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A Preliminary Report on Judicial Sentencing for Violent Offenses

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ABSTRACT

Every day, judges are faced with making decisions about a defendant's potential risk as it relates to setting bail, sentencing, and a variety of other contexts. In making these decisions, judges must balance issues of fairness and protection of the individual rights of the accused with protection of society from dangerous predators who may commit future acts of physical or sexual violence. As professionals who are not specifically trained in violence assessment, judges must rely on others, including probation agents, attorneys, and expert witnesses, for information to assist in their decision-making. Through expert witnesses and up-to-date training of criminal justice professionals, judges should have access to a significant body of knowledge regarding the risk factors that are known to be related to future violence, particularly risk factors such as psychopathy which has been found to be the single best predictor of future violence in a wide variety of populations. A preliminary study was carried out in western Michigan counties using transcripts from sentencing hearings of violent offenders convicted of rape, felonius assault, or homicide/attempted homicide to determine whether known risk factors influenced judges' decisions regarding sentencing and whether such information impacted a judge's decision to depart from the Michigan sentencing guidelines. Results suggest that risk factors are often not mentioned during the sentencing hearings and that when they are, they rarely appear to influence judicial decisions. In particular, no mention of the term psychopathy or of expert testimony related to risk or of the names of scientifically validated instruments for assessing violence risk was found in all transcripts reviewed. Implications of these results for professional training and improvement in judicial sentencing are discussed.

Introduction

Given the central position that a judge assumes in the criminal justice system, as the gatekeeper of the civil rights of the accused as well as the guardian of public safety, it is paramount for them to rely on the most effective methods possible when sentencing an offender. In Michigan, the state legislature provides guidance to judges in the form of "sentencing guidelines" to standardize the sentences for criminal offenses. At the same time, recognizing that special circumstances may warrant exceptional handling of a particular case, the law permits judges to "depart" from the guidelines either giving a sentence that is more lenient or more strict. However, offenders who commit a particular crime are not equally likely to commit that same crime, or to commit additional crimes, in the future. Particularly in the case of violent offenders, it would seem reasonable for judges, in their decisions about appropriate sentence length and whether or not to depart from the sentencing guidelines, to consider those risk factors which indicate that a given offender is at high risk for future violence.

For the past two decades, scientists in the field of risk assessment have been developing the scientific basis to more precisely estimate the degree of recidivism risk posed by a given offender for future violence (Hanson & Bussiere, 1998; Quinsey, Harris, Rice, & Cormier, 1998). In particular, there have been significant advancements in identifying variables that show high correlations with violent and sexual recidivism as well as in the development of standardized tests and instruments that are scientifically validated to measure these variables.

Among the hundreds of risk factors studied as possible predictors of future violent behavior, psychopathy has emerged as the single most valuable predictor variable among widely

differing populations (Monahan et al., 2001; Rice & Harris, 1997; Cornell et al., 1996). For example, in a study of male forensic inmates, instrumental (premeditated) offenders could be reliably distinguished from reactive (provocational) offenders on the basis of violent crime behavior and on degree of psychopathy when group differences could not be attributed to participant age, race, length of incarceration, or extent of prior criminal record (Cornell et al, 1996). Psychopathy is a pervasive personality style that consists of interpersonal (manipulative, deceitful), emotional (lack of remorse, callousness, superficial emotions and relationships), and behavioral (aggressive and impulsive behavior, lack of future plans, parasitic lifestyle) factors (Hare, 2003). Frequently confused by both mental health professionals and legal professionals with the psychiatric diagnosis of Antisocial Personality Disorder, psychopathy represents a distinct, but overlapping construct (Hare, 2003). Over the past decades, a primary scientifically validated measurement of psychopathy has emerged: the Hare Psychopathy Checklist–Revised (PCL-R) (Hare). Various other risk assessment instruments have also been developed for assessing the possibility of an offender's future risk; these instruments have been published (Quinsey et al., 1998; Webster, Douglas, Eaves, & Hart, 1997) and are available to professionals who are in a position to provide relevant information to the courts faced with making sentencing decisions for violent offenders.

This current state contrasts markedly with an evaluation of the field conducted by Loftus and Monahan (1981) over 20 years ago. At that time, Monahan concluded that mental health professionals assessing risk of future violence based solely on their experiential opinions were accurate in predictions of violence only one out of three times. Despite these scientific concerns, the courts emphatically indicated that this type of information was very important in making judicial decisions, particularly those related to sentencing where the judge must balance civil rights with public safety (*Barefoot v Estelle*, 1983). More recently, in the landmark decision of *Daubert v. Merrell Dow Pharmaceuticals* (1993), the U.S. Supreme Court clearly placed the role of gatekeeper for scientific expert testimony on trial court judges. Given the responsibility indicated in *Daubert* and the current status of the science of risk assessment, particularly of psychopathy as a risk variable, one would expect that judges would routinely make use of expert information related to risk in a wide variety of contexts including both civil and criminal proceedings. Unfortunately, available information suggests that this is not the case. Both the personal experience of one of the authors as well as a recent study of clinical versus forensic psychologists (Tolman & Mullendore, 2003) and also a study of circuit court judges in Michigan (Tolman & Buehman, 2004) suggest that both mental health and legal professionals are often unaware of the scientific meaning of the term "psychopath" and are even more unaware of the existence of scientifically validated instruments to measure the construct of psychopathy and to evaluate potential risk. Adding to this disconnect, roughly 50% of the judges surveyed by Tolman and Buehman confused psychopathy with psychosis, which can exist concurrently with psychopathy but is a distinctly separate diagnosis and disorder.

Given the potential value to society and the courts of identifying the risk factor of psychopathy along with other known factors that increase an offender's risk for violence, this study proposes to evaluate how often the concept of psychopathy is used in trial court decisions, specifically in western Michigan. Further, it is important to understand the basis for testimony regarding psychopathy or risk and to determine how often judicial decisions are based on scientifically sound assessment methods such as the Hare Psychopathy Checklist–Revised (PCL-R) and the Hare Psychopathy Checklist–Screening Version (Hart, Cox, & Hare, 1995) versus more primitive and biased forms of assessment such as unsupported opinion. It is also equally important to see what type of professional (psychologist, psychiatrist, social worker) is addressing the issue of psychopathy as a risk variable because the administration of the instruments requires specialized training and a high degree of professional judgment. Only by understanding current practices can progress be made in developing a plan to address existing problems and enhance the ability of the justice system to manage violent offenders. This study may also convey a sense of whether or not psychopathy is becoming more recognized in court and whether or not expert testimony concerning the possible psychopathy of an offender is considered admissible.

Method
Case Selection
Given the time allotted for the completion of this research project, this preliminary investigation was held to a rather limited jurisdiction. The goal was to obtain from trial courts in Ottawa, Muskegon, and Kent counties a stratified random sample of sentencing transcripts of three types of offenses that often are associated with psychopathic offenders: criminal sexual conduct in the first and third degree, felonius assault, and homicide or attempted homicide. County court clerks were contacted in each jurisdiction and provided with a description of the rationale for random

selection and a subset of random numbers to use in selecting cases. They were requested to randomly select five cases of each type and to obtain the transcripts of those cases. Only adult cases were selected because these constitute records open and available to the public. Across all cases reviewed the mean offender age was 35.1 years, ranging from 19 to 56, with a standard deviation of 11.6. All offenders sentenced in this study were male.

A random list of cases of each type was generated by the Kent County Office of Community Corrections, but the report from the county clerk indicated that the majority of them did not have a trial transcript. Efforts are currently underway in order to expand the number of cases reviewed for the study. At the time of this report, only 2 cases had been obtained from Kent County; one case was a transcript of a homicide case and one transcript was of a sexual assault. Given the low return at the time of this report, no attempt was made to evaluate potential differences in how jurisdictions handled these cases. All results presented in this study are based on the total aggregate summary of transcripts (n=19).

Data Collection Instrument
Each transcript was read and scored using a data collection instrument developed for this study. A copy of the instrument is included in the Appendix. The instrument was divided into three sections: general information, offender history, and sentencing information. The general information section was composed of items assessing the offenders' ages, charges, and jurisdictions. The offender history section summarized the offenders' histories by scoring the variables that were related to violence risk. The scoring for items in this section ranged from 0 to 3 with a 9 given if the variable was not mentioned in the transcript. For

example, the variable "prior criminal history" was scored 0 if the offender did not have a criminal history, 1 if the offender had a non-violent criminal history, 2 if the offender had a violent criminal history, 3 if the offender had both, and 9 if criminal history was not mentioned in the transcript. The sentencing information section was concerned specifically with the judge's sentencing decision and was scored similar to the offender history section to improve the reliability of data scoring decisions. An example of an item from section three would be whether or not the transcript referred to psychopathy or the psychopathy assessment instruments (PCL-R or PLC-SV) in consideration of sentencing; if so it was scored a 1, if not it was scored a 0.

Procedures
The transcripts of the sentencing hearings were scanned for references or arguments that indicated the presence of known risk factors for future violence. These references could have been made by either attorney, by the judge, or by explicit reference to the Pre-Sentence Investigation report (PSI). All such references were then scored according to the scoring instrument.

Results
Offender History
For almost half of the cases reviewed (43%), offender history was not mentioned in the course of the sentencing hearing. In those instances where it was described, four offenders (21%) were noted to have *both* a history of non-violent and violent prior offenses; two offenders (10%) were described with only violent histories; three offenders (16%) were reported to have exclusive non-violent criminal histories; and two offenders (10%) had no reported criminal history. The six offenders (32%) reported to have prior histories of violence would likely be

considered "high risk" for future violent offending.

Substance abuse is a key risk factor related to future violence. In the majority of cases (68%) prior substance abuse was not mentioned in the transcript; four offenders (21%) were reported to have prior possession charges; and two offenders (10%) were described as having no prior substance charges.

With regard to a history of prior sexual offending, once again it was found that the majority of the cases (63%) did not mention this risk factor while seven of the offenders (37%) had been sentenced for prior sexual offenses. However, it is important to note that of the seven criminal sexual conduct offenders, four (57%) manifest behavior that would be considered indicators of sexual deviance (victim was below legal age of consent or the same sex as the offender). This is important because sexual deviance is a key risk factor for future sexual offending (Hanson & Morton-Bourgon, 2004). The sample group of six homicide offenders was the only group where history of sexual offense was not mentioned for any of the individuals.

A past history of mental illness was noted in less than half of the cases (47%); of these cases, only one person had been hospitalized for mental disorders, a known risk factor for future violent offending (Hodgins & Janson, 2002). None of the offenders was reported to have been found not guilty by reason of insanity in a prior charge.

Sentencing Information
For all nineteen transcripts reviewed, the judge departed from the recommended sentencing guidelines only once. This case involved an offender with a history of mental illness and resulted in the judge departing to issue a lower sentence than was recommended by the probation agent. Only four of the cases (21%) indicated evidence that

the judge's final sentence was affected by the presence of one or more of the risk factors mentioned in section two of the instrument although they were not sufficient enough for the judge to depart from the sentencing guidelines. Although risk factors had been mentioned during the hearing, there was no evidence that this information affected sentencing in seven of the cases (37%), and potential risk factors from section two were not mentioned at all in eight of the cases (42%). Of the four cases in which risk variables affected the judge's overall sentencing decision, the sentence was increased in two cases and decreased in the other two.

Of the nine cases (47%) in which the offender had a reported criminal history, this history was referred to by the judge in only three of the sentences (33%). In these three incidences, the judge still sentenced within the recommended guidelines, neither exceeding nor reducing the amount of time that the offender would serve in jail or prison.

Only one case (5%) involved expert testimony; a clinical psychologist testified concerning an offender's competency to stand trial. No experts were used to assess potential future risk for violence in any of the cases studied. As one would expect, there were no references made to the PCL-R, PCL-SV, or any other type of actuarial risk assessment tool during any of the sentencing hearings.

None of the cases mentioned were concerned with dynamic risk factors. Hanson and Harris (2001) define dynamic risk factors as those that can change and are thought to be linked to acute increases in violence risk. Examples of this type of risk factor include association with criminal peers, impulse control, social skills, use of substances, specific contexts that are related to criminal behavior, compliance with psychotherapy or other treatment, and taking medications.

Discussion

The sample described in this preliminary report was too small and did not have enough samples from different counties in western Michigan to make significant conclusions about the overall pattern of judicial use of risk information in sentencing decisions in Michigan or even west Michigan. This was due mainly to the manner in which the trial court cases, and particularly transcripts of sentencing hearings, were organized and stored by the various jurisdictions studied. The different systems in place in each county for organizing and storing this type of information create a significant barrier to research on the nature of sentencing decision-making and would also presumably hinder access of the public to cases that may be of interest to a variety of interested parties (e.g. victims, victim advocacy organizations, news reporters). If studies of the type presented in this report are of interest to legal and mental health professionals and the public, it may be useful for the state to consider establishing more consistent systems for information storage and retrieval. This would also benefit researchers interested in studying criminal activity based on specific types of offenses.

The authors intend to continue the study to expand the sample, perhaps including additional counties in western Michigan, in order to address the central questions of the study.

Michigan legislators would probably be pleased to note that judges rarely departed from the sentencing guidelines. In fact, departure occurred only once (5% of cases), and that case was a *downward* departure (a lesser sentence than recommended) due to the defendant's history of mental illness. The judge's reasoning from the transcripts was unclear, but he specifically stated that the offender's behavior had caused "significant

harm" to himself and to society. As noted above, serious mental illness is associated with increased rates of criminality and violence (Hodgins & Janson, 2002), so the rationale for a downward departure in this case is unclear, but may reflect a tendency toward leniency to a person who was seen as having suffered from his illness and who needed treatment. In any case, given the literature on risk factors and future violence, one would expect judges to carefully consider offender histories of significant mental illness in their consideration of the appropriateness of a sentence.

Further, the fact that there were so few departures for these individuals convicted of *violent crimes* raises two important issues. First, although the Supreme Court clearly charged the trial judges as "gatekeepers" for scientific information (*Daubert v. Merrell Dow*, 1993), the role of the probation agent who prepared the Pre-Sentence Investigation in these cases was critical. Judges largely appeared to accept at face value the PSI conclusions regarding the appropriate sentence based on the offender's history. In Michigan, probation agents calculate an abbreviated risk assessment as part of the PSI based upon a formula that was developed in an internal study conducted by the Department of Corrections over a decade ago. This study and the formula, to our knowledge, were never cross-validated nor subjected to peer review. As indicated in the Introduction, the field of risk assessment has made significant strides in the past decade in improving knowledge, technology, and instruments for assessing risk of physical, and especially sexual, violence. These instruments have been rigorously tested and evaluated across populations, time, and offense type. In contrast, there was no indication that the formula used by probation agents has been updated or reviewed since it was created, and at

this point it should not be considered a reliable source of risk information.

In addition, the personal experience of the first author suggests that while probation agents are doing the best they can with the information they have been given, they are sorely undertrained in the very areas one would hope they would be knowledgeable about: static (historical) and dynamic risk factors that relate to a given offender's potential for future criminal and violent behavior. Obviously, these areas of knowledge are critical to decisions about sentencing length and feasibility of community supervision. The Department of Corrections does not currently require any background or expertise in this area when agents are hired, and it does not appear that agents are provided sufficient training to be aware of major advances in these areas. This last condition reflects an ongoing barrier that exists, in general, to incorporate current scientific findings into the legal process. Thus, judges are left to rely on risk information reports comprised from an outdated instrument and prepared by persons who are not aware of the most critical findings in the area.

It was typical for negotiations to occur during the sentencing hearing between the defense attorneys and the prosecuting attorneys over the issue of the accuracy of the scoring used in the PSI which has implications for the recommended sentence. Again, the judge's final decision for sentence is based in part upon the outcome of these negotiations. However, the facts that no mention was made in any transcripts about the term "psychopathy", there was no use of experts to provide at least a risk screening, and the high rate of hearings where key risk factors were not even discussed or mentioned at all suggest that the attorneys involved in these discussions were likewise unaware of the importance of known risk factors for criminal, sexual, and violent

recidivism. Otherwise, one would assume that the attorneys (particularly the prosecuting attorney) would have raised the issue during the negotiations. As mentioned in the Introduction, for the same type of crime (e.g. felonius assault, or even a sex offense), a set of offenders may have significantly different individual risk for committing that same crime or another crime in the future. The interests of fairness, as well as the concern with public safety, would suggest the need to consider the risk context of each offender in order to best protect society while protecting individual rights and reducing the burden on our societal resources.

There are several potential reasons why these sentencing hearings may have been so sparse in their consideration of important risk factors for future violence (in only 21% of the 19 cases were risk factors explicitly considered). First, while judges and other criminal justice professionals, including attorneys and probation agents, are accustomed to dealing with issues of risk in general, available evidence (Tolman & Buehmann, 2004) suggest that these professionals are not aware of advances in the understanding of *specific* risk factors and how they relate to violence; likewise, they appear to be unaware of the development of risk-specific instruments that have been scientifically validated. Thus, the relative lack of consideration of these factors in sentencing decisions may not be surprising.

Second, one could argue that even if judges were unaware of these advances in science, they could rely upon experts to provide that information to the court. However, the presence of experts in the court is usually contingent upon the court, or the attorneys involved in the case, recognizing the need to engage such experts and knowing which experts to use. Recent studies (Tolman & Mullendore, 2003; Tolman

& Buehmann, 2004) have indicated that there are significant differences between "clinical" and "forensic" psychologist experts in their ability to provide to the courts useful information related to risk for violence and that both courts and non-forensic clinicians often assume that risk issues are clinical, not forensic, questions. Perhaps for that reason, they do not consider the utility of forensic experts, trained in doing these types of evaluations (i.e. they do not see the need for "clinical" input in many of these types of cases).

Third, because the authors did not review the actual PSI reports in these cases, it is possible that these reports did, in fact, provide detailed information about known risk factors for criminal, violent, and sexual recidivism and that such evidence was so compelling that questions did not arise during negotiations regarding the sentencing guidelines and were essentially stipulated to by all parties. For the reasons given above, this explanation seems unlikely but cannot be totally ruled out.

Fourth, it is possible that many of the risk factors for potential violence were included in the PSIs and that judges considered that evidence but did not see fit to comment on it because they did not believe the information was sufficient to justify a departure from the sentencing guidelines. Although Michigan law is somewhat vague on when judges may depart from the guidelines, it indicates that a departure can occur when the judge believes there is a significant reason to do so and when that departure can be justified by the available evidence. As was clear from the lack of input of specialized forensic experts and the use of specialized risk instruments in the cases studied, judges may have felt that there were insufficient reasons to consider departure or to enable justification of such a position. Apart from the issue of

judicial knowledge of violence risk and accurate risk assessments, it is probably very important to better understand judicial reasoning regarding sentencing departures and how judges view the impact of scientific evidence during considerations of future risk.

As an example of some of the above issues, consider the issue of sexual deviance. Half of the cases in this sample involving sexual offences presented evidence of sexually deviant arousal patterns. Not all persons who commit a sexual offense have patterns of deviant sexual arousal; those that do represent a subgroup of offenders who raise greater concern for public safety. Previous research (Rice & Harris, 1997) has found that deviant sexual offenders sexually recidivated even faster and to a greater degree than non-deviant psychopathic offenders. Furthermore, using survival curve analyses, Rice and Harris found that the group of sex offenders at greatest risk for committing another sex offense (several times the rate of all other sex offenders combined) were individuals who were both psychopathic and sexually deviant. The interaction of these two dimensions is a good example of how both factors should be considered in evaluating the sentencing options that would best be used to protect society from future crimes.

Obviously, these issues are important both to defendants in the criminal justice system and to the public. If judges and other professionals in the criminal justice system are relatively unaware of the importance of these findings in forensic psychology, then it behooves us as a society to ensure that they receive adequate training that would enable them to differentiate the types of experts and testimony most likely to be useful or at least to know what instruments to look for and what risk factors to consider in sentencing violent offenders. If there are system barriers, including legal theory, case law, and sentencing guideline policies, to the use of this information, then it would be helpful to work with policy-makers to educate them so that better policies could be developed to protect the rights of the accused while making society safer. There are also problems within the professional fields themselves (Tolman & Mullendore, 2003); those involved in professional training need to do a better job in teaching new professionals about the boundaries between clinical and forensic expertise and the need to work within one's boundaries of competence. Doing so would make experts in court more credible to the courts and would enhance the ability of the courts to trust their judgments.

This study should be completed by finishing the data collection or perhaps by expanding it to include a more representative sample of western Michigan counties. This would enable the analysis to determine if there are significant differences between jurisdictions or if the issues noted in this report are commonplace. Research is also needed to better understand the training, strategic thinking, and use of expert testimony by attorneys who are often the professionals that drive the presentation or lack of presentation of this type of information in the court. Finally, research into understanding the barriers that exist between science and the application of that science to the criminal justice system is sorely needed. If we can better understand the elements that constrain our ability to make better decisions, we may be able to move closer to a vision of a safer, yet fair, society.

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Appendix

Trial Court Scoring Instrument
Case ID # _____
Sentencing Decisions x Future Risk of Violence

Variable names are in ALL CAPS; instructions are in *italic*

Section 1: General Information

AGEOFF: Age of Offender: _____

OFFTYP: *Circle the correct type*
Offense: (1) Criminal Sexual Conduct
⇒ *If CSC, indicate type*: CSCTYP   (1)st Degree   (2)nd Degree   (3)rd Degree
    (2) Felonius Assault
    (3) Homicide/Murder 1st Degree

JURISD: *Circle correct location*
Jurisdiction: (1) Kent County   (2) Ottawa County   (3) Muskegon County

Section 2: Offender History Information - *circle the correct information <u>according to the record</u>*
For ALL variables, score 9 if the record does not mention the issue at all.

PRIVIO:
Prior Criminal History: (3) Both types   (2) Violent   (1) Non-violent   (0) None
"Violent" *includes <u>convictions</u> for offenses causing physical or emotional harm exclusive of sexual offenses and substance charges. This category includes assault, arson, kidnapping, any crime with a weapon, domestic violence, and stalking. "Intent" crimes such as attempted murder ARE considered to be violent.*
"Nonviolent" *are <u>convictions</u> for crimes that do not involve direct contact with a victim or the causing of physical harm, e.g. trespassing, theft or B&E without confrontation, fraud, vandalism, technical probation or parole violation, escape, etc.*

PRISUB:
Substance Abuse: (2) Distribution (drug pusher)   (1) Possession   (0) No Hx
This category includes prior convictions for substance related offenses. If the convictions were only for possession or use of substances, score 1. If the convictions included more serious use of substances including marketing or distribution or intent to distribute, score 2.

PRISEX:
Sex Offenses: (3) Both Types   (2) Contact Offenses   (1) Non-contact offenses   (0) None
This category scores prior convictions for sexual offenses of any type. Sexual offenses that do not involve physical contact with the victim would be scored 1 (e.g. trespass at night/voyeurism, exposure, exhibitionism, obscene phone calls, possession of child pornography, public indecency, gross indecency). Offenses that involve penetration or direct contact with the victim would be scored 2 (e.g. CSC 1st or 3rd, creation of child pornography, rape. etc). Offenders with a history of both types of offenses would score 3. Convictions for prostitution-related charges would NOT be counted. "Intent" crimes such as attempted rape or intent to commit rape, WOULD count.

SEXDEV:
Sexual Deviance: (1) Yes   (0) No
Score a 1 if there is any evidence that the defendant has a history of deviant sexuality including sexual attraction to children, same-sex victims of sexual offenses. If the defendant has only committed sexual offenses against opposite sex adult victims (e.g. rape), score 0.

MHHX:
Past Mental Illness: (3) Hx of psychosis   (2) Hx of hospitalization   (1) Outpatient only   (0) No mental health history
Score 3 if there is any evidence that the defendant has been previously diagnosed with some type of psychotic disorder such as schizophrenia, Schizophreniform, delusional disorder, paranoia, psychotic disorder NOS or if the defendant has taken antipsychotic medications (e.g. Haldol, Thorazine, Olanzapine, Seroquel, etc.). If the defendant has NOT been diagnosed with a psychotic disorder, but has been previously hospitalized (whether voluntary or not), score 2. If the person has been diagnosed and treated only on outpatient, score. Otherwise, score 0.

NGIHX: ⇒ History of prior acquittal via Not Guilty by Reason of Insanity?
(1) Yes   (0) No

Section 3: Sentencing Information; *as with Section 2, score all records where there is no information as 9.*

PRIHXCON
Is there evidence that the judge considered the defendant's prior risk factors? (1) Yes   (0) No
Only score 0 if 1 or more risk factors were present (you scored it in the above list in Section 2) and the judge did not mention it in his/her reasoning. If there is evidence the judge DID consider risk factors that were present, score 1. If no risk factors were evident in the transcript and the judge did not raise any, score 9.

EXPTEST:
Was expert testimony or a report referred to by the judge or attorneys? (1) Yes   (0) No
    If Yes, answer the following:
    EXPCRED: Credentials of expert: (4) MD   (3) Ph.D./Psy.D.   (2) SW   (1) Other   (0) None
If the credentials are unknown (e.g. Dr. X), then score 1 and keep a tally on how many "Dr" credentials are mentioned. If the "expert" was a probation or parole agent, then score 1 (e.g. Presentence Investigation Report PSI).

PSYPTHY:
Was reference made to psychopathy or to the PCL-R or PCL-SV? (1) Yes   (0) No

OTHRISK:
Was reference made to other known risk instruments? (1) Yes   (0) No
Include: HCR-20, SVR-20, Static-99, RRASOR, VRAG, MnSOST-R. Do NOT include instruments like the MMPI-2, DSM, or other diagnostic instruments.

DYNRISK:
Was reference made to any <u>dynamic</u> risk factors? (1) Yes   (0) No
Dynamic risk factors are those that change over time and that may be susceptible to change such as: criminogenic needs, impulse control, social skills, use of substances, specific contexts that are related to criminal behavior, psychotherapy or other treatment, taking medications, etc.

SENTRISK:
Is there evidence that the judge's final sentence was affected by the presence of any of the risk factors in Section 2?
    (2) Presence increased sentence   (1) Presence decreased sentence   (0) No effect
Score this item according to available information in the transcript; in his justification of sentence, did the judge refer to these risk factors as shaping the decision?

SENTEXP:
Is there any evidence that the judge's final sentence was affected by any expert testimony or report used?
    (2) Presence increased sentence   (1) Presence decreased sentence (0) No effect
Do NOT count PSI reports. Same scoring criteria as for SENTRISK.

OTHBAS:
Indicate (freehand) any other basis given in the transcript of factors that influenced the judge's sentencing decision (such as Presentence Investigation Report, victim statement, etc.). Compile this information in another word document called Trial Ct Other Basis.doc