the principle of individualized justice and the usefulness of the presentence report.

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CHAPTER I

REVIEW OF THE LITERATURE

The trend toward individualized justice has fostered the need for more extensive information about the personal characteristics of offenders. In 1852, John Augustus, the first Probation Officer, noted that in sentencing "it is necessary to take into consideration the previous character of the person, his age, and the influence by which he will in future be likely to be surrounded" (2, p. 34). This concept of providing the courts with comprehensive information about the offender's background prior to the passing of sentence was given its legislative base in the United States via the Massachusetts Law of 1880 (19). The first provision for the assembling of presentence reports was incorporated into Canadian statutes in 1889 (7). During these early years, before the formation of a Probation Service, character evidence was introduced by prosecution and defence counsel. With the appointment of Probation Officers (dating from 1921 in Ontario), the use of the presentence report, as we presently know it, emerged.

The presentence report, or social enquiry, contains "an inventory of positive and negative facts in the offender's background and current situation, assembled in a manner so as to highlight traits, patterns of behaviour, strengths and weaknesses in the subject's personal and social situation" (20, p.201). The report is prepared by the Probation Officer at the request of the presiding Judge after a guilty verdict has been entered. Sentencing is generally delayed for a period of two to three weeks in order to permit the Probation Officer to conduct an investigation and file his report with the court.

It would appear that the presentence report has been welcomed enthusiastically by the Canadian judiciary, if the rather remarkable increase in its utilization is viewed as a valid indicator.[1] In Canada and elsewhere, a variety of committees which have been struck for the purpose of examining various aspects of the criminal justice system, have applauded the use of the report as a means of individualizing justice and have urged its even more extensive usage. Among the more influential of the groups advocating this position are the Archambault (4), Fauteux (5), Streatfield (27), and Ouimet (6) Committees.

Although the presentence report is now widely used as a sentencing tool, we find little agreement in the literature

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[1] Hogarth (17) reports a 71% increase in the use of Presentence Reports from 1956 to 1966 in Ontario courts. From 1972 to 1976, the number of Presentence Reports completed in Nova Scotia rose 136% from 1063 to 2511. (23).

regarding the nature of its impact. The conflicting reports generated by research on the subject have prompted some experts to caution against overemphasizing the importance of the presentence report within the judicial process. Hogarth, for instance, contends that "there is little proof that the report actually lives up to the extravagant claims made for it" (17, p.247). In his critique, Weinreb of Harvard Law School claims that "in all but the rarest cases, the use of presentence reports has meant simply delay" (28, p.114).

It is generally agreed by criminologists, professionals within the criminal justice system, and the community as a whole, that sentencing in the criminal courts is characterized by disparity (17, 11, 15). This fact should not alarm nor surprise those in agreement with the principle that punishment for a criminal act should be tailored to fit not only the offence but the offender as well. Disparity may, however, be linked with injustice when the variables found to have a significant impact on sentencing outcome are not properly the concern of the law (1). As Quinney noted: "obviously judicial decisions are not made uniformly. Decisions are made according to a host of extra-legal factors, including the age of the offender, his race and social class" (26, p.141).

Research concerning the impact of these so-called extra-legal variables[2] on sentencing has produced conflicting results. Bullock (3), in his study of Texas prison inmates, found evidence for discrimination in length of sentence on the basis of racial factors. This finding was also obtained in Garfinkel's (13) research on North Carolina homicide offenders. Green (14) contends, however, that the studies which lend support to the notion of racial discrimination in sentencing have not properly controlled for the impact of legal factors. When Green controlled for offence seriousness, number of charges and prior convictions in his study of robbery and burglary cases in Philadelphia, the relationship between race and length of sentence was found to be insignificant.

Some evidence for the impact of socio-economic status on length of sentence has been reported by Nagel (21) and Forslund (12) in the absence of controls for legal variables. Nagel did discover that when he was able to control for offence type and prior record for a sub-sample of his population, the significance of the relationship between socio-economic status and disposition disappeared.

In examining the relationship between age of the offender and court disposition, Green and Forslund report some evidence

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[2] This term, as used in the research, refers to the perceived characteristics of the offender that are <u>legally</u> irrelevant to the imposition of sentence.

to support its significance. Green, unlike Forslund, proceeded to control for the effect of prior record and in so doing, found that age was no longer a significant variable. Nagel, controlling for offence type, found no evidence for discrimination in sentencing on the basis of offender age.

Hagan (16) is critical of the methodology that has been employed in many of the studies which have explored the role of extra-legal attributes of the offender in the determination of judicial dispositions. He claims that the tests of significance used are insufficient and inappropriate to support the type of conclusions which are frequently drawn. When Hagan applies a measure of association (Goodman and Kruskal's tau-b) to the data obtained in some of the research reported above, a number of interesting results emerge. He found, for example, that in many cases wherein a significant relationship (using chi-square) between a socio-economic variable (age, sex, race, socio-economic status) and sentencing outcome was noted, the strength of association was minimal. Hagan concludes, from his review of 20 studies on judicial sentencing, that "knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions" (16, p.379).

The presentence report, in view of the nature of its contents and the purpose for its use by the courts, represents a vehicle through which extra-legal information about an offender may be introduced into the judicial decision-making process. Researchers who are concerned with the operationalization of individualized justice and the notion of sentencing disparity have quite naturally turned their attention to the role of the presentence report in sentencing. The research conducted has focused both on the Probation Officer, to determine the type of factors which determine the recommendations contained in the report, and on the judiciary, to determine the impact of the contents of the report on disposition.

Curry (11) in his study of Presentence Reports prepared by the Texas County Adult Probation Service, found that the type of offence for which the offender was convicted was not significantly related to the recommendation for or against probation. This finding is, however, in contradiction to those reported by Norris (22) and Lohman et al (18) who found that the assessment made by the Probation Officer was significantly affected by the nature of the offence. It may well be that Curry's offence categorization, which consisted of four groupings (Crimes Against Persons, Property Crimes, Morals Crimes and Sex Offences) was too broad to permit a valid analysis of this variable.

In examining the role of the offender's prior record on Probation Officer decision-making, Curry noted that a high proportion of those with no prior conviction and a low proportion of those with a great number of prior convictions (16 or more) received a positive recommendation for probation. For cases falling between the two extremes, he found no evidence for a significant correlation between length of prior record and recommendation for or against probation. Curry further analyzed the prior record data in terms of the number of previous convictions for offences of the same general type as the current offence and found that while those with no prior record of similar offences were more likely to receive a positive recommendation from the Probation Officer, there was little variation in recommendation rates between individuals with one previous conviction and those with more than one. In contrast to Curry's findings, other studies have reported a significant correlation between length of prior record and subsequent recommendation by the Probation Officer (22, 8, 15).

In addition to these legal variables, Curry examined the relationship between certain socio-economic attributes of the offender and recommendations made by the Probation Officer. Among the demographic characteristics examined, he discovered that race was not a significant variable. Age of the offender was significantly related to recommendation, in that offenders between the ages of 30 to 50 received significantly fewer positive recommendations than either those in the 17 to 29 age category or those over the age of 50.

Curry also studied the impact of variables denoting the stability or achievement of the offender and discovered that income, employment status and stability and residential stability were significantly related to the recommendation of the Probation Officer. In examining other studies concerned with the impact of these factors on decision-making (18, 22, 16, 9) it appears that no consensus exists as to the precise influence of such factors on Probation Officer decision-making.

Carter and Wilkins (9), reporting data derived from an examination of 500 consecutive cases processed through the United States District Court in the Northern District of California in 1964-65, noted that recommendations for probation increased with number of years of education, average income, marital and employment stability. In contrast, recommendations for incarceration increased with extent of alcohol and other drug usage, use of weapons in the commission of the offence, and existence of family criminality.

In a study commissioned by the Probation Officers Association (Ontario) (25), a content analysis of 234 presentence reports completed by Ontario Parole and Probation Officers during 1974 was conducted in order to determine the impact of various offender characteristics on the Officer's recommendation for disposition. The results indicate that the offender's prior record and his attitude toward both the offence and the Probation Officer were significantly related to the Probation

Officer's recommendation. The nature of the offender's early family background was significantly linked to the recommendation contained in the presentence report only for those with a prior criminal record. This was also the case when the variable of 'drug use' was examined.

Carter (8), utilizing the "decision game" developed by Wilkins (29) in order to simulate the presentence report investigation, explored the method used by Probation Officers in determining recommendations for disposition. Using cards in which information usually gathered in the preparation of a presentence report was presented on separate cards (labelled age, offence, prior record, employment history, etc.), the Probation Officer was requested to select as many cards as required to make a recommendation. On the basis of the results, Carter concluded the Probation Officers make their recommendation decisions on the basis of small amounts of information (an average of 4.7 cards selected prior to decision-making) and that much of the information collected by the Officers was irrelevant in the determination of recommendation. In analyzing the frequency distribution of the first three card items selected by Probation Officers, Carter was able to produce a list of the type of information about the offender found to be most vital in the decision-making process. In order of frequency selected, these were: offence (most often selected), prior record, defendant's statement, family history, psychological/psychiatric assessment, plea, defendant's attitude, alcohol involvement, employment history and marital status. It is interesting to note that of the five model cases examined, in only two cases were all 14 Probation Officers in agreement in their recommendation for disposition.

Hagan (15) in his study of Probation Officer decision-making in a western Canadian province, concluded from the results of a path analysis that the factors which have the strongest direct effect on Probation Officer recommendations are offence seriousness, prior record and the Officer's evaluation of the offender's prospects for success on probation.

It is clearly difficult to develop a comprehensive understanding of the process of Probation Officer decision-making on the basis of the contradictory conclusions which have been drawn from the research cited above. There is some evidence to suggest that legal variables influence Probation Officer recommendations, but researchers vary in their opinions about the relative importance of this information. The results of the studies indicate that extra-legal or socio-economic data have an impact on the Probation Officer's decision, but the researchers differ widely in their conclusions concerning which of these offender characteristics are most relevant. There is some evidence to suggest that the subjective impressions of the offender held by the Probation Officer have a significant impact on the decision-making process (22,15,25).

Having examined the factors which influence Probation

Officer decision-making, we now turn our attention to the research concerning the relationship between the recommendations contained in the presentence report and the final disposition of the court.

The report on the San Francisco Project (18), based on data collected on 500 consecutive cases processed by the Northern District Court of California during 1964-65, cited a 96% agreement rate between Probation Officer's recommendation for probation and the granting of probation by the court. Similarly high rates of agreement are reported by Carter and Wilkins (9) in their analysis of decisions of the California Superior Courts from 1959 to 1965 (average rate of agreement 96.5%) and those of the ten United States federal judicial circuits during 1964 (94.1% agreement). The authors do note, however, that while there is a very strong relationship between recommendations for probation and court dispositions of probation, the strength of the relationship diminishes slightly when recommendations against probation are compared with court decisions to grant probation.

A study of 128 randomly selected cases processed through the Texas Courts in 1973, reported by Curry (11), reveals that the courts granted probation when it was recommended by the probation department in 95% of the cases.

Hagan (15), in his study of 507 cases processed through the courts in a western Canadian province during a four month period in 1973, noted a 79.7% rate of agreement between Probation Officer recommendation and court disposition. The Ontario Probation Officers Association study (25) reported a 75.1% rate of agreement between recommendation and sentence.

This consistently high rate of agreement between Probation Officer's recommendation and judge's decision has prompted some researchers to investigate the dynamics of the impact of the presentence report on judicial disposition. Carter and Wilkins (9) identified four factors which, in their opinion, might account for the similar decisions made by probation staff and judges:

a) judges respect the 'professional' competence of Probation Officers and therefore trust their ability to properly evaluate an offender.

b) some cases are obviously 'probation' or 'imprisonment' cases.

c) Probation Officers, aware of the sentencing patterns of different members of the judiciary, 'second-guess' the judge's disposition.

d) Probation Officers base their recommendations on the same factors utilized by the judges in determining sentence.

Using data obtained from the San Francisco project, Carter and Wilkins derive some support for the fourth factor cited above. By correlating a number of offender characteristics with both Probation Officer's recommendations and judge's decision, an overall correlation of .90 (using Spearman's rho) was noted.

Offender Characteristics	Probation Officer's Ranking	District Court Judge's Ranking
Prior Record	1	3
Confinement Status	2	2
Number of Arrests	3	4
Offence	4	1
Longest Employment	5	5
Occupation	6	8
Number of months employed	7	6
Income	8	10
Longest Residence	9	7
Military History	10	9

Source: Lohman, J.D., Wahl, A. and Carter, R.M. (1966)
San Francisco Project Series. Report No. 5. p. 68.

Of the 28 offender characteristics rated, the ten most significant factors for decision-making from the Probation Officer's point of view were the same factors identified by the judges in their ranking of the ten most important factors, although the order of importance differed slightly for the two groups.

Carter and Wilkins did not, in their study, produce any data to either support or disprove the first two hypotheses other than to make a subjective statement that these factors likely played a role in facilitating agreement between Probation Officers and the judiciary.

In addressing themselves to the third hypothesis, (i.e. that Probation Officers 'second-guess' the judge's decision), the authors examined the extent to which different judges received varying rates of recommendation for or against probation. No significant variation in the percentage of probation recommendations to individual judges was noted.

Interestingly, Carter and Wilkins observed that although the recommendation-disposition relationship remained fairly consistent between courts, the rate of Probation Officer recommendations for probation varied widely even within the same district. They tentatively conclude from these results, that Probation Officers do not view the correctional process from identical perspectives and that the pattern of recommendations is a function of different educational backgrounds and work experience on the part of the Probation Officer. Results obtained in the Presentence Report study commissioned by the Probation Officers Association (Ontario) (25) suggest that although Probation Officers and judges tend to agree in their selection of appropriate dispositions, they base their decisions on different types of information. Probation Officers' decisions were influenced, in general, by such factors as the offender's attitude toward the offence, his level of cooperation, present drug use and early family background. Judges, on the other hand, arrived at their decisions using such information as the offender's adherence to predominant social values, his emotional health and his early family background.

Hagan (15) argues that the provision allowing Probation Officers to explicitly state their recommendation in a presentence report is a significant determinant of the impact that specific contents of the report will have on disposition. He claims that the 'social work' orientation of Probation Officers leads them to emphasize extra-legal offender characteristics in contrast to the judges, who because of their legal training, tend to rely on offence-related information in the determination of sentence. On the basis of his data, Hagan concludes that when Probation Officers are encouraged to make specific reommendations, extra-legal offender characteristics assume increasing significance in relation to the judge's decision.

It should be noted that Hagan did not examine information contained in the presentence report, but relied rather on the responses of Probation Officers to a questionnaire which they completed following the presentence report interview. It is, therefore, unclear to what extent the Probation Officer's evaluation of, for example, the offender's demeanor or his prospects for success on probation were actually transmitted to the judge via the contents of the presentence report. In addition, Hagan's categorization of offence seriousness (in terms of maximum statutory sentence) must be questioned.

Using his measurement scale, the offence of simple possession of marijuana, for which a maximum penality of seven years imprisonment is prescribed under provisions of the Narcotic Control Act, would be categorized as six in his Legal Seriousness Scale of nine.

Hagan hypothesizes that the 'social work' orientation of Probation Officers would lead them to emphasize 'extra-legal' factors in assessing offenders. However, when various offender characteristics are correlated with the Probation Officer's evaluation of the individual's prospects for success on probation, the correlation coefficient linking 'prior record' to success prospects is determined to be .37, which along with 'offender's demeanor' (p=38) are the variables for which the highest degree of correlation is noted. Although Hagan does not comment on this particular data, it would appear that, in assessing the offender, the Probation Officer places considerable emphasis on offence-related data.

Hogarth (17) notes that the use of the presentence report is linked to significantly different patterns of sentencing for certain types of offences when compared to the offence-disposition relationship which emerges when the presentence report is not utilized. For serious offences such as Robbery and Break and Enter, where the rate of institutional committal is generally high, he discovered that the use of the presentence report was associated with a more frequent selection of non-institutional sentences. With respect to minor offences, he found that the use of the Presentence Report was associated with a significantly higher selection of dispositions of incarceration. These results led Hogarth to conclude that Ontario magistrates use Presentence Reports in "difficult" cases in part to justify atypical sentences that would appear overly punitive or lenient if based solely on the nature of the offence.

In order to examine more closely the impact of the presentence report on sentencing, Hogarth conducted an experiment to test the extent to which the report alters the magistrate's perception of the offender. His sample consisted of 84 cases of Break and Enter in which a presentence report was completed for one-half (42) of the cases. Both magistrates and Probation Officers completed a questionnaire independently which required an evaluation of the offender's attitude to the offence, problem areas in the offender's life, a categorization of the offender, a rating of useful treatment plans and the adequacy of existing correctional resources. The amount of agreement between Probation Officers and judges (the dependent variable) was operationalized as the absolute difference between the ratings of the two groups. Overall, Hogarth found that the use of the presentence report was not associated with greater agreement between Probation Officers and judges for any of the variables examined. After reporting these results, however, Hogarth himself notes some methodological shortcomings which he feels may weaken the strength of conclusions that might be drawn from his experiment. He was not able to administer the questionnaire to judges before and after they received a presentence report and thus was unable to determine whether the judge's assessment of the offender had changed as a result of reading the report. He also noted that for those cases in which a presentence report was not requested, the Probation Officer completed the questionnaire after the sentence was passed, and he suggests that knowledge of the disposition may have influenced the Probation Officer's assessment of the offender.

Some authors claim that in order to understand the dynamics of the impact of the presentence report on judicial decision-making, it is essential to explore the ideological differences between Probation Officers and judges vis-a-vis their views on offender culpability and the type of factors which should be considered in determining sentence. As Cohn states: "the difference in frameworks is consistent with the different position each occupies in the broader social system; an emphasis on the criminal aspects by the court, and an emphasis on the social and psychological data by Probation Officers" (10, p.18). Perrier (24) believes that the judge's ideological perspective is a product of his legal training based on the neo-classical tradition of freewill and individual responsibility, and that the Probation Officer's viewpoint is a function of his orientation to deterministic social scientific theories. He suggests that the influence of the neo-classical tradition will cause the judge, in his decisions regarding sentence, to place emphasis on such factors as the gravity of the offence, consequences of the offence, the offender's plea and his previous criminal record. Perrier believes that the Probation Officer's 'social casework' approach to the offender causes him to attribute greater importance to the individual's personality and social environment.

Viewing the presentence report as the most significant link between the probation service and the judiciary, it is difficult to reconcile the high rate of agreement between pre-sentence report recommendations and court dispositions with two widely disparate sets of assumptions regarding offender assessment strategies. Perrier (24) feels that within the context of the unequal power relationship which exists between the probation service and the judiciary, the Probation Officers learn to present their views in such a way that they are acceptable to the court, and in so doing, subjugate their own assessment framework to that of the judiciary. The Carter and Wilkins data (9) cited earlier appear to contradict this hypothesis in that no significant evidence was derived to support the notion that Probation Officers attempt to 'second-guess' the judges decision.

Hagan (15) has argued from the opposite point of view, maintaining that, through the vehicle of the presentence report, judges are influenced in their choice of disposition by assessments made by the Probation Officer which are based on a 'social work' orientation.

The San Francisco Project date (18) would appear to conflict with both of these points of view, by revealing that both Probation Officers and the judiciary utilize the same set of factors in decision-making. Results of the Ontario study (25), however, lead to the conclusion that although Probation Officers and judges tend to agree in their choice of disposition, they base their decisions on different types of information.

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CHAPTER II

METHODOLOGY

Research concerning the impact of the presentence report on sentencing has produced varied and often conflicting results. As revealed in the previous chapter, the only finding which appears to have produced more agreement than dissent among researchers is the significance of the relationship between the Probation Officer's recommendation and the disposition of the court.

In reviewing these studies, it appears that the major source of variation in the results lies in the choice of research methodology. In fact, the authors frequently include in their discussion of results a critique of their colleagues' research design (see, for example, Hagan (5)).

One of the major weaknesses of much of the research on the presentence report lies in the fact that the content of the report itself has not often been the subject of research. Some researchers utilize information derived from a questionnaire completed by the Probation Officer subsequent to the completion of a Presentence Report (6,7); others have extracted their data from simulations of the preparation of Presentence Reports (2). The problem with such approaches is that while they may reveal the nature of the Probation Officer's thoughts about a particular case, they may not reflect the actual written communication of these thoughts to the judiciary. It is obvious that one set of facts may be communicated in many different ways, depending upon the importance attributed these facts by the communicator, which, in turn, is a function of the communicator's personal biases, moral judgements, and the nature of his professional training (13). Despite the fact that content analysis is a time-consuming task, it was deemed by the author to be the approach best suited to extracting the type of information required for this study. Content analysis permits not only an examination of the facts contained in the report, but also an analysis of the manner in which they are presented.

Another criticism which has been levelled against many of the studies concerning factors related to court disposition is the neglect of many researchers to control for offence severity (4,11). In those instances where control has been attempted, moreover, the offence categories utilized are often so broad as to be meaningless. Curry (3), for example, classified offences according to four broad categories: crimes against the person, property crimes, morals crimes, and sex offences (not including sexual assault). For the purposes of his research, a minor common assault offence would be placed within the same category as a rape or murder. As a result of this criticism, it was decided that the present study would be confined to an examination of one offence category, namely, Break, Enter and Theft in order to avoid confounding the results (see Appendix A for Criminal Code definition of this offence). This particular category was selected because it was found to be the offence for which the greatest number of presentence reports were requested by the courts and also because it is an offence associated with a wide range of possible dispositions.[1] No attempt was made to control for seriousness of the offence other than to ensure that the offender had been convicted of Break, Enter and Theft and that multiple offences were not involved.

A) The Sample

A representative sample of 95 presentence reports completed on male offenders, convicted of a single offence of Break, Enter and Theft during 1976 and 1977 was selected. The record-keeping procedure utilized by the courts and the probation service precluded random sampling. Cases were selected in such a manner as to ensure that all Probation Officers writing reports and all judges requesting them were represented in the sample.

Although the total number of Probation Officer positions in the Halifax office was eight during these two years, staff turnover during this period increased to fifteen the number of Officers who were involved in Presentence Report writing.

The majority of the presentence reports were requested by the five judges who regularly occupy the bench in the Halifax

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[1] It would be illogical, for the purposes of this study, for example, to select an offence such as Robbery, for which a minimum term of three years in penitentiary has been dictated by the Nova Scotia Court of Appeal, or an offence such as Possession of Marijuana for which a fine or discharge have generally been awarded in recent years.

courts. A small number were requested, however, by three judges who replace the regular judges during vacation periods.

It should be noted that in Nova Scotia, unlike some other Canadian provinces, presentence reports are written according to a uniform format determined by the Department of the Attorney General. (See Appendix B). This format, which includes detailed instructions on the nature of information which must be provided in the presentence report, has served to maximize consistency in the quality and quantity of information that is provided to the courts. It should be further noted that Probation Officers, by directive of the Attorney General, are not permitted to include any recommendation for disposition in the presentence report, the rationale for this directive being that the role of the Probation Officer is to present information to the court and that recommendations for disposition are more appropriately within the mandate of prosecution and defence counsel.

B) The Instrument

A data-coding schedule was devised to facilitate the extraction of information from the presentence reports relevant to the research questions posed. (See Appendix C). The schedule was composed of four broad information categories: (a) Court/outcome variables; (b) Extra-legal (offender) variables; (c) Legal (offender) variables; and (d) Report variables.

a) Court/Outcome variables

This category included items relating to which judge requested the presentence report, which Probation Officer wrote the report and the final court disposition.

Each judge was identified by a number from 1 to 9 (Item 1 of the Coding Schedule) and the Probation Officers were assigned a number from 1 to 15 (Item 2). Court disposition was recorded in two ways; the first consisted of a detailed, nine-category breakdown of possible dispositions (Item 3) and the second in a breakdown according to the four major sentence categories of discharge, fine, probation and incarceration (Item 4).

The court disposition was used as the dependent variable in order to test the significance of various offender characteristics and report writing styles to the judge's decision regarding sentence.

Judges and Probation Officers were identified to permit an analysis of whether there were substantial differences in the type of reports prepared for the various judges, whether significantly different sentencing patterns between judges existed and whether there were substantial differences among Probation Officers in the way in which information about the offender was presented to the court.

b) Extra-legal (offender) variables

Included in this category are items relating to the socio-economic, demographic and attitudinal makeup of the offender which together provide a profile of the individual's personal characteristics. The age of the offender was recorded in years (Item 5). Employment history (Item 6) was defined in terms of whether the individual had been employed regularly, intermittently or on a seasonal basis. The offender's employment status (whether employed or unemployed) at the time of his court appearance was coded in Item 7. Educational background was noted in terms of the last grade completed (Item 8). A categorization of police comments about the offender (Item 11) was completed in terms of how well the individual was known to the police and whether or not he was considered a problem by them. The offender's family experiences were categorized in terms of family stability (Item 12) and family environment (Item 13). The individual's record of psychiatric treatment was coded in Item 14 and the Probation Officer's assessment of the need for such treatment was included in Item 15. Reports from community references (excluding police and immediate family members) concerning the offender's reputation in the community are categorized in Item 16. The offender's use of alcohol and other drugs are noted in Items 17 and 18. Finally, the offender's attitude concerning his situation, as assessed by the Probation Officer, is coded in Item 19.

These items were used as independent variables in order to test the impact of various offender characteristics on both the type of report written by the Probation Officer, and the judge's choice of disposition.

c) Legal (offender) variables

All offenders who are convicted of an indictable offence (including Break and Enter) have been fingerprinted at the time of arrest and assigned a unique number, the Fingerprint Section (F.P.S.) number. Through the co-operation of the Royal Canadian Mounted Police, 'H' Division, the Criminal Records (F.P.S. sheets) for all 95 individuals were obtained. This information was coded in three separate categories according to the number of prior convictions for Break and Enter (Item 9), the number of convictions for offences other than Break and Enter (Item 10) and the dispositions received for these prior convictions (Item 20). In order to obtain a Prior Disposition Score for each offender, each previous disposition was given a score from 1 to 5 according to the following scale:

Discharge (absolute or conditional)	1
Fine	2
Probation	3
Incarceration (less than 2 years)	4
Incarceration (2 years or more)	5

The Prior Disposition Score was simply derived by summing each separate score.

These items were used as independent variables to test the impact of the offender's criminal record on judicial dispositions and on the type of report written by the Probation Officer.

d) Report variables

The presentence report document itself was analyzed in terms of its length, number of persons consulted in the report preparation, number of facts and opinions contained and the tone conveyed.

The length of the report (Item 21) was determined by simply adding the number of typewritten lines contained. As all reports were written according to a uniform format and all typed on similar machines, this measurement tool was thought to provide a useful measure of the verbosity of the reports.

In order to ascertain the factual content of the presentence report, a 'fact' was defined as an objective statement by the offender or other person which could be externally verified. Using this definition, statements to the effect that the offender had done poorly in school or did not get along well at home, for example, were considered to be facts. A statement given by a professional, in his area of expertise, was also considered factual. The total number of facts (Item 23) was determined by summing all such statements.

'Opinions' were defined as subjective statements, judgements or inferences on the part of the Probation Officer or other persons which reflect personal biases and experience. The total number of opinions (Item 24) contained in the report were categorized according to those attributed to the Probation Officer (Item 25) and to other individuals consulted in the preparation of the report (Item 26). Each opinion was rated along a five-point scale, in which 1 represents a very positive and 5 a very negative opinion. The mean value of the report opinion scores obtained was defined as the 'tone' of the report (Item 27). The standard deviation of the opinion scores (Item 28) represented the variability of the opinions expressed. This standard deviation score was obtained in order to differentiate between reports, which expressed uniformly moderate positive (or negative) opinions and those which contained extremes of both positive and negative opinions. Although both reports could conceivably be determined to have the same overall tone (as measured by the mean opinion value), it was felt that the degree of consistency of opinions expressed might well influence the judge's perception of the offender.

At the conclusion of this section providing a list of variables considered in this study, it is germane to make some general comments regarding the methodology employed to analyze the substance of the presentence report. 'Content analysis' has been defined as "an objective, systematic, and quantitative description of the manifest content of communication"(1, p.489). Through the establishment of categories of analysis, the content of the presentence report may be scrutinized by the use of quantitative procedures. Reflecting upon the advantages of quantification over qualitative description or exploration, Perrier(13) contends that a procedure such as content analysis "provides for greater visibility and replication of the research process". He notes, however, that some elements of the report may be lost when the contents are partialized into categories; for example, information which is indirectly conveyed to the judge through the organizational structure or through style of presentation.

It is felt that the impact of organizational structure in the Nova Scotia reports has largely been controlled through the implementation of a uniform report format. The 'report' variables utilized in this study were designed to capture, in a quantitative sense, some elements of the style in which 'objective' information about the offender is conveyed to the judge.

C) Compilation and Analysis of Data

The data-coding schedule was used to extract information from the sample of presentence reports. Data transcribed on the coding sheets were then punched in numeric form onto computer cards. The tables and statistics were compiled and calculated using a series of programs in the SPSS computer package(12).

One-way analysis of variance(8) was performed in order to assess the effect of different categories of the independent variables (offender and report characteristics) on the dependent variables (sentencing outcome and report tone). This procedure provides a test of significance of the differences between the means of the categories of the independent variables on the dependent variable. For the purpose of this study, significance is reported if the probability of obtaining a given F ratio is .01 or less. Variables considered in the analysis meet the requirements of ordinal measurement. In view of Labovitz' assertion that except for extreme situations interval statistics can be applied to any ordinal-level variable(10), parametric statistics are employed in the analyses of the results.

A step-wise multiple regression procedure(9) was utilized to develop a single equation representing the weighted combination of offender and report variables which best predicts the severity of sentence imposed. The same procedure was used to determine the offender characteristics which are the best predictors of report tone. The computer first selects the independent variable that is the best predictor of the dependent variable. It then selects from the remaining independent variables the factor that best explains the remaining unexplained variance. This process continues until the size of the correlation coefficient can no longer be significantly increased by the addition of another variable.

A measure of inter-rater reliability was utilized to determine the reliability of the rating instrument. This measure tests the degree of agreement between two or more raters using the same rating instrument to code identical data. In order to determine inter-rater reliability, 15 of the total sample of 95 presentence reports were coded independently by the researcher and a research assistant who was thoroughly familiar with the coding schedule. In this study, a reliability test developed by Scott(14) was utilized. His formula for inter-rater reliability is as follows:

$$R = \frac{P_o - P_e}{1 - P_e}$$ where P_o is the percentage of observed agreement and P_e is the percentage of expected agreement on the basis of chance, based on the number of indicators in each category.

The inter-rater reliability, as determined by this formula, was .87.

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CHAPTER III

RESULTS

The purpose of this study was to ascertain which offender characteristics are most significant in determining sentence, which offender attributes influence the tone of the presentence reports, and whether the tone of the presentence report has an impact on sentencing outcome.

Before proceeding with an investigaion of the data related to the primary research issues, a preliminary analysis of the sentences imposed by the various judges was conducted. A result indicating that one or more of the judges was significantly more severe (or lenient) in the imposition of sentence for the offence of Break and Enter would confound further analysis and necessitate the removal of a number of cases from the sample. The distribution of mean outcome scores by judge is presented in Table I. A one-way analysis of variance (F = 2.04, df = 5,89) revealed that the differences in sentencing between judges was not significant.

A similar analysis was conducted in relation to the probation officers who had written the various reports, the result of which is presented in Table II. The analysis of variance (F = 1.42, df = 15,79) revealed no significant difference in the outcome of cases on the basis of which probation officer prepared the presentence report.

A) Impact of Offender and Report Variables on Sentencing Outcome

Having established that the variation in sentences imposed was not simply a function of which judge heard the case nor which probation officer prepared the report, we turn our attention to an examination of the relationship between the characteristics of the offender and sentencing outcome. A personal profile was derived for each of the 95 offenders in the sample according to the dimensions specified in the coding schedule. Through a series of one-way analysis of variance, sentencing outcome was related to 16 personal/legal offender variables in order to determine which characteristics of the offender were significantly linked with outcome. The results of the analyses are presented in Table III. It will be noted that differences in such offender characteristics as age, educational level, employment status and history, history of psychiatric treatment and alcohol or other drug use are not associated with significant outcome variations. The nature of the offender's relationship to his family does appear to have some impact on sentencing outcome (F = 4.68, df = 4,90); in those cases where there is conflict within the family unit and little effort is being made to rectify the situation, the outcome of sentencing is more severe. Sentencing also appears to vary significantly according to the nature of the comments about the offender made by community members (F = 5.3, df = 4,90). More severe sentences result in those cases where the general reaction of community references to the offender is adverse. It is interesting to note that in 40% of the 95 reports examined, no comments from community references (excluding police and family) were included. The sentencing outcome associated with cases which contained no community references was significantly less severe than reports which contained some negative community reaction and did not differ significantly from cases in which community response was totally positive.

The variables reflecting the presence or absence of a prior criminal record were associated with significant differences in outcome. Individuals who had not previously been convicted for a Break and Enter offence were given more lenient sentences than those who had one or more previous convictions (F = 42.6, df = 1,93). An examination of the total prior criminal record, including Break and Enter, reveals that sentences are significantly more severe for those with a prior record (F = 59.8, df = 1,93). The Student-Newman-Keuls multiple range test was performed in order to determine which of the prior record groupings (i.e., no previous record, one previous conviction, two or more previous convictions) were associated with significant differences in [illegible]come severity. The results indicate that sentence imposed on those with no criminal record was significantly more lenient than that imposed on those with a record, but that the mean outcome values associated with those with one previous conviction versus those with multiple previous convictions did not differ significantly.

In order to examine the independent impact of each of the various offender attributes on sentencing outcome, the multiple regression procedure was utilized. The analysis of variance provided an overview of the relationship between the independent variables (offender characteristics) and the dependent variable (sentencing outcome) without controlling for the interaction between the independent variables. The multiple regression procedure permits an examination of the linear relationship between a set of independent variables and a dependent variable while taking into account the interrelationship among the independent variables.

Results of the step-wise multiple regression of sentencing outcome with the offender variables and the report variable 'tone' (N = 95) is presented in Table IV. The offender variables 'police profile' and 'community references' were excluded from the analysis because of the high proportion of missing values, 46% and 40% respectively.[1] Two variables emerge from the regression analysis as significant predictors of sentencing outcome: 'record' and 'tone of the report'. Of all the information about the offender contained in the presentence report, it would appear that the judge is most influenced by the offender's prior record (F = 57.81, F significance = .000) and the quality of opinions expressed regarding the offender (F = 23.96, F significance = .000).

In view of the significance of the relationship between prior record and sentencing outcome, as revealed in the analysis of variance and regression analysis reported above, it was determined that a regression analysis should be performed separately for two subgroups of the sample, the first

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[1] Missing values in these two categories indicate that the probation officer failed to contact the police and/or community references in the preparation of the report.

group comprised of those with no criminal record and the second, those with one or more previous convictions.[2] Again, the offender variables 'police profile' and 'community references' were excluded from the analysis.

The results of the step-wise regression of sentencing outcome with the remaining offender variables plus the report variable 'tone' for the subgroup of the sample with no previous record (N = 51) is presented in Table V. It will be noted that the only significant offender variable emerging from this regression analysis is 'recommendation for psychiatric treatment'. Further analysis of this independent variable revealed, however, that of the subgroup of 51 offenders with no prior record, in only one case was a recommendation for treatment contained in the presentence report. On the basis of this analysis, it would appear that neither the tone of the report nor information relating to the personal characteristics of the offender are significant predictors of sentencing outcome when the offender has no prior record.

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[2] It will be recalled that the multiple range test performed subsequent to the analysis of variance of outcome by record indicated that the group of offenders with one previous conviction did not differ significantly from the group with two or more previous convictions on the basis of mean outcome score.

Results of the step-wise multiple regression for the subgroup of offenders with a record of one or more previous convictions (N = 44) are contained in Table VI. The only variable emerging as a significant predictor of sentencing outcome is 'tone of the report' (F = 24.51, F significance = .000).

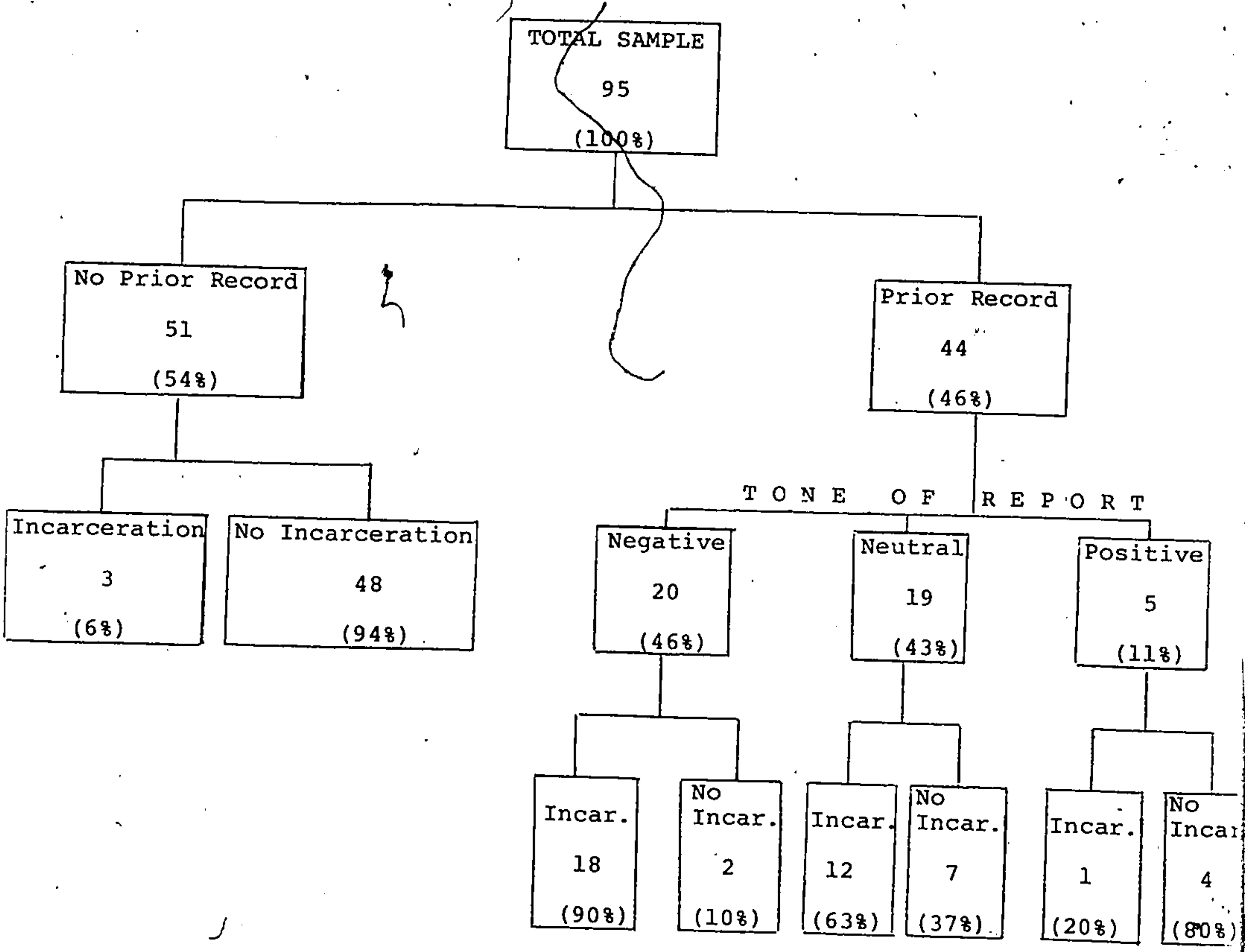
The tone, or quality of opinions regarding the offender, expressed in the report appears to be a very important factor in the determination of sentence, but nonetheless, a factor which assumes significance only in cases where the offender has a prior record. The dynamics of this relationship between the tone of the report and sentencing outcome are further displayed in Table VII which consists of a crosstabulation of outcome and tone for the subsample of offenders with a prior record (N = 44). Tone of the report is broken down into three categories: positive (mean tone ranging between 1 and 2.5), neutral (mean tone 2.5 to 3.5), and negative (mean tone 3.5 to 5). Sentencing outcome is divided into two categories: non-incarcerative disposition and incarcerative disposition. The relationship between the two variables (X^2 = 10.27, df = 2) is significant at the .01 level, and the degree of association, as measured by Kendall's tau c is significant at the .001 level. If the report submitted on an individual with a criminal record is positive in tone, the offender is likely to receive a non-incarcerative disposition and, conversely, if the report is negative, the offender is more likely to be sentenced to jail.

The results of the regression analysis performed on the total sample (Table IV) indicated that the offender's criminal record was the most powerful predictor of sentencing outcome. The regression performed on the subsample of offenders with a prior record (Table VI) did not list the variable 'record' as a significant predictor of outcome. These findings suggest that it is not the <u>length</u> of the offender's criminal record that influences the judge's decision but rather whether or not a record exists. A distribution of sentence type (non-incarcerative versus incarcerative) by prior record (no previous conviction versus one or more previous convictions) is presented in Table VIII. With very few exceptions, offenders with no previous record were given a non-institutional disposition. This together with the regression results presented in Table V suggest that the personal characteristics of the first offender and the tone of the presentence report are unimportant factors in the determination of sentence. Instead, the judge's decision to suspend the passing of sentence and place the offender under probation supervision would appear to be virtually guaranteed when the offender has no prior record. In cases where the existence of a prior record is indicated, the tone of the report becomes a significant factor in the decision to either impose a sentence of incarceration or release by means of a suspended sentence or fine. A summary of the judicial decision-making process, based on the results of the analyses presented above, is depicted in Figure A.

These results have considerable implications with respect to judicial utilization of the presentence report. If in the case of a first offender the judge bases his sentencing decision solely on the fact that the offender has no previous record (information which can readily be supplied by the Crown) and is virtually unaffected by the facts or opinions contained in the presentence report, the rationale for requesting a report under these circumstances must surely be questioned. It must be noted that this study is restricted to an examination of Break and Enter cases for which a presentence report was requested. Hogarth(1) has suggested that judges ask for a presentence report in Break and Enter cases when they are contemplating the 'atypical' disposition of a non-incarcerative sentence. In our sample of individuals who were sentenced with benefit of a presentence report, 61 (64%) of the total of 95 were given a

FIGURE A

JUDICIAL DECISION-MAKING PROCESS



non-institutional disposition. Forty-eight (79%) of these 61 offenders who were not sentenced to jail were persons with no prior criminal record. In order to determine whether this decision to impose what Hogarth considers to be an atypical sentence (i.e., non-institutional disposition) is a function of the fact that the offender has no previous record or, alternatively, a function of other factors (e.g. facts about the offence or offender that emerge during trial), an examination of court dispositions for Break and Enter cases with no presentence report might be undertaken. In light of the poor quality of court data, an alternative method of exploring this issue was devised. All male admissions to the Halifax County Correctional Centre[1] as a result of conviction for a single Break and Enter offence during the three month period March to May, 1977 were analyzed, in terms of the existence of a prior record and whether a presentence report was completed. Were the results of this analysis to indicate that a number of individuals with no prior record were sentenced to incarceration without benefit of a presentence report, our conclusion, based on our sample

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[1] The Halifax institution was selected because it handles the largest volume of provincial inmates and also because it is the institution which houses all offenders sentenced from the Halifax courts, from which our sample was taken.

data, that virtually all first offenders convicted of Break and Enter are given a non-institutional disposition, would require modification. The results of the analysis of Break and Enter admissions to the Halifax County Correctional Centre (N = 38) are presented in Table IX.

Of the 38 individuals admitted for this offence, 37 (97.4%) had a record of previous criminal convictions. Presentence reports were completed in 29 (76.3%) of the total cases. In no instance was a person with no criminal record sentenced to the institution without benefit of a presentence report. On the basis of this analysis and that presented previously, we conclude that far from being atypical, the decision to impose a non-incarcerative disposition is typical in cases where the offender has no previous record.

B) Impact of Offender Variables on Tone of the Presentence Report

We turn now to an examination of the relationship between offender characteristics and the tone of the presentence report in order to determine which attributes of the offender influence to the greatest degree the tonal quality of the Probation Officer's submission to the court. It will be recalled that the variable 'tone' represents the mean opinion score of the report where each opinion expressed regarding the offender, attributed either to the probation officer or community reference, was scored on a five-point scale, ranging from 'very negative' to 'very positive'.

Through a series of one-way analysis of variance, the tone of the report was related to the sixteen personal/ legal variables in order to determine to what extent the tone varied along the dimensions of these categories which represent the characteristics of the offender. The results of the analyses are presented in Table X. Variations in such offender characteristics as age, education, history of mental health treatment, alcohol or drug use and family environment are not associated with significant differences in report tone. The offender's employment history is significantly related to report tone (F = 7.4, df = 2,92) in that a report submitted on an individual who has been regularly employed was more positive in tone than one submitted on an offender with a poor employment record. Reports were significantly more positive in tone when the offender was employed than if he was unemployed (F = 7.9, df = 1,93). The measure of the stability of the offender's relationship with his family was significantly linked with report tone (F = 5.2, df = 4,90). The report was significantly more positive in cases where family members were supportive of the offender than in cases where there was evidence of conflict between the offender and his family. The substance of comments about the offender made by community members was significantly reflected in the tone of the report (F = 4.0, df = 4,90) in that when community sources spoke favourably of the individual, the report tended to be more positive than when they made adverse comments. Variations in the offender's attitude as expressed in the presentence report interview were associated with significant differences in tone (F = 8.1, df = 2,92). Individuals who displayed a belligerent attitude were portrayed in a more negative manner to the court than those who appeared remorseful. The tone of reports submitted on first offenders was significantly more positive than the tone associated with offenders with one or more convictions (F = 6.4, df = 2,92).

A step-wise multiple regression was performed in order to ascertain the independent impact of each independent variable on the dependent variable 'tone' while controlling for the interaction between independent variables. The results of the analysis are presented in Table XI. The variables 'family stability', 'offender's attitude' and 'employment history' emerged as the most powerful predictors of report tone, the predictive value of each significant at the .01 level. It is interesting to note that the nature of the offender's record is not a significant determinant of the tone of the pre-sentence report.

C) Impact of Offender Variables on Report Content

In the previous section, we presented an analysis of the relationship between the characteristics of the offender and the tone of the pre-sentence report as the communication vehicle through which these characteristics are portrayed for the court. In this section we will examine the relationship between the offender variables and other aspects of report contents: length of the report, total number of facts reported, total number of opinions reported and variability of opinions reported.

An analysis of the relationship between offender variables and court disposition presented in the first section of this chapter revealed the type of information about the offender deemed to be most important to the judiciary in determining sentence. Assuming that the importance assigned to various offender characteristics by the probation officer will be reflected in the actual document, this section presents an examination of the degree to which factors most relevant to the judge are emphasized by the probation officer.

In Table XII, the length of the presentence report is not associated with differences in offender age, education, employment history or status, family stability or environment, alcohol or drug use or attitude toward the offence. Reports written on individuals with a history of mental health treatment are significantly longer than those concerning offenders with no record of treatment (F = 8.02, df = 4,90). Reports which contain primarily adverse community reactions toward the accused are longer than those in which reactions are positive or mixed (F = 5.20, df = 4,90). The presence or absence of a prior conviction for a Break and Enter offence is significantly related to the length of the report (F = 6155, df = 2,92) but, interestingly, the reports written on those with one previous conviction are considerably longer than those written on offenders with multiple previous convictions as well as those with no previous convictions. The nature of an offender's record for offences other than Break and Enter is also significantly related to report length (F = 4.48, df = 2,92), but here the length of reports written on individuals with either one previous offence or multiple offences is comparable and considerably longer than those written on persons with no prior record.

A series of one-way analysis of variance were performed in order to determine the relationship between the various offender variables and the total number of facts contained in the report. It will be recalled that a 'fact' is defined, for the purpose of this thesis, as an objective statement by the offender or other person which could be externally verified. The results of the analyses are presented in Table XIII. It will be observed that the volume of facts presented does not vary to any significant degree with different categories of the offender variables age, education, attitude toward the offence, employment history or status, family stability, recommendation for psychiatric treatment, alcohol or drug use.

The nature of the offender's mental health record is significantly related to the number of facts conveyed in the report (F = 7.83, df = 4,90) with the greatest factual content associated with reports written on offenders with a history of mental health in-patient and out-patient treatment. Reports written on individuals to whom community reaction was uniformly negative contained significantly more facts than other reports (F = 3.54, df = 4,90). The nature of the offender's family environment in significantly associated with the factual content of the report (F = 4.81, df = 2,92) in that reports portraying the individual as coming from a negative family environment contained considerably more facts than other reports. The number of prior convictions for any criminal offence is associated with significant variations in the factual content of reports (F = 4.79, df = 2,92); reports written on offenders with no prior record contain fewer facts than those written on individuals with a record of one or multiple previous offences.

The next analysis consists of an examination of the relationship between the offender variables and the total number of opinions contained in the presentence report. The results of this analysis appear in Table XIV. With the exception of the variables 'Mental Health Record' and 'Community References', variations in other offender characteristics are not associated with significant differences in the number of opinions conveyed in the reports. Reports written on individuals who have undergone out-patient and in-patient treatment for mental illness contain a greater number of opinions than other reports (F = 4.01, df = 4,90). Reports which convey information from community references contain, understandably, a greater number of opinions than those in which the reaction of community members was not presented (F = 5.79, df = 4,90). The number of opinions, however, was not associated with the nature of the community response; reports reflecting an overall negative reaction from community members did not contain substantially more or less opinions than reports conveying a more positive community reaction toward the offender.

In addition to obtaining a measurement of the tone of each presentence report (defined as the mean opinion score), the variability of the quality of opinions expressed in the report was also determined (calculated as the standard deviation of opinion values). A series of one-way analysis of variance were performed in order to determine whether any offender characteristics were associated with significant variations or fluctuations in the overall tonal quality of the reports. The results are presented in Table XV. The only variable in which significant variation was noted between categories was 'Community References'. Opinions expressed in reports where community references were uniformly negative or absent altogether were more consistent than those contained in reports where community reaction was mixed or uniformly positive.

In reviewing the results presented in this section, it appears that where the length of the report or the number of facts and opinions vary significantly along different dimensions of a particular offender variable, it is the more negative aspect of the individual's character that receives greater emphasis by the probation officer. Reports written on individuals who elicit a negative response from the community, or who have a prior criminal record, or who have a history of psychiatric illness, tend to be lengthier and contain more facts than other reports.

The analysis of the impact of offender variables on sentencing outcome presented in an earlier section of this chapter revealed that the presence or absence of a criminal record was the most significant determinant of the type of sentence imposed by the judiciary. It is interesting to note that while this offender characteristic does not appear to influence the tone of the report written by the probation officer (nor indeed the number of opinions expressed in the report), it does have significant impact on the quantity of information which is made available to the court, as reflected in the absolute length of the report and the number of facts contained within the report. Thus, while the probation officer's assessment of the offender is not guided by the extent of the individual's prior criminal involvement, there would appear to be some realization on the part of the officer that such information is important to the judge and must be fully reported.

We have also noted that the tone of the report is a significant determinant of court disposition, particularly in cases where the offender has a prior record. In light of the importance of this information to the judiciary, it is interesting to observe that two highly relevant potential contributors to the quality of opinions expressed regarding the offender, namely 'Police Profile' and 'Community References' are underreported. In Table XVI a crosstabulation of police profile by prior record of the offender is presented. It will be noted that in 46.3% of the total reports information from the police was not presented, and, further, that in fully 81.8% of the submissions on persons with a prior record, police comments were not reported.

Information from community references was not reported in 40.0% of the total cases (see Table XVII); in 31.8% of the reports written on individuals with a prior record, no opinions from community sources regarding the accused were obtained.

TABLE I

Outcome score by judge

Judge	Number of Cases	Mean Outcome Score[1]	Standard Deviation
A	8	4.50	2.27
B	13	3.31	1.44
C	24	3.63	1.64
D	31	4.35	1.91
E	12	5.08	2.61
Other	7	5.42	2.57
Total	95	4.21	2.03

F = 2.04, df = 5,89, not significant

[1] Outcome Score

Discharge	1
Fine	2
Probation	3
Intermittent Sentence	4
Incarceration (- 3 months)	5
Incarceration (3-6 months)	6
Incarceration (7-12 months)	7
Incarceration (13-24 months)	8
Incarceration (2 yrs. +)	9

TABLE II

Outcome score by author of pre-sentence report

Probation Officer	Number of Cases	Mean Outcome Score[1]	Standard Deviation
A	10	5.50	2.80
B	8	2.75	0.46
C	15	4.60	2.10
D	2	5.50	3.53
E	4	4.00	2.00
F	6	5.83	2.32
G	3	4.67	2.89
H	8	4.62	2.33
I	9	4.11	2.03
J	3	3.33	1.53
K	4	3.00	0.82
L	2	5.00	2.83
M	2	3.50	0.71
N	2	3.00	0.00
O	9	3.78	1.20
Others	8	3.13	0.83
Total	95	4.21	2.02

F = 1.42, df = 15,78, not significant

[1] Outcome Score

Discharge	1
Fine	2
Probation	3
Intermittent Sentence	4
Incarceration (- 3 months)	5
Incarceration (3-6 months)	6
Incarceration (7-12 months)	7
Incarceration (13-24 months)	8
Incarceration (2 yrs. +)	9

TABLE III

Outcome score by offender characteristics

Offender variables	N	Mean Outcome Score[1]	Standard Deviation	F ratio	df	F prob
Age						
16-17	31	3.7	1.6			
18-20	41	4.0	1.9			
21-24	14	5.3	2.6			
25 +	9	5.2	2.2			
Total	95			3.03	3,91	0.03
Education						
Grade 7 or less	22	4.9	2.3			
Grade 8 and 9	42	4.3	2.3			
Grade 10 and 11	24	3.7	1.3			
Grade 12 or more	7	3.4	1.1			
Total	95			1.76	3,91	0.16
Employment History						
Full/part-time	36	3.6	1.5			
Intermittent	52	4.5	2.3			
History of Unemployment	7	5.4	1.5			
Total	95			3.41	2,92	0.04
Employment Status						
Employed	44	3.8	1.8			
Unemployed	51	4.6	2.2			
Total	95			3.95	1,93	0.05

TABLE III (Cont'd)

Offender variables	N	Mean Outcome Score[1]	Standard Deviation	F ratio	df	F prob
Family Stability						
Supportive	55	3.7	1.5			
All attempting to rectify	16	3.8	1.7			
Some attempt to rectify	6	6.0	2.5			
No attempt to rectify	15	5.6	2.6			
Alienation	3	5.0	3.5			
Total	95			4.68	4,90	0.001*
Mental Health Record						
No Record	65	4.0	2.0			
Current Treatment	1	3.0	0.0			
Past outpatient	13	3.8	1.5			
Past inpatient	13	5.5	2.3			
Past in- and outpatient	3	5.0	2.0			
Total	95			1.96	4,90	0.11
Recommended for Psychiatric Treatment						
No Recommendation	87	4.1	2.0			
Recommended	8	5.6	2.0			
Total	95			4.4	1,93	0.04

TABLE III (Cont'd)

Offender variables	N	Mean Outcome Score[1]	Standard Deviation	F ratio	df	F prob
Community References						
All positive	19	3.5	1.5			
Mixture - positive	17	4.1	2.0			
Mixture - negative	12	5.6	2.6			
Negative	9	6.1	2.5			
No References	38	3.7	1.5			
Total	95			5.3	4,90	0.00*
Alcohol Use						
Abstains	3	3.0	0.0			
Moderate	78	4.1	1.9			
Abuse (non-specif.)	9	4.4	2.6			
Periodic binges	1	3.0	0.0			
Chronic alcoholic	4	7.0	1.6			
Total	95			2.48	4,90	0.05
Drug Use						
None	69	3.9	1.9			
Prescription	2	3.0	0.0			
Some use (non-spec.)	5	6.4	2.8			
Occasional soft	6	3.5	1.2			
Regular soft	1	5.0	0.0			
Occasional hard	3	4.7	2.9			
Regular hard	9	4.8	2.3			
Total	95			1.60	6,86	0.16

TABLE III (Cont'd)

Offender variables	N	Mean Outcome Score[1]	Standard Deviation	F ratio	df	F prob
Family Environment						
Positive	42	3.8	1.7			
Combination	34	4.4	2.2			
Negative	19	4.8	2.3			
Total	95			1.75	2,92	0.18
Offender's Attitude						
Belligerent	11	5.4	2.2			
Some concern	71	4.2	2.0			
Very remorseful	13	3.5	1.9			
Total	95			2.61	2,92	0.08
Prior Record (B & E)						
No prior record	76	3.8	1.8			
One prior offence	10	5.7	1.5			
Multiple prior offences	9	6.2	2.5			
Total	95			10.7	2,92	0.00*
Prior Record (Other Criminal Code)						
No prior record	56	3.3	1.0			
One prior offence	15	4.7	2.3			
Multiple prior offences	24	6.1	2.2			
Total	95			26.4	2,92	0.000*
Record (any criminal offence)						
No prior record	51	3.0	0.7			
One prior offence	14	5.1	2.2			
Multiple prior offences	30	5.8	2.2			
Total	95			31.3	2,92	0.000*

TABLE III (Cont'd)

Offender variables	N	Mean Outcome Score[1]	Standard Deviation	F ratio	df	F prob
Prior Disposition Value						
No prior record	51	3.0	0.6			
Low	27	4.9	2.1			
Moderate	9	6.3	1.9			
High	7	6.7	2.4			
Very High	1	9.0	0.0			
Total	95			21.8	4,90	0.00*

[1] Outcome Score

Discharge	1
Fine	2
Probation	3
Intermittent Sentence	4
Incarceration (- 3 months)	5
Incarceration (3-6 months)	6
Incarceration (7-12 months)	7
Incarceration (13-24 months)	8
Incarceration (2 yrs. +)	9

TABLE IV

Regression of sentencing outcome
with offender variables and tone
of report
(N = 95)

Offender/Report Variables	F to Enter or Remove	F significance	Simple r
Record	57.81	.000*	.62
Tone	23.96	.000*	.52
Age	2.35	.129	.26
Employment Status	0.76	.385	.20
Drug Use	0.77	.381	.20
Family Stability	0.84	.361	.37
Alcohol Use	0.42	.518	.27
Offender's Attitude	0.30	.587	- .22
Education	0.17	.682	- .20
Family Environment	0.04	.845	.19
Recommended for Psychiatric Treatment	0.02	.887	.21
Employment History	F level insufficient for inclusion		
Mental Health Record	F level insufficient for inclusion		

Analysis of variance	df	Sum of squares	F	F significance
Regression	11	208.6	--	-
Residual	83	177.2	8.88	.000*

Multiple r .73

r square .54

*significant at .01 level

TABLE V

Regression of sentencing outcome
with offender variables and tone
of report for offenders with no
prior record
(N = 51)

Offender/Report Variables	F to Enter or Remove	F Significance	Simple r
Recommended for Psychiatric Treatment	10.67	.002*	.42
Age	2.13	.150	.18
Offender's Attitude	2.27	.138	- .13
Employment History	2.03	.161	- .01
Tone	0.99	.324	.21
Family Environment	0.81	.374	.03
Employment Status	0.63	.431	.07
Family Stability	0.15	.703	.04
Education	0.17	.679	.14
Mental Health Record	0.08	.772	- .03
Drug Use	0.02	.888	- .03
Alcohol Use	F level insufficient for inclusion.		

Analysis of variance	df	Sum of squares	F	F significance
Regression	11	7.17	-	-
Residual	39	14.75	1.72	.104

Multiple r	.57
r square	.33

*significant at .01 level

TABLE VI

Regression of sentencing outcome with offender variables and tone of report for offenders with a prior record (N = 44)

Offender/Report Variables	F to Enter or Remove	F Significance	Simple r
Tone	24.51	.000*	.61
Record	6.44	.025	.38
Age	3.28	.078	.11
Employment Status	1.88	.178	.10
Alcohol Use	1.40	.244	.11
Drug Use	0.47	.495	.11
Offender's Attitude	0.29	.591	-.19
Family Stability	0.28	.599	.23
Recommended for Psychiatric Treatment	0.04	.834	.03
Family Environment	0.07	.791	.13
Mental Health Record	0.03	.870	.08
Employment History	0.02	.898	.24
Education	F level insufficient for inclusion		

Analysis of variance	df	Sum or squares	F	F significance
Regression	12	117.31	-	-
Residual	31	95.49	3.17	.005*

Multiple r .74

r square .55

*significant at .01 level

TABLE VII

Sentencing outcome by
tone of report

Offenders with
Prior Record
(N = 44)

	Sentencing Outcome					
Tone of Report	No Incarceration		Incarceration		Total	
	#	%	#	%	#	%
Positive	4	9.1	1	2.3	5	11.4
Neutral	7	15.9	12	27.3	19	43.2
Negative	2	4.5	18	40.9	20	45.5
Total	13	29.5	31	70.5	44	100.0

X^2 = 10.27, df = 2, significant at .005

Kendall's tau c = 0.44, significant at .001

TABLE VIII

Outcome type by
prior record
(N = 95)

	Outcome Type					
Prior Record	No Incarceration		Incarceration		Total	
	#	%	#	%	#	%
No Prior Record	48	50.5	3	3.2	51	53.7
Prior Record	13	13.7	31	32.6	44	46.3
Total	61	64.2	34	35.8	95	100.0

TABLE IX

Male admissions to the
Halifax County Correctional Centre
Break and Enter
March 1 - May 1, 1977
(N = 38)

	Pre-sentence Report Completed		No Pre-sentence Report Completed		Total	
	#	%	#	%	#	%
Record	28	73.7	9	23.7	37	97.4
No Record	1	2.6	0	-	1	2.6
Total	29	76.3	9	23.7	38	100.0

TABLE X

Tone of report by offender characteristics

Offender variables	N	Mean Tone[1]	Standard Deviation	F ratio	df	F prob
Age						
16-17	31	3.1	0.7			
18-20	41	3.1	0.8			
21-24	14	2.9	0.6			
25 +	9	3.6	0.4			
Total	95			1.8	3,91	.15
Education						
Grade 7 or less	22	3.5	0.5			
Grade 8 and 9	42	3.1	0.8			
Grade 10 and 11	24	2.9	0.7			
Grade 12 +	7	2.9	0.7			
Total	95			3.2	3,91	.03
Employment History						
Full/part-time	36	2.8	0.1			
Intermittent	52	3.2	0.7			
History of unemployment	7	3.8	0.6			
Total	95			7.4	2,92	.001*
Employment Status						
Employed	44	2.9	0.6			
Unemployed	51	3.3	0.7			
Total	95			7.9	1,93	.006*
Family Stability						
Supportive	55	2.9	0.6			
All attempting to rectify	16	3.1	1.0			
Some attempt to rectify	6	3.8	0.2			
No attempt to rectify	15	3.6	0.6			
Alienation	3	3.5	0.6			
Total	95			5.2	4,90	.001*

TABLE X (Cont'd)

Offender variables	N	Mean Tone[1]	Standard Deviation	F ratio	df	F prob
Mental Health Record						
No Record	65	3.0	0.8			
Current treatment	1	2.8	-			
Past outpatient	13	3.3	0.6			
Past inpatient	13	3.4	0.5			
Past in- and outpatient	3	3.2	0.9			
Total	95			1.0	1,93	.03
Recommended for Psychiatric Treatment						
No recommendation	87	3.1	0.7			
Recommended	8	3.6	0.5			
Total	95			4.6	1,93	.03
Community References						
All positive	19	2.8	0.6			
Mixture - positive	17	3.2	0.6			
Mixture - negative	12	3.3	0.4			
All negative	9	3.8	0.2			
No References	38	3.0	0.9			
Total	95			4.0	4,90	.005*
Alcohol Use						
Abstains	3	3.5	0.6			
Moderate	78	3.1	0.8			
Abuse (non-specified)	9	3.0	0.5			
Periodic binges	1	3.6	-			
Chronic alcoholic	4	3.7	0.5			
Total	95			1.0	4,90	.39

TABLE X (Cont'd)

Offender variables	N	Mean Tone[1]	Standard Deviation	F ratio	df	F prob
Drug Use						
None	67	3.1	0.8			
Prescription	2	3.1	0.1			
Some use (non-specif.)	5	3.3	0.6			
Occasional soft	8	2.8	0.6			
Regular soft	1	3.5	-			
Occasional hard	3	3.6	0.8			
Regular hard	9	3.3	0.6			
Total	95			0.6	6,88	0.72
Family Environment						
Positive	42	2.9	0.6			
Combination	34	3.1	0.8			
Negative	19	3.5	0.6			
Total	95			4.2	2,92	.02
Offender's Attitude						
Belligerent	11	3.8	0.5			
Some concern	71	3.1	0.7			
Very remorseful	13	2.7	0.6			
Total	95			8.1	2,92	.001*
Prior Record (B & E)						
No prior record	76	3.1	0.8			
1 previous conviction	10	3.5	0.6			
2 or more previous convictions	9	3.2	0.4			
Total	95			1.5	2,92	.22
Prior Record (Other Criminal Code)						
No prior record	56	2.9	0.7			
1 previous conviction	15	3.1	0.7			
2 or more previous convictions	24	3.5	0.6			
Total	95			5.4	2,92	.01*

TABLE X (Cont'd)

Offender variables	N	Mean Tone[1]	Standard Deviation	F ratio	df	F prob
Record (any criminal offence)						
No prior record	51	2.9	0.7			
1 previous conviction	14	3.3	0.8			
2 or more previous convictions	30	3.4	0.6			
Total	95			6.4	2,92	.003*
Prior Disposition Value						
No prior record	51	2.9	0.7			
Low	27	3.3	0.7			
Moderate	9	3.6	0.5			
High	7	3.5	0.5			
Very High	1	3.6	-			
Total	95			3.6	4,90	.009*

[1] Tone

Very positive	1
Positive	2
Neutral	3
Negative	4
Very negative	5

*significant at .01 level

TABLE XI

Regression of report tone with offender variables
(N = 95)

Offender variables	F to enter or remove	F significance	Simple r
Family stability	17.73	.000*	.40
Offender's attitude	16.72	.000*	- .37
Employment History	6.40	.013*	.35
Education	1.15	.286	- .25
Family Environment	1.19	.278	.28
Recommended for Psychiatric Treatment	1.64	.204	.22
Record	.50	.480	.29
Alcohol Use	.91	.343	.10
Mental Health Record	.43	.514	.19
Employment Status	.07	.785	.28
Age	F level insufficient for inclusion		
Drug use	F level insufficient for inclusion		

Analysis of Variance	df	Sum of squares	F	F significance
Regression	10	18.98	-	-
Residual	84	31.11	5.12	.000*

Multiple r	.62
r square	.38

*significant at .01 level

TABLE XII

Length of report by offender variables

Offender variables	N	Mean Length	Standard Deviation	F ratio	df	F prob
Age						
16-17	31	78.7	29.6			
18-20	41	76.8	44.5			
21-24	14	80.8	36.8			
25 +	9	89.8	32.0			
Total	95			0.30	3,91	0.83
Education						
Grade 7 or less	22	84.9	38.9			
Grade 8 and 9	42	75.2	27.4			
Grade 10 and 11	24	80.5	52.6			
Grade 12 +	7	80.6	28.1			
Total	95			0.33	3,91	0.80
Employment History						
Full/part-time	36	75.7	43.7			
Intermittent	52	79.7	32.8			
History of Unemployment	7	93.0	39.3			
Total	95			0.62	2,92	0.54
Employment Status						
Employed	44	76.1	41.1			
Unemployed	51	81.7	34.4			
Total	95			0.55	1,93	0.46
Family Stability						
Supportive	55	71.7	32.7			
All attempting to rectify	16	81.2	36.4			
Some attempt to rectify	6	97.8	19.0			
No attempt to rectify	15	96.3	54.7			
Alienation	3	83.7	26.8			
Total	95			1.77	4,90	0.14

TABLE XII (Cont'd)

Length of report by offender variables

Offender variables	N	Mean Length	Standard Deviation	F ratio	df	F ratio
Mental Health Record						
No Record	65	72.4	31.4			
Current Treatment	1	63.0	0.0			
Past outpatient	13	83.5	38.6			
Past inpatient	13	87.2	24.5			
Past in- and outpatient	3	180.0	69.2			
Total	95			8.02	4,90	0.00*
Recommended for Psychiatric Treatment						
No Recommendation	87	77.3	36.8			
Recommended	8	99.5	42.0			
Total	95			2.59	1,93	0.11
Community References						
All positive	19	86.7	46.7			
Mixture - positive	17	89.6	34.0			
Mixture - negative	12	91.7	26.4			
Negative	9	106.3	26.2			
No References	38	60.4	31.6			
Total	95			5.20	4,90	0.00*
Alcohol Use						
Abstains	3	89.3	45.6			
Moderate	78	74.0	32.9			
Abuse (non-specif.)	9	102.9	60.0			
Periodic binges	1	91.0	0.0			
Chronic alcoholic	4	117.3	32.0			
Total	95			2.53	4,90	0.05

TABLE XII (Cont'd)

Length of report by offender variables

Offender variables	N	Mean Length	Standard Deviation	F ratio	df	F prob
Drug Use						
None	67	76.1	39.1			
Prescription	2	77.5	19.1			
Some use (non-spec.)	5	87.2	24.2			
Occasional soft	6	81.7	36.7			
Regular soft	1	45.0	0.0			
Occasional hard	3	120.7	45.9			
Regular hard	9	83.8	33.9			
Total	95			0.87	6,88	0.52
Family Environment						
Positive	42	73.4	32.2			
Combination	34	77.1	37.5			
Negative	19	95.9	45.2			
Total	95			2.51	2,92	0.09
Offender's Attitude						
Belligerent	11	81.8	40.0			
Some concern	71	79.3	32.8			
Very remorseful	13	76.3	58.7			
Total	95			0.06	2,92	0.94
Prior Record (B & E)						
No prior record	76	73.6	31.7			
One prior offence	10	116.3	60.0			
Multiple prior offences	9	85.6	32.0			
Total	95			6.55	2,92	0.00*
Prior Record (Other Criminal Code)						
No prior record	56	69.9	31.2			
One prior offence	15	93.3	52.9			
Multiple prior offences	24	92.1	35.0			
Total	95			4.48	2,92	0.01*

TABLE XII (Cont'd)

Length of report by offender variables

Offender variables	N	Mean Length	Standard Deviation	F ratio	df	F prob
Record (any criminal offence)						
No prior record	51	68.3	31.5			
One prior offence	14	85.4	27.1			
Multiple prior offences	30	94.8	45.4			
Total	95			5.38	2,92	0.01*
Prior Disposition Value						
No prior record	51	68.3	31.5			
Low	27	90.6	43.6			
Moderate	9	88.8	40.7			
High	7	99.8	33.7			
Very High	1	97.0	0.0			
Total	95			2.58	4,90	0.04

*significant at .01 level

TABLE XIII

Total facts in report by offender variables

Offender variables	N	Mean number of facts	Standard Deviation	F ratio	df	F prob
Age						
16-18	31	35.5	13.2			
18-20	41	34.8	15.3			
21-24	14	38.3	14.3			
25 +	9	42.9	11.6			
Total	95			0.92	3,91	0.44
Education						
Grade 7 or less	22	36.5	12.8			
Grade 8 and 9	42	36.4	12.3			
Grade 10 and 11	24	36.0	18.7			
Grade 12 +	7	36.7	13.1			
Total	95			0.01	3,91	0.99
Employment History						
Full/part-time	36	33.4	15.3			
Intermittent	52	38.0	13.8			
History of Unemployment	7	38.6	8.3			
Total	95			1.22	2,92	0.30
Employment Status						
Employed	44	35.9	16.1			
Unemployed	51	36.7	12.3			
Total	95			0.08	1,93	0.77
Family Stability						
Supportive	55	33.3	11.9			
All attempting to rectify	16	36.9	15.0			
Some attempt to rectify	6	41.5	9.4			
No attempt to rectify	15	42.3	18.7			
Alienation	3	48.3	19.6			
Total	95			2.14	4,90	0.08

TABLE XIII (Cont'd)

Total facts in report by offender variables

Offender variables	N	Mean number of facts	Standard Deviation	F ratio	df	F prob
Mental Health Record						
No Record	65	32.9	11.4			
Current Treatment & Past outpatient	1	41.0	0.0			
Past outpatient	13	41.3	16.0			
Past inpatient	13	39.9	10.5			
Past in and outpatient	3	71.0	24.2			
Total	95			7.83	4,90	0.00*
Recommended for Psychiatric Treatment						
No Recommendation	87	36.1	14.2			
Recommended	8	39.0	14.2			
Total	95			0.31	1,93	0.58
Community References						
All Positive	19	39.0	17.8			
Mixture - positive	17	38.1	13.8			
Mixture - negative	12	37.3	6.7			
Negative	9	48.3	15.4			
No References	38	31.1	11.7			
Total	95			3.54	4,90	0.01*
Alcohol Use						
Abstains	3	38.7	8.7			
Moderate	78	34.9	13.0			
Abuse (non-specif.)	9	41.9	21.9			
Periodic binges	1	50.0	0.0			
Chronic alcoholic	4	47.0	14.9			
Total	95			1.40	4,90	0.24

TABLE XIII (Cont'd)

Total facts in report by offender variables

Offender variables	N	Mean number of facts	Standard Deviation	F ratio	df	F prob
Drug Use						
None	67	35.3	14.4			
Prescription	2	37.5	2.1			
Some use (non-spec.)	5	40.8	14.9			
Occasional soft	6	39.2	17.8			
Regular soft	1	33.0	0.0			
Occasional hard	3	39.7	11.0			
Regular hard	9	37.7	14.2			
Total	95			0.23	6,88	0.97
Family Environment						
Positive	42	34.2	12.1			
Combination	34	34.1	13.6			
Negative	19	45.0	16.6			
Total	95			4.81	2,92	0.01*
Offender's Attitude						
Belligerent	11	36.5	15.8			
Some concern	71	36.2	12.2			
Very remorseful	13	37.2	22.2			
Total	95			0.03	2,92	0.97
Prior Record (B & E)						
No prior record	76	34.4	12.7			
One prior offence	10	46.2	21.8			
Multiple prior offences	9	42.0	10.7			
Total	95			4.15	2,92	0.02
Prior Record (Other Criminal Code)						
No prior record	56	33.5	13.3			
One prior offence	15	41.5	19.3			
Multiple prior offences	24	39.7	10.8			
Total	95			2.89	2,92	0.06

TABLE XIII (Cont'd)

Total facts in report by offender variables

Offender variables	N	Mean number of facts	Standard Deviation	F ratio	df	F prob
Record (any criminal offence)						
No prior record	51	32.4	12.9			
One prior offence	14	38.7	13.7			
Multiple prior offences	30	41.9	14.7			
Total	95			4.79	2,92	0.01*
Prior Disposition Value						
No prior record	51	32.4	12.9			
Low	27	39.5	15.7			
Moderate	9	41.2	13.6			
High	7	45.9	10.9			
Very High	1	39.0	0.0			
Total	95			2.54	4,90	0.05

TABLE XIV

Total opinions in report by offender variables

Offender variables	N	Mean Number of opinions	Standard Deviation	F ratio	df	F prob
Age						
16-17	31	11.3	5.1			
18-20	41	9.3	6.3			
21-24	14	10.4	8.2			
25 +	9	9.3	4.6			
Total	95			0.68	3,91	0.57
Education						
Grade 7 or less	22	11.0	6.4			
Grade 8 and 9	42	9.3	4.5			
Grade 10 and 11	24	10.1	8.0			
Grade 12	7	12.4	6.2			
Total	95			0.71	3,91	0.55
Employment History						
Full/part-time	36	10.5	6.7			
Intermittent	52	9.7	5.7			
History of Unemployment	7	11.6	6.3			
Total	95			0.38	2,92	0.69
Employment Status						
Employed	44	10.5	6.0			
Unemployed	51	9.9	6.2			
Total	95			0.24	1,93	0.63
Family Stability						
Supportive	55	9.5	5.8			
All attempting to rectify	16	10.4	6.7			
Some attempt to rectify	6	13.7	4.1			
No attempt to rectify	15	11.2	7.4			
Alienation	3	8.3	3.5			
Total	95			0.83	4,90	0.51

TABLE XIV (Cont'd)

Total opinions in report by offender variables

Offender variables	N	Mean Number of opinions	Standard Deviation	F ratio	df	F prob
Mental Health Record						
No Record	65	9.6	5.3			
Current Treatment	1	6.0	0.0			
Past outpatient	13	10.1	7.7			
Past inpatient	13	10.2	4.9			
Past in- and outpatient	3	23.0	10.1			
Total	95			4.01	4,90	0.00*
Recommended for Psychiatric Treatment						
No Recommendation	87	10.1	6.2			
Recommended	8	10.8	5.2			
Total	95			0.08	1,93	0.77
Community References						
All positive	19	11.9	6.9			
Mixture - positive	17	13.1	6.8			
Mixture - negative	12	12.0	3.7			
Negative	9	12.4	3.3			
No References	38	6.8	5.1			
Total	95			5.79	4,90	0.00*
Alcohol Use						
Abstains	3	12.7	8.3			
Moderate	78	9.4	5.5			
Abuse (non-specif.)	9	14.2	9.0			
Periodic binges	1	8.0	0.0			
Chronic alcoholic	4	13.5	5.6			
Total	95			1.79	4,90	0.14

TABLE XIV (Cont'd)

Total opinions in report by offender variables

Offender variables	N	Mean Number of opinions	Standard Deviation	F ratio	df	F prob
Drug Use						
None	67	9.8	6.1			
Prescription	2	8.0	1.4			
Some use (non-spec.)	5	11.8	8.3			
Occasional soft	6	11.8	5.4			
Regular soft	1	2.0	0.0			
Occasional hard	3	16.7	6.8			
Regular hard	9	9.7	5.6			
Total	95			1.07	6,88	0.38
Family Environment						
Positive	42	9.2	5.7			
Combination	34	10.6	6.2			
Negative	19	11.4	6.8			
Total	95			0.99	2,92	0.37
Offender's Attitude						
Belligerent	11	10.3	6.5			
Some concern	71	10.1	5.7			
Very remorseful	13	10.1	8.2			
Total	95			0.00	2,92	0.99
Prior Record (B & E)						
No prior record	76	9.5	5.1			
One prior offence	10	15.1	8.5			
Multiple prior offences	9	10.0	8.8			
Total	95			3.94	2,92	0.02
Prior Record (Other Criminal Code)						
No prior record	56	9.5	5.4			
One prior offence	15	11.3	8.0			
Multiple prior offences	24	11.0	6.4			
Total	95			0.82	2,92	0.45

TABLE XIV (Cont'd)

Total opinions in report by offender variables

Offencer variables	N	Mean Number of opinions	Standard Deviation	F ratio	df	F prob
Record (any criminal offence)						
No prior record	51	9.3	5.4			
One prior offence	14	10.9	3.5			
Multiple prior offences	30	11.3	7.9			
Total	95			1.10	2,92	0.34
Prior Disposition Value						
No prior record	51	9.3	5.4			
Low	27	11.4	6.9			
Moderate	9	9.2	5.4			
High	7	12.6	8.6			
Very High	1	11.0	0.0			
Total	95			0.86	4,90	0.49

*significant at .01 level

TABLE XV

Variability of opinions expressed in report by offender characteristics

Offender variables	N	Variability of opinions[1]	Standard Deviation	F ratio	df	F prob
Age						
16-17	31	0.80	0.32			
18-20	41	0.84	0.35			
21-24	14	0.78	0.44			
25 +	9	0.74	0.41			
Total	95			0.26	3,91	0.85
Education						
Grade 7 or less	22	0.87	0.39			
Grade 8 and 9	42	0.79	0.31			
Grade 10 and 11	24	0.83	0.41			
Grade 12 or more	7	0.72	0.38			
Total	95			0.41	3,91	0.75
Employment History						
Full/part-time	36	0.81	0.37			
Intermittent	52	0.86	0.34			
History of Unemployment	7	0.48	0.32			
Total	95			3.64	2,92	0.03
Employment Status						
Employed	44	0.84	0.38			
Unemployed	51	0.79	0.34			
Total	95			0.54	1,93	0.46
Family Stability						
Supportive	55	0.78	0.38			
All attempting to rectify	16	0.78	0.40			
Some attempt to rectify	6	0.70	0.24			
No attempt to rectify	15	0.97	0.26			
Alienation	3	0.95	0.19			
Total	95			1.10	4,90	0.36

TABLE XV (Cont'd)

Variability of opinions expressed in report by offender characteristics

Offender variables	N	Variability of opinions[1]	Standard Deviation	F ratio	df	F prob
Mental Health Record						
No Record	65	0.81	0.39			
Current Treatment	1	0.98	0.00			
Past outpatient	13	0.83	0.24			
Past inpatient	13	0.78	0.34			
Past in- and outpatient	3	0.90	0.28			
Total	95			0.13	4,90	0.97
Recommended for Psychiatric Treatment						
No Recommendation	87	0.81	0.36			
Recommended	8	0.86	0.39			
Total	95			0.18	1,93	0.67
Community References						
All positive	19	0.96	0.27			
Mixture - positive	17	0.89	0.30			
Mixture - negative	12	1.02	0.23			
Negative	9	0.68	0.33			
No References	38	0.67	0.40			
Total	95			4.41	4,90	0.00*
Alcohol Use						
Abstains	3	0.61	0.39			
Moderate	78	0.80	0.37			
Abuse (non-specif.)	9	1.01	0.09			
Periodic binges	1	0.74	0.00			
Chronic alcoholic	4	0.81	0.42			
Total	95			0.97	4,97	0.43

TABLE XV (Cont'd)

Variability of opinions expressed in report by offender characteristics

Offender variables	N	Variability of opinions[1]	Standard Deviation	F ratio	df	F prob
Drug Use						
None	67	0.81	0.37			
Prescription	2	1.06	0.01			
Some use (non-spec.)	5	0.66	0.46			
Occasional soft	6	0.78	0.32			
Regular soft	1	0.71	0.00			
Occasional hard	3	0.54	0.41			
Regular hard	9	0.95	0.22			
Total	95			0.83	6,88	0.55
Family Environment						
Positive	42	0.81	0.35			
Combination	34	0.77	0.42			
Negative	19	0.89	0.23			
Total	95			0.70	2,92	0.50
Offender's Attitude						
Belligerent	11	0.73	0.38			
Some concern	71	0.82	0.37			
Very remorseful	13	0.85	0.30			
Total	95			0.35	2,92	0.71
Prior Record (B & E)						
No prior record	76	0.79	0.36			
One prior offence	10	0.92	0.37			
Multiple prior offences	9	0.84	0.37			
Total	95			0.62	2,92	0.54

TABLE XV (Cont'd)

Variability of opinions expressed in report by offender characteristics

Offender variables	N	Variability of opinions[1]	Standard Deviation	F ratio	df	F prob
Prior Record (Other Criminal Code)						
No prior record	56	0.79	0.37			
One prior record	15	0.85	0.33			
Multiple prior offences	24	0.84	0.34			
Total	95			0.29	2,92	0.75
Record (any criminal offence)						
No prior record	51	0.79	0.38			
One prior offence	14	0.87	0.27			
Multiple prior offence offences	30	0.83	0.35			
Total	95			0.34	2,92	0.71
Prior Disposition Value						
No prior record	51	0.79	0.38			
Low	27	0.89	0.28			
Moderate	9	0.61	0.47			
High	7	0.88	0.11			
Very High	1	1.29	0.00			
Total	95			1.66	4,90	0.17

[1] Variability is represented by the standard deviation of total opinion scores where each opinion stated in the report is rated according to a 5 point scale from very positive to very negative.

*significant at .01 level

TABLE XVI

Prior record of offender
by police profile

	Prior Record of Offender					
Police Profile	No Record		Record		Total	
	#	%	#	%	#	%
Unknown to police	41	80.4	1	2.3	42	44.2
Known to police/not considered a problem	1	2.0	6	13.6	7	7.4
Known to police/ considered a problem	1	2.0	1	2.3	2	2.1
No police reference	8	15.6	36	81.8	44	46.3
Total	51	100.0	44	100.0	95	100.0

TABLE XVII

Prior record of offender by
nature of community references

	Prior Record of Offender					
Community References	No Record		Record		Total	
	#	%	#	%	#	%
All positive	8	15.7	11	25.0	19	20.0
Mixture - positive	12	23.5	5	11.4	17	17.9
Mixture - negative	5	9.8	7	15.9	12	12.6
Negative	2	3.9	7	15.9	9	9.5
No references	24	47.1	14	31.8	38	40.0
Total	51	100.0	44	100.0	95	100.0

REFERENCES

(1) HOGARTH, J. (1971) Sentencing as a Human Process. Toronto: University of Toronto Press.

CHAPTER IV

DISCUSSION AND CONCLUSIONS

An analysis of the contents of 95 presentence reports and court dispositions of these cases suggests that both legal and extra-legal factors are considered by the judiciary in decisions regarding sentencing. The nature of an offender's criminal record appears to be a significant determinant of the additional types of information that a judge will utilize in the decision-making process. The decision to suspend passing of sentence and impose probation supervision appears virtually automatic in those cases where the offender has no prior record. Personal characteristics and socio-economic background of the first offender as portrayed in the presentence report do not have any significant impact on court disposition.

In those cases where the offender has a prior record, it would appear that the judge looks to the presentence report for additional information to assist him in the determination of sentence. Our analysis of the relationship between the various offender and report variables and court disposition for offenders with a prior record, revealed the tone of the report to be the only significant predictor of sentencing outcome. Although the absence of a criminal record was seen to have considerable influence in determining disposition, the length of the record did not emerge as a significant predictor of sentence severity. No single aspect of the offender's personal characteristics nor social environment emerged as a significant determinant of court disposition. However, these socio-economic variables would appear to play an important role in the sentencing process insofar as it is the Probation Officer's commentary concerning these variables (as reflected in the nature of the opinions expressed in the presentence report) which has a significant impact on disposition.

A majority of the studies concerning the relationship between offender characteristics and judicial disposition have revealed that legal factors, such as the nature of the offence and criminal record of the offender, are the most critical in determining sentence (4, 10, 7, 9). Hogarth(8) notes that regardless of differences in penal philosophy or attitudes among magistrates, there is a fair degree of agreement about the pre-eminence of the offence in determining sentence.

In view of the wide variation in dispositions associated with the 95 sample cases (ranging from suspended sentence to six years imprisonment), it is obvious that knowledge of the offence category alone (Break and Enter) contributes very little to the decision regarding sentence. No comment can be made regarding the impact of offence severity on the type of sentence imposed, as information contained in the probation files was not sufficiently detailed to permit a valid categorization along this dimension. In reviewing the relationship between criminal history and court disposition for the sample of Break and Enter cases, it appears that this legal factor is most influential during the initial stages of the judicial decision-making process. We have observed that the decision to impose a period of probation supervision is made consistently in cases where the offender has no prior adult criminal record. In view of the fact that our sample is composed primarily of youthful offenders (mean age, 19.9; median age, 18.5), it may well be that the judge considers the absence of a criminal record as sufficient information to justify the imposition of the least punitive sentencing alternative (suspended sentence) regardless of how positive or negative other characteristics of the offender may be.

The multiple regression analysis of the factors associated with court disposition for offenders with a prior criminal record revealed that legal factors such as length of criminal record and nature of prior court dispositions were not significant predictors of the type of sentence imposed for our sample of Break and Enter offenders. It is clear that the judicial decision-making process in these cases is based on information other than that strictly pertaining to the offence and criminal history of the offender. An analysis of the association between offender characteristics and disposition revealed that the nature of the offender's relationship to his family and his reputation in the community were factors linked with significant differences in sentencing outcome. These variables did not, however, emerge in the multiple regression analysis as significant predictors of court disposition, nor did any other factor reflecting the personal characteristics of the offender. The results suggest that the judge's decision regarding disposition is influenced less by the facts pertaining to specific aspects of the offender's personality and environment than by the opinions about him as expressed by the Probation Officer.

On the basis of these results, we concur with Hagan's conclusion that knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions(7). Hagan contends, however, that these factors which are included in the presentence report, indirectly influence judicial decisions through intervening variables which themselves have a direct impact on sentencing outcome(6). The intervening variables isolated by Hagan (namely, perception of offender's demeanor and evaluation of prospects for success on probation) reflect the Probation Officer's subjective impressions of the offender. By introducing the concept of these intervening variables, Hagan acknowledges the significance of the Probation Officer's opinions regarding the offender in the decision-making process.

Our results indicate that in those cases where knowledge of legal factors alone does not provide sufficient information for a sentencing decision, the overall quality of opinions expressed in the presentence report assumes preeminent importance.

The multiple regression analysis of report tone with offender variables provided an overview of the nature of offender attributes which were the best predictors of the general impression of the offender conveyed to the court by the Probation Officer. Legal factors such as length of criminal record and nature of prior dispositions were not found to be significant predictors of report tone. Factors which emerged as most relevant to the Probation Officer in determining the negative or positive quality of opinions expressed in the report were: the degree of family support provided the offender, the offender's attitude toward the offence and the offender's employment history.

Our review of the literature revealed that, for the most part, research related to the contents of the presentence report has been confined to an investigation of the factors contributing to the Probation Officer's sentencing recommendation. There is no evidence that a systematic attempt has been made to isolate those factors that are the best determinants of the quality of opinions regarding the offender as expressed by the Probation Officer in his report to the court. In Chapter I, we noted that the studies relating to the contents of the presentence report have produced conflicting evidence with regard to the offender characteristics which are most relevant to the determination of Probation Officer recommendations. While most researchers concluded that legal factors such as offence type and criminal record were significantly related to recommendation, there was little agreement concerning the type of socio-economic or personal data utilized in the decision-making process.

It is suggested here that there is a qualitative difference between the study of report tone and report recommendations; the former being concerned with the descriptive thought processes of the Probation Officer and the latter with the analytical processes. In stating this, the author does not deny the complexity of the descriptive process; in fact, it is acknowledged that an individual's description of reality is a reflection of his own values and attitudes and is greatly influenced by the social situation in which he finds himself(1). By viewing the presentence report as constituting a piece of 'socially constructed reality'(11) we are able to gain some insight into the Probation Officer's conceptual framework by examining the opinions he expresses regarding different types of offenders. On the basis of the conclusions Hagan has drawn from his research(6), it would appear that sentencing recommendations made by Probation Officers reflect not only the evaluation of the offender, but also a consideration of the way in which the judiciary will evaluate offender characteristics. By being required to submit a sentencing recommendation, the Probation Officer is forced into a quasi-judicial role. Perrier(11) suggests that as a result of the unequal power relationship between the Probation Service and the judiciary, the Probation Officer learns to present his recommendations in such a way that they are acceptable to the court. Thus, the study of Probation Officer recommendations may include elements of the Probation Officer's perception of judicial decision-making strategies, as well as the Officer's assessment of the offender. Where the Officer is not permitted to assume the quasi-judicial role of proposing an appropriate disposition, it is suggested that the presentence report is more likely to reflect only the Officer's viewpoint concerning the meaning or significance of the various characteristics of the offender.

In contrast to the research which has suggested a significant relationship between legal factors and Probation Officer recommendations, the results of the present study indicate that legal variables are not good predictors of report tone. The Probation Officer does not appear to be inclined to write a negative report about an individual based solely on his knowledge that the offender has a lengthy criminal record or history of previous incarcerations. The quality of opinions expressed in the report are determined to a far greater degree by the Probation Officer's view of the offender's, attitude, relationship with his family, and his employment history.

Hagan(6), Perrier(11) and Cohn(3) maintain that the Probation Officer, in his assessment of the offender, places greater emphasis on extra-legal characteristics than on legal factors. They believe this assessment strategy to be a function of the 'social work' orientation of probation staff which is itself a product of the positivist school of criminological thought. The present study, although limited in scope to a small sample to Break and Enter offenders, lends support to this notion.

While our findings suggest that legal factors are not considered of any particular importance in the Probation Officer's decision to portray the offender in either a positive or negative light, previous research indicates that these factors are critical in determining sentencing recommendations. It is suggested that these factors are considered by the Officer in formulating recommendations because he perceives that such data will be of utmost importance to the judge in determining the actual sentence to be imposed. Gross(5), in his study of the relationship between the Probation Officer's conception of the meaningfulness of various items in the presentence report and his perception of the court's ranking of the importance of these items, reports that the Probation Officer believes information concerning the offender's attitude and his family situation to be most important while he expects that the court will place greater emphasis on offence-related information.

Although legal variables do not appear to influence the tone of the report, the results of the present study indicate that these factors are associated with significant variations in report length and factual content. Reports written on individuals with a prior record tend to be longer and contain a greater number of facts than those completed for first offenders. These results may be interpreted to indicate that the Probation Officer, anticipating the importance of legal factors to the judiciary in determining disposition, provides the judge with substantially more information when writing reports on offenders with a prior record.

In keeping with the stated purpose of this study, we will turn now to a discussion of the implications of the results with respect to the impact of the presentence report on sentencing. It appears that the contents of the report are not of any significant importance to the judge in assisting him to determine sentence for the first offender convicted of a Break and Enter offence. We have noted that the absence of a prior record is in itself sufficient information to enable the judge to select an appropriate disposition and that this is information that can be obtained from the Crown attorney. Once the judge has determined that the young, first offender does not require custodial supervision, the range of alternate dispositions considered would appear to be extremely narrow. The provisions of Section 662 of the Canadian Criminal Code preclude the use of the absolute and conditional discharge for offenders convicted of Break and Enter. In addition, Section 646(2) prevents the imposition of a fine except in addition to another penalty for this offence. The fact that the pre-sentence report appears to have no impact in these cases may well be a function of the limited range of non-incarcerative dispositions. If suspended sentence is deemed to be the only appropriate disposition for the first offender convicted of Break and Enter, the socio-economic data presented in the presentence report would obviously be irrelevant to the judge.

The Law Reform Commission, in a report to the Minister of Justice submitted in 1976, recommended that the range of dispositions should be broadened to include residence orders, community service orders, hospital orders, reporting orders, etc.(2). With a greater variety of non-incarcerative dispositions available, the judge may require more information concerning the offender in order to make his sentencing

2

decision, information which is contained in the presentence report.

Although it is conceivable that the judiciary may in the future make greater use of the presentence report in sentencing certain types of first offenders, the results of this study raise some questions about the current rationale for report requests on first offenders convicted of Break and Enter, in light of the fact that the contents of the report appear to have minimal impact on sentencing outcome. Probation Officers in the Halifax Probation Office estimate that at least seventy per cent of their time is devoted to the preparation of presentence reports. Thus, it may well be productive for the judiciary and the Probation Service to discuss alternate means of presenting presentence information to the court in cases where a full presentence report is not required. The utilization of alternatives such as abbreviated reports or oral presentations may permit the Probation Officer to spend more time on other important duties while still providing the judge with the basic data he requires to assist in the decision-making process.

Our results suggest that the presentence report in its present form has a significant impact on sentencing for those offenders in the sample who had a record of previous convictions. The tone of the report rather than specific characteristics of the offender was found to be the best predictor of sentencing outcome. Previous research concerned with the relationship between various offender characteristics and court disposition has revealed that knowledge of specific offender attributes contributes minimally to a prediction of disposition. Hogarth, for example, found that the best predictive combination of twelve legal and personal variables accounted for only nine per cent of the variance in the length of prison sentences imposed by Ontario magistrates(8). In contrast, the present study revealed that a weighted combination of eleven legal and extra-legal variables plus the report variable 'tone' explained fifty-five per cent of the variance in court dispositions for offenders with a prior criminal record. It is obvious that the presentence report conveys more information than a simple, objective recitation of specific offender characteristics. Moreover, it would appear that it is the Probation Officer's subjective impression of the offender (reflected in the tone of the report), rather than any other single or collective aspect of the presentence report, which has the greatest impact on sentencing.

The Probation Officer's ideological framework, his concept of justice and his attitudes toward offences and offenders would thus appear to have considerable impact on the sentencing process as it is these beliefs that influence the type of opinions contained in the presentence report. We have noted that of the reports completed on individuals with a prior record, 32% contained no comments from community references and fully 82% contained no comments from the police. In a significant proportion of cases, therefore, the Probation Officer bases his opinions solely on discussions conducted with the offender and the offender's family. The extra-legal variables 'family stability', 'offender's attitude' and 'employment history' were significant predictors of report tone while the legal variables examined were not. In view of the impact of report tone on sentencing, we concur with Hagan's conclusion that the presentence report introduces a channel of extra-legal influence into the sentencing process(6).

The results of the present study reflect the view that sentencing is indeed a complex process. The relationship between offence and punishment, so clearly drawn within the "classical" conception of justice, has become more difficult to define. The full range of factors influencing the choice of dispositions is not easily articulated because of the variability associated with what is largely a discretionary process. We have observed that there are legal constraints which serve to narrow the range of sentences that may be imposed, while noting that these are so broadly stated as to be of minimal assistance in many cases. As a result of Hogarth's major research(8) there can be little doubt that the varying attitudes and penal philosophy of the judiciary are significant determinants of the type of information sought and the manner in which this information will be utilized in sentencing decisions. We have observed that information requested by the judge is not always used in the sentencing process. Decisions concerning sentence for first offenders convicted of Break and Enter, for example, appeared to be made without reference to data contained within the presentence report. In cases where the presentence report was observed to have a significant impact on sentencing, the general impression of the offender conveyed by the Probation Officer, rather than specific offender characteristics, was found to be most influential in the decision-making process. The influence of extra-legal factors on sentencing through the medium of the presentence report provides evidence that the principle of individualized justice is being applied. The fact that the judge appears to be most influenced by the tone of the report suggests that this individualization is strongly based on the Probation Officer's assessment of the importance of various offender attributes. Hagan(6) warns that involvement of the Probation Officer in this type of advisory capacity is a significant source of disparity in the sentencing process. Should the assessment strategy of the Probation Officer stem from a philosophy which conflicts with that of the judiciary, a sentencing decision based on the tone of the presentence report will likely reflect these contradictions.

The disparity in sentences imposed on offenders convicted of similar offences is a source of concern to the public, police, correctional agencies and the offenders who believe that they have been treated unfairly by the courts. We have observed that application of the principle of individualized sentencing, by definition, results in greater variability of judicial dispositions than would be observed if equal punishments were to be imposed for equal acts. The variability in sentencing can be expected to increase as the number of facts considered relevant by the judge in determining disposition increases. Dissatisfaction with sentencing practices arises, not because the parameters of the decision-making process have broadened, but rather because the criteria for assessing the importance of the various parameters cannot, or at least have not, been articulated.

This study, although admittedly of limited generalizability (because the sample consisted of a relatively small number of offenders convicted of a specific offence in a particular city), has revealed the contents of the presentence report to be a significant source of variability in the sentencing process. The observation was made earlier in this report that disparity may be linked with injustice when variables found to have a significant impact on sentencing outcome are not considered uniformly. Although not prepared to argue that the presentence report is a major source of injustice in the sentencing process, the author suggests that it constributes to the inconsistency in dispositions imposed by the courts. Presentence reports are not requested following every criminal conviction; information contained in the reports is not utilized in a consistent manner by the judiciary; and finally, the aspect of the reports found to be the most significant in influencing judicial decisions (tone) is a function of the Probation Officer's subjective impressions of the offender.

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APPENDIX 'A'

Breaking and entering with intent

306. (1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein,

(b) breaks and enters a place and commits an indictable offence therein, or

(c) breaks out of a place after

  (i) committing an indictable offence therein, or

  (ii) entering the place with intent to commit an indictable offence therein,

is guilty of an indictable offence and is liable

(d) to imprisonment for life, if the offence is committed in relation to a dwelling-house, or

(e) to imprisonment for fourteen years, if the offence is committed in relation to a place other than a dwelling-house.

The Criminal Code, R.S.C. 1970, Chapter C-34

APPENDIX 'B'

PRESENTENCE REPORT FORMAT

ATTORNEY GENERAL
NOVA SCOTIA

CORRECTIONAL SERVICES

PRESENTENCE REPORT

QUEEN

VS.

____

AGE: EDUCATION: MARITAL STATUS:

OFFENCE:

SENTENCING DATE:

JUDGE:

PROSECUTION COUNSEL:

DEFENCE COUNSEL:

PROBATION OFFICER:

Halifax, N.S.

DATE:

NAME: WHITE, John Michael
(surname to be capitalized and Christian names spelled in full)

ADDRESS: 447 Mahon Street,
New Waterford, Nova Scotia (complete postal address)

TELEPHONE NUMBER:

PLACE AND DATE OF BIRTH: New Waterford, Nova Scotia - 19, June, 1935
AGE: 40 years

SOURCES OF INFORMATION:

1. WHITE, Mr. John Michael - the accused
2. WHITE, Mrs. Joanna - wife of the accused
3. REYNOLDS, Mr. Joseph - operator of Reynold's Service Station, 21 Wyse Road, New Waterford, employer of the accused
4. JOHNSTON, Miss Sharon - 14 Sycamore Drive, New Waterford, - victim
5. RUDGE, Constable Fred - R.C.M.P., New Waterford
6. JENSON, Mr. James - 449 Mahon Street, New Waterford, neighbour

OFFENCE: (brief but concise resume of the offence)

eg. - together with an accomplice, on January 15, 1976, the accused stole a 1974 vehicle, the property of Miss Sharon Johnston, which was destroyed as the result of an accident.

DISPOSITION:

Mr. White appeared before Judge Leo MacIntyre in New Waterford Provincial Magistrate's Court on January 20, 1976, and pled guilty. Sentencing was adjourned until January 27, 1976 for a PreSentence Report.

or, Mr. White appeared before Judge Leo MacIntyre in New Waterford Provincial Magistrate's Court on January 20, 1976, and pled not guilty; a trial was held and he was convicted. Sentencing was adjourned until January 27, 1976 for a PreSentence Report.

FAMILY BACKGROUND & ENVIRONMENT:

This will include the general background of immediate family members, their accomplishments, status in the community and family relationships. It is not necessary to list all of the brothers and sisters in a family; note the place in the family of the accused (eg. third of fourteen children) and detail of any particular members which you feel would be relevant to the offender's involvement in the offence and data which would aid the Judge in sentencing.

If married, state the date of marriage and the solidarity of same and the financial status of the family (in general terms).

If the offender is a foster child, explain the effect of his parents upon him and background information on the foster parents, number of foster homes and/or the history of agency involvement.

Indicate any early influences during development (physical or emotional) that may have had a significant bearing on the offender's present personality or behaviour, his present associates or influences.

PARENTAL ATTITUDE AND HOME SITUATION:

Indicate the attitude of the other members of the family towards the offence, each other, and in particular towards the offender. Did the parents attend the Court hearing? What do they intend to do about the behaviour and what was attempted in the past to correct it?

Describe the atmosphere in the home including the physical conditions, if significant and their possible effect upon the offender's behaviour. Indicate the type of neighbourhood including desirable or undesirable influences in the community. Describe any previous home situations and neighbourhood influences which appear significant.

EDUCATIONAL HISTORY:

Scholastic achievement and any other training. The behaviour while attending school, attentiveness, absenteeism, likes or dislikes. Where available, psychological test results and compatability with fellow students and teachers.

EMPLOYMENT HISTORY:

This should include information relating to the type of employment, earnings (if possible), length of employment and reason for leaving.

Where possible, former, or present employers, should be interviewed and ascertain his work habits such as attendance, reliability, honesty, attitude towards job and fellow employees.

From this information, ascertain his/her occupational skills, interests and ambitions.

MEDICAL AND/OR MENTAL RECORD:

The physical health should be inquired into and any medical problems he has including problems with drugs or alcohol should be documented and confirmed where possible by medical reports. However, if there is nothing significant to report, this section can be eliminated.

Should there be a history of mental illness in the family, particularly the offender, the report should be confirmed.

Should it be felt that a psychiatric assessment is required, it may be obtained by having the offender volunteer to visit a psychiatrist privately, through his medical plan or a clinic.

COMMUNITY HISTORY:

Inquiries are to be made into their early life style and behaviour such as possible juvenile involvement. Law enforcement agencies are to be contacted and ascertain if any previous involvement and any other actions which may indicate a pattern of anti-social behaviour. Their behaviour patterns in the community should also be inquired into from reliable sources. If there are reliable persons in the community who can offer some support, this should be documented.

BEHAVIOUR AND PERSONALITY TRAITS:

Probation Officer's assessment of the offender's general level of understanding, maturity, responsibility, impulsiveness and hostility as demonstrated in the interview situation, personality characteristics as given by other sources and his general attitude towards his situation.

Probation officer's description of the offender's general appearance and physical attributes that appear to be significant.

Offenders are not to be labelled, but an observation is to be made as to their truthfulness and status as either leaders or followers in relation to their social adjustment.

REMARKS:

This should be a summation of the Probation Officer's evaluation of the offender tieing in the total report to crime causation.

A possible plan for treatment should be indicated taking into consideration the offender's interests, leizure time activities, talents, and accomplishments. This treatment plan should be determined in consultation with the offender, where possible. No recommendations are to be made as to what sentence should be imposed. If the report is well done the Judge should be able to ascertain whether or not the accused is a good candidate for non-institutional types of programs without the Probation Officer actually stating it.

........................(signed)

Probation Officer,
Halifax/South Shore Region
August 25, 1976

APPENDIX 'C'

DATA CODING SCHEDULE

1. JUDGE

Categories:

01 Murray
02 Randall
03 Green
04 O'Hearn
05 Anderson
06 Gunn
07 Kimball
08 Other

2. PROBATION OFFICER

01 Dennis
02 Riley
03 Pottier
04 Robson
05 Morris
06 Honsberger
07 Aitken
08 Graves
09 MacNeill
10 Waters
11 MacSween
12 Hayes
13 Helen
14 Mont
15 Maroun
16 Other

3. OUTCOME

01 Discharge
02 Fine
03 Probation
04 Intermittent Sentence
05 Incarceration up to 3 mos.
06 Incarceration 3-6 mos.
07 Incarceration 6m-1yr.
08 Incar. 1-2yrs. L.A.D.
09 Incarceration 2yrs. +

4. OUTCOME TYPE

   1) Discharge
   2) Fine
   3) Probation
   4) Incarceration

5. AGE

   Age of individual.

6. EMPLOYMENT HISTORY

   1) History of full or part-time steady employment - working with no more than three (3) months between jobs OR full-time student.

   2) History of seasonal employment over time period examined in report.

   3) History of intermittent full and part-time jobs: at least one job in each year lasting one or more months.

   4) History of regular unemployment - less than one job per year but there are indications the defendant has looked for work.

   5) History of regular unemployment with no indications the offender was looking for work.

7. EMPLOYMENT STATUS - at time of the report

   1) Employed or full-time student
   2) Unemployed

8. EDUCATION

   Actual number of years of education obtained;
   e.g., Grade 10

9. PRIOR RECORD SIMILAR

   Number of previous Break and Enter convictions

   0 (No Record) to 9 (9 or more)

10. PRIOR RECORD DIFFERENT

    Number of previous convictions for Criminal Code offences other than Break and Enter

    0 (No Record) to 9 (9 or more)

11. POLICE PROFILE

    Refers to an actual statement indicating that police have been contacted regarding the offender.

    1) no involvement, unknown to them, no previous record.
    2) known, but not well and not considered a problem.
    3) known well and not considered a problem.
    4) known, but not well and considered a problem.
    5) known well and considered a problem.
    0) no statement.

12. FAMILY STABILITY

Quality of interaction between offender and his family at time of report.

1) family is supportive of offender, comments about him are positive in nature, no evidence of conflict.
2) some evidence of conflict, but both offender and family are making concrete attempt to rectify situation.
3) evidence of conflict, either offender or family have given up attempt to rectify situation.
4) serious conflict, neither offender nor family attempting to rectify situation.
5) alienation/hostility, complete family breakdown.

13. FAMILY ENVIRONMENT

History of offender's family experience.

1) positive; secure happy home life.
2) mixture of positive and negative.
3) negative; broken home, family breakdown, hostility.

14. MENTAL HEALTH RECORD

Refers to history of treatment prior to arrest.

1) no history of treatment for mental illness.
2) current treatment.
3) past outpatient.
4) past inpatient.
5) past outpatient and inpatient.

15. RECOMMENDATION FOR MENTAL HEALTH TREATMENT

1. No
2. Yes

16. COMMUNITY REFERENCES

Comments concerning offender made by community members (excluding police and family).

1) all positive references.
2) mixture of positive and negative but majority are good.
3) mixture of positive and negative but majority are bad.
4) all negative references.
5) no references.

17. ALCOHOL USE

1) abstains from alcohol consumption.
2) moderate use; social drinker.
3) abuse noted but not specified.
4) periodic binges - periods of intense drinking and periods of moderate or no drinking.
5) chronic alcoholic.

If no reference to alcohol use, code as 2).

18. DRUG USE

1) no drug use.
2) prescription medicine.
3) drug use but not specified.
4) occasional soft drug use.
5) regular soft drug use.
6) occasional hard drug use.
7) regular hard drug use.

If no reference to drug use, code as 1).

19. OFFENDER'S ATTITUDE

Probation officer's assessment of offender's attitude regarding offence.

1) beligerent, hostile/refusal to admit guilt.
2) exhibits some remorse and concern about offence.
3) very upset, extremely remorseful regarding offence.

20. PRIOR DISPOSITION SCORE

Discharge	Fine	Probation	Incarceration (Prov.)	Incarceration (Fed.)
(1)	(2)	(3)	(4)	(5)

Total for all convictions equals Prior Disposition Score.

21. LENGTH

Total number of lines commencing at Family Environment and Background section.

22. SOURCES OF INFORMATION

Number of references contacted in the preparation of the report.

23. TOTAL NUMBER OF FACTS CONTAINED IN REPORT

24. TOTAL NUMBER OF OPINIONS CONTAINED IN REPORT

25. NUMBER OF OPINIONS ATTRIBUTED TO PROBATION OFFICER

26. NUMBER OF OPINIONS ATTRIBUTED TO COMMUNITY REFERENCES

27. TONE

Each opinion is rated according to the following scale:

very positive	positive	neutral	negative	very negative
(1)	(2)	(3)	(4)	(5)

Tone = mean opinion score.

28. STANDARD DEVIATION

Standard deviation of total opinion scores.