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THE SELECTIVE PROCESS OF THE CRIMINAL JUSTICE SYSTEM

LAURENCE ARMAND FRENCH

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THE SELECTIVE PROCESS OF THE
CRIMINAL JUSTICE SYSTEM

by

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B.A., University of New Hampshire
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A DISSERTATION

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ABSTRACT

1. Purpose of Dissertation

This is a study of the functioning of our criminal justice system and how it operates in our country. One system, that of New Hampshire is examined in detail. The major objective of the study is to determine to what extent criminal justice ideals are applicable in the actual adjudication process. The ideals of justice refer to the composite of federal and state statutory and constitutional guidelines mandating the operation of the adversary trial court system and its functionaries, law enforcement and corrections. Correspondingly, the criminal justice apparatus refers to the components of the criminal justice system whose function is to administer justice. This includes three general sub-components: law enforcement, the judiciary, and corrections. Within this perspective, law enforcement and corrections perform input and output functions to the judiciary, especially as it operates at the trial court level. Selection, in the context of this study, pertains to any variance between the ideals of justice and its actual implementation which occurs other than by chance or the natural functioning of the criminal justice process. Since it is virtually impossible to investigate all aspects of ideal/actual variance occurring within the criminal justice system, this study addresses itself specifically to the selective attrition of criminal cases, resulting in probable cause, which are processed before the state trial (superior) court. Supplementary to this is a survey of the selective attrition of reported and cleared cases brought before the state's various law

enforcement agencies. This allows for the examination of selective attrition trends in all three criminal justice components: law enforcement; the judiciary; and corrections. Inferences can then be generalized concerning the overall ideal/actual performance of the New Hampshire criminal justice system.

2. Procedures and Methods

A descriptive, exploratory approach was used in this study. Guiding questions, stated as themes, address themselves to the ideal functioning of the various components of the criminal justice system. The three basic themes, one for each of the criminal justice components, are:

(a) law enforcement

To what extent do the state and local police pursue serious criminal violators, and is this proportional to the seriousness of the offenses?

(b) judiciary

How effective is the judiciary in the adjudication of defendants referred to it from the police and from grand juries? Related to this are the issues of bail, the prevalence of jury trials, quality of defense, and the extent of collusion between prosecution, defense and bench.

(c) corrections

How consistent are dispositions handed down from the trial court especially in comparison to the nature or seriousness of offenses?

The actual performance of the system is then examined in light of these themes.

The major data sources used in the research include the "statewide" and "Merrimack County," superior court samples for the year 1970. Additional data sources include data portraying general characteristics of the typical state felon, the state judiciary statistics on the four most populous counties, the state police's statewide crime report, as well as the state prison's and department of probation's reports.

3. The Findings

The findings reflect the assessment of the themes addressed to each of the criminal justice components within the state system. The analysis indicates that the law enforcement component corresponded closely with its ideal mandate, that of protecting the public from serious offenders. Their arrest record for 1970 shows that fifty-five percent of the arrests were for felony charges and that eighty-one percent of these felony arrests involved serious offenses.

The judiciary, on the other hand, showed marked discrepancies between its ideal mandate and actual practices. The most obvious breach of ethic involved collusion between the supposedly separate judicial entities comprising the adversary system: the defense, prosecution and the court. Here bargain pleas, prosecutor's discretion, and other forms of negotiated justice were used to circumvent the time consuming and costly trial court procedures. Specifically, the data indicate that both the statewide and Merrimack County samples had a third of their cases disposed of prior to official arraignment

procedures. In addition, sixty-three percent of the Merrimack County felony sample involved "bargain pleas," whereby lesser or reduced charges were exchanged for guilty pleas at arraignment.

The output function of the court system, corrections, involved a comparison of confinement versus non-confinement dispositions. The statewide sample had forty-eight percent of its cases resulting in confinement while the Merrimack County sample had only twenty-six percent. However, "confinement" and "seriousness of offense" seem to be closely related.

Overall, the study shows that the role of the police and corrections are quite dependent upon the judiciary and when the judiciary fails to function according to its ideal mandate then latent, or unintended, practices tend to occur, often becoming institutionalized. These contradictions between the avowed ideals and modified practices of justice could well be a major source of frustration among criminal justice practitioners licensed to implement our judicial ideals. Hence, deviation from the ideal norm within one component of the criminal justice system seems to have an adverse effect on the entire system. One plausible solution to this problem would be the legal regulation of certain types of selective justice, such as plea bargaining. This would require, however, a scheme which would best facilitate the interest of justice while not impinging on individual rights and due process.

CHAPTER I

STATEMENT OF PURPOSE

This is an exploratory, descriptive study of the functioning of the criminal justice system in the state of New Hampshire. The central purpose of the study is to analyze relationships between the ideals of criminal justice, as expressed in formal legal codes, and the actual practices in criminal justice. A guiding concept is selectivity which refers to whether individuals are, or are not, processed through the various components of the criminal justice system. The major components considered are the police, the courts and corrections.

Criminal justice ideals focus about the adversary trial court contest whereby separate powers, the prosecution and the defense, present their cases before the neutral court for a determination of guilt or innocence. The New Hampshire superior court represents the state's trial court system which convenes at least twice annually in each of the ten counties. This study addresses itself to the functioning of this trial court system. Within this perspective, law enforcement and corrections are viewed as constituting input and output functions to the judiciary.

Ideally, the criminal justice process originates with the commission and reporting of a statutory violation, deemed criminal, followed by these steps: arrest; initial interrogation; preliminary hearing; probable cause determination; indictment; arraignment; plea to charge; trial; verdict; sentence and appeal, if found guilty. Selective attrition in this study is limited to those cases in which probable

cause was determined either by a lower court or by a grand jury, consequently allowing the cases to be officially viewed as serious criminal offenses which are then processed through the state superior court system.

Related to this particular type of selection is a broader concept of selectivity involving the organizational aspect of the criminal justice system referring to the entire network of interrelated agencies comprising that system: law enforcement (police, sheriffs, marshalls); judiciary (prosecution, court, defense); and corrections (penal institutions, probation, parole). Within our overall national system, the United States possesses unique characteristics which differentiate its criminal justice system from those of other countries. Our law enforcement agencies are highly decentralized, autonomous units, licensed to bear arms; while our judiciary system consists of a dual political system, the federal and state courts; and our correctional facilities are geared primarily toward custody rather than rehabilitation or punishment. These characteristics are not necessarily shared by other criminal justice systems. The organizational aspects of the larger United States' criminal justice system, however, are shared to a considerable extent by the particular system under investigation--that of New Hampshire. An important consideration relating the criminal justice apparatus to the adjudication process is the extent and types of discretionary powers possessed by the members of the criminal justice system. This aspect of the selection process would involve every discretionary decision made in the adjudication process from the decision of the law enforcement officer to arrest or not, to the decision of the judge in imposing sentence.

The major basis for determining the extent of variance from which all forms of selectivity will be compared is the manifest, ideal mandate of criminal justice as expounded by federal and state constitutions and statutes. This mandate includes certain fundamental rights for the accused which have a direct bearing on the criminal justice operation, especially as it relates to the adversary trial contest.

Examples of these rights are:

1. The right against unreasonable searches and seizures.
2. The right to be informed of one's constitutional rights.
3. The right against self-incrimination.
4. The right to counsel.
5. The right to reasonable notice of the nature of the charges against one.
6. The right to be heard in a court of law.
7. The right to confront witnesses against one.
8. The right to a fair trial before an impartial judge.
9. The right to a speedy and public trial.
10. The right to a trial by a jury of one's peers.
11. The right against double jeopardy.
12. The right to reasonable bail or recognizance.

These ideals specify norms which regulate both the functioning of the criminal justice apparatus (law enforcement, judiciary, corrections), and the operation of the criminal justice system regarding the adjudication of criminal deviants through that system.

This study looks at one particular system, that of New Hampshire, attempting to determine to what extent the ideals of criminal justice

are followed in the actual implementation of justice at the trial court level.

The study consists of eight chapters. Following this chapter are two theoretical chapters which review the relevant literature in a deductive fashion beginning with the most general theoretical considerations concerning the nature of the criminal justice system and selectivity. Chapter II briefly summarizes philosophical ideals relating to social order and control indicating their influence in the development of specific theories of crime causation and control. These ideals and theories are then related to the actual structural organization of our nation's criminal justice system. Also, manifest and latent functions are discussed in terms of "ideal" and "actual" variance within the criminal justice system, showing how selectivity is a result of these differences. Specific reference to the structural bases of selectivity are provided later on in the study by Sykes (1967) and Palmer (1973). Sykes argued that selective judicial attrition is due to deliberate built-in sources of inefficiency which decreases the chances of the ideal processing of justice while Palmer, in a similar fashion, described some of the consequences resulting from the structural bases of judicial selectivity. He felt that our existing control apparatus acts in such a way as to facilitate the social processes conducive to crime--an end diametrically opposed to its ideal social mandate.

Chapter III deals with selectivity per se. General theories of selectivity involving social structural conditions and processes are discussed first, followed by selectivity specific to the criminal justice system. The latter includes the selection of criminal justice

practitioners, and the attrition of cases through the adjudication process. Selective attrition in the context of this study is limited to criminal cases processed before the state trial court. And due to the restricted nature of the available data, natural attrition or attrition due to chance can not easily be distinguished from deliberate judicial abuses.

In Chapter IV, the ideals of criminal justice, especially as they relate to the adversary court contest, are examined as well as their methods of implementation within the actual criminal justice system. Basic differences between criminal, civil and juvenile justice are compared in relation to judicial ideals and the adversary system. In addition, the trial court system is placed in its proper perspective regarding the overall criminal justice process.

Next, themes of inquiry into the performance of the criminal justice system are discussed especially as they apply to the New Hampshire criminal justice system. These general themes, designed to evaluate the effectiveness of the New Hampshire criminal justice system, are based upon the judicial ideals mentioned earlier.

(a) law enforcement

To what extent do the state and local police pursue serious criminal violators, and is this proportional to the seriousness of the offense?

(b) judiciary

How effective is the judiciary in the adjudication of defendants referred to it from the police and from grand juries? Related to this are the issues of bail, the

prevalence of jury trials, quality of defense, and the extent of collusion between prosecution, defense and bench.

(c) corrections

How consistent are dispositions handed down from the trial court especially in comparison to the nature or seriousness of offense?

These themes, in effect, set a basis for ideal/actual comparisons. This is followed by methods of exploration whereby the implementation of the themes are discussed. The major sources of data relevant to these discussions consist of the statewide and Merrimack County superior court samples. Lastly, limitations of the inquiry are presented which include discussion of research limitations as well as suggestions for improving future research designs.

Chapter V describes the components of the criminal justice system (law enforcement; the judiciary; and corrections) at both the federal and state levels, explaining in detail the New Hampshire criminal justice system. The criminal justice process is first explained and related to each of the three criminal justice components. Next, the components themselves are discussed. Here, the development, organization and operation of law enforcement, the judiciary and corrections are presented as they exist in our nation's criminal justice system. Lastly, the New Hampshire system is discussed concluding with two illustrations, one of the overall criminal justice system's organizational hierarchy and another on the flow of criminal cases through the state system. These illustrations portray the visibility of the New Hampshire criminal justice system.

In Chapters VI and VII, the operation of the New Hampshire criminal justice system is discussed as it relates to the processing of criminal cases through the state trial court system. Chapter VI presents an overview of the nature of the state's criminal justice system. Secondly, Chapter VI discusses the law enforcement input into the state trial court system. Here the state police's statewide criminal file is used to ascertain the number of criminal offenses reported and recorded in the state for 1970.

Chapter VII continues the explorative inquiry into the New Hampshire criminal justice system, discussing the judiciary and corrections. First, the judiciary, the state trial court system in particular, is examined regarding its general court workload and the disposition of cases. Next, using the statewide, superior court sample, the "availability of bail" by type of offense (personal, property and non-victim) is analyzed. This is followed by a presentation of the "adjudication of criminal cases," again by type of offense, through the trial court system. Both the statewide and Merrimack County superior court samples are used in this analysis.

The correctional output section includes an examination of confinement versus non-confinement dispositions in relation to the seriousness of criminal offenses as well as discussion of the custodial role of the New Hampshire correctional institutions receiving convicted criminals from the trial court system: state prison, houses of correction, and the department of probation.

In the final Chapter VIII, the purpose of the study is reviewed, followed by a discussion of the applicability of the ideals of justice to the New Hampshire criminal justice system. This involves critical

assessments of the themes and their degree of concurrence within the state's criminal justice system. Next, a general discussion of the apparent function of criminal justice selection is presented, while, lastly, a related argument concerning the larger implications of the overall study concludes the dissertation. A major issue discussed concerns the legalization of certain selective processes such as plea bargaining. Here various arguments concerning discretion, bargain justice and the best use of bail are reviewed.

CHAPTER II

PHILOSOPHICAL AND THEORETICAL BASIS OF THE UNITED STATES' CRIMINAL JUSTICE SYSTEM

Perhaps more than in most areas of social and behavioral science theory, criminological theory has been plagued by the question of value assumptions underlying it. Do legal definitions of crime have political undertones? Do the powerful in good measure determine what is to be considered crime, and which crimes are to be prosecuted? What are the latent functions of criminal justice systems as compared to their manifest or ostensible functions? More broadly, to what extent has the nature of criminological theory itself been influenced by society's view of crime and criminal justice? It is because of questions such as these that it is especially important to begin with a consideration of the major philosophical bases of sociological theory in general, and theories of crime in particular.

An analysis of the major philosophical theories of social organization will provide insight into the ideal conceptual models of social organization and control as perceived by a number of important thinkers. Often these ideals become the manifest justification of institutionalized control mechanisms in actual operation. The ideals of our court system and police and penal philosophies are examples of borrowed philosophical concepts. Hence, social philosophies are seen as relevant metaphysical constructs of societal realities transformed into political, social and moral norms which when institutionalized are

perpetuated and enforced by the social order through a variety of sanctions.

Regardless of great differences in cultures, social prescriptions and sanctions always exist. Durkheim drew attention to this more than a half century ago when he stated that crime is present not only in societies of one particular type but in all societies. He asserted that no society is exempt from the problem of criminality and that a major difference across societies is in the form of the acts which are considered deviant. But of greater significance is Durkheim's suggestion that even in an ideal utopian society, deviance would be present:

Imagine a society of saints, a perfect cloister of exemplary individuals. Crimes, properly so called, will there be unknown; but faults which appear venial to the layman will create there the same scandal that the ordinary offense does in ordinary consciousness. If, then this society has the power to judge and punish, it will define these acts as criminal and will treat them as such (Durkheim, 1950:67).

Philosophical views of society can be located on a continuum which has its polar opposites harmony on the one hand and conflict on the other. The theories themselves are of three types: (1) harmonious social theories; (2) conflict social theories; and (3) conflict-harmonious social theories. The major forms of social control typified in most social theories fall into two categories: (1) internal, rational control or (2) external, enforced controls.

The "ideals" of criminal justice differ considerably from the actual practices in our society. One explanation for this difference is that the ideals of justice are based on an oversimplified, rational view of man which considers individual "free will" as an innate form of social control whereby the person deliberately chooses between clearly defined

choices of "right" and "wrong" forms of behavior. Palmer phrased this phenomenon as such:

Our system of justice, and that of many other societies as well, operates on an erroneous view of man, an over-simplified hedonistic psychology. At basis the assumption is made in legal philosophy that each person receives the same amount of reward from the commission of a particular type of crime. The more serious crimes, such as criminal homicide, are held to provide the greater reward. It is further assumed that the deterrent value of a given punishment will be equal for all. The aim is to set the degree of punishment so that it outweighs slightly the reward value of the crime. If this is done then supposedly individuals will desist from violence and theft. Yet it is well known that the reward and frustration values of particular types of experience vary widely for different persons. On this basis alone it is to be expected that in the United States the social control of crime will be grossly ineffective (Palmer, 1973).

Richard Quinney (1971) made a similar observation when he stated that today in the United States there exists a contradiction between the philosophy underlying the administration of criminal law and the explanation of criminal behavior. The explanation of criminal behavior, asserted Quinney, rests in part on a deterministic approach while the problem of establishing the criminality of an accused person depends on a rationalistic approach.

While the ideals of justice are based on a rational view of man and an equilibrium or balanced view of society, the actual practices of the components of the criminal justice system (law enforcement; judiciary; and corrections) are in considerable measure quite contrary to these ideals. The practices of the criminal justice system are based primarily on conflict rather than order. This tends to lead to latent or unintended mechanisms of control which serve actually to perpetuate and even propagate those criminal behaviors which social mandates clearly state are to be controlled, reduced and eliminated.

Illustratively, Erikson (1966) suggested that criminal violation serves the function of defining varying degrees of socially unacceptable and acceptable behavior and that the criminal justice system facilitates this process by selecting and labeling certain members of society as deviant types. Support of the above contentions regarding the latent functions of the criminal justice system and the conflict concept of criminal justice by social officials is not difficult to obtain. The Kerner and Skolnick Reports, and the President's Commission on Law Enforcement and Administration of Justice as well, lend credence to these contentions. Palmer (1973) purported that when an individual is arrested the police are likely to label him as guilty while the legal philosophy of criminal justice presumes the opposite. Prevention detention, stated Palmer, is a startling example of labeling as well as an apparent transgression of constitutional rights. This process does not stop with law enforcement: judges and prosecutors frequently label and castigate defendants as do many correctional officials. Criminal justice control agents operate in this fashion because it is expected of them by members of society, especially those possessing political and social power. Philosophical foundations of theories of society will now be discussed followed by more specific theories of crime causation and control.

1. Philosophical Foundations of Sociological Theories

Discrepancies between the ideals of criminal justice, which are based on equilibrium theories of society, and the actual practices of the system which are based on conflict theories, are viewed as being instrumental respecting both the extent and the nature of selectivity within that system. Conflict-harmonious theories of society, on the other hand, provide the theoretical frame of reference employed in the context of the dissertation. These types of philosophical constructs of society are further linked to more specific theories of crime causation and control.

a. Early Harmonious Philosophical Foundations

Both Plato and his student, Aristotle, had a tremendous influence on the development of law and justice in western civilization. The rational concept of truth has its roots in Plato's Republic while Aristotle is credited with the rational context of justice. Contemporary scholars such as William McNeil (1963) have provided convincing evidence that the roots of western civilization transcend the Greek era by two thousand years and are really founded in the ancient Egyptian and Indus civilizations. Nevertheless, in the context of the development of popular philosophies of society, social control and deviance, the most influential, initial sources were Plato's Statesman and Laws (1966) and Aristotle's Politics (1962). Those works combined the concepts of inner social controls and external normative guidelines which are similar to those presented in the classical school of theories of crime

causation and control covered later. It was this model of society which greatly influenced the United States Constitutional doctrine regarding ideal justice and which also provided the basis for progressive change in both the British and American criminal justice systems during the early nineteenth century.

With the advent of the "Age of Reason," theological assumptions justified by Aristotelian logic came under question by the new class of social scientists. These skeptics initiated new inquiries concerning the ideal, natural state of man. One school of speculation, the "British Empiricist," provided equilibrium theories in the works of John Locke and Jean J. Rousseau. Locke (1968) contended that men were naturally in a state of perfect freedom to order their actions as they thought fit, within the bounds of the laws of nature. He saw society as being capable of self-government within the structure of "natural law." However, if a member of society transgressed the laws of nature, then he must be punished because of his obvious choice to discard nature's law.

Rousseau, like Locke before him, suggested that man was born free in the state of nature and that it is the artificial structure of society that restricts him. The solution to the dilemma between man's alleged natural state and the existing oppressive, inequitable social structure is stated in Rousseau's social contract:

The individual, by giving himself up to all, gives himself to none; and, as he acquires the same right over every other person in the community, as he gives them over himself, he gains an equivalent for what he bestows, and still a greater power to preserve what he retains . . . This act of association accordingly converts the several individual contracting parties into one moral collective body (Rousseau, 1959:130).

In this ideal state, welded together by a social contract of collective interest and morality, Rousseau saw man successfully transformed from a state of nature to a state of society in which justice is substituted by instinct as the rule of conduct.

b. Modern Harmonious Philosophical Foundations

Equilibrium views of society were later reflected in numerous theoretical models especially those put forth by Spencer, Weber and Parsons. In their theories, these scholars also postulated that deviance was extraneous to the natural order of society and suggested it should be controlled and treated as a transient and unnatural social ill. These types of social theories subsequently influenced the functioning and practices of the criminal justice system regarding the controlling of social deviance. Since society, according to these theorists, is seen as attempting to maintain stability, deviance is viewed as an alien factor inputted into the system with the purpose of upsetting the social order. This perspective views deviance as being unrelated to the normal social processes and hence as being bad in itself.

Spencer, a British sociologist, attempted to apply Darwin's biological findings to the social scene. He made famous the concept of "Social Darwinism," which was seen as justification for existing industrial practices and the political policy of laissez-faire. Spencer saw industrial society evolving from a competitive society to one of cooperation. During this transition the division of labor would change human personalities from self-serving egoism to altruism. Spencer held that society was evolving toward a state of equilibrium where major

conflict would be non-existent. His optimism toward his utopian society is probably best set forth in the following short statement:

The ultimate development of the ideal man is logically certain. Progress is not an accident, but a necessity. Instead of civilization being artificial, it is a part of nature (Spencer, 1966:63).

Weber (1958), in The Protestant Ethic and the Spirit of Capitalism, suggested that the asceticism promoted by certain Protestant religions (Calvinists, Pietists, Methodists and Baptists, among others) in their theological dogma, helped develop a psychological condition among its members which was conducive to, and supportive of, capitalism. The Protestant Ethic of predestination, or "the calling," set the stage for social achievement based upon an ascetic way of life. Thus, the combination of the greatest possible productivity in work coupled with the rejection of luxury led to a life style which apparently influenced the spirit of capitalism.

The Protestant Ethic is reflected in the ideals of our criminal justice system where defendants are assumed to possess the capacity to make clear-cut choices between right and wrong, good and evil. This, however, contradicts the class bias which is also a product of the Protestant Ethic. In justifying their elite position in society, those possessing social, economic, and political power conveniently ascribe their success to predestination which implies their membership among the chosen few. By the same token, the power class justifies the existence of the marginal classes in society as those being inferior or as those not selectively chosen by God. This rationalization process employed to justify the existence of differential strata and power in society actually combines two concepts: that of "Social Darwinism" and the Protestant concept of "predestination." Both concepts reinforce

each other in that each justifies social stratification as being a selective, predetermined process. An obvious consequence of these philosophies is that the marginal classes are often viewed as being caught up in an irreversible process where little can be done to improve their lot. This eventuates in their often being prejudged, stigmatized, and labeled as being inferior members of the social group, which in turn, leads to discrimination and other abuses at the hands of those possessing power, including the criminal justice apparatus.

Talcott Parsons (1968), a contemporary theorist, sets forth his major arguments concerning the structure and function of the social system in his works regarding a general theory of action. In his outline of the social system, Parsons attempts to analyze society in a structural functional context, classifying the functional requirements of a social system and arranging them in reference to the processes of control. The four basic functional classes are (1) pattern maintenance, (2) integration, (3) goal attainment and (4) adaptation. These social functions then correspond to four levels of organization within the social structure in a pyramid of importance within the society. At the base are those works and values most diffuse and common to all units of society. At the next three levels (the institutional, managerial, and primary or technical levels), the base of diffusion diminishes at each successive level in the structural hierarchy. Parsons' model of society is a neatly structured one with social processes and controls based on rational, functional operations. It is an equilibrium functional model in which internal social order is self-maintained without deviance or strain. A major criticism to the model is that since deviance is seen as being external to the normal functioning of the system it cannot

deal adequately with social change. Parsons' social system of determinate relations includes only those relations constituting an "institutionalized" dominant structure of conformity to role expectations. A major short-coming is that deviance and strain on the model are lumped together and treated as dysfunctional for the system.

c. Conflict Philosophical Foundations

Four philosophers, Thomas Hobbes, Thomas Malthus, Karl Marx and Friedrich Engels, stand out as major conflict philosophers. Hobbes (1688), the conflict skeptic of the British Empiricist School, contended that men originally lived in a state of mutual warfare and that without government, the life of man was solitary, poor, nasty, brutish and short. He theorized that on the basis of self-interest and fear of attack, men agreed to live under government.

Thomas Malthus (1798), in his Essay on Population, presented his universal principle of human population: the human race, when unchecked by natural or unnatural disasters, will increase geometrically while the earth's mass remains constant. Malthus believed that the current philosophy of the progress of industry would stimulate an increase in population which would create unnecessary conflict and agony for society's members.

Karl Marx and Friedrich Engels authored in 1848 The Communist Manifesto in which they presented their concepts of historical materialism, economic determinism, and the theory of class struggle with its inevitable conclusion of social change. They held that human history is characterized by the struggle of human groups: free men and slaves; patricians and plebians; barons and serfs; and master artisans

and journeymen. With the advent of the industrial revolution, Marx and Engels saw the inevitable struggle between the proletariats and the bourgeoisie as such:

The essential condition for the existence and sway of the bourgeoisie class, is the formation and augmentation of capital; the condition for capital is wage labor. Wage labor rests exclusively on competition between the laborers. The advance of industry, whose involuntary promoter is the bourgeoisie, replaces the isolation of the laborers, due to competition, by their revolutionary combination, due to association. The development of modern industry, therefore, cuts from under its feet the very foundation on which the bourgeoisie produces and appropriates products. What the bourgeoisie therefore produces, above all, are its own gravediggers. Its fall and the victory of the proletariat are equally inevitable (Marx and Engels, 1967:78-79).

In this state of proletariat rule, the bourgeoisie class would disappear as would "surplus value" and capital competition.

All four of these social philosophers predicted dire consequences for both men and society, placing at the root of all these difficulties deterministic factors uncontrollable by man himself. Hobbes viewed man as being dangerous in himself; therefore, in need of both stern, authoritative leadership and externally imposed controls. Malthus, Marx and Engels, on the other hand, reflected on certain inescapable situations in which men, as members of social groups, are involved. These situations, whether they be Malthus' population crisis or Marx and Engels' economically determined class struggle, are viewed as being beyond man's self-control. What these scholars suggest, in effect, is that conditions extraneous to man himself predetermines his behavior. This in itself is not unique. It is when predetermination is affiliated with inevitable, irreversible conflict, as these men suggest, that we have the formulation of a polar conflict philosophy regarding men and society.

d. Conflict-Harmonious Philosophical Foundations

The conflict-harmonious philosophies, for the most part, strike a balance between the polar extremes of harmonious and conflict models of man and society. These philosophers envision man and society as being involved in a complex, ongoing social process which at times includes periods of excessive stress resulting in conflict, while at other times a degree of stability and harmony is maintained. They also depart from harmonious and conflict philosophers by suggesting that this ongoing social process is natural in itself, without postulating either ideal, utopian results or dire, irreversible consequences concerning man or society's fate.

During the late nineteenth century four scholars were especially instrumental in the development of conflict-harmonious philosophies. Pareto interrelated the concepts of class, status and labels while Simmel and Durkheim expounded on the concepts of relative group space, boundary maintenance and the role of conflict in social groups. Tarde, along the same lines, introduced the idea that human behavior, both legitimate and illegitimate, was learned in the context of social groups.

Vilfredo Pareto (1968), an Italian sociologist, presented his theory of "the circulation of elites" in an historical analysis of political and social power structures. Of considerable importance to modern social theories is his mentioning of the labeling process within social structures. Basically, Pareto's theory states that in any society there are two major strata: the lower non-elite and higher elite. The lower stratum represents the masses who have very little

social or political power while the elite power stratum is divided into two groups: the governing elite and the non-governing elite. Labels are employed so as to identify the members of society, basically to maintain the elite stratum and "keep down" the non-elite. Pareto contended that it is the social position a member of society happens to occupy which determines the social label that person wears, hence his power in the social order. His major argument was that occupation of these political and social positions does not guarantee that the occupant is qualified or trained for that position.

George Simmel addressed himself to a similar form of social relation, that involving the group-binding functions of conflict:

A certain amount of discord, inner divergence and outer controversy, is organically tied up with the very elements that ultimately hold the group together. . . . The position and integrating role of antagonism is shown in structures which stand out by the sharpness and carefully preserved purity of their social divisions and gradations . . . Hostilities not only prevent boundaries within the group from gradually disappearing . . . often they provide classes and individuals with reciprocal positions . . . (Simmel, 1966: 17-18).

Emile Durkheim (1950), in the same vein, asserted that no society is exempt from the problem of criminality and that the only major difference is in the form of the acts which are considered deviant. He implies that societies have, at any given time, a certain propensity for deviance, whether it be criminal, mental or otherwise; and that this tentative quota is pursued regardless of the specific nature of acts so defined.

Another important contribution at this time was Gabriel Tarde's (1968) assertion that criminality was associated with learning techniques. He stated that crime is not a characteristic that the

individual inherits or a disease he contracts, but rather it is an occupation he learns from others. Learning, according to Trade, occurs through imitation and association with others in a shared cultural milieu.

Three twentieth century scholars who added precedent to the conflict-harmonious orientation were Scheler, Freud, and Darhendorf. Max Scheler (1968), one of the founders of the phenomenology school, emphasized the significance of relative cultural values within a stratified society, predicting the chaotic consequence resulting from the imposition of one set of cultural goals and values on a heterogeneous population. He examined society in regard to the political relativity of deviance and the use of formal controls in maintaining the objectives and morality of the incumbent political power. Scheler attacked the problem of social determination, represented in Nietzsche's term "ressentiment," signifying the imposition of social morality on members of society regardless of its feasibility. Scheler saw societies consisting of hierarchies of value and classes, and he posited attempts toward equality between persons in society, especially in terms of value aspirations and moralities. He considered this the chief aberrations of the modern age. In doing so he questioned Kant's assumption of the constancy of human reason and human understanding by arguing that each culture has its own ethos and perspective and that their systems of knowledge and values are relative to the view of the world. In his concept of cultural relativism Scheler pointed out that when society imposes a singular political or social morality to all its members, it disregards class variations regarding their values and

morals and allows for discriminatory practices regarding enforcement of their social prescriptions.

Sigmund Freud (1962) contributed to this school through the development of his "psychoanalytic theory" linking man's basic drives and the socialization process to his personality development. He explains deviant behavior as being a consequence of maladjustment between certain components of the personality and its social development. Deviant behavior, according to Freudian psychoanalytic theory, is related to two basic instinctual drives which we all inherit from birth: eros--the life or love instinct; and thanatos--the death or hate instinct. These two instinctual drives and the development of the personality in regard to its three basic components (the id, the ego and the superego) produce three possible types of deviant behavior according to Freud.

1. The inability to control the urges of the id because of an underdeveloped ego or superego consequently leads to criminal behavior.
2. Disruptive ego development during the first three years of life leads to the later development of an antisocial personality.
3. An overdeveloped superego which ignores the demands of the id leads to the development of neurotic behavior.

The major control mechanism relevant to these forms of deviance, according to psychoanalytic theory, is an understanding of the unconscious motivations which are the underlying causes of the maladjusted personality types.

Ralf Dahrendorf (1970) presents a rather clear overview of the two preceding orientations, harmonious (utopian) and conflict (rationalist), while providing a strong argument in support of the conflict-harmonious approach. In Power in Societies, he reviews the two conflicting schools of social philosophy referring to them as integrative (utopian) and coercion (rationalist) theories which correspond respectively to the harmonious and conflict classifications employed in this study. In the first, social order is seen as resulting from a general agreement of values which outweighs all differences of opinion and interest, while in the latter coherence and order in society are seen as being dependent on force and constraint resulting in the domination of some and the subjection of others. Dahrendorf, after reviewing the basic assumptions of both schools, concludes that in a sociological context neither of these models can be conceived as being exclusively valid or applicable. Instead of being contradictory, alternative aspects of the structure of society, they are seen as being complementary, providing the dialectics of stability and change, integration and conflict, function and motive force, consensus and coercion.

A theme common to most theories of society, contends Dahrendorf, is the evolution of society toward a state of equilibrium. In Essays in the Theory of Society, he points out all utopias, from Plato's Republic to George Orwell's World of 1984, have one element in common-- they are all societies from which change is absent.

Universal consensus means, by implication, the absence of structurally generated conflict. In fact, many builders of utopias go to considerable lengths to make it clear that in their societies conflict over values or institutional arrangements is either impossible or simply unnecessary . . .

Utopias are monolithic and homogeneous communities, suspended not only in time but also in space, shut off from the outside world, which might after all, present a threat to the cherished immobility of the social structure (Dahrendorf, 1968:107).

Dahrendorf, Coser (1966) and Buckley (1967) questioned utopian theories and offered an adaptive model of social order and social control. This relatively new conceptual image of social order whereby both consensus and conflict are viewed as being both sides of the same coin, is currently undergoing popularity both in philosophy and sociology.

2. Theories of Crime Causation and Control

a. Harmonious Theories

We now turn to the more specific theories of crime causation and control which share, to a greater or lesser degree, the philosophical views of both men and society of those equilibrium social theorists just mentioned in the previous section. A theme common to both groups is the assumption that societies are ideally capable of harmonious order while their members possess the innate capacity to make rational judgments concerning their behavior.

The most significant school of criminal thought supportive of this philosophy is the classical school. This school postulated that free will, rationalism and hedonism were the major interrelated influences and causes of deviant behavior. Although this school is credited to Cesare Beccaria and Jeremy Bentham who developed it during the late 1700's and early 1800's, its historical roots are based on the Christian doctrine of "free will," which itself has a history over four thousand years old.

Beccaria (1764) posited that the existing crimino-legal system was arbitrary, hence allowing for abusive practices. In an attempt to remedy this, he suggested that for the sake of consistency in sentencing practices there should be determinate sentences based on the concept that punishment should be no more severe than necessary to prohibit or deter deviant behavior. Jeremy Bentham (1748-1832) followed Beccaria's lead in 1789 when he presented his concept of "penal pharmacy" whereby

prescribed punishments were to correspond to specific crimes. Bentham contended that the major function of law is to deter deviant behavior, and, therefore, the foundation of punishment should be based on an understanding or social contract between the members of society and society at large. If everyone understood that the rationale behind punishment was merely to deter deviant behavior and not for the purpose of arbitrary abuse by those possessing social and political power, then deviance per se would be reduced.

While both Beccaria and Bentham were concerned with eliminating the arbitrary and cruel practices apparent in the criminal justice system of their day, one could question their basic premise that deviant behavior is due to a conscious, rational process of choice between clearly dicotamous alternatives of good and evil. The classical school's greatest contribution therefore is its concern with reform and standardization within the criminal justice system.

The classical school and its philosophy of both man and justice was instrumental in the structuring of the United States' Constitution, especially those areas specifying the ideals of justice. In addition, this school was directly responsible for many organizational aspects of our criminal justice system which resulted from the classical reform movement in the late eighteenth and early nineteenth centuries.

The concept of corrective penology paralleled the widespread reform of both the police and the criminal code in England during the late seventeen hundreds. Sir Robert Peel (1959) was instrumental in reforming the criminal law and police system, while John Howard (1959), sheriff of Bedforeshire, was very instrumental in prison reform by his efforts which culminated in the Penitentiary Act passed in 1799. This

act provided for (1) secure and sanitary structures, (2) systematic inspection, (3) abolition of fees, and (4) a reformatory regime in penitentiary houses. In 1816, through the influence of Sir Samuel Romilly (1959), the first modern English prison was built. Peel, Howard, and Romilly were all greatly influenced by Jeremy Bentham, the social reformer. This trend was carried on in America by the Quakers who were instrumental in developing the humanitarian philosophy of corrective penology. In 1790, the Walnut Street Jail was erected in Philadelphia. Shortly thereafter two penal systems emerged from this Quaker endeavor: the Pennsylvania separate system and the Auburn silence system.

While these initial classical reforms were instrumental in molding our ideal criminal justice system, they failed to function in the manner for which they were designed. The judicial process and criminal law assumed rational action on the behalf of society's members. Intent and apparent choice to violate laws are implied by our system and are evident in the judicial concepts of mens rea (guilty mind), mala in se (acts wrong in themselves), and mala prohibita (acts wrong because they are prohibited by statute). Ideally, the court represents a neutral institution mediating between the state and the accused individual in criminal violations. This is based upon the ideal safeguard that the accused is allegedly innocent until his guilt is proven "beyond a reasonable doubt" before a jury of his peers.

The ideal judicial situation with all its safeguards is probably rarely implemented mainly because of the class and political bias involved in the legislative process of making laws and the value bias involved in decision-making procedures beginning with the arresting

officer up to the sentencing judge. In an attempt to keep the mechanisms of "justice" in motion, short-cut techniques have been developed creating a selective process of justice with inbuilt discriminatory practices. The codification of the law itself represents a selective process in that laws reflect the behavioral standards of the group or social class possessing political power. Most societies are heterogeneous in terms of age, sex, education, income, religion and social class, creating situations of relative values and varying behavior among the populace. For example, in the South, white dominated legislatures often attempt to perpetuate and protect their values through legislative laws as do most politically endowed interest groups. Again, much of the current drug controversy involves a value gap between middle class, middle-aged legislatures and youthful drug users.

This section dealt specifically with theories of crime causation and control and how they altered or otherwise affected the actual criminal justice process. We turn now to conflict theories of crime causation and control and their impact on the criminal justice system.

b. Conflict Theories

More recently, the positivists, founded by Lombroso, have postulated theories of crime causation involving innate, genetic determinism. This school, still active today, contends there are born criminal types. The positivists gained prominence largely because of the works of Cesare Lombroso (1970), an Italian medical doctor. While studying military personnel and inmates of military prisons during the late 1800's, Lombroso developed a theory of hereditary criminal tendencies. In effect, Lombroso saw criminals being a distinct type

characterized by physical stigmata. He believed that criminal types were "atavistic" or genetic throwbacks of an earlier more primitive species of man. Obviously, this theory challenged the work of the classical schools and presented an entirely different perspective regarding social regulation of deviant members in society. Lombroso hinted that the only method of safeguarding society from these criminal types was through the use of severe social intervention of which the extremest forms would be death, life-long institutionalization or exile (social death). Lombroso neglected to take into account the fact that most of the criminals in the Italian army were Sicilians who were not only a distinct physical type but shared an entirely different culture from the Italians. This shortcoming, however, did not discourage others from following Lombroso's lead in the positivist school.

Enrico Ferri (1970) succeeded Lombroso as head of the positivist school at the turn of this century. Like his predecessor, he also rejected the concept of free will developed by the classical school. In addition he was responsible for formulating a concept of societal protection from criminal behavior which placed total responsibility for criminal acts upon the offender regardless of the presence of psychological or physical conditions inherent in the situation.

Ernest A. Hooton (1970), a Harvard anthropologist, presented in 1939 his concept of "criminal stock." Here he attempted to associate deviant behavior with physical and racial factors. Over a twelve year period he studied some 13,000 prisoners in ten states and concluded that crime is a direct result of biological inferiority. Based on these conclusions Hooton advocated that the criminal stocks would best be eliminated through controls such as compulsory sterilization.

Additional theories include the work of William H. Sheldon (1970) and his somatotypes, linking behavioral patterns to body type. Sheldon and Eleanor Glueck (1970), over the last thirty years, have been testing Sheldon's somatotypes in relation to delinquent behavior. Their findings, although inconclusive, suggest that the mesomorphic male child is more prone toward certain types of delinquent behavior. Currently, there is renewed interest in the positivist approach, especially concerning sex chromosome imbalances. Although research results to date have all proven inconclusive this research goes on in an attempt to link the presence of extra Y chromosomes in males with excessive, uncontrollable aggression.

The externally deterministic, conflict school, based on philosophical concepts similar to those of Malthus, Marx and Engels, includes the geographic, climatic and economic schools of crime causation. During the early eighteenth century, the Baron de Montesquieu (1689), in his works, The Spirit of Laws, hypothesized that criminality increases in proportion as one approaches the equator. Montesquieu associated the moral temperament of the people with geographic area. In cold countries there is little sensibility to pleasure, hence few vices and many virtues; in temperate countries the people are more flexible in their manners and the climate is not a strong influence upon temperament; as climates become warmer vices increase and virtue decreases.

In the late 1800's Adolph Quetelet (1859) claimed that crimes against the person were more prevalent in warm climates while crimes against property were numerous in cold areas. This, Quetelet called the "Thermic Law" of crime. Other studies concerning geographic or temperate

conditions involved the work of Edwin G. Dexter (1959), conducted during the late 1800's which attempted to link temperate conditions in two separate geographic areas, Denver and New York City, to type of criminal offense. More recently Marvin E. Wolfgang (1958) found no statistical significance between hot and cold months which led him to reject the hypothesis concerning any relationship between monthly or seasonal changes and rates of homicide (see Bloch and Geis, 1970, for a conflicting view).

Regarding economic deterministic considerations, Ettore Fornassari di Verce (1959), in 1894, noted that while the poorer classes of Italy made up 60 percent of the total population--they represented 85 percent to 90 percent of the convicted criminals. Another economist, William Bonger (1959), a Dutch criminologist and Marxist, theorized that poverty furnished the motive for crime because of the consequence of the inequitable distribution of wealth in capitalistic motivated societies. These conditions, Bonger contended, lead to innumerable conflicts between the lower, powerless, proletariat and the affluent, powerful bourgeoisie. This theory is most applicable to crimes against property which can be directly related to the conditions of poverty among the proletariat class within the large competitive capitalistic system. If one takes this view, then the solution to the crime problem can only be achieved through a reorganization of the means of production and a more equitable distribution of social and economic resources.

In the positivistic schools the innate characteristics associated with deviance are considered to be inherited or possessed without the consent of the individual. Often associated with these concepts of deviance are physical stigmata which are used to label

whole groups of potential deviants. This is especially true of the positivistic school starting with the work of Lombroso and continued to the present by Ferri, Hooton, Sheldon and the Gluecks. In regard to the selective process of criminal justice these theories are especially relevant to the labeling phenomenon whereby criminal justice practitioners often use visible appearance as a criteria for predetermining the guilt or innocence of suspected offenders. This process is often reinforced by the external, deterministic concepts of deviance, especially those put forth by Marx. The poor in America, often also possessing the additional stigma of a racial or ethnic identity, are a convenient source of marginal people from which to select deviant members. In some instances the entire population is considered to be potentially deviant, as is the case with ghetto blacks and chicanos. Temperament fits in the stereotyping scheme in that most marginal groups are often viewed as being less capable of controlling their emotions, hence being more prone toward violence.

Earlier it was mentioned that criminal justice practitioners often use the polar conflict philosophy in the process of implementing "justice." It is suggested that the underlying reason for this viewpoint is the awkward dilemma these officials are caught up in. On the one hand, they are unrealistically expected to institute the ideals of justice, while on the other hand, they are expected to provide society's members with obvious proof that they are both performing their duties and that they are still badly needed for the protection of society. The criminal justice apparatus is unlike other public institutions in that if they were performing their social mandate, little public attention would be drawn to either their existence or their need. This would

prove disastrous in a politically structured country like the United States. If the public is not concerned with, or aware of, certain institutional needs, then it is difficult to gather any political support for these agencies. The criminal justice apparatus is big business in this country and is fully aware of the political atmosphere in which it must operate to survive. Consequently, the polar conflict view of criminality is conveniently used to both resolve the dilemma stemming from their impossible mandate and to justify their performance and continual existence and need in the society. This polar conflict rationalization often initiates and supports rhetoric portraying criminal types as incorrigible, sub-humans who present a threat to society in general, while having as their major objective the destruction of the criminal justice apparatus. It is in this sense that criminal justice agencies often violate the limits of their jurisdiction while pursuing certain types of deviance with the frenzy of a personal vendetta.

Historically, societies reacted to the conflict criminal philosophy by instituting a number of penalties designed to eliminate the offender from the society. Transportation, or social death, was widely used in Europe with France maintaining its South American penal colonies until the early 1940's. A more widespread and equally controversial method of permanent social separation is capital punishment. The United States Supreme Court, in June of 1972, ruled capital punishment unconstitutional on the grounds that the methods of selecting death sentences were arbitrary and hence discriminatory. Immediately politicians and criminal justice officials began to oppose the decision. More recently, President Nixon, on nationwide radio, attacked

"soft-headed judges and probation offices" while advocating the death penalty as punishment for cases of murder under federal jurisdiction. The president went on to say: "Contrary to the views of some social theorists I am convinced that the death penalty can be an effective deterrent against specific crimes. The death penalty is not a deterrent so long as there is a doubt whether it can be applied. The law I will propose will remove this doubt" (Nixon, 1973). Shortly thereafter, Billy Graham (1973), a moral leader and close friend of President Nixon, publically supported the reinstatement of the death penalty and even suggested castration for convicted rapists.

Deadend penology instituted at Alcatraz Prison in 1934 is yet another example of attempts to implement controls based along the lines suggested by conflict theorists. The treatment of inmates centered about the philosophy that some criminals are incorrigibles and cannot be reformed--therefore should be repressed and disciplined in an isolated, maximum confinement institution. A more recent example regarding penal institutions was the Attica incident in September of 1971. Following the assault on the inmates, 10 hostages and 29 inmates were dead of bullet wounds inflicted by the authorities while 3 hostages and 85 inmates suffered non-lethal gunshot wounds. In addition, one state trooper suffered leg and shoulder wounds from another trooper's shotgun blast (Attica, 1972).

The most remarkable incident in the entire Attica situation was official attempts, both political and correctional, to make the public believe that any violence that occurred was at the hands of the inmates. This is best explained by the McKay Report:

The aftermath of Attica began with a monstrous credibility gap created when harried prison officials could not wait until they had learned the truth before informing the public what had happened that morning and then tried to dispute the truth with still more rumors. It continued as officials resisted the efforts of lawyers and doctors to gain access to the facility to aid inmates. Officials' public statements that the hostages had been maimed and murdered, which were issued before the results of the autopsies were known, reflected their apparent eagerness to provide the media with "facts" which would justify an armed assault in which 39 men were killed and over 80 more wounded (Attica, 1972:455).

Among those who wanted very much to believe that the inmates were responsible for the resulting deaths were Governor Rockefeller and United States' Senator James Buckley. Both used terms such as "cold-blooded killings," "wanton murder of hostages," in their premature public condemnation of the inmates while at the same time suggesting that punishment for those responsible should be swift and authoritative. However, it was Governor Rockefeller who later ordered a blackout on official statements and attempted to manage the news after the true situation was evident (Attica, 1972).

Other incidents of official policy being governed by criminal conflict theories are the mention of the "rotten apple" and the "riff raff" theories regarding the cause of mass disorders. Here political and criminal justice officials operate on the assumption that outside agitators are responsible for stirring up minority groups who would otherwise be content with existing conditions. These theories rule out viable social and political causes of mass protest. Skolnick (1969), in The Politics of Protest, also suggested that the violence which often stems from mass protest is a consequence of the control agents' erroneous perception of the real cause of, and the significance, related to the initiation of the protest. Skolnick further questioned the ability of our courts to function adequately under conditions of public

strife. The decision of former United States' Attorney General, John Mitchell, to intern, without due process, thousands of demonstrators during the 1971 May Day protest, lends support to Skolnick's earlier contentions.

c. Conflict-Harmonious Theories

The theorists now to be discussed developed theories of crime causation and control which were directly influenced by those conflict-harmonious philosophers mentioned earlier. There are apparent similarities between Pareto's labeling concept and those later fostered by the societal reaction school. Similarly, Tannenbaum initiated the criminal labeling concept which was later revised by Lemert. Simmel had a direct influence on Coser's work regarding the functions of social conflict while Durkheim provided a similar incentive for Erikson's concept of boundary-maintenance and latent criminal controls. Tarde influenced Sutherland who was responsible for the creation of the associational school of criminal theory, while close parallels exist between the works of Scheler and those later developed by Merton who is a founder of the structural school of criminal theory. And Freud had an obvious influence on the development of the frustration-aggression theory of Dollard, Boob, Miller, Mower and Sears.

Building on Tarde's work, Edwin Sutherland (1970) developed a more systematic explanation of criminal behavior in his theory of "differential association." The central argument of the theory is that criminal behavior is learned through interaction with others in intimate personal groups and involves the techniques, motives, drives, rationalizations and attitudes favorable to the commission of crime.

With the work of Sutherland, the "associational school" developed producing many theories of crime causation and control including those of Cohen, Sykes and Matza, Wolfgang and Ferracuti, to mention a few. These developments also provided the impetus for the development of the "structural school" which Robert K. Merton helped establish. Merton credits Durkheim as directly influencing his theory of social structure and anomie, but this work also resembles Scheler's cultural phenomenology.

Elaborating on Durkheim's concept of anomie, Merton (1968) developed a theory of social structure and anomie which stated that deviant behavior results from discrepancies between culturally defined goals and the socially structured means of achieving these goals. The general American culture, consisting of middle class values, defines success goals for everyone when, in fact, there are limited avenues available for success. In our society, Merton suggested the emphasis is placed on goals and not the means. These are reflected in his paradigm of possible individual adaptations to cultural goals and institutional norms.

<u>Adaptations</u>	<u>Goals</u>	<u>Means</u>
I. Conformity	+	+
II. Innovation	+	-
III. Ritualism	-	+
IV. Retreatism	-	-
V. Rebellion	-	-

(+ = acceptance; - = rejection)

Another important contribution made by Merton concerns the concepts of manifest and latent functions. Here he clearly stated the

distinction between intended and unintended functions, a consideration most crucial to this research. Later on, Erikson (1966) linked the concept of latent functions to the functioning of the criminal justice system. The major distinction between manifest and latent functions, according to Merton, preclude the inadvertent confusion between conscious or obvious motivations and their objective consequences. Merton saw research directed toward determining latent functions as representing significant increments in sociological knowledge in that it studied practices or beliefs which are not common knowledge. Research directed toward studying unintended and generally unrecognized social and psychological consequences of social behavior provides greater knowledge in that these findings represent the degree of difference between the actual function and the "common sense" knowledge represented by the manifest function.

Turning to Freud's influence, an outgrowth of his work was the "frustration-aggression" theory developed at Yale University during the late 1930's by Dollard, Miller, Doob, Mower and Sears (1967); their basic postulate being that aggression is always a consequence of frustration and contrawise, that the existence of frustration always leads to some forms of aggression.

Stuart Palmer (1962), in his work A Study of Murder, operationalized the frustration-aggression concept by studying the early life experience of 51 murderers and an equal number control group of non-murderers consisting of brothers of the murderers. Palmer pointed out that in the past unwarranted criticism was leveled at Dollard's frustration-aggression hypothesis on the grounds that it did not account for self-aggression. In an attempt to clarify this

misconception Palmer clearly postulated three general situations regarding the degrees of socialization a member of society is exposed to and the form of aggression the frustration was likely to manifest. According to Palmer what determines the direction the aggression takes is the degree of socialization of the person; that is, the process in which the person develops a conscience or superego.

1. If the individual is undersocialized, then he will presumably direct his aggression toward others in a more or less indiscriminate fashion; the extreme form being homicide.
2. If he is oversocialized, he will presumably turn his aggression inwardly, upon himself; the extreme here would be suicide.
3. A third alternative is moderate socialization whereby the individual is likely to direct whatever aggression he encompasses outwardly in an indirect and fairly acceptable fashion.

The frustration-aggression theory bears some similarity to Merton's individual adaptations but goes deeper into explaining the relationship of social structural factors instrumental in the development of personality types and their respective behavioral patterns.

During the 1930's Frank Tannenbaum (1938) made a major contribution to the societal reaction school with his work concerning the dramatization of evil. In examining the social process of labeling youth as deviant, Tannenbaum noted that the major discrepancy lies in the fact that adults often misinterpret the real significance and meaning of the alleged delinquent act by believing that the youth are

seduced by the devil into doing his evil work. The discrepancy between the young delinquent and the community is due to two opposing definitions of the situation. The original action of the delinquent may be in the form of play, adventure, excitement, interest, mischief, or fun, but to the community their acts are seen as being evil acts of delinquency which need to be controlled. The community in demanding punishment engages in a process of tagging, defining, identifying, and segregating delinquents. This process, in turn, stimulates, emphasizes and evokes the very traits that are complained of; hence, the delinquent youth becomes the thing he is described as being. Tannenbaum not only pointed out the process of labeling deviance but showed how other misuse of controls actually contributes to the creation of undesirable situations through the self-fulfilling prophecy. The harder the community and control agents work to reform its "evil" members the greater this evil grows under their hands. The dramatization of evil therefore tends to precipitate the conflict situation which was first created through some innocent maladjustment.

Edwin M. Lemert (1951) built directly on the work of Tannenbaum in that he saw deviant conduct emerging from individual, situational and systematic sources. The criminal or delinquent act begins with a flirtation with risk which may result in some social reaction. If the original deviant act is detected and subjected to some punitive social response, then it could lead to a process of social and self-labeling known as "secondary deviance" and, consequently, to a deviant career. While the preliminary deviant act was possibly initiated in an isolated situation of peer group excitement, the social response and subsequent penalties could cause further deviation which in turn increases the

social stigma and negative self-perception. If this process continues, the deviant member most likely learns to accept his deviant status which leads to continued deviance and ultimately to deviant careers.

Coser (1966), on the other hand, presented us with a conflict-harmony concept of social action whereby even the structure of society is seen as contributing to institutionalized conflict. Court procedures are seen as forms of highly institutionalized conflict with game-like features and built-in conventional termination points. Incarceration, death penalties, convict work groups and wars are other forms of institutionalized gamelike forms of conflict. In fact, Coser suggested that Hobbes' philosophical vision of the state of nature probably more adequately represents the modern social process. Lewis Coser (1965) also developed Simmel's conception of the functions of social conflict in relation to group boundary-maintenance. Coser elaborated on Simmel's postulates and developed a viable scheme on the functions of social conflict. In this work, Coser related the function of conflict to different levels of social interaction. At the group or societal level, Coser provided a scheme of boundary maintenance related to in-group/out-group hostilities:

1. Conflict serves to establish and maintain the identity and boundary lines of societies and groups.
2. Conflict with other groups contributes to the establishment and reaffirmation of the identity of the group and maintains its boundaries against the surrounding social world.
3. Patterned enmities and reciprocal antagonisms conserve social divisions and systems of stratification.

4. In social structures providing a substantial amount of mobility, attraction of the lower strata by the higher, as well as mutual hostility between the strata, is likely to occur.

Kai Erikson (1966), in a similar fashion elaborated on the boundary-maintenance concept linking it to the social process of selecting deviants and labeling them. Erikson suggested that the difference between those who earn a deviant title in society and those who do not is largely determined by the way in which the community filters out and codes the many details of behavior which comes to its attention. However, once someone is selected to the deviant class and successfully labeled as such, the control apparatus functions so as to encourage and facilitate this behavior on the part of the deviant member. This process in turn helps define the normative boundaries for the other members of society--both the deviant and non-deviant. That is, the deviant members fill positions in society which provide the necessary function of boundary maintenance for society's members while the criminal justice system facilitates this process by providing evidence to the public, through the mass media, of visible deviant members of society, thereby reinforcing the societal boundaries of acceptable behavior. Another latent function of the criminal justice system is to provide deviant members with the opportunity to enhance their deviant identity. This process involves the ritual of arrest, arraignment and incarceration which helps direct the otherwise statusless individual toward a negative role while at the same time providing justification for the performance of the criminal justice system.

Putting things in perspective, the overall general view of criminal justice selection is based on the conflict-harmonious conceptual model of society, especially those particular theories addressing themselves to societal reaction, the labeling process, boundary maintenance and functions of social conflict. By providing an explanation of the on-going function of society they also, as Dahrendorf suggested, explain the relationship and development of the seemingly polar harmonious and conflict models. In retrospect, it was stated earlier that this research would attempt to link the organization and operation of the criminal justice system to the extent and nature of selectivity within that system.

The extent and nature of selective attrition of deviants processed through the system, representing the operation of the criminal justice system, is seen as being a consequence of structural conditions inherent in the organization of the social system in general and the criminal justice control system in particular. The operation of the criminal justice system is thus linked to the organizational aspects of both society and the criminal justice apparatus.

The actual functioning of the criminal justice system is in turn greatly impeded by its own ideal mandate which does not represent the true function of deviance in a society, therefore making it impossible to universally implement. The frustration and conflict generated by this situation among the criminal justice practitioners provides the major cause for their polar conflict rationale regarding deviance in society. It is a form of institutional justification or reaction formation to an intolerable situation. Hence, the extent and nature of selective attrition of deviants through the criminal justice

system is seen as being a consequence of the seemingly unresolvable contradictions presented by the ideals and practices of criminal justice; neither of which seems to account for the true function of deviance, that of relative normative boundary-maintenance.

The next section elaborates on theories of selection, including both general theories of selectivity involving social structural conditions and processes, and theories related specifically to selectivity within the criminal justice system.

CHAPTER III

SELECTIVITY: THE PROCESS OF DETERMINING AND ADJUDICATING DEVIANTS IN OUR SOCIETY

As stated earlier in Chapter I, this is a study of selection within the criminal justice system. While the quantitative aspect of the research relates specifically to the selective attrition of criminal cases, the broader concept of general selectivity in our society must also be examined. The more general societal selection processes provide the basis for specific criminal justice selection. Generally speaking then, the purpose of this chapter is to review both general societal selection processes and criminal justice selectivity, showing how they are related to each other.

A common theme and the basic thesis of this chapter on selection is the prevalence of a dual polar stereotyping process in society concerning the "acceptability" or "unacceptability" of its members. Included in this process of dual polarization are three social variables: social stratification, availability of social positions, and the politicality of morality. In compliance with the major theoretical frame of reference presented in this study these three factors, the dualistic concept of social acceptability and their relevance to selectivity, focus about the disparity existing between the ideal mandate of justice, its harmonious philosophical perspective and that of the actual practices of the criminal justice apparatus with its polar conflict orientation (see Chapter II).

The conflict philosophy employed by the criminal justice apparatus in the implementation of "justice" is viewed as merely a reflection of the broader process of polarization of acceptability instituted in the society overall. Accordingly, this orientation oversimplifies social processes through the mechanism of polar stereotyping or labeling. It is a form of institutionalized authoritarianism whereby choices are clearly dichotomized. The obvious shortcoming of this rationalization process is that it seldom considers alternative causes of social phenomenon such as deviance, hence failing also to recognize alternative solutions. Recent examples of the polar stereotyping process are the riots of the sixties and early seventies, the Attica and Walpole prison uprisings, the secret police activities of the Nixon administration, and the current backlash concerning the Supreme Court's capital punishment decision.

By failing to accept the positive manifestations of deviance within the context of on-going societal processes both the harmonious (ideals of justice) and conflict (practices of justice) schools contribute substantially to the dualistic stereotyping process of social acceptability. This oversimplification of social processes is a consequence of the unrealistic idealism of justice, on the one hand, and the impossible mandate of the criminal justice system to implement that idealism, on the other.

Briefly stated, the dualistic stereotype of acceptability and unacceptability reflects the process of dichotomizing members of society into polar groups according to predefined social characteristics such as race, ethnic, religious, sexual or economic variables. This results in labels and generalizations being associated with those members of

society who are perceived as members of these broad social categories. These generalizations in turn have as their basic structure prevalent social philosophies (see Chapter II). Similarly, Erich Goode (1969), in speaking on the social construction of reality, mentioned that the specific rules governing man's perception of his universe are more or less arbitrary, a matter of convention. He further stated that every society establishes a kind of epistemological methodology relevant to the perceived needs of that particular social universe.

Douglas (1970a) linked the epistemological orientation to the emergence of polar morality in our society and how this is related to status achievement and, subsequently, social stratification. Western man's being and many of his problems of existence involve relations between moral oppositional dualism concerning the nature of reality. He mentioned numerous modes of dualism: morality and immorality, respectability and disrespectability, the other-worldly and the this-worldly, the sacred and the secular. The comparisons or contrasts between good and evil are not simply linear comparisons, suggested Douglas. However, it is the categorical distinction between good and evil which lies behind the dichotomization of society into moral polar opposites. In Douglas' own words:

The necessary opposition makes the deviant and the criminal necessary, and the categorical contrast makes him into a necessarily different type of being. And, at the same time, that good necessarily implies its opposite of evil (and vice versa), good necessarily implies a categorical contrast; if there is a good type, there must be an evil type (Douglas, 1970:4).

This moral dichotomy was touched upon in the preceding chapter in the context of the polar ambiguities associated with the similar philosophical doctrines of the Protestant Ethic and Social Darwinism.

In addition, Pareto extended this argument to include the political determination of acceptability and unacceptability in the circulation of the elite (see Chapter II).

As mentioned earlier, Douglas (1970b) went on to tie together this process of moral oppositional dualism to social status implying an oversimplified "either-or" model of social stratification. There exists in our culture, he stated, a necessary process of moral degradation of others and suggested this process represents an attempt to upgrade the self in the competitive struggle for social status. Consequently, social statuses have become morally meaningful categories in themselves. Subsequently, the categorical status of poor or lower class has as one of its meanings that of being immoral in terms of middle-class norms, contended Douglas. Hence, this can be interpreted to imply that societies employing simplistic oppositional dualism as a mechanism of categorizing their members, by the same token, oversimplifies the nature of stratification in the society by reducing it to two broad polar groups, those of acceptability and unacceptability.

Along similar lines, both Coser (1967) and Dahrendorf (1968) have argued for a more adequate balance between the two philosophical extremes, the harmonious and conflict schools, both schools contributing in different ways to the maintenance of strict oppositional dualism. What is needed, both men have suggested, is a combination of both perspectives. The conflict-harmonious orientation would be more amenable to multiple interpretations of social phenomenon, hence better prepared to find viable solution. By being better prepared to determine the significance of social crises, such a widespread deviance, the society's control mechanisms should accordingly be more susceptible to

fostering necessary changes within the social order in an effort to reduce excessive stress.

While the conflict-harmonious perspective seems desirable, it, for the most part, is not an operative aspect of our social control apparatus. This, of course, means that polar stereotyping continues to remain a blatant social reality. What consequence does this have on the mechanisms of social control especially those related to criminal justice selection? For one thing, it establishes a criteria for "dualistic justice" in our society. A double-standard of justice, one applicable to the acceptable "middle-class strata" and another to the unacceptable "lower-class strata." With this type of system functioning in our society a goodly number of people are exempt from the stigma of criminality while others are overexposed. Broadly speaking, we could say that much of the available statistics related to criminal deviance reflect mostly the activities of those in the unacceptable strata. The burden of responsibility for the inequity of justice cannot be solely placed on the criminal justice control apparatus for they are merely carrying out society's mandate. Perhaps the social institutions most responsible for this phenomenon are those crucial socialization agencies, the family and the schools.

Linking oppositional dualism to the general theme of the dissertation we have already touched briefly upon the most significant mode of general selectivity, that of the prevalence of dualistic justice and its relationship to polar standards of acceptability and unacceptability. Through this process we have more closely defined the population we will be dealing with when we examine the specific nature

of selective attrition of criminal cases through the criminal justice system.

Oppositional dualism is also related to the research sample in yet another way. The discrepancy between the ideals of justice and its actual implementation eventuates in a highly volatile stress situation which is conducive to the adoption and justification for the conflict perspective often employed by the components of the criminal justice apparatus. The conflict orientation, in turn, affects the organization of the criminal justice system, especially its structure, objectives and operational procedures. This subsequently is reflected in the actual implementation of "justice;" thus, suggesting that the wide disparity between the avowed ideals of justice and the actual operation of the criminal justice system accounts mostly for the phenomenon of selective attrition.

The remainder of the chapter addresses itself to the theoretical development associated with the dualistic contrast of acceptability and unacceptability especially as it relates to the social determination of deviance. Theoretical developments regarding general societal selection of acceptability and unacceptability are presented first. These fall into three sub-categories: stratification, the availability of social positions, and the politicality of morality. What follows is a review of the literature pertinent to criminal justice selectivity, particularly those studies which refer to the general selection process and to the attrition of criminal cases through the criminal justice system.

1. General Societal Selection

a. Stratification

Numerous arguments have been offered concerning the phenomenon of social stratification. It often provides the major source of contention between cooperation and competitive utopian political ideologies. Regardless if the ideology advocates a classless or classed society, the fact remains that social stratification is a social reality, universally applicable. What differs, however, is how stratification is viewed by these various social philosophies. Briefly (see Chapter II), harmonious social philosophies, especially those of Spencer and Parson, have used stratification to justify the unequal distribution of wealth, power, goods and services, arguing that those members of society best qualified to occupy these more prestigious positions in society would justifiably evolve to those positions through social competition; hence, deserving disproportionate rewards. Conflict social philosophies, on the other hand, either attempt to justify the existence of dual polar stratification in society as the Hobbesian orientation suggests, or attempts to reorganize the social order along classless lines, accompanied with a redistribution of wealth, power, goods and services, as Marx and Engels contended.

How does this relate to selectivity? By virtue of its definition, the unequal distribution of wealth, power, goods and services, stratification, implies general societal selection. In relating stratification to the selective availability of social

acceptability and unacceptability, four theoretical perspectives are considered: boundary-maintenance, the circulation of the elite, social structure and anomie, and the culture of poverty and educational processes.

The boundary-maintenance perspective, strongly supported by both Durkheim (1968) and Simmel (1955) during the latter part of the nineteenth century, states that human societies will always label some mode of behavior as deviant so as to be able to define a visible "out-group" for the rest of the group's members. The out-group defines for the society the legitimate or acceptable limits of behavior within the group. The primary function of this mechanism is to provide for the members of the group, at any time, the exact limits of the group's boundaries so they can be aware of the current modes of acceptable behavior which are not absolutes in themselves; hence, subject to unpredictable change. The unacceptable "out-group" provides concrete evidence of behavior patterns undesirable to the social norms. (See Chapter II)

Pareto (1968) and his "circulation of the elite" related social values, goals, and objectives to the power elite. Pareto suggested that the determination and imposition of social values is directly related to the values of those possessing social, political and economic power in the society. And by the determination of acceptable behavior in the society the elite in turn automatically define unacceptable or deviant behavior. Deviant, or otherwise defined unacceptable groups, in this sense can potentially include entire segments of society, especially those in the non-elite stratum.

Robert I. Merton's (1970) "social structure and anomie" contributed substantially to the foundation of the structural school. Merton noted that the ideal goals of American society purport equal success for all its members while the society is in fact stratified with limited access to avenues of success. His theory deals with the disparity between the societal ideals and its real practices. Merton asserted that a consequence of this disparity between the societal goals and the available means of success is that a selection process occurs based on the acceptance or denial of the societal goals and the availability or inaccessibility of legitimate avenues of success. He contended that most modes of behavior stemming from this selection process fall into five categories of adaptations: conformity, innovation, ritualism, retreatism and rebellion. The last two adaptations account for societal members who neither have access to legitimate success avenues nor covet the societal goals. These represent the most alienated members of society, according to Merton, and those most likely to engage in deviant behavior.

It is generally recognized that the public school system in the United States is a major vehicle for the transmission of these middle class norms, values and ideals. Gross, Mason and McEachern (1966) showed how the organizational aspects of the educational control apparatus is linked to strong middle class segments of society through its super-ordinant lay school board which regulates the subordinate administration and faculty. Through this social control process the educational system is regulated by powerful middle class contingents within the community structure. This process of social control over the educational system has produced a system which strongly supports

adherence to the general middle class norms by its administrators, teachers and students, while condemning those who do not. Elaborating further on the educational double standard, Hyman Rodmen (1971) pointed out that the middle class stereotyping of lower class families as being "immoral," "uncivilized," "promiscuous," "lazy," "obscene," "dirty," and "loud," is often carried into the public school situation by both the middle class school board and the middle class teachers. The impact of the institutionalization of such a misconception is felt by both middle and lower class students. Kenneth Clark, in the Dark Ghetto (1965), reminded his readers that black youths internalize the same general cultural values that do the rest of societal members, including the derogatory image of "lower" class members of society. The implication here is that the school system, representing the nations most powerful secondary socialization institution, is greatly responsible for the determination and transmission of acceptable and unacceptable definitions of social situations. When it is realized that the majority of the public school children are not middle class but rather are from the working and lower classes, the impact of the dualistic process becomes more significant. This implies that most children who do not fit the acceptable middle class image have a good chance of internalizing a negative self-image. Gerry Rosenfeld (1973) postulated that the adherence to this polar dual concept of acceptable and unacceptable class reference by the public school apparatus leads to a self-fulfilling prophecy within these institutions. Rosenfeld argued that the myth of the "culture of poverty" is used as a rationalization by school officials in explaining their lack of success in teaching lower class youth.

It must be made clear at this point that many of the myths about the children come not from their conditions of existence, but from the narrow and confining aspects of school life as these weigh on the teachers. The system itself spells failure and discontent . . . Many teachers find a need to erect make-believe pictures of the children for their own minds. They attribute all ills to the "culture of poverty" in which the children are thought to live. The child is seen alienated from the school and the larger society, but it is the culture of the school which alienates both teacher and child (Rosenfeld, 1971:58).

William Kvaraceus and Walter B. Miller in their National Education Association Delinquency Report (1959) stressed the larger implications of this dual confrontation between the lower class milieu and the middle class educational system by pointing to the complex interplay between these cultural forces and their tendency to reinforce or encourage the continuation and perpetuation of this undesirable conflict situation.

b. Availability of Social Positions

Selectivity and the availability of acceptable and unacceptable social positions have previously been discussed in the context of Merton's social structure and anomie. This section will provide a more comprehensive review of theoretical developments pertinent to this topic. Starting with Sutherland's "differential association," and followed by the subsequent theoretical developments of Cohen, Cloward and Ohlin, Dunham, Matza and others, selection will be reviewed in relation to the availability of acceptable and unacceptable social positions.

Sutherland's (1966) differential association is a more precise statement of Tarde's earlier conceptualization of association. Sutherland went a step further by saying that deviant behavior is

behavior learned in the context of intimate, primary group relations much like conforming behavior. He suggested that the marginal and lower class members of society are exposed to both deviant and conforming aspects of social behavior and what determines the nature of an individual's personality composition is the preponderance of exposure and the degree of internalization of one of these alternatives.

Albert Cohen (1955), in the middle 1950's, derived a theory of delinquent socialization which drew upon both Sutherland's and Merton's contributions to the field of deviant socialization. In this work, Cohen linked both structural (social class), and associational factors (family socialization) to the phenomenon of delinquent peer group affiliation. According to Cohen, delinquent peer group affiliation reflects a reaction-formation either to the family or to the dominant cultural values. Middle-class delinquent reaction formation is seen by Cohen as representing awareness of, and objectives to, acquired effeminate mannerisms and traits stemming from an overexposure to the mother as socializing agent and an under-exposure to adequate male role models. The latter occurs in middle-class families due to the father's preoccupation with his work from which both he and the family derive their social status. In the working or lower classes the delinquent reaction-formation is not directed toward the mother or family, suggested Cohen, but rather is directed toward society itself. The working or lower class male youths have adequate male role models in that residences are closer, unemployment is higher and consequently numerous males are constantly available in the community to provide role models for the male youth. Delinquency, however, is seen by Cohen as directly resulting from the lack of legitimate avenues to the coveted

societal goals which are held out to everyone, even the slum or ghetto dweller. While Cohen provided two different arguments, one for middle-class delinquents and yet another for working or lower class delinquents, the manner in which both delinquent sub-cultures express their frustration in terms of a reaction-formation is similar. Both types of delinquency involve malicious, non-utilitarian destruction of property.

Richard Cloward and Lloyd Ohlin's (1961) "differential opportunity structure" theory is especially valuable in that it emphasizes selectivity within the realm of the illegitimate social structure. Cloward and Ohlin suggested that stratification and selection is not solely a function of the legitimate social structure but that the deviant sub-culture possesses its own hierarchy of positions which limited access to the most prestigious ones. Within the overall deviant sub-culture there exist three dominant types of opportunity structures.

1. "Criminal sub-cultures" occur in stable slum neighborhoods where there is a hierarchy of criminal opportunity. Theft, extortion and other illegitimate activity comprise the criminal means employed by sub-cultural members.
2. "Conflict sub-cultures" exist in disorganized slums which lack an organized criminal hierarchy. Sub-culture members engage in acts of violence as an important means of securing status.
3. The "retreatist sub-culture" emerges as an adjustment pattern for the lower-class youth who

have failed to find a position in either the criminal or conflict sub-cultures. Drug use and addiction are prevalent in their sub-culture (1961).

This theory, probably more than any, substantially strengthened both Sutherland's "differential association" and Merton's "social structure and anomie." It explains the complex process of social selection and how this is related to both the social structure and the socialization process. Cloward and Ohlin pointed out that there can be a high failure rate within the deviant sub-culture as well as in the dominant, legitimate culture. The members of the retreatist sub-culture in effect represent two-time losers in that they have failed in both the legitimate and illegitimate cultures.

Similarly, in studying the phenomenon of differential rates of mental disease in communities, Dunham (1965) popularized the "drift" hypothesis. The drift hypothesis states that personality inadequacies or psychotic proneness of persons causes them to drift into certain social classes, sub-cultures or community settings. This in turn inflates the rate of mental disease in these communities. Dunham qualified this hypothesis, fostered by and widely used by psychiatrists, by stating that for certain communities to be receptive to these drifters there must exist a low visibility of, and high tolerance for, these people in the community. David Matza (1964) later applied the drift hypothesis to the formulation and development of deviant careers while Lewis Yablonsky (1968) more recently applies it to the hippy community.

c. Politicality of Morality

This section links selection to the societal process of determining which modes of behavior and which moralistic criteria are used in defining social acceptability and unacceptability. It has already been mentioned that Pareto spoke of this phenomenon in his circulation of the elite (1968). In the realm of theories of crime causation and control, Tannenbaum, Lemert and Becker explored the politicality of labeling while Erikson and Goffman addressed themselves to the politicality of the control processes. Quinney, Gusfield, Goode, Fiddle, and Schur associated politicality with particular social issues involving the morality of deviance.

Chapter II mentioned that Tannenbaum (1939), in the 1930's, contributed significantly to the societal reaction school with his work concerning the dramatization of evil. Tannenbaum explained the social process of selecting and labeling youth as deviant members of society. In doing so, he expanded on W. I. Thomas' differential definitions of the situation. Thomas stated that there are essentially two operative definitions of the situation, the individual and the societal. Individual definitions tend to be spontaneous and hedonistic in nature while societal definitions have as their ends, order, utility, and stability. Tannenbaum, in turn, suggested that the major discrepancy between young delinquents and the community control apparatus is due to two opposing definitions of the situation. Often the original motivation for delinquent activity is spontaneous and hedonistic activity such as play, adventure, excitement or mischief while the community control apparatus views these activities as unorderedly and

non-utilitarian; hence, they select these individuals out and label them as deviant members of the community. Lemert, in the 1950's developing Tannenbaum's earlier contentions, related labeling to the process of social and self-acceptance of deviant labels and the ultimate development of deviant careers. Here Lemert (1964) linked the initial selection and labeling of youth engaged in delinquent activity and the subsequent process of social reinforcement of the negative perception of the labeled youth, which ultimately culminates with the youth accepting this negative identity and engaging in a deviant career. This process, in effect, represents a self-fulfilling prophecy. Other theorists related the labeling selection process to social structural conditions which, when examined, indicate this process is even more selective than it is currently stated.

Howard Becker (1966) studied the phenomenon of non-victim deviants and the social process of labeling them as such. Becker, like his predecessor, Pareto, viewed the definition of deviance as being a consequence of the prerogative of the power and ruling elite. He suggested that social groups create deviance by making the rules whose infraction constitute deviance, and by applying those rules to particular people and labeling them as outsiders. The deviant is one to whom a label has been successfully applied. The politicalization of selecting and labeling deviant populations is implicit in Becker's argument which addresses itself to non-victim or moralistic deviance. More explicitly Becker suggested that it is those who possess political and economic power in society who are responsible for defining and instituting relative morality whose infraction constitutes deviance. The process of legislating morality often leads to the development of

new rules enforcing agencies which later become institutionalized with the ultimate function of creating a new class of outsiders.

Kai Erikson (1966) made contributions regarding the latent function and self-fulfilling prophecy as these mechanisms are involved in the creation, continuation and perpetuation of certain modes of deviant behavior. He stated that deviant forms of conduct often seem to derive nourishment from the very agencies devised to inhibit them. Many of the institutions designed to discourage deviant behavior actually operate to perpetuate it. For example, correctional institutions gather marginal people into tightly segregated groups, providing them an opportunity to teach one another the skills and attitudes of a deviant career, while provoking them into using these skills by reinforcing their sense of alienation from the rest of society. Erving Goffman (1967) added substance to this argument by reflecting on the deviant institutionalization process. He contended that total institutions do not substitute their own unique culture for something already formed, but rather they effectively create and sustain a particular kind of tension between the outer world and the institutional world and use this persistent tension as a strategic lever in the management of the inmate population.

Gusfield, Goode, and Quinney followed Becker's basic theme of the politicality of the selection of deviance. Joseph Gusfield, in Symbolic Crusade (1966), portrayed the development sequence of a specific moral issue in our history, the temperance movement. Gusfield viewed the temperance movement as an example of legislative morality imposed on an entire nation through the effective lobbying of a politically powerful interest group. It was through this effective

public campaign that rural, native American Protestants were able to successfully impose their moral beliefs on an entire nation through the passage of the Eighteenth Amendment. The objective of this movement, holds Gusfield, was an attempt to preserve the austere ethic of Protestant, rural America from being contaminated by the cultures of incoming successive waves of immigration to the United States. This movement represents a frantic effort to resist the inevitability of social change.

Erich Goode (1969) presented a similar argument concerning marijuana legislation in the United States. Goode asserted that the marijuana controversy is a political rather than a scientific debate and that scientific truth or falsity seems to have little or no impact on the positions taken although both sides quote scientific findings in substantiating their political views. The politically dominant group in society attempts to enforce its version of reality on the rest of the society through the use of high status members and groups in society who reiterate the rhetoric of the incumbent morality.

Richard Quinney (1972), along lines similar to those of Becker, suggested that what actually influences the decision-making process concerning social control are group value systems expressed as political interest. He noted that the underlying character of much of the behavior that becomes labeled as criminal in America is related to political interest groups who attempt to fashion society's values after their own. Quinney pointed to the Sedition Act of 1798, the Voorhis Act of 1940, the Internal Security Act of 1950, the Immigration and Nationality Act of 1952, and the Communist Control Act of 1954, as the evidence of this process. He also stated that criminal behavior is

becoming increasingly political with traditional channels for change becoming insensitive or inappropriate in responding to the grievances of the population.

Quinney, though influenced by Roscoe Pound's interest concept (1943), developed his own theory of interest. Pound assumed that the legal order was created in society to regulate and adjust the conflicting desires of men and that law provided the general framework in which social order was maintained. The total process involved individual, public and social interest. Pound's interest theory is really of the equilibrium type and not unlike the social models presented by Parsons-Shills and Davis-Moore (see Chapter II). Quinney modified Pound's conceptual model by expounding on the political interest factor: (a) law is the creation and interpretation of specialized rules in a politically organized society; (2) politically organized society is based on an interest structure; (3) the interest structure of politically organized society is characterized by unequal distribution of power and by conflict; (4) law is formulated and administered within the interest structure of a politically organized society. Quinney's major departure from Pound involved a conflict power model of society, one assuming that law is created by political interest. He saw law as consisting of specialized rules which are created and interpreted in a politically organized society based on an interest structure with an unequal distribution of power.

Seymore Fiddle (1967) spoke of drift, sub-cultures and the politicalization effects of labeling in his consideration of lower class, drug addict sub-cultures. Fiddle's basic theme is that repression breeds sub-cultures. He pointed out that drug addict drift

into sub-cultures primarily is due to their criminal status and the fear of legal reprisal. The addict subculture is subsequently a creation of the political and criminal justice systems, suggested Fiddle.

Edwin Schur (1965) applied the societal reaction perspective to the formation of non-victim, deviant subcultures, especially homosexual and drug addict subcultures. Schur contended that legal repression creates the deviant subculture which in turn provides for the basic human and social needs of the otherwise isolated, labeled deviant member of society, thereby providing a social environment conducive to the continuation and perpetuation of the same activities affecting their deviant status. In this sense Schur asserted that legal repression actually perpetuates the same behavior the political and legal control apparatus are allegedly attempting to control, hence often creating a self-fulfilling prophecy. It could then be said that a latent function of the political and legal control apparatus is to create the same activity they manifestly avow to stifle.

Similarly, Palmer (1973) claimed that the crime control process accomplishes ends quite opposite to those dictated by its social mandate. Law enforcement, the judiciary and corrections act in such a way that social frustration is increased among marginal or dissatisfied members of society. This, in turn, serves to limit the accessibility of adequate role models hence facilitating crime. Crime, then, becomes an integral part of our social life in that criminal expectations are institutional components of our social organization.

The arguments presented in this section on general societal selection addressed themselves to societal processes which are held as

being instrumental in the selection of marginal and deviant members of society. A theme common to all theoretical considerations presented is the prevalence of a selective definition of the situation regarding acceptable legal, political, social and moral modes of behavior by those directly or indirectly possessing political power. The most important factor concerning all theories presented is they viewed society as being involved in the process of determining deviant behavior. No longer was deviance viewed as consisting merely of innate individual malfunctions extraneous to the ideal functioning of the social order.

2. Criminal Justice Selectivity

Selectivity within the criminal justice system is closely related to the more general societal selective characteristics presented above. Stratification within the criminal justice system is often reduced to a form of social dualism with political officials, criminal justice officials and practitioners, and "middle-class" members of society occupying the acceptable strata while marginal and lower class members of society occupy the unacceptable strata. This type of polar stereotyping is reflective of the conflict model of society frequently employed by criminal justice agencies. Polar confrontations between "good" and "bad," "right" and "wrong," represent a type of institutional authoritarian bias which often does not allow for alternative explanations; hence alternative solutions to those social problems these institutions have been licensed to control.

A type of oppositional dualism is the double standard of justice which indicates there exist in practice two standards of justice, one for the acceptable "middle-class" and another for the stigmatized "lower-classes." Patricia Wald (1967), in The President's Commission on Law Enforcement and Administration of Justice, stated that poverty breeds crime at the hands of the criminal justice apparatus since the existing criminal justice ideals apparently do not apply to the lower class members of society. She mentioned that the great majority of those accused of crimes in this country are not only poor but are arrested more often, convicted more frequently, sentenced more harshly, and rehabilitated less successfully than the rest of society.

Another sociologist, T. E. Ferdinand (1966) compared the process of delinquent formation and nutrition among middle and lower class youth. He noted that a major difference between the delinquent patterns of the upper and middle classes and those of the lower class is the relative effectiveness with which conventional groups such as the family and the school deal with emerging delinquent groups. Parents and school authorities seem more effective in dispersing upper and middle class delinquent cliques than lower class delinquency, thereby quenching upper and middle class delinquency prior to its reaching the attention of the criminal justice control apparatus. Lower class delinquent groups, on the other hand, are more often referred to the criminal justice control apparatus by the middle class public school system; thus, contributing to the generally held image that delinquency is predominately a lower class phenomenon. Others such as Chambliss and Seidman, Jacob, Wolfgang, Garfinkel and McKay related the concept of dualistic justice to the political processes involved in selecting criminal justice personnel and to actual selection within the adjudication process.

William Chambliss and Robert Seidman (1971) associated police discretion involving the double standard of justice to political and social elitism. Police agencies, they contended, are political institutions in that they are licensed to enforce statutes generated by political, law-making bodies. In addition, most heads of police agencies are politically determined. Faced with these social realities police agencies, if they are to minimize external strain, attempt to avoid "public arousal." This means not offending the white, middle class public segment which represents or supports the backbone of the

political structure. This definition of the situation excludes lower class and other marginal groups in society. The police therefore are encouraged to pursue those violators that the community rewards them for pursuing while ignoring those violators who have the capability of causing trouble for the agencies. The avoidance of public arousal is an explanation as to why the legal system has failed to deal effectively with middle and upper class law violators (see Appendix III).

Herbert Jacob (1972) elaborated on justice and the political arena. In doing so, he affiliated politically motivated professional elitism with the advent of selective justice especially as it related to the judiciary, defense and prosecution. Jacob pointed out that in the recruitment of judges, the supposed impartial, neutral arbitrators of the judicial process, three sets of procedures exist in the United States: (1) the federal government and 21 states permit the chief executive to appoint judges who must then be confirmed by the respective senates; (2) 15 states elect judges through partisan elections, while (3) 18 states elect judges in special nonpartisan elections. The overall implication is that judgeships are closely linked to politics.

Regarding the defense, Jacob noted that its parent organization, the bar association, (133,000 lawyers in 1,700 affiliations) are more than merely guild groups. He suggested that in addition to restricting entry into the profession and seeking to control the activity of their members they are also powerful political interest groups promoting their self-interest and resisting any constructive change in the judiciary or legal system which may impede or otherwise restrict their lucrative profession. It is only when change will eliminate

nonprofessional elements in the judicial process that the legal profession will unite in its support.

This political self-interest has an obvious effect on the performance of the legal profession involving their relationship with their clients. Jacob posited that the legal profession caters to those who can afford their services while those who cannot afford legal services are often denied benefit of quality counsel. Indigent cases receive little attention and many defendants are advised to plead guilty to a reduced charge regardless if they are guilty or not. Jacob stated that studies of criminal justice show that those who do not get bail or legal advice often receive heavier penalties than those who can afford such services. He concluded that the quality of justice is dependent on one's wealth: money can buy leniency; poverty begets harsh treatment. It is the prosecutor, asserted Jacob, who possesses the most power through his discretionary license. In many jurisdictions the prosecutor acts as a de facto judge making most of the decisions regarding innocence or guilt.

Harold Garfinkel (1949), in a study of inter- and intra-racial homicide, showed that racial discretion and bias permeates the entire adjudication process. In his study of court decisions concerning homicide cases in North Carolina, Garfinkel concluded that the judicial system reacts in a dichotomous fashion in reference to homicide offenses. Certain forms of homicide are preselected by the white dominated legal system as being "sacred" violations of social norms while others are viewed as merely "secular" violations. Blacks killing whites and some whites versus white homicide cases fall into the sacred category while black against black, and whites murdering blacks

constitute the secular category. Sacred violations are represented by a compulsion to allocate responsibility with the trial marked by sacred ritual. Secular violations, on the other hand, are emotionless attempts to balance the judicial tally sheet.

At the end of the criminal justice process lies the correctional apparatus. It is the recipient of progressive selection, attrition and discretion within the other components of the criminal justice system. It would seem foolish to assume that selection and discretion do not exist in the final stage of "justice." The McKay Report (1972) on the Attica uprising emphasized the significance of the dual standard and the role it played in the unfortunate Attica riot. Approximately half (1,200 of 2,243) of the inmates were directly involved in the disturbance. Of the total inmate population 65 percent were either black or Puerto Ricans. Most of the rioters were from this group. The white assault force of 1,100 armed men consisted of a contingency of New York state police (less than one third of one percent of the entire state force were blacks), sheriffs from nine counties and prison guards. The report documented evidence pointing to blatant discrimination by prison officials and staff toward the black and Puerto Rican majority. These included less pay, worse jobs and harassment by white guards and administrators. The stage for a polar confrontation was set. On one side were the virtually unarmed (clubs and makeshift knives and spears) inmates while on the other was an equal number of heavily armed men constituting the assault force. What occurred during and immediately after the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War.

Turning now to the specific attrition of criminal cases within the criminal justice system Gresham Sykes (1967) professed that crimes are "lost" at every stage in the process of the adjudication process. He noted that there is a precipitous drop in the numbers as the system moves from the commission of a crime to the application of penal sanctions. Sykes dismissed corruption as the major source of the system's inefficiencies. Rather, he contended, the system contains a number of deliberately built-in sources of inefficiency, knowingly created structural conditions that decrease the chances of detecting, apprehending, convicting, and punishing the offender. Frustrated police agencies, congested court calendars and under-subsidized correctional institutions coupled with increasing political and public demands for efficiency, contribute much to the current situation the criminal justice system is in.

In expounding on these built-in sources of inefficiency, John Kaplan (1973) noted that a subtle process has occurred in the criminal justice system whereby informal, administrative short cuts and individual judgment and discretion have replaced stated judicial rules and procedures. Chief Justice Warren Burger (1971) lent support to this contention by stating that the existing judicial system is virtually structurally ineffective to deal with the current needs of our society. He mentioned that the existing criminal justice system is operating on 1900 guidelines when the country had a mostly rural population of only 76 million. Through the years the number of judges, prosecutors and courtrooms were based on the premise that approximately 90 percent of all defendants would plead guilty leaving only 10 percent,

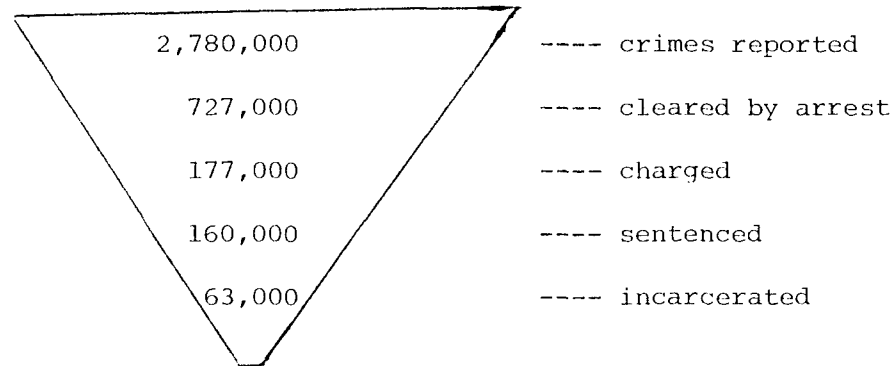
more or less, to be tried. The premise is no longer a reliable yardstick of judicial needs, warned Burger.

Not only are informal procedures employed but often they are covered up by the entire judicial court system. Arthur Rosett (1967) observed that although plea-negotiation and bargain justice seem to be involved in as many as nine out of ten convictions of serious offences, the criminal justice system itself acts as if these informal activities do not transpire. Usually the rules under which the game is played is to have the defendant state in court at arraignment that no promises were made to induce his guilty plea. This charade occurs, insisted Rosett, while everyone in the courtroom is aware that negotiations have occurred.

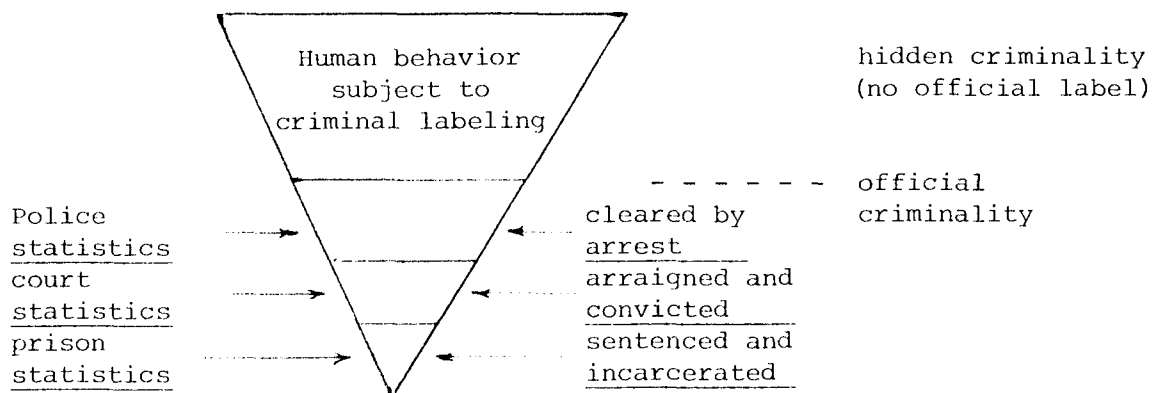
The extent of discretionary selection will never be fully revealed due to the complexity of the structure of the criminal justice system. It would be a near impossible task, for example, to determine the extent of discretion used by the over four hundred and twenty thousand law enforcement officers in the United States. A more reasonable task would be to attempt to determine the extent of discretionary selection employed by prosecutors since they deal only with known offences cleared by arrest. This indicates the availability of criminal statistics is a reflection of certain limitations of the criminal justice system. These limitations raise serious questions regarding the reliability of criminal statistics. The Federal Bureau of Investigation, Uniform Crime Report (1972) notes that the total number of criminal acts that occur is unknown but those that are reported to the police provide the first means of a count. But even when working with the available statistics, as limited as they may be,

a discernable funneling pattern of attrition occurs providing support for Sykes' argument.

The President's Commission on Law Enforcement and Administration of Justice (1967) graphically presented the funneling effects of reported crimes using the national statistics for the year 1965.



Richard Quinney (1972) carried the funneling attrition process a step further by linking it to the labeling process. He argued that criminal statistics are not indicative of the true nature of criminality in a population in that they merely reflect differentials in the administration of justice. To illustrate this, Quinney (1972:122) included a projected proportion of the funnel to represent "hidden criminality."



Quinney suggested that all human behavior has a probability of becoming defined as criminal in one of the stages of criminal procedures. However, only the behavior of some persons are officially processed and

labeled as criminal in one or more of the stages. Of those subject to official criminality Sykes (1967) cited their overall characteristics as consisting of males who are members of minority groups or the lower classes and who are somewhat younger than the average citizen.

This chapter on selection was specifically designed to present various discussions concerning the nature and extent of selectivity in our society, especially as it relates to the criminal adjudication process. General selection highlighted stratification, the availability of social positions, and political elitism while additional discussion followed scanning the literature pertinent to criminal justice selection and attrition. Social structural conditions especially as they relate to oppositional dualism (Douglas, 1972) link both considerations of selection. The extent of selection, of both deviant populations and judicial attrition, apparently is associated with the variance existing between avowed societal ideals and the actual social processes and practices. A result of the adherence to unrealistic harmonious ideals is the acceptance and perpetuation of a polar conflict philosophy by those licensed to implement an impossible mandate. In terms of the societal ideals of justice it seems that the manifest mandate is very selectively pursued while most of the criminal justice control apparatus performance is geared toward quite another cause, that of maintaining the polar conflict image of criminal deviance in our society. This unintended or latent function corresponds closely with the boundary-maintenance concept of crime causation and control (see Chapter II). However, perpetuation of the conflict perspective greatly magnifies the deviant or unacceptable population in society. What occurs then is the criminal justice control apparatus often engages in activity

that initiates, stimulates and even perpetuates the very societal problems they are licensed to control, reduce or eliminate. Accordingly, these control agencies are organized in such a fashion as to facilitate and justify their conflict perception of deviance, thus creating a self-fulfilling prophecy.

CHAPTER IV

EXPLORATORY THEMES AND METHODS OF INQUIRY

Following the broad philosophical and theoretical arguments presented in the preceding two chapters we turn now to the ideal nature of our criminal justice system. Exploratory themes and methods of evaluating the effectiveness of the actual operation of the New Hampshire criminal justice system are developed. Chapter V then discusses, in greater detail, the complex criminal justice apparatus operating in this country at both the federal and state level, with the state of New Hampshire examined in detail. The systematic diagram of the state's criminal justice system at the conclusion of Chapter V provides the reader with a graphic model of how the system operates at the trial court level. This sets the stage for chapters VI and VII where the functioning of the state's criminal justice system is discussed in terms of the actual input of criminal cases, their subsequent adjudication, and the eventual judicial disposition of these cases.

1. The Ideals of Justice and the Purported Methods of Implementation

Reduced to its simplest level of explanation the ideals of justice focus about the adversary system or judicial contest. This game-like feature of our judicial ideals is purportedly facilitated by the criminal justice system. Within this system the state is represented by law enforcement agencies, the prosecution and correctional institutions. Correspondingly, the accused, or defendant, is represented by defense and by constitutional and statutory guarantees which, in effect, attempt to off-set the vast powers represented by the accuser: the state. The court, in this judicial game, acts as the neutral arbitrator of this staged contest. Like other games, there are rules dictating how it is to be played (James, 1971). Court procedures, a separate jargon, ritualistic role playing and the like are all very much a part of the judicial contest.

Apparently the founding fathers established this accusatory, adversary system for various reasons, the most obvious being: 1. the insurance of "due process" based upon the assumption of innocence until proven guilty; 2. the protection of the innocently accused; 3. to maintain the democratic premise that no man is above the "law"; and 4. to placate the public by allowing the judicial contest to serve a safety value function of reducing public indignation against offenders. Others (Durkheim, Simmel, Erikson) have suggested that the meaning of this last statement could well be extended to include the function of boundary-maintenance whereby the judicial process defines for the

general populace, at any given time, the limits of acceptable behavior within the collectivity (see Chapters II and III).

Erikson noted that confrontations between deviant offenders and the agents of control have always attracted considerable public attention whether it be at the judicial or correctional level: "In our own past, the trial and punishment of offenders were staged in the market place and afforded the crowd a chance to participate in a direct, active way" (Erikson, 1966:12). He goes on to mention that reform which brought about changes in these public practices coincided with the advent of the mass media suggesting that today, newspaper, radio and television coverage of deviance and the judicial contest provide the same type of entertainment that public executions once did. In a similar vein, Barnes and Teeter (1959) stated that the last public execution in the United States occurred in late 1936, drawing a crowd of over 20,000 spectators to a small Kentucky town.

Now, more attention is given to the details of the adversary system and its mechanisms of implementation: the criminal justice apparatus. The adversary system differs according to type of statutory offense, i.e. criminal, civil or juvenile. Generally speaking, criminal cases involve "wrongs against the state" while civil cases or torts represent "wrongs against individuals." Juvenile cases can involve criminal, civil and special juvenile statutory violations by minors as well as parental neglect. Ideally, juvenile court cases involve the state versus the state since the minor's interest is supposedly represented by the state in these matters. This is based on the concept of *parens patriae* whereby the state has original jurisdiction over all resident minor children. However, the 1967

United States Supreme Court decision strongly suggested the "due process" be extended to juvenile cases (Gault, 1967).

The following paradigm emphasizes the basic differences between the criminal, civil and juvenile judicial procedures.

PROCEDURE	NATURE OF STATUTORY OFFENSE		
	CRIME:	TORT:	DELINQUENCY:
1. Judicial adversaries:	State versus individual	Individual versus individual	State versus state
2. Determination of wrong:	Beyond a reasonable doubt*	Preponderance of probability*	Individual judicial judgment
3. Nature of disposition:	Retribution	Restitution	Rehabilitation

*Indicates jury trials are available to defendant

Due process refers to the strict adherence to the rules of the judicial game. This includes the assumption of innocence until proven guilty and a separation of interest among the various players representing the state, neutral court and defense. Other procedural guidelines are spelled out according to which judicial process is followed: criminal, civil, or juvenile. This study is primarily concerned with criminal judicial procedures and the following constitutional rights refer specifically to this process although they may be applicable to either the civil or juvenile procedures, or both.

In order to make the adversary game a more rational one our forefathers provided constitutional guarantees for the accused to offset the political machinery represented by the state. These include:

1. The right against unreasonable searches and seizures.
2. The right to be informed of one's constitutional rights whenever suspicion focuses upon you.
3. The right against self-incrimination.
4. The right to counsel at every critical stage of the criminal proceeding.
5. The right to reasonable notice of the nature of the charges against you.
6. The right to be heard, that is "have your day in court."
7. The right to confront witnesses against you.
8. The right to a fair trial before an impartial judge.
9. The right to a speedy and public trial.
10. The right to a trial by a jury of your peers.
11. The right against double jeopardy.
12. The right to reasonable bail.

Appeal of an inferior court judgment to the state trial court is an implicit constitutional right while procedural or habeas corpus appeals at the appellate court level are statutory rights (Kerper, 1972).

How are these procedures, focusing around the judicial system, to be implemented? Basic to the entire adversary system is the trial court. On one side is the prosecutor and the grand jury, on the other the defense, while in the middle is the court and petit (trial) jury. The prosecutor's office receives cases from various law enforcement agencies, appeals from inferior state courts and may even initiate its own criminal investigations. The grand jury, which works in conjunction

with the prosecutor at the trial court level, actually supercedes the authority of the prosecutor in that they and they alone have the ultimate power to indict. Indictable cases are then brought before the court. At arraignment the defendant most often has the right to plead "guilty," "not guilty" or "nolo contendere" (no contest). Not guilty pleas result in jury trials whereas guilty and nolo contendere pleas leave the ultimate judgment to the sitting judge.

The defendant upon his appearance before the court, either for a probable cause hearing or arraignment, has the right to be represented by a competent defense lawyer. If indigent, then a lawyer will be appointed. States without public defenders use the appointed attorney method whereby a pool of criminal lawyers are randomly assigned by the court to represent indigent defendants (Abraham, 1967). Alleged violators of federal statutes, regardless if they are misdemeanors or felonies, are heard by the federal trial court (Federal District Court). In the state judicial system, lower or inferior courts exist at levels below the state trial court. Anyone convicted in an inferior court has the automatic right to appeal the court's judgment to the state trial court. No other reason has to be stated for this appeal other than the fact that the defendant wants to exercise his constitutional rights by having a jury trial. However, appeals beyond the state or federal trial court level must be based upon procedural matters and can be heard only if the appellate court so decides through a majority rule. Judgments below the state trial court level are individual decisions made by the sitting judge without use of a trial jury, while those above the state or federal trial court levels are decisions made by a bench of judges with a majority decision necessary for judgment.

Quite obviously, a comprehensive investigation into all aspects of the trial court adjudication process is not plausible, hence the analysis is limited to a sample of cases processed through the New Hampshire state trial court. Two samples are used. One consists of a thirty-five percent sample of all recorded cases processed through the state trial court for fiscal year, 1970. This data source was generated from the only comprehensive source available for trial court cases, those maintained by the state probation office. A code sheet was compiled for excerpting information relevant to this study (see Appendix IV). However, many files were incomplete and much of the desired information was unavailable. Another shortcoming of this data source was that the information was analyzed according to variables and not individual cases making it virtually impossible to trace individual cases through the adjudication process.

The second sample, that of the entire fall trial court session for Merrimack County, was used for investigating trial court data. This, in effect, is a sub-sample of the statewide sample since it is possible to have Merrimack County cases represented in the larger statewide sample. There were two sessions of the state trial court held in Merrimack County during fiscal 1970 and this sample represents the second session. This data is more detailed since plea bargaining was also investigated. This information was not available for the statewide sample.

Another data source was employed, that of the state police report. This report reflects the single most comprehensive data source on law enforcement arrest within the state. Together, the three data

sources made possible the investigation of the state criminal justice system's criminal case attrition trends.

2. Themes of Inquiry into the Performance
of the Criminal Justice System

In examining the functioning of the criminal justice system in the state of New Hampshire all comparisons must be made with the ideal judicial guidelines. These guidelines which explain the expressed license and mandate of the criminal justice system constitute a constant, thereby limiting the analysis of the relationships between the ideals of criminal justice and its actual implementation to a descriptive/exploratory probe. The general themes guiding this descriptive/exploratory probe of the functioning of the state's criminal justice system are based upon the ideal role of criminal justice: that of protecting society from wrong doers, whose behavior, if allowed to continue, could prove disruptive to the society as a whole. Based upon this premise law enforcement should pursue violators of criminal statutes according to the severity of offense as they are categorized into felonies and misdemeanors. Correspondingly, the judiciary should process those cases brought before it according to constitutional judicial procedures. Here all parties, the prosecution, the neutral court, and defense, should play the adversary game according to the ideal procedures mentioned earlier. Above all, for the judiciary, especially at the trial court level, to function according to its ideal, rational mandate there must be a separation of interest and influence in the adversary contest. Breach of this confidence, collusion, is one of the most flagrant judicial violations possible according to the judicial ideals. Corrections, acting more as an extension of the state's judiciary, should provide consistent penalties

for convicted suspects, again based upon the severity of the offense. The purpose of Chapters VI and VII is to examine the effectiveness of the New Hampshire criminal justice system vis-a-vis its avowed ideals.

To what extent does the New Hampshire criminal justice system adhere to its ideal judicial objectives? Special questions are raised concerning the functioning of each of the criminal justice sub-components: law enforcement, judiciary, and corrections.

a. Law Enforcement

The basic question raised concerning the functioning of the state law enforcement agencies is: to what extent do the state and local police pursue serious criminal violators, and is this proportional to the seriousness of the offense? This involves those law enforcement agencies whose primary function is to process felony cases which ultimately are referred to the state trial (superior) court: municipal police agencies (13 municipalities) and the State Police. The county sheriff's offices (10 counties) also have original criminal jurisdiction within their respective counties; however, they function primarily as "officers of the court." In this capacity they serve writs, transport and house defendants, and produce such defendants at court hearings, trials and the like.

b. Judiciary

The question raised concerning the judiciary is how effective is it in the adjudication of defendants referred to it from the police or from the grand jury. Especially, how applicable are the judicial guarantees such as bail, jury trials, and the availability of defense?

Equally important, are the judicial components, in fact, separate from each other, i.e. prosecution, neutral court, and defense? Again, this study focuses upon the state's trial court which convenes at least twice yearly at the county level. Each county has an elected county attorney representing the state as the prosecutor. In addition, the state attorney general's office may also assist at the county level. In fact, all serious felonies must be reported to the attorney general's office since that office has original jurisdiction over the prosecution of such cases. A state superior court justice sits at each county trial court bench hearing both criminal and civil cases on the docket. Public defense, for the most part, consists of appointed attorneys. Only one county (Merrimack) provides a public defender at the state trial court level.

c. Corrections

The basic theme here is how consistent are dispositions handed down from the trial court in comparison to the nature or seriousness of the offense? Also, to what extent do the state correctional institutions comply to their custodial mandate? Corrections at the state trial court level can involve the state hospital, state prison, and the county houses of correction as well as the state parole office and the state probation office.

3. Methods of Exploration

The availability of data restricts somewhat the extent of exploration possible in this study. Nonetheless an attempt is made to discuss, in as great a detail as possible, the functioning of the state's criminal justice system at the trial court level for fiscal 1970. The emphasis is placed on the court system. Law enforcement, prosecution, defense and corrections are discussed and examined in light of the state trial court process.

The law enforcement data is supplementary to the state trial court process providing a profile of the nature and extent of serious crimes in the state and their clearance rate. The two trial court samples, on the other hand, lend themselves to both judicial and correctional analysis. These data are analyzed according to two major criterion: type of offense; and nature of disposition. Type of offense indicates the nature and seriousness of these criminal offenses while the dispositions reflect the corresponding adjudication of the offenses. As mentioned earlier in this chapter, these data sources, while providing the most comprehensive and accurate data available, are limited. They represent only those cases formally reported to either the state police or the state probation office. And many of these cases were found to be incomplete. Ostensibly, lower level discretion, by either the police or lower courts, can not be documented in this study because of these shortcomings.

a. Law Enforcement

The state police keep a criminal file on all criminal cases in the state. This is similar to the comprehensive file compiled by the Federal Bureau of Investigation at the federal level. The state police is also the single largest law enforcement agency in the state. It is involved in the investigation of practically all serious felonies within the state and works closely with the state Attorney General's office as well as with the United States Attorney, the Federal Bureau of Investigation and the United States Marshall's office represented in the federal district which encompasses the state's political boundaries. The state police data provides a profile of the nature of offenses reported in the state as well as the nature of charges referred to the respective county prosecutors for possible indictments before the state trial court.

b. Judiciary

A sample of the statewide data of the state's trial court docket for fiscal 1970 is examined regarding: 1. the nature of charges referred to the court for adjudication; 2. the availability of bail by seriousness of offense for these referred charges; 3. the extent and nature of non-judicial dispositions by the prosecutor, of cases referred to the state trial court by seriousness of offense; and 4. the nature of disposition handed down by the court, again by seriousness of offense. The trial court session of one county (Merrimack) is examined separately as a basis of comparison with the statewide data sample. Here additional information concerning plea

bargaining is presented. A third source of data is the state judiciary council's statistical report for the state trial court during fiscal 1970. Interviews with county attorneys, defense lawyers, judges and the assistant attorney general in charge of criminal investigations provide further insight into the functioning of the state criminal justice system.

c. Corrections

Information on how many inmates are referred to the state penitentiary by nature of offense is available. Unfortunately, similar data from the state hospital and houses of correction were not available.

4. Limitations of the Inquiry

Although the data presented in Chapter VI suffices in presenting a general profile of the functioning of the New Hampshire criminal justice system, additional information would have made the study sounder. Additional desirable information includes comprehensive county sheriff's reports concerning criminal investigations, court functions and county jail and houses of correction records. Similarly, comprehensive county attorney records indicating the nature of all original charges referred to the prosecutor's office for indictment and the subsequent handling of these referred charges by that office would be needed for any reliable empirical research. The state trial court records could be improved through better and more comprehensive reporting methods. These records should also note the specific correctional agency convicted defendants are referred to by the court. Correspondingly, the county and state correctional facilities, in their annual reports, should corroborate the court's record. As the reporting process stands now, there is little consistency in reporting methods and often duplication occurs inadvertently discrediting the agency's statistical self-analysis. Either a standardized method of reporting should be adopted by all criminal justice agencies or a separate agency should be established with the specific role of compiling accurate reports for all the state's criminal justice agencies.

The next chapter presents the components of the criminal justice system at both the federal level and that of the state of New Hampshire.

CHAPTER V

COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM

This chapter provides a general profile of the components of the criminal justice system in the United States. The specific components are: (1) the criminal justice process; (2) the overall criminal justice system of law enforcement, judiciary and corrections; and (3) the components of a particular "visible" system. The latter refers to the context in which this research was conducted: the criminal justice system of a small northern New England state; New Hampshire.

1. The Judicial Process

Ideally, our form of justice is based on the Anglo-Saxon tradition of the "innocence-until-proven-guilty" accusatorial system. Deliberate exceptions to this procedure were the compulsory evacuation of 120,000 Japanese Americans, immigrants, and aliens from their West Coast homes on the presumption of their disloyalty during World War II, and more recently the mass internment of war protestors and demonstrators in Washington, D. C., at the direction of Attorney General Mitchell (Eldefonso, et. al., 1968).

A very complex judicial process has evolved around the accusatorial procedure beginning with the offense of some legal statute or ordinance, following through the entire process, ultimately ending with a disposition of innocent or guilty. In the case of guilty plea there is the matter of sentencing and possible incarceration. As an additional safeguard the convicted person has recourse to an appellate court and, if already incarcerated, a writ of habeas corpus can be filed (Sykes, 1967).

Legal statutes are legislated at local and federal levels which are then enforced by police agencies whose license and mandate are restricted by law to specific jurisdictions. Specific charges are adjudicated through a system of courts ranging from local inferior courts designed primarily to handle minor infractions to the country's highest court--the United States Supreme Court. Affiliated with the courts are court clerks, court officers, prosecutors, and defense attorneys (Abraham, 1968).

The specific steps involved in the criminal justice process start with an alleged offense of an existing law which is reported or otherwise brought to the attention of control agent officials--primarily the police. An investigation follows, and if the charge is substantial, a warrant for arrest is issued. Next, the suspect is interrogated and undergoes a preliminary hearing before a magistrate to determine probable cause for charging the suspect. If the suspect is charged, he is held over for a trial court or released on bail or personal recognizance. Subsequently, his case is brought before a grand jury by the prosecutor for the determination of a bill. If a true bill is found, the suspect is indicted to appear before the trial court to be arraigned and to make a plea against the charge brought against him. If the defendant pleads "not guilty," he is entitled to a trial by a jury of his peers. If a guilty verdict is found, the defendant would then hear the disposition of the court with the option to appeal the sentence (Sykes, 1967).

In actual practices all these steps are not followed as prescribed by the ideals of the criminal justice code. This is evident by the fact that less than one percent of all crimes committed eventually go to trial (Wolfgang, et. al., 1970). Arrests are generally made by law enforcement officers, with or without the use of warrants, stemming from either reported or on-the-scene-witnessing of the offenses. Arrests made without the use of a warrant assume that the police officer has reasonable and probable cause to believe that the person to be arrested has committed a public offense in his presence. The assumption of probable cause coupled with human bias on the part of the officer in his interpretation and perception of deviance

contributes greatly to the phenomenon of discretionary arrest patterns. Another important selective factor influencing arrest is the probability of an offender being detected in the act by either a peace officer or by citizens willing to testify or report the commission of a crime.

When a person is arrested, warned of his rights to remain silent and of the availability of defense, two more important biases enter into the judicial process: the nature of the charge and the availability of bail. If the defendant has access to a knowledgeable and prestigious defense lawyer, he has a good chance of having the original charge reduced or even dropped. This process often involves a deal between the prosecutor and the defense attorney prior to defendant's bail (James, 1971).

Bail, on the other hand, is a procedure for releasing charged defendants on financial or personal conditions to insure their return for trial. Theoretically, under our innocent-until-proven-guilty accusatory system, any defendant is eligible for bail. In practice, most states and the federal government restrict bail to non-capital offenses within their jurisdictions. Often high bail is used as a method of deterring defendants for serious offenses. In 1964, the National Conference on Bail and Criminal Justice found the bail system in need of extensive reform. The corruption among bondsmen has seriously plagued the bail system in this country. Bondsmen often select clients who have only been charged with minor offenses when, actually, these low risk defendants should be eligible to be released on their own recognizance. Bondsmen thrive on the inequity of the existing bail system making their services selectively available while charging excessive fees for their services (De B. Katzenbach, 1967a).

The National Conference on Bail delineated a number of major shortcomings within the existing bail system. It pointed out that the policy of detainment of an inordinately high proportion of defendants imposes an unnecessary burden upon these individuals. The conference further stipulated that this procedure operates to the disadvantage of the criminal justice process and the community as a whole. Another serious fault noted by the commission is that money bail is traditionally set on the basis of the alleged offense rather than on the background of the particular defendant. This often results in prohibitively high bail being levied when there is often very little risk of flight. The irony of the money bail system is that it is generally imposed on defendants who cannot afford the expense, while those defendants who can afford it tend to be released on their own recognizance (moneyless bail) (DeB. Katzenbach, 1967a).

Money bail abuse usually takes the form of discrimination against defendants from minority and lower strata backgrounds while personal recognizance, as a form of bail, is widely used for middle or upper class defendants. Here one is reminded of the numerous high level Watergate defendants who were not only exempt from posting money bail but some were spared the common, yet undignified practice, of being fingerprinted and having a "mug shot" taken, once indicted. The irony of the existing bail system is that often those who can afford money bail are released on personal recognizance while those who cannot afford money bail, mostly those members of society from the lower social classes, are denied this non-monetary bail option. One recommendation stemming from the Task Force Report is that personal recognizance be more widely used among those who cannot afford money bail. This would

also help rid the judicial system of the lucrative and highly questionable profits made by bail bondsmen. The Task Force Report further stated that the existing system with its seemingly class bias toward bail use, money bail or personal recognizance, often results in prohibitively high bail being set where there is little risk of flight and unreliable defendants being released with inadequate assurance that they will appear (Task Force Report: Courts, 1967: 38).

Drawing on other research, "The Manhattan Bail Project" (1963) surveyed the major bail studies within the last fifty years concluding that: "Every serious study published since the 1920's has exposed defects in its (bail) administration. Yet proof of the need for reform has produced little in the way of fundamental change" (Johnson, et. al., 1970: 146). The authors (Aver, Rankin and Stury) went on to say that the bail system fails to perform its theoretical function in several respects such as misuse of professional bondsmen, misunderstanding of bail-setting procedures by local magistrates, and the improper use of bail as a pretrial device to "punish" defendants. The Manhattan Bail Project summarized the current status of bail as being used to punish, to insure detention, to aid the prosecution and to satisfy public and journalistic clamor, all functions contrary to its constitutional mandate--that of insuring the defendant's appearance before the court. Again, the Manhattan Bail Project presented arguments similar to those later reported by the President's Task Force. The latter concluded that a central fault of the existing bail system is that it detains too many people with serious consequences for defendants, the criminal process and the community. They suggested that the aim of reform must be to reduce pretrial detention to the lowest level without allowing

the indiscriminate release of persons who pose substantial risks of flight or of criminal conduct (Task Force Report: Courts, 1967:38).

Finally, Richmond and Aderhold, in their work New Role for Jails (1969), elaborated more on the selective nature of bail. They stated that the system which permits accused persons with money to be free awaiting trial while those without resources have to stay in jail is one of the greatest blots on our notions of equal justice. By equal justice they referred to the judicial ideal that every accused person, rich or poor, is presumed to be innocent until proven guilty (Carter, et. al., 1972:386).

Bargain justice, probably more than any other mechanism, accounts for the greatest deviation from the ideal judicial process. Congested court calendars, undermanned staffs, and political and public pressure for an impressive conviction record forces the prosecutor to manipulate the judicial process to meet these conditions. The prosecutor's discretion with respect to bargain justice involves close cooperation with the court clerk in scheduling cases, with defense attorneys in reducing charges, and with judges in predetermining sentences (DeB. Katzenbach, 1967a).

Prosecutory discretion, although not sanctioned by our judicial ideals, is widely employed. Many arguments exist both for and against its use. Nevertheless, it is a common practice which, in all likelihood, will eventually, in some manner, become an acceptable, legal practice within the criminal justice process. However, until that occurs certain abuses are associated with this practice: political biases, self-interest, and class discrimination. Cole (1970) investigated the political abuse issue, in both rural and urban settings, and found that

politics as such did not appear to influence the decision to prosecute. As far as rural/urban differences were concerned, rural prosecutors often had better access to personal knowledge of the defendant's background than urban prosecutors.

One only has to trace the political rise of many prominent persons to see the effect of the self-interest factor. It is common knowledge that impressive conviction records, developed while serving as local and/or state prosecutor, hold considerable weight in appointments to the bench or in gaining support for high political office. Self-interest does not necessarily have to reflect political discretion. The prosecutor's conviction record is the important factor and this can be accomplished through class discretion. The Task Force Report (1967), Kaplan (1973), Jacobs (1972), Wald (1967) and others have documented the evidence of class discrimination as a result of prosecutory discretion. Arguments for acceptable use of prosecutory discretion is mentioned in the concluding chapter (Chapter VIII).

The defendant's chances of manipulating the criminal justice process to his advantage depends greatly in the quality of legal defense he can obtain. A financially secure defendant can afford to choose the defense attorney of his choice, while those defendants who must accept a state appointed defense must take their chances with the quality of the attorney provided. The most prevalent method of appointed legal defense employed in the United States is the assigned counsel system, which is used in about 2,750 of the country's 3,100 counties, including many of the largest cities. The courts utilizing this system provide lawyers from private practice on a case-by-case basis to represent defendants who cannot afford an attorney. There are

major shortcomings within this system. One is that in many instances younger, less experienced members of the bar are selected. Often the appointment interferes with an already busy schedule leaving little time for proper pre-trial preparation. The public defendant system eliminates the problems mentioned above but adds to the problem of collusion between the defense and prosecutor, since they work closely in preparing cases before the court (DeB. Katzenbach, 1967a).

The Task Force Report estimates that there are between 1,700 and 2,300 defense attorneys for every 325,000 charged felons. The recent Supreme Court decision to include misdemeanor and juveniles to the indigenous defense category can only exacerbate the problem. The National Legal Aid and Defense Association shows that there are about 900 defenders in the United States of whom about half are full-time while about 2,500 to 5,000 lawyers accept occasional criminal representations. Criminal defense lawyers represent a small portion of the some 200,000 lawyers holding private practices in this country. The Task Force Report summarized by saying: "Where counsel must be provided as a matter of constitutional or statutory requirement, the need is often met by the appointment of lawyers who are unfamiliar with the criminal process and sometimes who have had no trial experiences" (Task Force Report: Courts, 1967: 57).

A final consideration in regard to selective bias within the judicial process involves sentencing procedures. In about one-quarter of the states the jury determines the type and length of punishment for some or all offenses in which they have determined the guilt of the defendant. The most serious disadvantages of jury sentencing are the lack of experienced jurors and the transitory nature of jury service.

Jury sentences are often very harsh and not appropriate to the degree of severity of the offense (Abraham, 1967). In both judge and jury sentencing unequal sentences for the same offense are widespread throughout the United States. This has its foundation in the broad range of statutory definitions regarding the seriousness of the offense. For example, a first offense for possession of marijuana in Oregon is a five dollar fine, while elsewhere this same offense is a felony. The use of appellate courts and habeas corpus reflect another selective process which operates after sentencing procedures. Some convicted and incarcerated offenders have access to influential defendant lawyers while others do not. For a better picture of how the selective mechanisms of justice operate, the functioning of the criminal justice system itself will now be discussed.

2. Components of the System

The components of the criminal justice system in the United States today consist of: (1) law enforcement (police, sheriffs, marshalls); (2) the judicial process (judges, prosecutors, defense lawyers); (3) corrections (prison officials, probation and parole officers).

a. Law Enforcement

The law enforcement system in the United States is highly decentralized based on the concept of local autonomy. Because of this principle, there exists today 40,000 separate law enforcement agencies on the federal, state, and local levels with over 420,000 officers. These agencies operate within the context of some 50 federal agencies, 200 state departments, 3,100 sheriff departments, 3,700 municipal agencies, and over 33,000 local police agencies distributed throughout boroughs, towns, and villages (DeB. Katzenbach, 1967b).

Our system of law enforcement has its roots in the English system which was transferred to this country during the colonial period. In early Anglo-Saxon England a mutual responsibility system of law enforcement developed whereby every man was responsible not only for his own actions, but also for those of his neighbors. When a crime was committed it was each citizen's duty to alert others and to pursue the criminal. This system dictated that if the citizen group failed in their effort to apprehend the lawbreaker all were fined by the Crown. The positions of constable, sheriff and justice of the peace developed.

Ten family groups, known as "tithing," were mutually responsible for policing their group. For every ten tithings, or "hundred," a local nobleman was appointed by the Crown as the constable who was in charge of the weapons and equipment for each hundred. The hundreds were in turn grouped into a "shire," a geographical area equivalent to a county. The Crown appointed to each shire a judge, called a "reeve," who was responsible for overall law enforcement and judgment. The "shire-reeve" is the lineal antecedent of the common county sheriff system that exists today. King Edward II created the office of "justice of the peace" to assist the sheriff in policing the county. King Edward III strengthened this position by coordinating the local constable and the justice of the peace so there was a separation between judge and law enforcer at the local level. The constable was no longer operating on the hundred pledge system but rather was an officer of the court obliged to serve the justice (DeB. Katzenbach, 1967b).

This system was transferred to the American Colonies during the seventeenth and eighteenth centuries and functioned well in the predominantly rural setting of Colonial America. The system continued after the colonial period with the exception that sheriffs, constables and justices of the peace now were elected rather than appointed. Accordingly development of municipal law enforcement agencies in the United States were also influenced by the British system. Sir Robert Peel, Home Secretary, presented to Parliament his Metropolitan Police Act in 1829. This was the first modern municipal police force in England. It consisted of one thousand policemen in six divisions with headquarters at Scotland Yard. The Obligatory Act of 1856 strengthened the Metropolitan Police Act by requiring each county to create its own

police force utilizing the organizational and training techniques instituted by Peel's force (Eldefonso, et. al., 1968).

At the turn of the nineteenth century New York City was alleged to be the most crime ridden city in the world with Philadelphia, Baltimore and Cincinnati not far behind. There existed at this time only a system of night watchmen whose function was to protect lives and property from crime and fire. As the cities and towns increased in size and population, this form of law enforcement became ineffective. An attempt was made in Boston in 1838 to rectify this condition by the creation of a daytime police force to operate in conjunction with the night watch. However, keen rivalries developed between the two shifts. The resultant state of mutual antagonism between these forces operated to reduce the effectiveness of this law enforcement system. New York, in 1854, legislated a law authorizing the creation of the first unified day and night police force. Boston and other cities soon developed their own unified police forces, and by the turn of the century there were few cities without this system. These unified forces generally came under the control of a chief or commissioner either appointed by the mayor or elected by the people. The New York City system, as initially conceived, did not function well. The legislature declared the city too corrupt to govern itself, and sent in a state police force known as the Metropolitan Police to rectify the situation. The state force emerged the victor, and today New York City's 37,000 man force is the largest municipal force in the country (DeB. Katzenbach, 1967b).

State police forces originated with the "Texas Rangers" in 1835, but the modern state police organization started with the Pennsylvania system in 1905. The majority of state police departments

were established shortly after World War I to deal with the increasing problem of auto traffic control. Federal agencies, on the other hand, began in 1789 with the creation of the Revenue Cutter service whose duty was to curtail smuggling. Today there are over fifty federal law enforcement agencies covering a wide range of jurisdictional functions, ranging from protection of the President to detecting sky jackers. The best known federal police agency, however, is the Federal Bureau of Investigation. Theoretically, the Federal Bureau of Investigation is under the jurisdiction of the Justice Department. In actual practice, under the 48 year reign of the late director, J. Edgar Hoover, it acted more as an autonomous force with the director solely determining its function, objectives and goals. Attorney General Bonapart, after Congress had adjourned in 1908, quietly established the Bureau of Investigation under the jurisdiction of the Justice Department. In 1924, J. Edgar Hoover, at age twenty-nine, was selected to be acting director of the Bureau of Investigation by Attorney General Stone; and finally in 1935, twenty-seven years after its clandestine origin, Congress officially enacted the Bureau and renamed it the Federal Bureau of Investigation. J. Edgar Hoover remained director of the Federal Bureau of Investigation until his death in 1972. Under his leadership the Bureau developed either a field office or a resident agency in every major city in the United States. The Bureau currently has under construction a one hundred three million dollar, block long, headquarters in Washington. When completed in 1974, it will be the costliest government building in the United States dwarfing that of its alleged superordinate, the Justice Department.

b. The Judicial Process

There exists in the United States a dual system of courts--the federal and the state system. The Federal system consists of three courts which deal specifically with criminal cases: the United States District Courts, the United States (circuit) Court of Appeals, and the United States Supreme Court. All three courts are federal constitutional courts created under Article III of the United States Constitution (Abraham, 1968).

The United States District Court was established under the Judiciary Act of 1789. It is a federal trial court with initial jurisdiction over nearly all federal civil and criminal cases. There are 93 district courts staffed with some 346 judges within the federal trial system. District court judges appoint their own assistants, court reporters, United States' commissioners, law clerks, bailiffs, stenographers, clerks, and probation officers. The federal district court judges, along with United States' Marshalls and United States' Attorneys, are appointed by the President with the advice and consent of the Senate. The United States Marshalls and Attorneys function directly under the authority of the Attorney General and the Justice Department (Abraham, 1968).

The United States (circuit) Court of Appeals is the next higher federal constitutional court and serves an appellate function. There are eleven Circuit Courts of Appeals with 88 judges serving the United States. Each Circuit has a chief justice, who upon reaching the voluntary retirement age of seventy ceases to be head of the court involved. He does, however, retain his powers as a full-fledged member

of this court. The highest federal court in the land, the United States Supreme Court, consists of a chief justice and eight associate justices. This court has both original and appellate jurisdiction, but rarely acts on original cases.

The state court systems lack a unified method of local jurisdictional organization. However, three basic courts exist throughout the systems. These are the lower courts, the trial courts, and the appellate courts. The lower courts constitute two types of courts. The lowest courts consist of local magistrates and a justice of the peace. Most often these justices are lay persons without legal background who are elected to terms in counties, cities and townships. Most of the magistrates' functions consist of quasi-legislative, quasi-judicial, and quasi-administrative duties. The inferior court, also known as the municipal court, district court, traffic court, city court, night court and police court, is the other lower court system. The inferior court is almost always a court of original jurisdiction and record in the state judicial hierarchy while its jurisdiction in criminal cases is restricted to misdemeanors, preliminary hearings, and bail setting.

The trial court, sometimes known as the county or superior court, is the next type of court generally found in the state judicial hierarchy. This court generally has original jurisdiction over felonies and is the trial court in the state system. It provides functions similar to those of the Federal District Court in the federal system. Unlike the Federal District Court, the State Superior Court also acts as an appellate court for misdemeanor cases processed in the lower magistrate and inferior courts. Each county usually selects both a

grand jury and a petit (trial) jury to assist in the functioning of the Superior Court. County or district attorneys, who are either elected or appointed by the governor and council, act as prosecutors of the Superior Court system. Judges, like the attorneys, are either elected by popular vote or appointed by the governor and council. Also associated with the country trial court system is some form of public supported defense, either a public defender system or appointed counsel system, the latter being the most widely used in the state court system (Abraham, 1968).

In some state judicial systems there exists an intermediate court of appeals similar to the Circuit Court of Appeals on the federal level. Other states incorporate this appellate court into the county trial court system. The jurisdiction of the state appellate court, like its federal counterpart, is almost wholly appellate. New York and California make extensive use of the intermediate court of appeals.

All state judicial systems have a final court of appeals which is the highest tribunal in the state system. Most often this high court is referred to as the State Supreme Court. Its decisions are final in regarding local law, although the Federal Circuit Court of Appeals and the United States Supreme Court can be petitioned regarding State Supreme Court decisions. The justices of the State Supreme Court, like those in the Intermediate Appellate Court and the County Trial Court, are either elected or appointed by the governor and council. These justices, unlike those in the inferior and magistrate courts, are most often full-time justices who, by law, are not allowed to retain private practices.

The judicial system of courts at both the state and federal levels employ, in addition to justices, other personnel who perform specific duties relative to the legal process. Personnel of this type include court officers, clerks, prosecutors, juries and defense counsel. The court officer at the non-trial inferior court level often is a local police officer working in conjunction with the judge. In the county trial court system the sheriff, who in most jurisdictions is an elected constitutional law enforcement officer, acts as officer of the court. The sheriff's court duties include serving writs, holding defendants in custody prior to their court appearance, and presenting defendants before the court for indictments, arraignment, bail, or trial. Federal marshalls act as court officers in the federal trial court system, serving much the same function the sheriff does at the state trial court.

The clerk of courts has a very important influence in the adjudication process at the trial court level, whether it be in the state or federal system. The clerk's functions primarily involve the scheduling of dates for court appearances. This function places the clerk in an important position in regard to both prosecution and defense. Defense attorneys are especially concerned with developing favorable relations with court clerks in hopes of retaining favorable scheduling for their cases. This is an important consideration, since congested court calendars often plague the judicial system in this country today (Knudten, 1970).

Prosecutors at the inferior court level often involve non-legal personnel such as local police officers, whereas in some jurisdictions the county or district attorney's office aids the lower courts in prosecuting certain cases. The county trial courts, in the state court

system, usually have elected or appointed prosecuting attorneys. The State Attorney General's office primarily handles cases brought before the state's higher courts, the intermediate Appellate Court and the Supreme Court. United States' Attorneys have jurisdiction over cases brought before the federal district and United States Circuit Courts of Appeals, both of which are under the direction of the Justice Department. Cases brought before the United States Supreme Court are generally initiated on behalf of the executive branch by the United States Attorney General.

Juries, both petit (trial) and grand, are used extensively in the United States but are on the decline in European judicial systems. Trial juries are selected for sessions of the trial courts both in the state and federal court systems. Some 100,000 civil and criminal cases are heard by approximately one million jurors annually in this country. Some states grant a jury trial only in criminal cases while at the federal level it is possible to waive a trial by jury provided that common consent of the parties to the suit is obtained. Twelve jurors constitute a trial jury in the Federal court system while at the state level this number varies from six to twelve members. Jury selection by the jury clerk often involves a very selective process with only "upstanding" citizens asked to serve. This selectibility obviously discriminates against the poor and minorities, making the concept of a "jury-of-peers" virtually meaningless (Abraham, 1968).

The grand jury does not render a judgment regarding a defendant's innocence or guilt. This function is limited to the petit or trial jury. The grand jury merely determines whether sufficient evidence exists to justify a trial in criminal cases. Bills of evidence

are presented to the grand jury by the prosecuting authority. It must then decide whether or not the evidence warrants an indictment, which is known as a "true bill." In most jurisdictions the grand jury acts merely as a rubber stamp for the prosecution. Over 95 percent of the bills presented to grand juries result in indictments (Abraham, 1968).

Defense is a very important aspect of the judicial process, since, without it, the entire process would be oriented toward the judicial authority, whether it be on the state or federal level. The President's Commission on Law Enforcement and Administration of Justice (1967) states that representation by counsel is essential in our system of criminal justice to aid a defendant in the protection of his legal rights and also in helping him understand the nature and consequences of the proceedings against him. The 1963 United States' Supreme Court decision regarding the case of Gideon versus Wainwright extended the right of indigents to be assigned counsel for noncapital as well as capital cases. The appointment of counsel at trial for felony defendants applies equally to both the state and federal court systems. Obviously those defendants who can afford to retain the defense attorney of their choice have a greater chance of survival in the judicial process than those who are dependent on court-appointed defense. The assigned counsel system is the most widely used system. Its major shortcomings are the inexperience of many of the attorneys selected and their lack of enthusiasm and preparation of the defense in court-appointed cases. A better but more costly system is the public defender system. The public defender system, while the better system, still has its faults. The attorneys, through extensive interaction with the prosecution in informal plea-reduction and bargain justice procedures,

tend to become involved in these procedures to such an extent that they become, in effect, an extension of the prosecution (DeB. Katzenbach, 1967c).

c. Corrections

Corrections include penal institutions such as prisons, reformatories, and jails, as well as the procedures of parole and probation. The current correctional apparatus in the United States varies greatly throughout the country. There are about 400 institutions for adult felons ranging from some of the oldest and largest prisons in the world to small forestry camps with a few dozen inmates. Four prisons have over 4,000 inmates each: San Quentin in California, the Illinois State Prison Complex at both Joliet and Statesville, the Michigan State Prison at Jackson, and the Ohio State Penitentiary at Columbus. In addition to these prisons there are some 2,500 county jails with an average daily population of about 40,000 inmates. In all, over two million Americans become prisoners each year in jails, prisons, or juvenile institutions. While 99 percent are eventually released, most within a year, many return again drawing attention to the questionable effect of these institutions in "correcting" deviant members of society (DeB. Katzenbach, 1967c).

A major problem facing the system of corrections today is the lack of legislative and public support in financing improvements. Most of the monies allocated to correctional institutions are necessary for maintaining the physical plant and paying the custodial staff. On the average, 80 percent of all correctional personnel in this country are employed in custody, services, or administration while only 20

percent engage in activities aimed at treatment. The latter figure includes all the probation and parole workers as well as social workers, psychiatrists, psychologists, and teachers. Correctional personnel, on the whole, are paid lower than their counterparts in other criminal justice agencies such as law enforcement and judicial personnel. The maintenance cost per inmate in prisons and jails reflects the low expenditures toward corrections. The annual maintenance cost per inmate in American prisons ranges from about \$1,300 in the South to \$2,650 in the Northeast. The annual per capita cost of jails in the country is approximately \$1,000 or less than three dollars a day (Johnson, 1968).

The corrections system in the United States consists of small police overnight holding jails, county jails, reformatories, prisons, parole, and probation. Police holding jails are used primarily to retain suspects being charged and those held over for court appearance. County jails are often used for both holding suspects for court appearance and for the serving of misdemeanor sentences. Reformatories are usually associated with juvenile offenders, although many states have reformatory systems for minimum and medium security offenses for young adult felons. Prisons, on the other hand, are mainly maximum security institutions with the general function of housing convicted serious felons.

Parole and probation are systems of dealing with convicted offenders conditionally returned to society. The use of parole in this country dates from about 1876. The extensive use of probation is a more recent development, having been in use only during the past fifty years. The primary difference between these two systems is that paroled individuals are conditionally released after a period of

incarceration, while probation occurs directly following conviction as an alternative to incarceration. Parole is a prerogative of the correctional system, while the decision regarding probation is reached by the courts (Glaser, 1964).

The major principle underlying both the parole and probation system is that in certain criminal cases the convicted individual can be returned to society under the guidance of trained correctional personnel. Both systems imply supervision of the offender as a means of promoting and insuring his adaptation to society in an acceptable manner. Probation and parole are utilized quite extensively in the United States, and approximately 60 percent of the adult felony offenders incarcerated in the United States are released back to society through parole. In comparison, about 55 percent of all adult felony convictions result in probation. Regardless of their widespread use in corrections both suffer from a common handicap--the provision of adequate supervision of offenders so released. Parole and probation agencies generally do not receive sufficient funding to employ the number of qualified personnel necessary to provide adequate supervision. This lack of adequate supervision is often related to the incidence of failure among offenders released to these programs. Approximately 66 percent of parolees and 40 percent of those on probation violate the terms of their release (Glaser, 1964).

Most correctional institutions in the United States today are primarily custodial in nature. Although the use of corporal punishment has declined, much suffering still exists in these institutions. Repressive measures such as solitary confinement and other officially sanctioned punitive measures are used in an attempt to maximize

security while handling large inmate populations with relatively small staffs and funds. Rehabilitation constitutes only a small proportion of the overall correctional functions, particularly among misdemeanor correctional facilities such as county jails. In examining correctional problems as well as those of law enforcement and the courts, the following section will examine the specific functions of a particular criminal justice system, emphasizing the interaction of the component parts of the system at various levels of operation.

3. The New Hampshire Criminal Justice System: A Visible System

The operation of a criminal justice system must be defined in terms of the structure and function of agencies operating within the context of criminal justice procedures. Criminal justice systems in the larger, more populated states are extremely complex making it virtually impossible to clearly define and describe their operation. The demographic characteristics and political organization of the state of New Hampshire are such as to enhance the visibility of its criminal justice system. Demographically, the state has a population of approximately 730,000 with about 15 percent of the population residing in the northern rural half of the state and 85 percent in the industrialized southern portion. Politically, the state is divided into ten counties, three in the northern half and seven in the southern sector. The state has thirteen chartered cities and 221 towns with the overall population distributed nearly equally between the towns and cities. The low population of the state in conjunction with its relatively clearly defined political organization facilitates the analysis of its criminal justice system (New Hampshire, 1970).

The criminal justice agencies operating under the jurisdiction of the cities and towns constitute the lowest levels of organization of the criminal justice system in the state. Local police agencies, municipal or district courts, and overnight holding jails constitute the major components of the system at these levels. The next level of organization of the criminal justice system operates within the context of county political administrations. Sheriffs' departments, superior

courts, county attorneys, county jails and houses of detention are the major components of the criminal justice system at this level. The criminal justice system operating at the state level consists of the state police, the Supreme Court, Attorney General's office, state penitentiary, and state industrial school while the fifth or federal level is represented by the federal marshal and his deputies, the Federal Bureau of Investigation, the United States Attorney's office, and the United States Federal District Court (State Comprehensive Plan, 1970).

a. The New Hampshire Law Enforcement Agencies

The Federal Bureau of Investigation has three resident agencies within the state located at Concord, Nashua and Portsmouth. Their function is to police federal statutes and assist state and local agencies on request. The United States Marshal's office, located at the Federal Building in Concord, consists of the United States Marshal, his chief deputy, and two other deputies. The primary function of the marshal's office is to work in conjunction with the United States Attorney and the Federal District Court. The state agencies consist of the state police, ten county sheriff's departments, thirteen municipal police agencies, and about 200 full-time and part-time town police departments.

The Division of State Police is under the Department of Safety and consists of a state headquarters and six troops distributed throughout the state. The state police is the single largest law enforcement agency in the state with over 170 personnel. It is a statutory police agency established in 1937. The upper echelon of the state police

comprised of a director with the rank of colonel, a deputy director with the rank of lieutenant colonel and two division majors. The incumbents of these positions are appointed by the Governor and Council and need not be selected from the ranks of agency personnel. The remaining police personnel are selected through state civil service exams beginning as "trooper trainees" with the possibility of advancing up the ranks to trooper, corporal, sergeant, lieutenant, and captain. It is also possible to advance from within the ranks to the position of major and even to the director's position. State police employees are ex-officio constables throughout the state, who patrol the highways and have general power to enforce all legal statutes and make arrests in all counties. The state police do not have jurisdiction to serve civil process or to exercise criminal jurisdiction within communities having a population exceeding 3,000 except when witnessing a crime, pursuing a law violator, or when requested by the local law enforcement agency, the attorney general's office, or the governor.

The county sheriffs are constitutional law enforcement officers who are elected for two-year terms in each of the state's ten counties. The sheriff appoints his deputies, who have the same powers and duties as the sheriff himself. The only prerequisite service for the sheriff and deputies is that they not be 70 years of age or older while occupying this position. The county sheriff's department works directly with the Superior Court and with the county attorney. The sheriff's duties, as set forth by statute, relate to criminal, civil, and executive jurisdictions. Within the criminal realm, the sheriff has powers to make arrests, is responsible for the care of prisoners in county jails, and for the collection of court fines and costs imposed.

His civil responsibilities require the serving of notice, levying property tax, and handling of delinquent cases. The sheriff's executive duties are to take charge of the Superior Court and to summon the jury. The sheriffs are the only state law enforcement agents who work on the fee-salary basis. In six of the ten counties the sheriff's department is paid set fees for serving writs, bills, making attachments, taking bail, levying executions, for appearances in court, and for travel in performing these functions (See Title VII, New Hampshire Statutes).

New Hampshire's thirteen cities, representing a little less than half the state's inhabitants, have approximately 550 full-time law enforcement personnel, with Manchester having the largest force (153) and Franklin (10) the smallest. Each of the thirteen cities has its own full-time police force whose duties and functions pertain to the apprehension of suspected criminals, juvenile problems, civil disputes, and traffic violations within their jurisdiction. In addition to the state statutes, each municipality has specific ordinances which pertain to the municipal area.

Less than a quarter of the state's 221 towns have full-time police departments while most of the remaining towns have part-time departments. The town police forces have no compulsory minimum standards, and often the pay is low. These conditions in many instances lead to the selection of grossly inadequate, poorly trained, and unqualified personnel. Those towns which have their own police force often leave police appointment to the selectmen. The town police have the same general power and authority within their respective jurisdiction as do the municipal forces. These duties pertain to criminal, juvenile,

civil, and traffic violations, plus additional duties specified by town ordinances (see Title VII, New Hampshire Statutes).

b. The New Hampshire Judiciary

There exists at the federal level a federal district court which encompasses the entire state in its jurisdiction. The first Circuit United States Court of Appeals shares Maine, Massachusetts, Rhode Island, Puerto Rico, and New Hampshire in its jurisdiction. Other federal agencies within the state whose functions are related directly to the federal courts are the United States Commissioner, the United States Attorney and the United States Probation Officer, all of which are located in the state capital (Abraham, 1968).

The New Hampshire state judicial system consists of four courts which deal with criminal cases: Supreme, Superior, District and Municipal courts. The judges for all state courts are appointed by the Governor and confirmed by the Executive Council for terms lasting until the judges' seventieth birthday. The Supreme and Superior courts are constitutional courts, while the lesser courts are statutory courts. The New Hampshire Supreme Court is the state's highest court and has final judgment in all questions of law within the state. This includes: civil, criminal, juvenile and probate matters; interpretation of the state constitution; and the admission, practice, and conduct of attorneys. The court serves primarily as an appellate court with final jurisdiction on questions of law and general superintendence of the lower courts. The court consists of five justices: a Chief Justice and four Associate Justices. The Superior Court is the state's trial court with functions at the county level. The Superior Court consists of ten judges, a Chief

Justice, and nine Associate Justices who each serve in one of the state's ten counties. The Superior Court sessions are continuous but usually convene twice annually. It is the only court empowered to hold jury trials and has appellate jurisdiction over district and municipal courts regarding all cases processed by these lower courts. Decisions of the Superior Court are final determinations and are not subject to further appeals except those concerning questions of constitutionality of the law (Judicial Council Report, 1970).

The District Court system was first established in New Hampshire in 1964 and will eventually replace the state's Municipal Court system. District Court personnel consist of attorney justice, special justice, and a court clerk. The justice can retain his private practice at the District Court level whereas Superior and Supreme Court justices' positions are full-time. The District Courts have original criminal jurisdiction, subject to appeal, of misdemeanor offenses within the district. These are offenses which are punishable by a fine not exceeding \$1,000, or imprisonment not exceeding one year, or both. The court also has jurisdiction of felonies regarding preliminary examinations and cases bound over for Superior Court sessions. The District and Municipal Courts also serve as the state's juvenile courts (Judicial Council Report, 1970).

The Municipal Court system consisted of 85 courts throughout the state prior to 1964, at which time 44 towns voted to retain this system when the option was presented to them in a referendum. These remaining Municipal Courts are to be eliminated with the retirement of the presiding Justice and absorbed into the District Court system. Currently there are fewer than thirty Municipal Courts remaining in the

state. The Municipal Court system does not require that the justice or special justice be an attorney. Hence, most Municipal Court judges are lay justices, some without any higher education beyond high school. These courts serve primarily as traffic courts but also have original jurisdiction over misdemeanors and juvenile offenses. Moreover, they have jurisdiction over felonies with authority to conduct preliminary examinations and to dismiss, bind over or hold respondents for the Superior Court. All Municipal Court decisions, like those of the District Courts, are subject to the right of appeal to the Superior Court and trial by jury. At the lowest level of the state judiciary is the office of the Justice of the Peace. While in some states this court officer still has criminal and civil powers, in New Hampshire the jurisdiction of the Justice of the Peace is restricted solely to the issuing of warrants concerning criminal cases. The prerequisite for the position of Justice of the Peace is similar to those of Municipal Court Justices; hence most Justices of the Peace in New Hampshire are lay personnel (Judicial Council Report, 1970).

The state's prosecution consists of the Attorney General's office and the County Attorneys. The Attorney General and the Deputy Attorney General are appointed by the Governor and Council. In addition, there are at least six assistants to the Attorney General who are appointed by him. The Attorney General is responsible for the prosecution of persons accused of type one crimes: those punishable by death, imprisonment for life, or for 25 years or more. The Attorney General is the chief law enforcement officer in the state. His office supervises criminal cases pending before the Supreme and Superior Courts of the state.

The County Attorneys are elected for two-year terms by each of the ten counties and function only part-time in this capacity, retaining their private practice while serving as County Attorney. The County Attorneys act under the direction of the Attorney General's office and are responsible for prosecuting felons and appealed misdemeanors before the state Superior Court. County Attorneys can assist in the prosecution of misdemeanor cases before the District and Municipal Courts upon request of the local jurisdiction.

The state's defender system is relatively new and provides for representation of defendants and appointment of counsel in cases where the defendant cannot afford to retain his own defense. Assigned counsel is provided, according to statute, for indigent defendants in criminal cases charged with felonies or misdemeanors other than petty offenses or juvenile charges.

c. The New Hampshire Correctional System

The state's correctional system consists of a prison, a juvenile reformatory, a parole and probation department, eleven county facilities, and municipal and town short-term holding jails.

The state penitentiary is the chief adult correctional institution for sentenced male felons. Female prisoners are sent to the Massachusetts Correctional Institution for Women at Framingham. The state prison has a relatively small population fluctuating between 200 and 300 inmates on any given day. There is ample room and work for these inmates under these conditions at the prison. Thirty-six guards,

sixteen overseers, four control room officers, and thirty-four officers and administrators manage the institution. Although recent federal funds have initiated the use of some treatment and rehabilitative programs, these programs do not involve or affect a large percentage of the inmates. In 1971, for the first time, the prison employed a full-time educator, but the effectiveness of this program has been greatly restricted primarily due to lack of adequate cooperation from the prison administrators. In addition to the state prison, the state hospital has facilities for prisoners in need of psychiatric treatment. These facilities also house defendants referred to the hospital for a determination of sanity, and prisoners and delinquents seeking mental treatment from the county facilities and the State Industrial School (see 1971, *New Hampshire, Prison Report*).

The Parole Department consists of a lay Board of Parole appointed by the Governor and Council, who also serve as the Board of Trustees of the state prison. The Parole Board has legal custody of all prisoners released upon parole until discharged upon reaching their maximum sentence or are remanded to prison. The state parole officer is appointed by, and is under the direction and control of, the Parole Board. Two assistant parole officers work with the parole officer in the supervision of some 200 parolees at any given time. Obviously, little time can be spent with the supervision and rehabilitation of the parolees; consequently, supervision is often left to the local police where the parolee resides. The parole problem is further compounded by the fact that most inmates are released early on parole. This stems from the Parole Board's policy of automatic release upon serving two-thirds of the minimum sentence, providing the inmate was not a

disciplinary problem, serving a life sentence, or sentenced to death. Life sentences and death penalties can be pardoned only by the Governor and when the pardon is conditional it most likely has conditions similar to those of parole.

The state has a Probation Board consisting of three members who are appointed by the Governor and Council for three-year terms. The Board oversees the performance and functioning of the Probation Department throughout the state which consists of ten district offices (one in each county) and a central office. The function of the Probation Department is the supervision of adult and juvenile offenders placed on probation by either the Municipal, District or Superior Courts. Theoretically, this supervision includes rehabilitation and treatment programs, but seldom is this the case, and often the supervision of probationers is left to the local police. This is because of the large case loads with which probation officers have to contend. In addition to the supervision of adult and juvenile offenders, the probation department acts as the central collection and dispersion agency for monies involving domestic relations such as child support and the like. In 1970 twenty-one regular probation officers handled 382 juvenile cases, 1,518 domestic relation cases, and for the same period the department collected \$3,754,000, most of it related to domestic relation cases (see 1971, New Hampshire Probation Report).

The state has one juvenile institution, the State Industrial School. The institution handles all youth adjudged delinquent and institutionalized by the Municipal, District or Superior Courts. In addition, juveniles in the state can also be incarcerated to the institution for 30 days while the Probation Department conduct

preliminary investigation prior to the official disposition. This arbitrary form of institutionalization is questionable especially in lieu of the 1967 Gault decision regarding the rights of juveniles to "due process" (Jacob, 1972). A separate building at the juvenile institution houses those youth incarcerated while awaiting the disposition of the court. Juveniles of either sex between the ages of seven and twenty-one, adjudged delinquent, can be sentenced to the State Industrial School for an indeterminate period not exceeding their majority (age twenty-one). Individuals age seventeen at time of arraignment are adjudicated as adults and subsequently processed through the criminal courts. However, if a juvenile reaches seventeen years of age while in the State Industrial School, he or she remains under the custody of the juvenile institution until reaching the age of his or her majority. Probation is used at the industrial school much the same way parole is used at the adult facilities.

The county correctional facilities consist of eleven separate facilities, one in each county with the exception of Hillsborough County which has a separate county jail in Manchester in addition to a county house of correction. The county farms in the remaining nine counties incorporate both the county jail and the county house of correction in the same facility. County jails are primarily used as holding jails for defendants not released on bail and awaiting arraignment before the Superior Court. The houses of correction, on the other hand, are used for convicted misdemeanors serving terms of a year or less. These county institutions are primarily custodial and leave a lot to be desired as far as correctional institutions are concerned. A recent study conducted by the Law Enforcement Assistance Administration, at

the request of the Governor's Commission on Crime and Delinquency, found basically that the county facilities are primarily custodial with virtually no rehabilitation, training, or treatment programs. Using the consultant's own words, "Correction of the offender cannot be accomplished by 'warehousing inmates,'" (see LEAA Report on County Jails and Houses of Correction, 1971). Municipal and local jails share the same shortcomings of the county facilities but differ in their basic function. These are short-time holding or in some cases overnight facilities used for serving sentences. If probable cause is found at the local court and the suspect is not released on bail, he is then transferred from the local jail to the county facility.

The interrelatedness of the three components of the New Hampshire Criminal Justice System at the five levels of operation is illustrated in the models provided on the following pages.

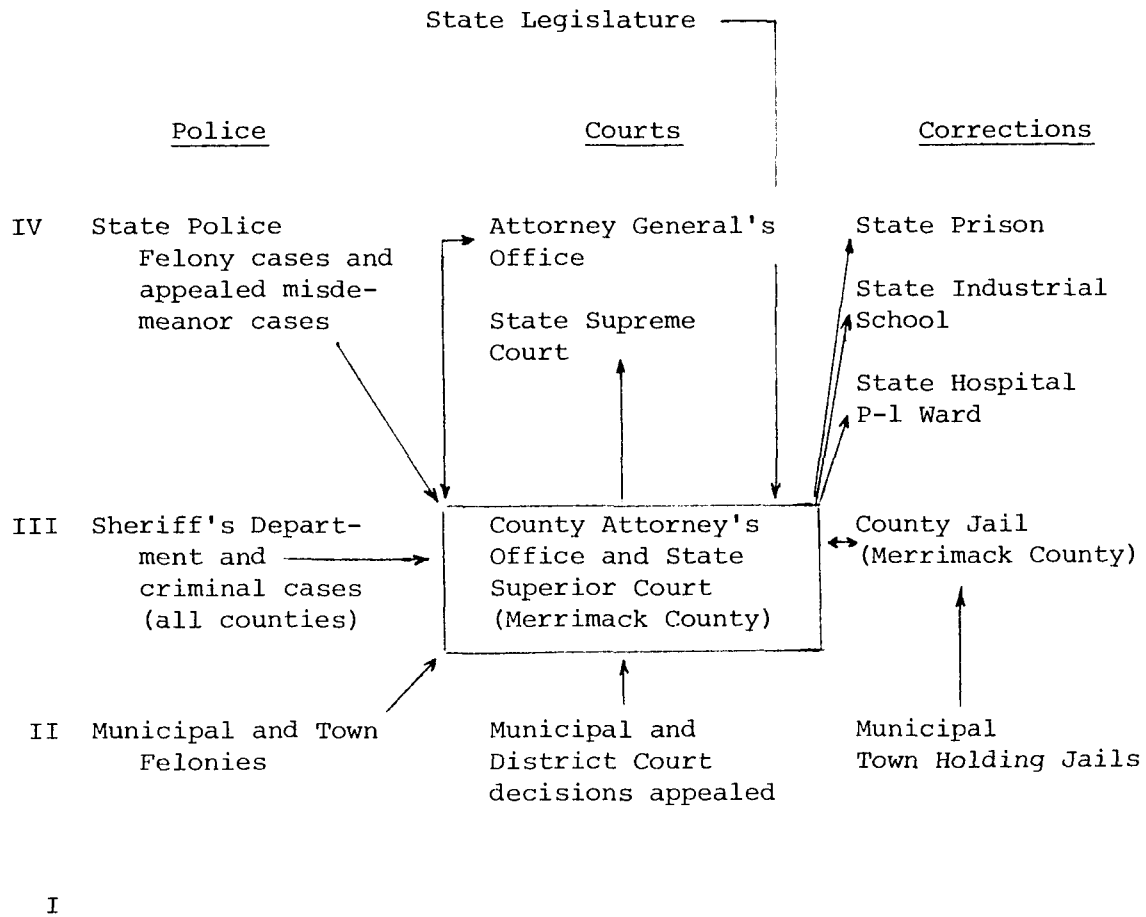
FIGURE 1. (Model 1)

STATE OF NEW HAMPSHIRE CRIMINAL JUSTICE SYSTEMCriminal Justice Agencies

<u>Level of Operation</u>	<u>Police</u>	<u>Courts</u>	<u>Corrections</u>
<u>Federal</u>	Local Federal Marshals:	District Federal Court:	
<u>State</u>	State Police:	Supreme Court Attorney General's Office:	State Industrial School: State Prison:
<u>County</u>	10 County Sheriff's Offices	Superior Court: 10 County Attorney's Offices:	11 County Jails/ Houses of Corrections
<u>City</u>	13 City Police Departments	District Court System:	Over Night Holding Jails:
<u>Towns</u>	Local Town Police Departments:	Municipal and District Court Systems:	Over Night Holding Jails:

FIGURE 2. (Model 2)

RELATIONSHIP OF THE STATE POLITICAL AND
CRIMINAL JUSTICE COMPONENTS REGARDING
THE PROCESSING OF FELONY CASES



CHAPTER VI

DISCUSSION OF THE NEW HAMPSHIRE CRIMINAL JUSTICE SYSTEM:

PART I - PROFILE OF THE TYPICAL OFFENDER

AND LAW ENFORCEMENT INPUT

Again, the central purpose of this study is to analyze relationships between the ideals of criminal justice as expressed in formal legal codes and the actual practices in criminal justice. Here selectivity refers to whether individuals are or are not processed through the various components of the criminal justice system according to the system's avowed ideals. The particular emphasis of this discussion focuses on the adjudication of criminal cases at the state trial court level while law enforcement and corrections are discussed in reference to their input and output functions in relation to that system.

A certain amount of cases would ordinarily be selected out due to the natural process of justice. Cases which do not result in a "true bill" and jury cases resulting in "acquittals" or "not guilty" determinations are examples of natural attrition. Natural attrition resulting from probable cause determinations is not accounted for by the two trial court samples since these data represent only those cases in which probable cause was found to exist. Accordingly, "not guilty" dispositions are mentioned in the disposition tables and are excluded from the composite tables since they reflect a legitimate form of selective attrition within our criminal justice process.

This chapter and the next analyze and discuss the functioning of the New Hampshire criminal justice system as it operates at the state trial court level. Figures 1 and 2 at the end of the preceding chapter graphically describe the overall state criminal justice system. Figure 1 shows the various levels at which the system operates while Figure 2 identifies the various inputs and outputs to the state trial court system. This chapter first discusses the profile of the typical New Hampshire offender. This profile includes type of offense (personal, property and non-victim), sex, education, and age of offender (see Tables I to IV). This information sets the stage for the analysis of the state system itself which includes law enforcement input, the functioning of the judiciary at the state trial court level, and correctional output. Law enforcement input is presented in this chapter while the judiciary and corrections are discussed in the following chapter. More specifically, Chapter VII discusses the availability of bail (Table VIII), an overview of the state trial court workload (Table IX), and the adjudication of criminal cases (Tables X to XII) as well as a comparison of confinement and non-confinement dispositions (Tables XIII to XV) and the nature of criminal cases referred to the state prison (Table XVI).

1. A Profile of the Typical New Hampshire Offender

It is generally held that for any research endeavor to fall within the realm of reliability it is important to first ascertain the nature and characteristics of the population under investigation. In this situation, that involves the characteristics of the criminal population processed through the New Hampshire trial court system. In this profile four tables on type of offense, sex, education and age of offenders are presented (Tables I to IV). This information is then discussed and compared with the larger, more general, national profile provided by the Uniform Crime Report (1970).

The data base for Tables I to IV represent a seventy-three percent sample of the total felony population processed through the state trial court during fiscal 1970. From this data it is clear that property offenses were the most common type of charge brought before the state trial court, with personal offenses representing a distant second and non-victim accounting for only seven percent of the sample. The misdemeanor category represents all three types of felony offenses. In essence, the average felon in the state of New Hampshire is a white male charged with a property offense who is in his late teens to middle twenties with less than a high school education. The offender with the highest education and youngest age is most likely a male, non-victim offender (78% of non-victim offenses are drug related).

The best source for a national comparison is the Federal Bureau of Investigation's, Crime in the United States: Uniform Crime Report-- 1970. The New Hampshire and FBI statistics differ somewhat in their

PROFILE OF FELON POPULATION: This profile of the felon population provides a general perspective by which Tables VII to VXI are to be compared.

TABLE I: Type of Offense:

1. Personal	20%
2. Property	56%
3. Non-Victim	07%
4. Misdemeanor	<u>17%</u>
Total	100%

TABLE II: Sex

1. Males	99.8%	(1109 cases)
2. Females	<u>00.2%</u>	(20 cases)
Total	100%	

TABLE III: Education by Offense:

Years of Schooling	6-8	9-10	11-12	Sample Size
1. Personal	49	63	60	172
2. Property	142	200	180	522
3. Non-Victim	09	15	31	55
4. Misdemeanor	26	50	70	146
Total	226	328	341	895

$$\chi^2 = 19.1581$$

$$p < .005$$

TABLE IV: AGE (By Percent)

	16-20	21-29	30+	Total
1. Personal	34%	39%	29%	100%
2. Property	49	32	19	100
3. Non-Victim	66	31	3	100
4. Misdemeanor	50	33	17	100

categorization but not so that a comparison cannot be made. The major difference pertains to the categorization of type of offenses. The FBI uses two major categories, "personal" and "property" offenses, while in this study two additional categories, "non-victim" and "misdemeanor," are covered as well. Because of these differences, the classification of offenses in the profile comparisons are restricted to personal and property offenses. The New Hampshire arrest sample consists of 20 percent personal and 56 percent property offenses while nationally 13 percent of the arrests were for personal offenses and 87 percent for property offenses (UCR, 1970). The major difference between the two profiles seems to focus about the commission of property offenses. However, if the misdemeanor category, consisting of 17 percent of the total arrest in the New Hampshire sample, were compiled with the property category, this new figure of 73 percent would closer approximate the national figure. The latter is probably more indicative of the true property arrest rate in that the vast majority of misdemeanor cases involve reduced charges, especially property offenses.

While the arrest profile, by type of offense, seems to correspond closely with the national figures, the sex and race distributions differ considerably. According to the Uniform Crime Report, the 1970 national average for the total arrest by sex was 85.6 percent males as against 14.4 percent females arrested for the commission of felony crimes (UCR, 1970). The state of New Hampshire's 1970 arrest profile, on the other hand, shows males constituting 99.8 percent of those arrested for felonies while only 0.2 percent arrested were females. A similar situation holds true regarding race and felony arrests. Nationally 69.9 percent of the felons arrested in 1970 were white;

27.0 percent were blacks; and 3.1 percent were of other racial stock (UCR, 1970). This indicated that blacks are arrested for felonies disproportionately to their representation in the general population (12 - 15 percent). Less than 01 percent of the 1970 New Hampshire sample were non-white. This incidentally, is because the state has a nearly negligible non-white population (less than 01 percent). The disproportionate sex ratio, however, is more difficult to explain (see Table II).

The next two categories to be compared are arrest by education and by age. The Uniform Crime Report does not provide statistical information on education by arrest; however, numerous criminological studies indicate that most arrested felons are from the lower social strata, which are characterized by low education levels, low occupational status, and poor community conditions (Sykes, 1967). Statistics were available regarding total arrest by age. The Uniform Crime Report shows that for violent crimes in 1970, 33 percent of those arrested were ages 16-20; 36 percent were ages 21-29, while 31 percent were age 30 or older (UCR, 1970). The New Hampshire sample corresponded closely to these figures deviating one to three percentage points (see Table IV). The national age profile for property offenses were 53 percent for ages 16-20, 28 percent for ages 21-29, and 19 percent for those 30 or older. Again, the New Hampshire figures corresponded closely. In two age categories, the variance was by four percent while the third category corresponded exactly.

This profile of the typical arrested felon represents a broad overview of the nature of offenders arrested, adjudicated and incarcerated in New Hampshire. It should, therefore, complement the other

state data sources presented in the context of this chapter and the next (Tables VII to XVI).

2. Law Enforcement Input

What is the role of law enforcement? Seemingly, it is to enforce criminal statutes, especially those constituting serious wrongs against the state. More generally, they are to protect society from wrongdoers. The specific theme explored regarding law enforcement is: to what extent do the state and local police pursue serious criminal violators, and is this proportional to the seriousness of offense? The police are unique in that they are the only civilian social control agency licensed to bear and use arms in the pursuit of their social mandate. Endowed with this serious public responsibility how are members of the criminal justice apparatus, especially the police, aware of which offenses are more serious and which are less serious? The seriousness of offense, of course, involves cultural values and sentiments, especially those views representing the social control apparatus. At the time of this study a search of the literature disclosed that violent or personal crimes are deemed the most serious in our society. This is followed by property offenses which constitute great monetary losses to the victims. The Federal Bureau of Investigation's Uniform Crime Report lists seven serious crimes categorized into "crimes against the person" and "crimes against property" in its crime index. Although twenty-nine offenses are covered in the report overall, these seven crimes represent the most common local crime problem. According to the report they are all serious crimes, either by their very nature or due to the volume with which they occur (UCR, 1970:5). Four of these seven crimes are the most serious: murder, forcible rape, robbery,

and aggravated assault. These constitute what the FBI term "violent" crimes.

TABLE V: UNIFORM CRIME REPORT - CRIME INDEX

I. "AGAINST THE PERSON"	II. "AGAINST PROPERTY"
*Murder	Burglary
*Forcible rape	Larceny, grand
*Aggravated assault	Auto theft
*Robbery	

*These offenses also constitute "violent crimes."

Theorsten Sellin and Marvin Wolfgang (1964) also provide a classification of offenses based upon the extent and seriousness of victimization. In this classification eleven crimes are ranked according to their degree of seriousness.

Again personal offenses are considered to be the most serious. A major difference, however, between the "crime index" and Sellin and Wolfgang's classification is the neglect of property offenses in the latter (with the exception of embezzlement) and the avoidance of moralistic or victimless offenses in the former. For the sake of this study felony crimes will include all three categories: personal, property and non-victim. Marshall B. Clinard (1974) offers a more comprehensive classification: violent personal; occasional property; political; occupational; corporate; conventional; organized; and professional offenses. This classification, while presenting a more thorough categorization of criminal offenses, is actually too

encompassing for this study. Nearly all the offenses represented in the state trial court sample fall into the three categories employed.

TABLE VI: CRIMINALITY BASED ON SERIOUSNESS OF VICTIMIZATION

"Most Serious"	1. Murder
	2. Forcible rape
	3. Armed robbery
	4. Embezzlement
	5. Prostitution
	6. Homosexuality
	7. Nudists (indecent exposure)
	8. Heroin users
	9. Drunkenness offenses
	10. Organized crimes (illicit gambling)
"Least Serious"	11. Juvenile delinquency (truancy)

It would seem safe then to rank crimes against the person as constituting the most serious wrong against our society followed by property offenses and then non-victim offenses. We now have a guide in which to answer the rhetorical question: to what extent does the New Hampshire law enforcement pursue serious criminal violators?

Law enforcement provides an input function to the adversary trial court system since for all practical purposes their professional function ends with arrest. Police clearance rates, by which they are

professionally evaluated, consists of the number of offenses reported, as against the number cleared by arrest. The higher the clearance rate, the higher is the police's proficiency rating. In discussing the role of the New Hampshire police one major source is used, the State Police Annual Report - 1970. This report is the sole comprehensive source of statewide law enforcement data. Seventy percent of the data is received from other police agencies: local, municipal, county and federal (see Figure 1, Chapter V). The remaining thirty percent are the product of state police investigations although these investigations themselves may have originated elsewhere. According to the State Police Report, 1,848 criminal cases were investigated and reported throughout the state during 1970. Of these, 1,469 were cleared by arrest giving the state law enforcement agencies an 80 percent clearance rate for these particular cases.

The State Police Report itemizes the criminal cases by offense accounting for the total (1,848) misdemeanor and felony charges. The major discrepancy in the report concerns drug offenses. The report mentions that during the 1970 period it received a total of 1,181 drug related cases which contradicts the itemized listing of the reported charges presented only a few pages earlier in the same report. The reported criminal offense record shows only 89 drug related cases. If these other drug related cases were mostly investigative inquiries not resulting in formal charges, then this would alter considerably the overall "clearance rate" for the state law enforcement agencies. Another related matter concerning reported and recorded criminal offenses is to what extent do local, municipal, county and federal law enforcement agencies cooperate with the state police in the maintenance of the

comprehensive statewide criminal file? Information on accuracy of reporting are not known or available for the state; however, some inquiries have been made into the FBI's success in soliciting data from state and local agencies for their Uniform Crime Report.

It is also important to note that criminal investigation usually accounts for a minimum of the various law enforcement agencies budget, time and manpower. The state police allocates only twenty percent of its time to criminal investigation while the majority of the time is spent policing the state highways. In 1970 the traffic operation resulted in 18,812 traffic court cases and the investigation of 2,708 auto accidents in which 196 deaths occurred. Similarly, the sheriffs' departments are preoccupied with civil cases while municipal and local police serve a multitude of functions in their communities, ranging from fire watch and information guide, to the investigation of traffic and civil matters as well as curtailing crime.

Table VII, "Criminal Cases Reported," list both the most serious and most numerous offenses presented in the State Police Report. These offenses are classified by type of offense (personal, property, non-victim and misdemeanor) as are the superior court tables in the following Chapter (Tables IX to XV). Table VII accounts for 1,388 or 75 percent of the total (1,848) cases reported in the State Police Report. The most prevalent crime was "burglary," a property offense, accounting for 480 cases. This was followed by a non-victim misdemeanor offense, "illegal possession of alcohol," with 265 cases. The only other cases numbering over a hundred were "grand larceny" with 116 cases and "petty larceny" with 105 cases. "Narcotic" cases numbered 89 while the most common personal offense was "aggravated assault" with

TABLE VII: CRIMINAL CASES REPORTED: Data from the State Police statewide comprehensive crime report - 1970

I. PERSONAL	NO.	III. NON-VICTIM	NO.
Murder**	7	Lewd & lascivious behavior	8
Manslaughter	3	Indecent exposure*	2
Kidnapping	3	Narcotics	89
Forcible rape**	3	Prison escape	2
Statutory rape*	5	Fugitive*	17
Attempted rape	2		
Aggravated assault**	20		
Robbery**	<u>3</u>		<u> </u>
	46		118
II. PROPERTY	NO.	IV. MISDEMEANOR	NO.
Larceny, grand**	116	Larceny, petty	105
Burglary**	480	Malicious destruction of property	84
Auto larceny**	25	Simple assault*	43
False pretense	19	Drunk*	80
Arson*	7	Illegal possession of alcohol	265
	<u> </u>		<u> </u>
	647		577

*Offenses not presented in the statewide superior court sample.

**Crimes included in the FBI "Crime Index."

20 cases. Overall property offenses were the most prevalent with 647 cases followed by misdemeanor offenses (577), non-victim offenses (118), and personal offenses with the fewest cases (46). The "crime index" offenses (murder, rape, aggravated assault, robbery, burglary, grand larceny and auto theft) accounted for 81 percent of the felony offenses in the table.

Although some questions are raised concerning the nature of drug offenses, the New Hampshire police, in general, seem to perform their role adequately conforming closely to both the state criminal profile and the FBI's crime index.

In answering the question, to what extent does the New Hampshire law enforcement protect the public from serious offenders through arrest, the data seems to suggest that the state's police forces comply adequately with their entrusted mandate. In the statewide, state police report 55 percent of the cleared offenses were of the felony type. Of the felony offenses 81 percent of these were "serious" crimes (UCR, 1970). These statistics become more significant when it is realized that the state's law enforcement agencies allocate only a small portion of their time, energy, manpower and budget to criminal investigations.

CHAPTER VII

DISCUSSION OF THE NEW HAMPSHIRE CRIMINAL JUSTICE SYSTEM:

PART II - JUDICIARY AND CORRECTIONS

This chapter continues the investigative inquiry into the functioning of the New Hampshire criminal justice system. Presented in this chapter are the discussions of the judiciary and corrections, especially as they relate to the state trial court. The broad themes explored regarding the judiciary are: How effective is the judiciary in the adjudication of defendants referred to it from the police and from grand juries? Related to this are the issues of bail, the prevalence of jury trials, quality of defense and the degree of collusion between prosecution, defense and bench. For the correctional component the basic questions raised are: How consistent are dispositions handed down from the trial court in comparison to the nature of seriousness of offense? Various data sources are examined in the context of this chapter in an attempt to provide at least partial answers to these questions. The major data sources consist of a thirty-five percent random sample of all the cases processed through the New Hampshire state trial (superior) court for 1970. Another complimentary data source is a comprehensive analysis of the entire felony population processed through the fall session of the state trial court for Merrimack County.

1. The Judiciary

The state trial court judiciary involves for the prosecution the attorney general's office and ten county attorney's offices. The ten state superior court justices each sit on one of the ten county benches where the superior court convenes, usually twice yearly, at which time it hears both civil and criminal cases. Public defense for nine of the state's ten counties consist of the appointed attorney system whereby indigent defendants are appointed an attorney from a pool of trial lawyers working within the respective county jurisdictions. One county, Merrimack, has one public defender to handle all indigent cases (see Chapter V). Grand and petit juries are selected for each county each time the superior court convenes in each particular county. At any given time the state trial court convenes at a regular session there are ten grand juries working with the county prosecutors and ten petit juries--one for each superior court justice at each county bench. The criminal docket for the state trial court usually consists of original felony charges as well as misdemeanor cases appealed from the state's inferior courts (municipal and district courts). It is not unusual for many of the original felony charges to be reduced to misdemeanors during plea bargaining sessions between the defense and prosecution prior to formal arraignment. Negotiated pleas probably account for most of the misdemeanor charges adjudicated through the state trial court. This brief description of the New Hampshire judiciary sets the stage for the discussions to follow.

While certain selection processes may serve to facilitate the criminal justice process, others impede it. It is the latter with which we are most concerned in this study. However, selection processes which may facilitate our criminal justice ideals are those that, while providing short cuts to the lengthy and expensive trial court system, do not, at the same time, obstruct the basic tenet of justice--the assumption of innocence until proven guilty. Properly supervised probable cause hearings, whether at the inferior court level or conducted by the grand jury, provide a form of legitimate selection which aids the criminal justice system by reducing the number of cases brought before the trial court bench. Similarly, prosecutor's discretion, again, if applied with foresight and objectivity, may benefit the "ideals" of justice, particularly that of "speedy" justice. And lastly, guilty pleas at arraignment, or bench trials, again help reduce the trial court docket. But as in the other examples cited, this process should follow other judicial safeguards for it to become a positive factor in aiding our overburdened courts. The Task Force Report (the Courts, 1967) drew a similar conclusion when they stated that plea bargaining and bench trials in themselves do not pose such an obstruction to ideal justice as much as the facade of denying they occur does. By refusing to admit that bargain justice occurs, not only is the myth that ideal justice is being implemented perpetuated, but the system also creates a system whereby corruption, such as collusion, becomes possible and is allowed to go unchecked. The Task Force Report realized that bargain justice is a reality within our current criminal justice system and they recommended that it be brought to light and modified so that there can be safeguards against the types of corruption

now possible in the system. If this is done, then processes such as these will be assets, not liabilities, to our judicial ideals and the operating system.

At the time of this research there were no such checks and balances on selection processes such as prosecutor's discretion, grand jury bill selections or bench trials, signifying that self-interest factors as well as objective, judicial considerations could have played a role in these decisions.

Selective bail, however, is another issue altogether. Most studies, including the Task Force Report (the Courts, 1967), conclude that discriminatory selection plays a major role in bail consideration. One exception to this would be the detainment of a serious felon who has pretty much indicated that, if allowed free on bail he would continue to jeopardize the lives and well being of other members of society. With this exception, bail as it is distributed within the various jurisdictions comprising the overall criminal justice system in this country, seems to have failed its original ideal role--that of guaranteeing the defendants appearance at subsequent processes within the adjudication process.

We now turn to the thirty-five percent statewide superior court data sample to ascertain to what extent the ideal judicial guidelines are or are not pursued. The availability of bail, nature of judicial processing and consistency of judgment are examined in the context of these data.

a. The Availability of Bail by Type of Offense

Bail is one of the important constitutional guarantees provided the defendant in his contest before the adversary court system (see Chapter IV). Bail is a crucial issue since it is closely linked to the major premise that the defendant's innocence is assumed until guilt can be proven beyond a reasonable doubt. Bail often means the difference between defendants' being free to prepare their cases or their being incarcerated awaiting arraignment. It is not unusual to have defendants incarcerated for excessive periods of time, sometimes exceeding a year, prior to their arraignment (Task Force Report: Courts, 1967). Bail can also be used in the period between conviction and appeal. In either case bail can constitute one of two types of release: money bail or personal recognizance (see Chapter V). Personal recognizance means giving one's word that he or she will appear for arraignment or appeal hearing, whichever is relevant to their situation. Money bail can be abused through the administering of excessively high bails and through no bail. Personal recognizance also can be abused by failure to appear. The 1964 National Conference on Bail and Criminal Justice concluded that the present bail system is both wasteful and unfair (Task Force Report: Courts, 1967). The only legal and constitutional use of bail, according to our judicial ideals, is to guarantee the appearance of the defendant at the prescribed court hearing. It is not to be used as a vehicle of discrimination or as punishment (see Chapter V).

How does the New Hampshire trial court system fare regarding the bail issue? Table VIII examines the awarding of money bail to defendants awaiting arraignment by type of offense. Unfortunately, information on

TABLE VIII: AVAILABILITY OF BAIL: STATEWIDE SAMPLE COMPOSITE TABLE

OFFENSE	BAIL AWARDED	BAIL AWARDED BUT NOT MET	BAIL NOT AWARDED	SAMPLE SIZE
PERSONAL	23 (41%)	18 (32%)	15 (27%)	56 (100%)
PROPERTY	42 (48%)	40 (46%)	5 (06%)	87 (100%)
NON-VICTIM	11 (52%)	8 (38%)	2 (10%)	21 (100%)
MISDEMEANOR	15 (65%)	6 (26%)	2 (09%)	23 (100%)
TOTAL	91 (49%)	72 (39%)	24 (12%)	187 (100%)

Percentages calculated by rows

$$X^2 = 17.1771$$

$$P < .01$$

$$C = 0.2900$$

the nature and extent of the use of personal recognizance as a form of bail was not available in the samples used in this research endeavor. The three bail options represented in the data are: "bail awarded," "bail awarded, but not met," and "bail not awarded." Those defendants released without having to post bond most likely constitute the ones released on their own word, an informal method of issuing personal recognizance bail (see Appendix I).

The bail data from the statewide superior court sample differs by seriousness of offense. This difference continues to be substantiated even when misdemeanor offenses are included within their respective categories by type of offense (8 property cases, 13 non-victim and no personal offenses). Of the total sample nearly half (49 percent) had bail awarded and met while for 12 percent, bail was not awarded. Personal offenses had the largest percentage of its cases resulting in "bail not awarded" (27 percent) followed by non-victim offenses (10 percent) and misdemeanor and property offenses with 9 and 6 percent respectively. On the other hand, misdemeanor offenses had the highest proportion of its cases resulting in available bail (65 percent) followed by non-victim offenses (52 percent), property offenses (48 percent), and personal offenses (41 percent). For the felony offenses (misdemeanors omitted) personal offenses had the lowest percentage of both "bail awarded" (41 percent) and "bail awarded but not met" (32 percent) while at the same time having the highest percentage of "bail not awarded" (27 percent). Non-victim offenses had the highest proportion (52 percent) of "bail awarded" and the lowest proportion (38 percent) of its cases "bail awarded but not met." Lastly, property offenses had the highest amount of its cases resulting in excessive

bail, "bail awarded but not met," (46 percent) while having the lowest amount of its cases in the "bail not awarded" category (06 percent).

To fairly evaluate the availability of bail within the state-wide sample two factors should be considered. First, how well does the state's bail system facilitate the judicial ideal that bail be used merely to guarantee the defendants appearance in court? And secondly, if a discernible pattern exists regarding the availability of bail, does this pattern follow some logical rationale for discriminatory bail?

The answer to the first question is that, overall, the New Hampshire judicial system does seem to deviate from the ideal, constitutional use of bail--to merely guarantee the defendants appearance in court. However, when exploring the second question regarding patterns of bail use, additional insight is provided as to why discriminatory bail exists. Social class comparisons involving availability of bail are not possible since information on the socio-economic status of the defendants was not included in the superior court records. Information was available regarding "seriousness of offense" and the availability of bail. In fact, when these comparisons are made we better understand the practical basis for selective bail aside from its ideal judicial use. The data indicates that those defendants charged with offenses perceived by society as constituting serious transgressions (personal crimes) were more likely not to be released on bail. Correspondingly, those defendants charged with less serious offense (misdemeanor and non-victim) were more likely to have reasonable bail set. While the letter of the law concerning the ideal use of bail is not implemented either in New Hampshire or in most state

and federal jurisdictions throughout the nation, New Hampshire does seem to follow some logical rationale for the selective use of bail.

Restrictive bail, that is either excessive bail or detainment without bond, is used more closely with serious offenders than with other offenders. In fact, an inverse relationship exists in this study between seriousness of offense and availability of reasonable bail. While this process violates the ideal use of bail it does provide some insight as to the patterns of and rationale for the use of restrictive bail. These reasons seem to be to protect society and not so much due to political and/or self interest on the part of the judge. (See Chapter VII).

b. The Adjudication of Criminal Cases by Type of Offense

Bail is an important issue in the adversary trial court system since related to it are other important rights, especially that against self-incrimination and the right to an adequately prepared defense. In addition, the stigma of incarceration in lieu of bail makes the likelihood of an impartial trial more remote than if the defendant were not so labeled. Other aspects of the adversary system are now explored in relation to the actual adjudication process. Are the ideal judicial guidelines consistently applied in the adjudication process at the state trial court, and if not, what selective trends, if any, occur? The Task Force Report noted that ideal/actual discrepancies occur in our criminal justice system throughout the United States, especially regarding plea bargaining, nol processed or dismissed charges, and the need for more and better trained defense attorneys. All these adjudication problems are related to the larger problem of the need for

"mass justice" in our society. The Task Force Report explained the negotiated plea as such:

Few practices in the system of criminal justice creates a greater sense of unease and suspicion than the negotiated plea of guilty. The correctional needs of the offender and legislative policies reflected in the criminal law appear to be sacrificed to the need for tactical accommodations between the prosecutor and defense counsel. The offense for which guilt is acknowledged and for which the sentence is imposed often appears almost incidental to keeping the business of the courts moving. (Task Force Report: The Courts, 1967:9).

The Report stressed the tripartite involvement of the judge, prosecutor and defense: "Although the participants and frequently the judge know that negotiation has taken place, the prosecutor and defendant must ordinarily go through a court room ritual in which they deny that the guilty plea is the result of any threat or promise: (Task Force Report: The Courts, 1967:12).

The Task Force Report also warned that the lack of judicial review associated with the plea bargaining process results in no checks on the amount of pressure put on the defendant to plea guilty as well as denying the defendant his constitutional right to put the prosecution to its proof. In other words, the Task Force Report strongly indicated that the negotiated plea contradicts the basic judicial ideals upon which our criminal justice system is based.

The same arguments presented against plea bargaining apparently hold true for non-trial dispositions or those cases otherwise disposed by the prosecutor prior to arraignment. The Task Force Report vividly stated the social significance of this misjustice:

A major difficulty in the present system of non-trial dispositions is that when an offender is dropped out of the criminal process by dismissal of charges, he usually does not receive the help or treatment needed to prevent recurrence. A first offender discharged without prosecution in the expectation that his conduct will not be repeated

typically is not sent to another agency; in fact, in most communities there are few agencies designed to deal with his problems. Whether mental illness, youth, or alcoholism is the mitigating factor, there rarely is any followup. In the struggle to reduce the number of cases that compete for attention, there is little time to consider the needs of those who are dropped out of the process (Task Force Report: The Courts, 1967:6).

In addition, the Report noted that often cases are prosecuted that should not be while, at the same time, offenders in need of treatment, supervision or discipline are set free without being referred to appropriate community agencies or followed up in any way (Task Force Report: The Court, 1967:7).

As previously mentioned this study uses two data sources, both stemming from the same population--that of the 1970 New Hampshire trial court cases. The following descriptive profile of the state's adjudication process is offered to better inform the reader of judicial trends within the state trial court system.

Four of the state's ten counties account for seventy percent of the state population. These counties provide a general overview of the state trial court workload. This profile should provide some background material regarding the overall functioning of the state superior court from which the subsequent data tables emerge. The Judicial Council Report presents the 1970 Superior Court for the county sample (see Table IX). These data provide comprehensive statistics regarding the attrition of cases processed through the superior court in seven general categories: indictments; appeals from lower courts; jury trials; cases heard by court, jury waived; guilty or nolo pleas; nol processed; and otherwise disposed. Table IX presents both the number of cases and the proportion of each disposition for each of the four most congested counties in the state.

TABLE IX: SUPERIOR COURT STATISTICS FOR CRIMINAL CASES

County Sample, By Number and Percent*

DISPOSITION	**COUNTY				Total
	Hillsborough	Merrimack	Rockingham	Strafford	
1. Indictments	790 (70%)	85 (07%)	164 (14%)	93 (09%)	1,137
2. Appeals from Lower Courts	283 (30%)	110 (12%)	297 (32%)	253 (26%)	943
3. Jury Trial	72 (51%)	4 (03%)	46 (33%)	18 (13%)	140
4. Case Heard by Court, Jury Waived	68 (64%)	2 (02%)	34 (31%)	3 (03%)	107
5. Guilty or Nolo Plea	527 (49%)	121 (11%)	263 (25%)	163 (15%)	1,074
6. Nol Processed	74 (22%)	104 (31%)	76 (23%)	77 (24%)	331
7. Otherwise Disposed	108 (43%)	51 (20%)	54 (21%)	41 (16%)	254
GRAND TOTAL	1,922	477	934	653	3,986
County Population	220,000 (30.3%)	75,000 (10.3%)	140,000 (19.3%)	70,000 (09.6%)	

*Percents are calculated by row sample size.

**These represent the most populated of the State's ten counties.

The four county sample comprises seventy percent of the 726,000 state population with Hillsborough representing thirty percent, Rockingham twenty percent, and Merrimack and Strafford both ten percent. The superior court statistics reveal that the two most populated counties, Hillsborough and Rockingham, accounted for the greatest number of "indictment," "jury trials," "cases heard by the court with jury waives," "guilty or nolo pleas," and in the "otherwise disposed" category. It is interesting to note that in the remaining two categories the statistics are not proportionate to the county population or to the number of criminal cases as were the other four categories. Regarding "appeals from lower courts" Rockingham had the highest proportion in the sample followed by Hillsborough and Strafford counties with only slightly smaller proportions. Merrimack followed a distant fourth with only 12 percent of the sample. In the "not processed" category, Merrimack County had a disproportionately larger percentage of these cases with 31 percent of the sample, while Strafford, Rockingham and Hillsborough followed in succession with the remaining 69 percent. These statistics seem not only to substantiate the contention that there exists a selective process restricting the ideal functioning of the criminal justice system but also points out that this process varies among the criminal justice sub-systems.

The statewide sample represents a 35 percent random selection of the total population while the Merrimack data represents the total number of cases processed through the fall docket of that county's superior court session. Comparisons between the two samples are made where applicable. Some data which were available for the statewide sample (bail) were not available for the Merrimack data; and in

contrast, bargain justice was available for the Merrimack sample and not for the statewide sample. While the statewide sample is representative of the state in general, Merrimack is but one of ten counties within New Hampshire. It is the third most populated county in the state and houses the state capital, Concord, within its boundaries. Concord, the largest community in the county has a more homogeneous and stable population than does many of her sister cities, especially those located in the most populated counties--Hillsborough and Rockingham. Accordingly, Merrimack has a lower crime rate than these other two counties (see Table IX). According to Table IX, a comparison of the superior court criminal trial court docket for the four most populated counties in the state, Merrimack has the fewest "indictments," "inferior court appeals," and "jury trials," while having the highest number of cases "not processed." In other words, Merrimack County does not have the overburdened court load that Hillsborough, Rockingham and Strafford counties have. In support of this, Table IX indicates that Strafford County, the least populous of the four most populated counties in the state, had more indictments, lower court appeals and jury trials than did Merrimack County.

Comparisons are made, however, between the statewide and Merrimack samples to ascertain how much the adjudication processes of each correspond or differ from the others. This is done by broad category or adjudication (non-judicial; non-confinement; confinement) and by type of offense (see Tables XIV, XV, and XVIII). The comparisons are made in this fashion to see if any selection patterns occur across both samples according to the severity of offense (personal, property and non-victim). This, in turn, will provide insight into the nature

of selection in regards to its ultimate benefit or hindrance to the adjudication process.

Within both samples, the adjudication process involves three stages (non-judicial, non-confinement and confinement dispositions) which are compared by type of offense (see Appendix II). The adjudication categories for the statewide sample consist of non-judicial dispositions, constituting "not-processed" and "dismissed" cases, those usually determined by the prosecutor prior to arraignment, which is followed by non-confinement dispositions. These include "fines," "suspended sentences," "suspended sentence and probation" and "probation." No statewide records are available indicating the number of jury trials versus the frequency of guilty pleas at arraignment. In this regard non-confinement dispositions help provide a profile of the consistency of justice in relation to the severity of offense (type of offense). This can be used as an indirect indicator of the fairness of the state trial court. Similarly, the third and last category consists of "confinement" dispositions. Again, the seriousness of offense is of considerable importance in determining the rationale and consistency for the court's judgments. Another data source, the October 1970 session of the Merrimack Superior Court, analyzes the entire fall session, felony population (99 cases) processed through the county bench of the state trial court. Much like the statewide superior court sample the cases are categorized into three groups: "non-judicial," "non-confinement" and "confinement" dispositions. However, these data provide a more detailed description of the judicial process of the state trial court. The first category, "non-judicial" dispositions, consists of not processed, indictment waived, and no true bill dispositions; while the

TABLE X A: DISPOSITION TABLE FOR STATEWIDE SAMPLE

CHARGE :	DISPOSITIONS :					
	OFFENSE	NOL PROCESS	DIS- MISSED	NOT GUILTY	FINED	SUSPENDED SENTENCE
PERSONAL	10 (16%)	10 (16%)	3 (5%)	2 (3%)	5 (8%)	0 (00)
PROPERTY	26 (29%)	6 (7%)	1 (1%)	4 (4%)	2 (2%)	1 (1%)
NON-VICTIM	2 (8%)	3 (13%)	0 (00)	2 (8%)	0 (00)	0 (00)
MISDEMEANOR	6 (27%)	5 (23%)	0 (00)	6 (27%)	1 (5%)	0 (00)
GRAND TOTAL	44 (22%)	24 (12%)	4 (2%)	14 (7%)	8 (4%)	1 (1%)

Percentages calculated by rows

TABLE X B: DISPOSITION TABLE FOR STATEWIDE SAMPLE (CONT.)

CHARGE:		DISPOSITIONS:							
OFFENSE	PROBATION	HOUSE OF CORRECTION	1-4	STATE PRISON*			life	N	
				5-9	10-14	15+			
PERSONAL	0 (00)	5 (8%)	16 (26%)	4 (6%)	4 (6%)	2 (3%)	1 (2%)	62 (100%)	
PROPERTY	7 (8%)	13 (14%)	15 (16%)	15 (16%)	1 (1%)	0 (00)	0 (00)	91 (100%)	
NON-VICTIM	1 (4%)	5 (21%)	10 (42%)	1 (4%)	0 (00)	0 (00)	0 (00)	24 (100%)	
MISDEMEANOR	0 (00)	3 (14%)	1 (5%)	0 (00)	0 (00)	0 (00)	0 (00)	22 (100%)	
GRAND TOTAL	8 (4%)	26 (13%)	42 (21%)	20 (9%)	5 (3%)	2 (1%)	1 (1%)	199 (100%)	

Percentages calculated by rows

*By years of sentence

TABLE XI A: DISPOSITION TABLE FOR MERRIMACK SAMPLE

CHARGE:		DISPOSITIONS:			
OFFENSE	NOL PROCESS	INDICTMENT WAIVERED	NO TRUE BILL	BARGAIN PLEA*	NOT GUILTY BY INSANITY
PERSONAL	2 (13%)	0 (00)	3 (18%)	7 (44%)	1 (6%)
PROPERTY	11 (15%)	4 (6%)	5 (7%)	45 (64%)	2 (3%)
NON-VICTIM	1 (8%)	0 (00)	0 (00)	10 (77%)	0 (00)
GRAND TOTAL	14 (14%)	4 (4%)	8 (8%)	62 (63%)	3 (3%)

Percentages calculated by rows

*Cases involving pre-arraignment prosecutor's discretion.

TABLE XI B: DISPOSITION TABLE FOR MERRIMACK SAMPLE (CONT.)

CHARGE:		DISPOSITIONS:						
OFFENSE	NOT GUILTY	SUSPENDED SENTENCE	PRO- BATION	HOUSE OF CORREC- TION	STATE PRISON*			N
					1-3	3-5	5+	
PERSONAL	0 (00)	0 (00)	2 (13%)	2 (13%)	3 (18%)	1 (6%)	2 (13%)	16 (100%)
PROPERTY	1 (1%)	2 (3%)	32 (46%)	6 (9%)	5 (7%)	2 (3%)	0 (00)	70 (100%)
NON- VICTIM	1 (8%)	1 (8%)	5 (38%)	5 (38%)	0 (00)	0 (00)	0 (00)	13 (100%)
GRAND TOTAL	2 (2%)	3 (3%)	39 (40%)	13 (13%)	8 (8%)	3 (3%)	2 (2%)	99 (100%)

Percentages calculated by rows

*By years of sentence

TABLE XII: FELONY COMPARISON FOR STATEWIDE SAMPLE

TYPE OF OFFENSE	NATURE OF DISPOSITION			N
	NON-JUDICIAL	*NON-CONFINEMENT	CONFINEMENT	
PERSONAL	20 (34%)	7 (12%)	32 (54%)	59 (100%)
PROPERTY	32 (36%)	14 (15%)	44 (49%)	90 (100%)
NON-VICTIM	5 (21%)	3 (12%)	16 (67%)	24 (100%)
GRAND TOTAL	57 (33%)	24 (14%)	92 (53%)	173 (100%)

Percentages calculated by rows

*"Not guilty" dispositions not included in non-confinement calculation.

$$\chi^2 = 2.805$$

No significant difference

TABLE XIII: FELONY COMPARISON FOR MERRIMACK SAMPLE

TYPE OF OFFENSE	NATURE OF DISPOSITION			
	NON-JUDICIAL	*NON-CONFINEMENT	CONFINEMENT	N
PERSONAL	5 (31%)	3 (19%)	8 (50%)	16 (100%)
PROPERTY	20 (29%)	36 (52%)	13 (19%)	69 (100%)
NON-VICTIM	1 (08%)	6 (50%)	5 (42%)	12 (100%)
GRAND TOTAL	26 (27%)	45 (46%)	26 (27%)	97 (100%)

Percentages calculated by rows

*"Not guilty" dispositions not included in non-confinement calculation.

$$X^2 = 10.757$$

$$P < .05$$

TABLE XIV: SAMPLE COMPARISON TABLE: PERSONAL OFFENSES

NATURE OF DISPOSITION	SAMPLE		
	STATEWIDE	MERRIMACK	N
NON-JUDICIAL	20 (34%)	5 (31%)	25
NON-CONFINEMENT	7 (12%)	3 (19%)	10
CONFINEMENT	32 (54%)	8 (50%)	40
GRAND TOTAL	59	16	75

Percentages calculated by columns

$$\chi^2 = 0.521$$

No significant differences

TABLE XV: SAMPLE COMPARISON TABLE: PROPERTY OFFENSES

NATURE OF DISPOSITION	SAMPLE		
	STATEWIDE	MERRIMACK	N
NON-JUDICIAL	32 (36%)	20 (29%)	52
NON-CONFINEMENT	14 (16%)	36 (52%)	50
CONFINEMENT	44 (48%)	13 (19%)	57
GRAND TOTAL	90	69	159

Percentages calculated by columns

$$X^2 = 26.994$$

$$P < .001$$

TABLE XVI: SAMPLE COMPARISON TABLE: NON-VICTIM OFFENSES

NATURE OF DISPOSITION	SAMPLE		
	STATEWIDE	MERRIMACK	N
NON-JUDICIAL	5 (20%)	1 (08%)	6
NON-CONFINEMENT	3 (13%)	6 (50%)	9
CONFINEMENT	16 (67%)	5 (42%)	21
GRAND TOTAL	24	12	36

Percentages calculated by columns

$$X^2 = 6.107$$

$$P < .05$$

TABLE XVII: COMPOSITE SAMPLE COMPARISON TABLE

NATURE OF DISPOSITION	SAMPLE		
	STATEWIDE	MERRIMACK	N
NON-JUDICIAL	57 (33%)	26 (27%)	83
NON-CONFINEMENT	24 (14%)	45 (46%)	69
CONFINEMENT	92 (53%)	26 (27%)	118
GRAND TOTAL	173	97	270

Percentages calculated by columns

$$\chi^2 = 36.37$$

$$P < .001$$

second category, "non-confinement," consists of not guilty by insanity, suspended sentence and probation. The "bargain plea" category was made possible through the confidential assistance of the county attorney. This designated the number of non-confinement cases in which bargain plea and subsequent reduced charges were exchanged for guilty pleas and jury trial waivers. The third and last category, "confinement," is similar to that in the statewide sample including both sentences to the House of Correction or to the State Prison (see Appendix III).

The analysis of these data is best presented by the "Felony Comparison Tables" (Tables XII - XIII), which indicates that both the statewide sample and Merrimack County fall session had approximately one-third of their cases disposed of in a non-judicial, pre-arraignment fashion. The similarities end there. Major differences occur between each sample's non-confinement and confinement dispositions. The statewide superior court sample had only 14 percent of its cases resulting in non-confinement in comparison to Merrimack's 45 percent. A similar inverse relationship exists between the confinement dispositions with the statewide sample which had 43 percent of its cases in this category while Merrimack had only 27 percent. This points to seemingly differential procedures within the various county jurisdictions. The statewide sample represents the entire ten county bench of the state trial court while Merrimack County represents but one county bench in the superior court system. Differences in the county adjudication process were mentioned earlier in this chapter in the context of explaining the overview of the superior court system (see Table IX). However, inconsistencies aside, the statewide sample does show that a third of the state felony cases resulted in pre-arraignment dispositions.

Within this category, property offenses accounted for over half the cases (56 percent), followed by personal offenses (20 percent). Non-victim offenses only accounted for nine percent of the non-judicial dispositions. Of equal importance is the revelation that 63 percent of the Merrimack County fall session felony population resulted in bargain pleas (see Tables XIA and XIB, as well as Appendix III).

Tables XIV-XVI compare the adjudication process for both samples, by type of offense, while Table XVII provides a composite comparison of the two samples. As mentioned earlier, there exists little difference between the samples regarding adjudication for "personal" offenses (Table XIV). Both samples had approximately half of their cases sentenced to confinement, about a third processed prior to arraignment, and the remainder (fewest) resulted in non-confinement sentences. Significant differences occur when both samples are compared for "property" and "non-victim" offenses. The statewide sample had nearly half of its property offenses (Table XV) sentenced to confinement while Merrimack had only 29 percent in this category. The Merrimack sample, one of ten counties in the State, had most (52 percent) of its cases result in non-confinement sentences as against statewide's 16 percent. Both samples had about a third of their cases processed prior to arraignment (non-judicial disposition). Regarding "non-victim" offenses (Table XVI), a similar pattern occurred with the statewide sample having most of its cases result in confinement while the Merrimack sample had most of its cases receiving non-confinement sentences. Another departure between the two samples involved the number of non-judicial dispositions. The statewide sample had 20 percent of its cases disposed prior to arraignment while Merrimack had only 8 percent. The composite table

(Table XVII) bears out the overall differences between the two samples again with the most marked differences occurring between the non-confinement and confinement categories.

The Merrimack/statewide comparison serves as an internal check on the overall New Hampshire judicial scene. It is designed to ascertain rural/urban differences within the state. This is important since the state trial court convenes at the county level with each county's docket reflecting the general characteristics of that area. Merrimack is the transitional county out of the state's ten counties. While being one of the four most populated counties it, at the same time, shares many characteristics associated with the less populated rural counties in that it is relatively rural with a stable, homogeneous population. Merrimack County, then, is used as an indicator of the judicial procedures among the more stable, rural jurisdictions.

One thing brought out by the Merrimack/statewide comparison is that serious personal crimes are dealt with consistently regardless of type of jurisdiction. These offenses resulted in harsher sentences in both samples. Differences did, however, occur regarding property and non-victim offenses between the two samples. This most likely reflects rural/urban differences in adjudication practices. In the rural jurisdictions sheriffs, the local police, district judges and county attorneys can rely more on informal inputs into their decision making process hence making better use of their discretionary powers. That is, they can call on other community members to help them appraise the situation and since most people in the area have been residents for many generations reliable information can be obtained through these procedures. And in situations such as these, lighter formal sentences

do not necessarily signify weaker control situations since informal constraints through folkways and mores can be brought to bear on these suspects once they are back in the community. These techniques are virtually impossible in the larger urban areas characterized by a high proportion of transient multiethnic and racial groups. Here law enforcement, the prosecution and the court have no alternative other than to make best use of the existing formal legal controls at their disposal. Hence, a greater proportion of property and non-victim offenders are processed in the more populated urban counties than is the case in the more stable rural counties like Merrimack.

2. Correctional Out-Put

Corrections performs an out-put function to the adversary trial court system in that it receives the "losers" of the judicial game.

The Task Force Report elaborated on this theme by stating:

Incarceration has inherent limitations as a method for the general control of crime. Of all the index crimes reported to the police, only about 25 percent are cleared by arrest. About 10-20 percent of the individuals arrested are sentenced to jail or prison. The jail terms are less than a year, and the average prison time is about one and a half years. So only a small percentage of the total possible crimes that could be committed on any given day are avoided by imprisonment. Probation and parole supervision may also serve to some extent to incapacitate, but how much they do is clearly hard to measure and no data on their restraining effects exist at present (Task Force Report: Corrections, 1967:55).

The questions raised concerning the functioning of the New Hampshire correctional system are: 1. Does the proportion of accused who are incarcerated vary significantly in relationship to the degree of seriousness of offense; and 2. To what extent do the state correctional institutions comply with their custodial mandate? The data base for exploring the first question stems from the statewide and Merrimack analysis presented in Tables X-XI. Separate tables (Tables XVIII-XIX) address themselves specifically to the confinement issue. In answering the second question concerning the custodial mandate of the New Hampshire correctional system, profiles of the state prison and houses of correction are presented in relation to the nature and extent of the protective, punitive and reformatory functions.

TABLE XVIII: CONFINEMENT TABLE FOR STATEWIDE SAMPLE

CHARGE:	DISPOSITION:		
	OFFENSE:	*NON-CONFINEMENT	CONFINEMENT
PERSONAL	30 (48%)	32 (52%)	62
PROPERTY	47 (52%)	44 (48%)	91
NON-VICTIM	8 (33%)	16 (67%)	24
MISDEMEANOR	18 (82%)	4 (18%)	22
GRAND TOTAL	103 (52%)	96 (48%)	199

*Non-confinement includes both "non-judicial" and "non-confinement" type dispositions (see Tables X-XIII).

Percentages calculated by rows

$$X^2 = 11.5072$$

$$P < .01$$

$$C = \underline{0.2389}$$

TABLE XIX: CONFINEMENT TABLE FOR MERRIMACK SAMPLE

CHARGE:	DISPOSITION:		
	*NON-CONFINEMENT	CONFINEMENT	N
PERSONAL	8 (50%)	8 (50%)	16
PROPERTY	57 (81%)	13 (19%)	70
NON-VICTIM	8 (62%)	5 (38%)	13
GRAND TOTAL	73 (74%)	26 (26%)	99

*Non-confinement includes both "non-judicial" and "non-confinement" type dispositions (see Tables X-XIII).

Percentages calculated by rows

$$\chi^2 = 7.7927$$

$$P < .05$$

$$C = 0.2701$$

TABLE XX: DISPOSITION AND SERIOUSNESS OF OFFENSE FOR STATEWIDE SAMPLE

CHARGE:	DISPOSITION:			
	NON-JUDICIAL	*NON-CONFINEMENT	CONFINEMENT	N
MURDER**	0 (00)	0 (00)	5 (100%)	5
RAPE**	7 (78%)	0 (00)	2 (22%)	9
ROBBERY**	0 (00)	2 (14%)	12 (86%)	14
AGGRAVATED ASSAULT**	9 (47%)	2 (11%)	8 (42%)	19
BURGLARY	9 (22%)	6 (15%)	26 (63%)	41
GRAND LARCENY	2 (33%)	0 (00)	4 (67%)	6
AUTO THEFT	4 (100%)	0 (00)	0 (00)	4
GRAND TOTAL	31 (32%)	10 (10%)	57 (58%)	98

*Non-confinement does not include "not guilty" dispositions.

**These crimes also constitute "violent" offenses according to the FBI's "Crime Index."

a. Confinement versus Non-Confinement

Three tables explore the question of confinement versus non-confinement. Two of these tables (Tables XVIII, XIX) examine the nature of confinement for both the statewide and Merrimack samples by broad type of offense while a third table looks at the nature of disposition in relations to the seriousness of specific offense (Table XX).

The statewide sample resulted in 52 percent of its cases disposed of other than through confinement while the remaining cases (48 percent) resulted in confinement at either the state prison or houses of correction. In comparison, the Merrimack County felony population had 74 percent of its cases disposed of other than through confinement while 26 percent were incarcerated.

In the statewide sample both personal and property offenses were closely divided between confinement and non-confinement dispositions. The greatest variance was in the non-victim category where twice as many offenses resulted in incarceration as did those otherwise disposed. The misdemeanor category had, as would be expected, a substantially large proportion of its cases resulting in non-confinement. The Merrimack County data, like the statewide sample, had an even distribution of confinement/non-confinement dispositions for personal offenses; however, the similarities end there. Eighty-one percent of the property cases resulted in non-confinement dispositions as against the statewide sample's 52 percent. Also, the non-victim category comparisons were inversely related with the Merrimack sample having 62 percent resulting in non-confinement while the statewide sample had 67 percent resulting in confinement.

Table XX presents the nature of disposition versus the seriousness of offense. Here the seven most serious crimes, as designated by the Federal Bureau of Investigation's Uniform Crime Report (1970), from the statewide superior court sample are compared in relation to the severity of disposition. These seven crimes account for approximately half of those represented in the entire statewide superior court sample (98 out of 199). A third resulted in pre-arraignment (non-judicial) dispositions at the hands of the prosecutors prior to court action while ten percent were found guilty of the charge but not incarcerated, and the majority (58 percent) were found guilty and incarcerated. Of the "violent" crimes, the five murder cases resulting in guilty dispositions (three were found to be "not guilty") were all incarcerated as were eight-six percent of the robbery cases. However, only 22 percent of the rape cases resulted in confinement while less than half (42 percent) of the aggravated assault cases met with confinement. The confinement pattern varies directly with the seriousness of offense in that incarceration is closely associated with murder, robbery, grand larceny and burglary.

b. Custodial Role of the New Hampshire Correctional System

According to Haskel and Yablonsky (1970), the overall custodial correctional role is divided into three primary functions: protective, punitive and reformative. The protective function is to protect society from dangerous criminals while the punitive function is twofold: 1. to deter future criminals; and 2. to placate the public, assuring them that retaliation toward the convicted criminal occurs.

The reformatory function involves attempts to modify deviant behavioral patterns through rehabilitation. These functions, while applicable to the nation's correctional system, do not necessarily work, suggested Haskel and Yablonsky. The functions of punishment and reformation may very well be counter-productive. The protective function is questionable since there does not seem to be any evidence that only "dangerous criminals" are incarcerated or that all "dangerous criminals" are, in fact, confined once adjudged guilty. A related protective element of correctional institutions is the safety of the inmates themselves. The murder of the self-confessed "Boston strangler" in Massachusetts and the multiple stabbing of the convicted migrant worker murderer in a California prison are recent examples of the lack of inmate protection in our nation's correctional facilities (Newsweek, 1973). A lack of inmate security often results in punitive actions being administered by inmates on their fellow inmates. Another protective/punitive issue is the extent of unofficial punitive measures being doled out by correctional staff members. The Arkansas state prison expose' during the late sixties cited patterns of abuse, including the shooting of prisoners, gratuitous beatings with rubber hoses, sexual perversion and other forms of punishment (Haskel and Yablonsky, 1970:466). When considering the inmates' lot, Sykes (1958) probably best outlined the deprivations of imprisonment. He suggested that incarceration imposes certain losses and deprivations such as the loss of liberty, goods and services, heterosexual relations, autonomy, as well as, the loss of security.

In looking at the New Hampshire correctional system, the protection of both society and the inmates will be considered. Unofficial use of punitive measures by either the staff or inmates is difficult to ascertain without a prolonged participant observation type of research, which was not possible in the context of this study. Also, the reformatory function, for the sake of this study, will be equated with rehabilitation programs. The state prison received three hundred and eighty-seven inmates from New Hampshire for the 1968-70 biennium. Twenty-eight of these were sentenced for the seven serious crimes constituting the Federal Bureau of Investigations's "crime index."

TABLE XXI: STATE PRISON POPULATION BY TYPE OF OFFENSE:

*OFFENSE	NUMBER OF INMATES
Murder**	7
Forcible Rape**	6
Robbery**	14
Aggravated Assault**	49
Burglary	22
Larceny (Grand)	3
Auto Theft	8
TOTAL	109

*Federal Bureau of Investigation, "Crime Index" category used.

**Indicates "violent" crimes

The most common offense for which inmates were incarcerated during 1968-1970 was not included in the crime index--violation of parole which accounted for 110 cases. Breaking and entering type offenses accounted for the next highest percentage of imprisonment with 64 cases (17 percent of the incarcerated population). Drug related offenses made up 6 percent (22 cases) of the newly received inmates (see Prison Report, 1970).

The state prison population is seldom overcrowded by general prison standards and with the exception of recent limited inmate protest, internal security seems moderately safe. Rehabilitation programs usually consist of the existing prison industries: carpenter, license plate and print shops. Additional rehabilitative programs are at the mercy of the federal government. Recently federal funds were available for primary and secondary classroom educational programs as well as for auto and small engine repairs. These programs are tenuous, however, in that the state is reluctant to continue them once federal funding ceases (see Chapter V).

Deprivations do occur at the state prison. Homosexuality is a problem as it is elsewhere in the nation's correctional system. Staff/inmate tension of the nature Goffman (1961) mentioned in his works on institutions seems to be evident. I noticed this in my own observations, and it was conveyed to me by others at the prison (both staff and inmates).

The other category of correctional institutions where convicted criminals are referred from the state trial court system are the state's eleven houses of correction (see Chapter V). These facilities offer virtually no reformative functions whatsoever. They are basically

"custodial." If these institutions safeguard society from its criminals, they certainly do not offer much protection or any other form of care for the inmates other than basic food and shelter. Dental, medical and other mental and physical health problems are ignored. The irony of this system is that, although seemingly much more primitive than the state prison, it usually houses misdemeanors serving confinement sentences. A study conducted and funded by the Law Enforcement Assistance Administration (1970) found in their report that the rehabilitation, training, and treatment were virtually nonexistent in the county houses of correction (see Chapter V). Wooden, creosoted floors and inadequate fire exits provide potential fire hazards. One complex had chains through the bars as a means of securing the cells.

The non-confinement or open correctional institutions of parole and probation do not adequately provide the supervisory function they are assigned, mainly because they are so overworked and understaffed. The state probation office averages seventy cases (both adult and juvenile) per probation officer. This situation is made worse by the numerous court preliminary investigations and domestic relation cases that have to also be handled by the probation officers. A similar situation confronts the state parole office which has only three men to handle over two hundred parolees statewide.

At best, the overall custodial function of the closed correctional institutions (state prison and houses of correction) is to house criminals, and not always only the most serious offenders, referred to it from the state trial court system as well as from lower courts. Less clear is the function of the open correctional institutions, such

as probation and parole since even their supervisory role is highly questionable.

How does the state's judiciary and correctional systems' performance compare with their ideal mandate? Does the judiciary provide the guarantees associated with the adversary system, and, if not, how does it deviate from these standards?

The bail data indicates an inverse relationship exists between the seriousness of offense (personal versus property and non-victim) and the availability of reasonable bail. Of course, this violates the basic ideals involving the use of bail. According to the major judicial premise, innocence is assumed until guilt is determined beyond a reasonable doubt; pre-sentence deterrence through the use of unreasonable bail or the denial of bail, still constitutes a serious breach of adversary ideals, regardless of the well-meaningness of the judge.

The study also reveals the prevalence of pre-arraignment omissions and reductions of charges referred to the prosecutor's office. This usually involves either the prosecutor's discretion to nol process cases due to a congested court calendar, or "bargain justice" whereby the prosecution and defense "work out a deal" in exchange for a guilty plea at arraignment. The data indicate that about a third of both the statewide and Merrimack samples were disposed of in a non-judicial fashion. Although information concerning "bargain pleas" was not available for the statewide sample, the Merrimack sample had 63 percent of its cases resolved this way.

While pre-arraignment modification or elimination of charges is often supported on the basis that it helps keep the wheels of justice moving, the lack of formal recognition along with no official checks on

procedures allows for a situation of "chance" selection at best and collusion and self-interest justice at worse. The American Bar Foundation's Survey of the Administration of Criminal Justice in the United States response to prearraignment prosecutors' discretion is:

Inequality of treatment is abhorrent when it is the result of deliberate malice or even lack of concern. It is, though to a lesser degree, also undesirable when the selection is dictated by fortuitous circumstances, or randomly (Miller, 1969:349).

Concerning bargain justice the American Bar Foundation Report again stressed the lack of official recognition and checks and balances on those engaging in this practice:

. . . The guilty plea process, frequently occurring and of great administrative significance, has grown without much formal attention, with very little legislative or appellate court guidance. Plea bargaining, while long known to those familiar with criminal courts, has remained largely unrecognized to all but direct participants (Newman, 1966:231).

It is one thing to say that judicial shortcuts benefit the criminal justice process in that it keeps the criminal justice apparatus moving, and quite another thing to imply that these processes facilitate the "ideals" of justice. It may very well be that non-judicial dispositions and bargain justice might become "normal" legitimate judicial procedures in the future, but to become so they must first be officially recognized and secondly, a system of reliable checks must be implemented to insure that "justice is done."

New Hampshire had no such official checks on the use of these judicial shortcuts, and conversations with the Assistant Attorney General in charge of criminal cases and with county attorneys from Merrimack, Hillsborough and Rockingham counties led me to conclude that most likely self-interest considerations superseded the facilitation

of judicial ideals. If this was the case, then most likely selection was not random. Without appropriate checks on judicial shortcuts there is no guarantee that society is being protected from its most serious criminals nor is there an insurance of fair justice for defendants processed before the courts.

Corrections, the output of the judiciary, refers to those cases resulting in convictions. Do these confined dispositions represent the most serious offenses processed through the state trial court? Using the Federal Bureau of Investigation's "crime index" as an indication of serious offenses, these crimes accounted for 49 percent (98 cases) of the entire statewide sample. Of these "serious" crimes, 58 percent resulted in confinement with murder, robbery, grand larceny and burglary representing the most likely crimes to result in a prison term. Confinement and seriousness of offense do seem to be positively related in this study.

The custodial role of corrections is less conclusive. While the state prison seems to provide a moderately adequate custodial service, the houses of correction, in comparison, leave much to be desired.

However, when putting the law enforcement input and correctional output in perspective vis-a-vis, the adversary system, it becomes apparent that their success is dependent upon the overall success of the judiciary. When the judiciary fails, law enforcement and corrections are also affected. That is, the police may well feel slighted when a sizable portion of their original charges result in dismissals or reduction of charges. At the same time, these same judicial tactics subsequently modify the nature of offenses processed

through the court often disguising the original charges, resulting in misrepresented conviction data. Hence, if the judiciary fails, it is quite apparent that this is transmitted in part to its input and output functionaries--law enforcement and correctional personnel.

CHAPTER VIII

SUMMARY

This chapter attempts to draw together the thesis explored in this study. First, the purpose of the study is reviewed. Then the guiding questions exploring the degree of actual consensus to the criminal justice ideals are correlated with the empirical examination of the New Hampshire criminal justice system presented in Chapters VI and VII. This is followed with a discussion of the functions of selectivity within the criminal justice system, especially as it relates to ideal/actual judicial variance. Lastly, we look at social situational trends involving ideal types of criminal justice control.

1. The Purpose of the Study Reviewed

The basic thrust of the study has been to ascertain to what extent the ideals and practices of criminal justice are in accord with each other and if they do not, what is the nature of their variance. One type of ideal/actual variance, that of the adjudicated individual defendant, is of considerable importance here. Illegal or quasi-legal procedures which result in selective attrition are primary indicators of discrepancies between the ideal and actual criminal justice system.

One criminal justice system, that of the state of New Hampshire, was examined in detail. Discussion of the ideal manifest functioning of the adversary trial court system is presented in Chapter V while the actual practices of the New Hampshire criminal justice system as they relate to the state trial court system are discussed in Chapters VI and VII.

2. The Applicability of the Ideals of Justice

The vehicle used to determine the applicability of criminal justice ideals in the actual criminal justice process was the raising of certain guiding questions which could then be discussed in the context of the available data reflecting the operation of the state trial court system. The discussion of the state criminal justice system, divided into two chapters, involves the system's three sub-components: law enforcement, judiciary, and corrections. Law enforcement and corrections respectively are playing input and output functions to the state trial court system.

In the first of these two chapters (Chapter VI), an overview of the state's criminal population is presented providing a demographic basis for comparing the state's trial court sample discussed in Chapter VII. The remainder of Chapter VI addresses itself to the functioning of law enforcement in the state system while Chapter VII continues with this discussion examining the judiciary and corrections. It is in the context of these discussions that the questions pertaining to the applicability of the manifested judicial ideals can be, partially at least, answered.

a. Law Enforcement

To what extent did New Hampshire law enforcement protect the public from serious offenders by arresting these offenders and bringing them before the state judiciary for prosecution? The statewide, state police report shows that of the 1,469 crimes cleared by arrest 55

percent were of the felony nature. Two serious offenses, burglary with 480 cases and grand larceny with 116 cases, topped the list for felony crimes. The other five serious offenses used in the Federal Bureau of Investigation's crime index (murder, rape, aggravated assault, robbery and auto larceny) accounted for 60 more crimes reported. All told, the crime index offenses (656 crimes) accounted for 81 percent of the felony cases (811) in the statewide, state police report. The limitations of the state police report aside, the state's law enforcement agencies seemed to have performed well during 1970. Their performance becomes more significant when it is realized that investigation of criminal violations accounts for only a small proportion of their work load.

b. The Judiciary

How effective was the judiciary in adjudicating defendants referred to it from the police and from grand juries? And how did the judiciary fare concerning the issues of bail, number of jury trials, quality of defense and collusion?

The availability of reasonable money bail was inversely proportionate to the seriousness of offense (personal versus property and non-victim). The use of bail as a pre-trial deterrent is by no means limited to New Hampshire. Nonetheless, this widespread misuse of bail does not right the issue. According to judicial ideals, bail, either money or one's word, is merely to insure the defendant's appearance before the court at a later date. Selective use of bail often gives those defendants who have access to bail an unfair, although legal, advantage over those who are denied their pre-trial freedom either through excessive bail or being held in lieu of bail.

The state trial court data (Tables X-XIII) is presented by disposition according to type of offense (personal versus property and non-victim; also see Appendices II and III). The dispositions are divided into three categories: non-judicial, non-confinement, and confinement. Non-judicial dispositions, a form of non-confinement disposition, refer to those cases handled out of court, prior to arraignment, and usually determined by the prosecutor. Non-confinement and confinement dispositions refer to those cases processed through the court. The nature of confinement becomes more crucial when looking at the correctional out-put.

The felony comparison tables (Tables XII-XIII) indicate that both the statewide and Merrimack samples had approximately a third of their cases disposed of in a non-judicial fashion. In the statewide sample (representative of the entire state), property offenses accounted for 56 percent of the non-judicial cases, followed by personal offenses with 20 percent and non-victim offenses with only 9 percent.

The Merrimack fall session felony population data provided additional information on the nature of non-judicial attrition of criminal cases. While working in close collaboration with the county attorney it was determined that 63 percent of the 99 felony cases processed through the state trial court system involved bargain pleas. In these cases, the prosecutor, defense and defendant agreed to a prearranged "deal" whereby reduction of charges, or both, were exchanged for a guilty plea at arraignment. This process does not include those cases already nol processed, filed or otherwise disposed. Merrimack County is one of the most populated counties in the state although it is the least populated of the four-county sample presented in Table VIII. If

this process occurs in Merrimack, it is safe to assume that it occurs elsewhere in the state, especially in those counties which have the most congested court dockets. The extent of bargain justice is difficult to ascertain since the court data only reveal the "adjusted charge," not the original charge or charges brought against the defendant. In addition to distorting the criminal charges brought before the courts, bargain justice violates the separation of judicial powers so crucial to the adversary ideals. Not only does collusion occur within the adversary process, it has become institutionalized in many jurisdictions. Technically, all parties involved are guilty of perjury and obstruction of justice. In reality, these techniques have become necessary for justice to work and without these practices many jurisdictions would be overwhelmed with a backlog of cases. Currently attempts are being made to make bargain justice an acceptable, legal practice. This means that certain provisions will be necessary to insure that due process is not forfeited for judicial expediency.

Tables XIV-XVII compared the statewide and Merrimack samples to see if any overall selective trend occurred within the respective disposition patterns. The samples were consistent only concerning "personal" offenses with both having the majority of their cases sentenced to confinement, a third being processed prior to arraignment and 12 to 19 percent resulting in non-confinement. The property, non-victim and composite comparison tables indicated marked differences between the samples, especially regarding differences in confinement versus non-confinement sentences. In all categories, Merrimack had more cases resulting in non-confinement than the statewide sample and conversely, the statewide sample had more cases resulting in confinement

than was the case for Merrimack. The lack of a discernible pattern with the state trial court leads one to believe that probably varied interest and practices occurred throughout the state jurisdiction.

A plausible explanation rests with the county attorneys who are elected, part-time officials possessing considerable power and authority regarding the adjudication of criminal cases before the state trial court (see Chapter V). Their decisions involve both non-judicial attrition (not processes, dismissed, filed) as well as the nature of the final charges to be presented at arraignment. The latter reflects the prosecutor's close working relationship with the grand jury, the clerk of court, defense lawyers and the judge. At bench trials the court often gives considerable weight to the prosecutor's recommended sentence for the defendant. Collusion in this situation is difficult to avoid since the county attorneys are also practicing lawyers. In a small state such as New Hampshire most attorneys practicing within a certain district, usually a county, know each other and most likely are good friends or associates. To what extent these close personal and professional relationships enter into the decision-making process of the county attorney is not known, but they cannot be dismissed either since the likelihood of professional collusion is quite probable.

Professional collusion between the prosecutor and defense is not wrong in itself. Actually it often serves to keep the administration of justice moving. However, there may be considerable differences between "speedy" justice and "fair" justice. On-the-spot execution is a common practice in Uganda and certainly provides a form of speedy justice; yet often in these situations "due process" and individual rights are the first victims of streamlined justice. Although the

chances of such programs being incorporated in the United States is slim, direct links have been established between oppressive judicial practices in other countries (South Viet Nam, Thailand, Greece, Brazil, Uruguay and others) and the United States through its police adviser programs (Time, 1974). These types of modified police-states have met with disapproval by the prestigious International Commission of Jurist, and they recently castigated Uganda's criminal justice system. New Hampshire is a far cry from Uganda, and one can rest assured that most criminal justice personnel in the state have a high regard for the law and the judicial process. This aside, it is still possible for bias and ethnocentrism as well as self-interest to enter into administrative decision-making policies--procedures which could result in discriminatory selection. To avoid this, checks and balances must become an integral part of prosecutors' discretion, bargain justice and any other aspect of shortcut justice. This is necessary to insure "due process," fair justice, and societal protection. And equally important, without these checks no one knows to what extent "ideal" judicial practices are being facilitated or to what extent they are being abused. The latter is strongly supported, however, by ex post facto research on those eventually incarcerated--the "losers" of the judicial process. While the majority of serious felons are white; accounting for approximately 70 percent of all reported and recorded felons, the majority of those eventually incarcerated to long term sentences are non-whites (Task Force Report: Assessment of Crime, 1967).

Certain of the issues centered about the judiciary have not been conclusively resolved. Ironically, prearraignment plea bargaining and other behind the scene deals between the prosecutor, defense and,

sometimes, the bench makes it difficult to know if the charges in the state probation office files actually represent the original charges or if they reflect charges stemming from bargain justice. Even more difficult is the determination of the number of jury trial cases as against bench trials. The only cases where it is certain that petit juries were used are those resulting in "not guilty" verdicts. Quality of defense was equally difficult to ascertain given the limitations of the information available. And collusion can only be inferred from those cases resulting in non-judicial dispositions in both samples and those cases involving plea bargaining from the Merrimack sample. Lastly, it is important to note that there is no fool proof way of separating natural, legal selective attrition from illegal and quasi-legal selective attrition in this study. Yet, it is obvious that the New Hampshire judiciary has drifted considerably from its avowed judicial ideals.

c. Corrections

How consistent are dispositions handed down from the trial court in relation to the seriousness of offenses and to what extent do the state correctional institutions comply to their custodial mandate, are the questions asked of the New Hampshire correctional system. In answering the first question concerning confinement, both the statewide and Merrimack samples were dichotomized along these lines (Tables XIV-XV). The statewide sample had 52 percent of its cases disposed of other than through confinement while the Merrimack County sample had 74 percent not confined. This indicated that both data sources resulted

in more cases being handled other than through incarceration to either the state prison or houses of correction.

Were those confined representative of serious crimes? Table XVII addresses itself to this question by presenting the seven serious crimes listed in the Federal Bureau of Investigation's crime index and determining which resulted in confinement. These crimes accounted for nearly half (98 cases) of the entire statewide sample (199 cases). A majority of these cases (58 percent) did result in confinement. This table shows that murder, robbery, grand larceny and burglary, in descending order, are the crimes most likely to result in confinement. Confinement and seriousness of offense, as far as this study is concerned, do seem to be related. A similar probe was made regarding the nature of criminal charges associated with felons received in the state prison where long termers are sentenced. Table XVII, again using the crime index, shows that twenty-eight percent (109 inmates) out of a total of three hundred and eighty-seven received for the 1968-70 biennium were incarcerated for these seven crimes. Most referrals (110 cases) were for violation of parole. Controlling on this offense, the crime index accounts for 48 percent of the incoming inmate population.

As for the custodial role, the state prison seems to adequately protect both society and the inmates with little excessive punishment other than that associated with incarceration itself (Sykes, 1958). The reformatory role is questionable and contingent on federal programs. The houses of correction, which usually house inmates serving sentences of a year or less (mostly misdemeanors), are failures, according to Haskel and Yablonsky's criteria (1970), providing little protection to either society or the inmates. The correctional environment seems

excessively cruel while reformative and rehabilitative programs are totally lacking (LEAA, 1970). Overall, it seems that those convicted criminals incarcerated are the ones who committed the most serious offenses. The reader must keep in mind, however, that bargain pleas and non-judicial modification of charges alters the nature of offenses considerably.

The study shows that the role of the police and corrections are quite dependent on the judiciary. If the judiciary fails to function according to its ideal mandate, then latent or unintended practices occur, often becoming institutionalized. This contradiction between the avowed ideals and modified practices could well be a major source of frustration not only to those in the judiciary but to the police and corrections as well (see Chapter VII and The Task Force Report: The Courts, 1967).

3. The Apparent Function of Selection

Overall, the research supports the general contention that there exists a selection process in the adjudication of criminal deviance in our criminal justice system which is very likely in part due to variations divergence from the ideals of that system rather than to sheer chance. The research supports other studies which indicate the general selection trend in the United States (see Chapter VII; Quinney, 1971; and The Task Force Reports: The Courts and Corrections, 1967). These studies included discussions on the misuse of bail, the negotiated plea of guilty, pretrial dismissal of cases, the need for more and better qualified defense attorneys and the apparent failure of our correctional system; all matters related to the malfunctioning of our judicial ideals and supportive of the basic thesis presented in this work.

The Task Force Report on Science and Technology (1967) graphically presented the national picture regarding criminal justice selection by noting that for 1965, 2,780,140 index crimes (7 offenses) were reported resulting in only 727,000 arrests and 1,053,000 unapprehended offenders. Of the 727,000 arrested felons, 290,000 had no complaint filed, or the charges were reduced while 177,000 had formal felony charges filed. Of the 177,000 formally charged cases, 9,000 were dismissed; 25,000 resulted in bench trials with 5,000 acquittals, while 13,000 had jury trials with 3,000 acquittals. One hundred thirty thousand pleaded guilty at arraignment. This resulted in 160,000 of the 727,000 arrested felons being sentenced; of which 63,000 were imprisoned; 56,000 placed on probation; 6,000 given suspended sentences;

and 35,000 serving short jail sentences and subsequently released. This documentation of the attrition of serious criminal offenses in our criminal justice system substantiates the extent of selective justice. This coupled with the numerous arguments concerning the nature of judicial discrimination provides a strong argument supporting the existence of widespread ideal/actual judicial variance in our criminal justice system.

New Hampshire shares in common with the overall national profile certain selective characteristics; that the criminal deviant is typified as involving teenage or young adults, males, mostly from the lower strata, charged mostly with the commission of property offenses (see Chapter VI and The Task Force Report and the Uniform Crime Report-1970). New Hampshire departs from the national trend in that its criminal offenders are primarily white while in numerous other jurisdictions Blacks and other non-white groups are often disproportionately represented, especially in low socio-economic communities. New Hampshire does not have a sizable non-white population; therefore, comparisons cannot be validly made. This profile of the average apprehended felon, whether it reflects national trends or that of New Hampshire, represents only a portion of the total criminal population. Many forms of criminal deviance go undetected while a considerable percentage of those detected are never cleared by arrest (Quinney, 1971). This is especially true for property offenses which account for the largest number of arrests. That is, although the most common criminal arrest involves property offenses, approximately eighty percent of the detected property offenses are not cleared by arrest (Uniform Crime Report, 1970). And it is estimated that the detected property offenses represent but a small

portion of the actual number of these offenses (see Quinney, 1971; The Task Force Report: The Courts, and Science and Technology, 1967; as well as the 1974 LEAA Report on Miscalculated Crimes in United States Cities). This information concerning the nature of selective justice, especially the class, sex, age, and type of offense factors, add clarity to the Task Force Report's study on index crime attrition. Since the index crimes include the seven most serious felony offenses threatening our society, according to the Federal Bureau of Investigation, it seems apparent that a goodly number of the offenses processed out of the normal adjudication process involved burglary, robbery, grand larceny and auto theft while the most vulnerable victims of our discriminatory system of criminal justice are those who commit personal offenses (especially murder or aggravated assault), are from the lower classes, and are most likely minority males (Task Force Report: Science and Technology, 1967). Class selection seems to facilitate the structural explanation of selectivity. Differential treatment of various classes by the criminal justice apparatus is well known. Affluent members of society get better treatment under our form of applied justice while those from the lower classes are most likely to be arrested, denied reasonable bail, found guilty and eventually incarcerated (see Chapter III).

Furthermore, those cases which are brought before the criminal justice system are subjected to additional selection in that only a small percentage of these cases are actually processed in the fashion prescribed by the ideals of justice, particularly by a jury trial. The research indicates the widespread use of bargain justice and non-judicial dispositions determined mainly by the prosecution. The 1967

Presidential Commission on Law Enforcement and the Administration of Justice documents the prevalence of bargain justice in the United States, indicating that this phenomenon is not unique to New Hampshire.

The wide use of bargain justice throughout our nation implies that it is an institutionalized part of our applied judicial system. Yet the practice of bargain justice still constitutes a serious violation of our judicial ideals, obviously causing a cultural lag between our judicial ideals and practices. Selective justice most likely will continue to remain an integral part of our criminal justice process but many things must be done to insure due process and individual rights. As the practice stands now there are no legal mechanisms operating to protect society from serious felons dismissed through prosecutory discretion and, equally important, to protect innocently accused persons from unjust legal consequences.

There is every indication that New Hampshire's criminal justice system functions better than the national average in that it is not burdened with many of the problems encountered in more complex systems, including the racial factor which plagues many states (Task Force Report: Courts, 1967).

Taking into consideration the merits of the New Hampshire system, however, that system falls far short of the ideals prescribed by the criminal justice mandate. The research bears this out by indicating discrepancies in the administration of bail, accompanied with the prevalence of reduced charges, bargain pleas, selective dispositions and inconsistent sentences. The selection process strongly indicates that only a small portion of the criminal population is effected by the judicial process. The major significance of this

phenomenon is that the relatively small sample of criminal deviants who are eventually incarcerated as a result of the criminal justice adjudication process seem to be selectively discriminated against by society. Why then do these practices continue in our society especially when they obviously violate the ideal mandates of justice? One reasonable answer to this perplexing question is that this selective sample of criminal deviants provides society with important latent functions. As explained earlier these functions are twofold. On the one hand, they provide the political and criminal justice apparatus with justifications for their policies and existence. On the other hand, latent functions provide society with visible boundaries delimiting the extents of legitimate behavior. While these latent functions may seem to be essential to society's functioning, it is questionable if the current extent of the selection process is necessary to sustain these functions.

A serious consequence of the continuation of this process is that as selective justice becomes more entrenched and institutionalized as a means of social control, the less likely is it that the ideals of justice can be met. This trend, if unaltered and carried to its extremes, could provide the political and the control apparatus with virtually unlimited power which would seriously alter our form of society especially as it is described in the Federal Constitution (Skolnick, 1969). Alternatives to this trend are now discussed in the following section.

4. The Larger Implication of the Study

The larger implication of this research, both the theoretical and investigative aspects, points to the fact that there exists in our society a selection process concerning the functioning of the criminal justice system. This selection process, in turn, seems to be related to limiting structural conditions prevalent in our society. The lack of acceptable occupational and status positions in our society inadvertently influence some of these dissatisfied members of society to seek out illegitimate deviant roles. This social situation makes it extremely difficult for the control apparatus to function in terms manifested in their ideal mandate. To compensate for these inadequacies in the social situation the control agents themselves often resort to extra-legal and illegal methods employed to justify their existence in society. Stuart Palmer explains this process regarding the role of the control apparatus in his work, Prevention of Crime:

The crime control process accomplishes ends quite diametrically opposed to those ostensibly sought by the society's members. Much of the control apparatus, much of the action of police departments, courts, prisons, so on, serves to increase frustration and limit adequate role model. This is crime facilitated. . . . We become dependent on crime. It becomes part of our way of life. It becomes an integral component of social organization. Crime provides activity and rewards not only for violators but for the average citizen. It provides as well a distinct livelihood for several million who are directly employed in the abortive attempt to control it (Palmer, 1973:3-4).

If these social limitations are to be resolved, new legitimate avenues must be provided within the existing structure; or if continued, the likelihood of major social change is imminent. Obviously, all the illegitimate avenues cannot be eliminated from society. They will still

provide the boundary maintenance function in defining the socially acceptable boundaries at any given time for society's members. However, the existing inequities could be greatly reduced through a modification of the existing "ideals" supportive of our social structure. By making them more applicable to the needs of both society and its members there is a good chance that not only would the new ideals be more equitable and universal once implemented, but that the prevalence of oppositional dualism, in the form of general strata of "acceptability" and "unacceptability" as well as "dualistic justice," will itself diminish. If social change is to effectively come about within the existing social structure, society will have to become better adapted to changing social situations especially regarding the flexibility of its control apparatus. For this change to come about, a better understanding of the existing social conditions will be necessary, and, correspondingly, an exceptional burden will be placed on the existing criminal justice system and other control agencies within society.

REFERENCES

REFERENCES

CHAPTER II

Aristotle

- 1962 The Politics of Aristotle. Ernest Barker (editor and translator), New York: Oxford University Press.

Attica

- 1972 See Attica: The Official Report of the New York State Special Commission. By Robert B. McKay. New York: Bantam Books.

Beccaria, C.

- 1970 In "Origins of Modern Criminological Theory," Crime in a Complex Society, by Richard D. Knudten. Homewood, Illinois: The Dorsey Press.

Bentham, J.

- 1970 In "Origins of Modern Criminological Theory," Crime in a Complex Society, by Richard D. Knudten. Homewood, Illinois: The Dorsey Press.

Block, H. and G. Geis

- 1970 Man, Crime and Society. New York: Random House.

Bonger, W.

- 1959 In "Economic Factors and Crime Causation," New Horizons in Criminology, by Barnes, H. and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.

Coser, L.

- 1966 The Functions of Social Conflict. New York: The Free Press.

Dahrendorf, R.

- 1968 Essays in the Theory of Society. Stanford: Stanford University Press.

Dahrendorf, R.

- 1970 Power in Societies, edited by Marvine E. Olsen. New York: The MacMillan Company.

Dexter, E.

- 1959 In "The Geographical Determinists," New Horizons in Criminology, by Barnes, H. and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall, Incorporated.

- Dollard, J. et. al.
1967 Frustration and Aggression. New Haven: Yale University Press.
- Durkheim, E.
1950 The Rules of Sociological Methods, edited by George E. G. Catlin. New York: Free Press, Macmillan.
- Erikson, K.
1966 Wayward Puritans. New York: John Wiley and Sons.
- Ferri, E.
1970 In Crime in a Complex Society, by Richard D. Knudten. Homewood, Illinois: The Dorsey Press.
- Freud, S.
1962 Civilization and its Discontents, edited by James Strachey. New York: W. W. Norton and Company.
- Glueck(s), E., and S.
1970 In Crime and Delinquency, by Haskell, M. and L. Yablonsky. Chicago: Rand McNally and Company.
- Graham, B.
1973 Contents of evangelist Billy Graham's speech made in Johannesburg, South Africa, in April, 1973.
- Hobbes, T.
1968 "Of the Natural Conditions of Mankind," Theories of Society, edited by Talcott Parsons, et. al. New York: The Free Press.
- Hooton, E.
1970 In Crime in a Complex Society, by Richard D. Knudten. Homewood, Illinois: The Dorsey Press.
- Howard, J.
1959 In New Horizons in Criminology, by Barnes, H., and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.
- Lemert, E.
1951 Social Pathology. New York: McGraw-Hill Book Company.
- Locke, J.
1968 "Of the State of Nature," Theories of Society, edited by Talcott Parsons, et. al. New York: The Free Press.
- Lombroso, C.
1970 In "Physiopsychological Explanations of Crime Causation," Crime in a Complex Society, Homewood, Illinois: The Dorsey Press by Richard D. Knudten.

- Malthus, T.
 1959 "An Essay on the Principle of Population," The Making of Society, edited by Robert Bierstedt. New York: Random House.
- Marx, K. and F. Engels
 1967 The Communist Manifesto, edited by Francis Randall. New York: Washington Square Press.
- McNeill, W.
 1963 The Rise of the West. Chicago: The University of Chicago Press.
- Merton, R.
 1968 Social Theory and Social Structure. New York: The Free Press.
- Montesquieu,
 1968 "The Spirit of the Laws," in Theories of Society, edited by Talcott Parsons, et. al. New York: The Free Press.
- Nixon, R.
 1973 Contents of the President's partial "State of the Union" message presented in a nationwide radio address, Saturday, March 10, 1973.
- Palmer, S.
 1962 A Study of Murder. New York: Thomas Y. Crowell.
- Palmer, S.
 1973 The Prevention of Crime. New York: Behavioral Publications.
- Pareto, V.
 1968 "The Circulation of Elites," Theories of Society, edited by Talcott Parsons, et. al. New York: The Free Press.
- Parsons, T.
 1968 "Application of Parsonian Theory," Sociological Inquiry (volume 38, number 2), edited by A. Paul Hare. Belgium: United Chapters of Alpha Kappa Delta.
- Peel, R.
 1959 In New Horizons in Criminology, by Barnes, H. and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.
- Plato
 1966 "Republic," "Statesman," and "Laws," in The Collected Dialogues, edited by Hamilton, Edith and Huntington Cairns. New York: Pantheon Books.
- Quetelet, A.
 1959 In "The Geographical Determinists," New Horizons in Criminology, by Barnes, H. and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.

- Quinney, R.
1971 The Problem of Crime. New York: Dodd, Mead and Company.
- Rommilly, S.
1959 In New Horizons in Criminology, by Barnes, H., and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.
- Rousseaus, J.
1959 "The Social Contract," The Making of Society, edited by Robert Bierstedt. New York: Random House.
- Scheler, M.
1968 Ressentiment, edited by Lewis A. Coser. New York: The Free Press.
- Sheldon, W.
1970 In Crime and Delinquency, by Haskell, M. and L. Yablonsky. Chicago: Rand McNally and Company.
- Simmel, G.
1966 Conflict, translated by Kurt H. Wolff. Glencoe, Illinois: The Free Press.
- Skolnick, J.
1968 The Politics of Protest: A Task Force Report to the National Commission on the Causes and Prevention of Violence. Washington: United States Government Printing Office.
- Spencer, H.
1966 The Study of Sociology. Ann Arbor: The University of Michigan Press.
- Sutherland, E. and D. Cressey
1970 Criminology. Philadelphia: J. P. Lippincott Company.
- Tannenbaum, F.
1938 Crime and Community. New York: Columbia University Press.
- Tarde, G.
1968 Penal Philosophy, edited by Edward Lindsey. Montclair, New Jersey: Patterson Smith Publishing Corporation.
- di Verce, E.
1959 In "Economic Factors and Crime Causation," New Horizons in Criminology, by Barnes, H. and N. Teeters. Englewood Cliffs, New Jersey: Prentice-Hall.
- Weber, M.
1958 The Protestant Ethic and the Spirit of Capitalism, translated by Talcott Parsons. New York: Charles Scribner's Sons.

- Wolfgang, M.
1958 Patterns in Criminal Homicide. Philadelphia: University of Pennsylvania Press.

CHAPTER III

- Becker, H.
1966 Outsiders. New York: The Free Press.
- Burger, W.
1971 "State of the Federal Judiciary" in Crisis in the Courts, by H. James. New York: David McKay Company.
- Chambliss, W. and R. Seidman
1971 Law, Order and Power. Reading, Massachusetts: Addison-Wesley Publishing Company.
- Clark, K.
1965 Dark Ghetto. New York: Harper and Row.
- Cloward, R. and L. Ohlin
1961 Delinquency and Opportunity. New York: The Free Press.
- Cohen, A.
1955 Delinquent Boys. New York: The Free Press.
- Cole, G.
1970 "The Decision to Prosecute," in Law and Society Review #4.
- Coser, L.
1967 The Functions of Social Conflict. New York: The Free Press.
- Dahrendorf, R.
1968 Essays in the Theory of Society. Stanford: Stanford University Press.
- DeB. Katzenbach, N.
1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- Douglas, J. (editor)
1970 Deviance and Respectability. New York: Basic Books.
- Dunham, H.
1965 "Anomie and Mental Disorders," in Anomie and Deviant Behavior. New York: The Free Press.
- Durkheim, E.
1968 The Rules of Sociological Method, translated by S. Solovay and J. Mueller. Glencoe: The Free Press.

- Erikson, K.
1966 Wayward Puritans. New York: John Wiley and Sons.
- Ferninand, T.
1966 Typologies of Delinquency. New York: Random House.
- Fiddle, S.
1967 Portraits from a Shooting Gallery. New York: Harper and Row.
- Garfinkel, H.
1949 "Research Note in Inter- and Intra-racial Homicides," in Social Forces (vol. 27; May, 1949).
- Goffman, E.
1967 "Characteristics of Total Institutions: in Deviance, edited by Dinitz, S., et. al. New York: Oxford University Press.
- Goode, E.
1969 "Marijuana and the Politics of Reality," in Journal of Health and Social Behavior (vol. 10; June, 1969).
- Gross, N., et. al.
1966 Explorations in Role Analysis. New York: John Wiley and Sons.
- Gusfield, J.
1966 Symbolic Crusade. Chicago: The University Press.
- Jacob, H.
1972 Justice in America. Boston: Little, Brown and Company.
- Kaplan, J.
1973 Criminal Justice. Mineola, New York: The Foundation Press.
- Kvaraceus, W. and W. Miller
1959 Delinquent Behavior. Washington: National Education Association.
- Lemert, E.
1964 Social Pathology. New York: McGraw Hill.
- Matza, D.
1964 Delinquency and Drift. New York: John Wiley and Sons.
- McKay, R.
1972 Attica. New York: Bantam Books.
- Merton, R.
1972 Social Theory and Social Structure. New York: The Free Press.
- Palmer, S.
1973 The Prevention of Crime. New York: Behavioral Publications.

- Pareto, F.
1968 In Theories of Society, edited by T. Parsons, et. al. New York: The Free Press.
- Pound, R.
1943 Social Control Through Law. New Haven: Yale University Press.
- Quinney, R.
1972 The Problem of Crime. New York: Dodd, Mead and Company.
- Rodman, H.
1971 Explorations in Role Analysis. New York: John Wiley and Sons.
- Rosenfeld, G.
1973 Shut Those Thick Lips. New York: Holt, Rinehart, and Winston.
- Rosett, A.
1971 "The Negotiated Guilty Plea," in Crime and Justice (volume 2) edited by Radzinowicz, L. and M. Wolfgang. New York: Basic Books.
- Schur, E.
1965 Crimes Without Victims. Englewood Cliffs, New Jersey: Prentice-Hall, Incorporated.
- Simmel, G.
1955 Conflict, translated by Kurt H. Wolff. Glencoe, Illinois: The Free Press.
- Sutherland, E.
1966 Principles of Criminology. Philadelphia: J. B. Lippincott Company.
- Sykes, G.
1967 Crime and Society. New York: Random House.
- Tannenbaum, F.
1939 Crime and Community. New York: Columbia University Press.
- U.C.R.
1972 Crimes in the United States: Uniform Crime Report. Washington: United States Government Printing Office.
- Wald, P.
1967 "Poverty and Criminal Justice," in The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- Yablonsky, L.
1968 The Hippie Trip. Los Angeles: Western Publishing Company.

CHAPTER IV

- Abraham, H. J.
1968 The Judicial Process. New York: Oxford University Press.
- Barnes, H. and N. Teeters
1959 New Horizons in Criminology. Englewood Cliffs, New Jersey: Prentice-Hall.
- Erikson, K.
1966 Wayward Puritans. New York: John Wiley and Sons
- Gault
1967 See Task Force Report, DeB. Katzenbach (editor). Washington: United States Government Printing Office.
- James, H.
1971 Crisis in the Courts. New York: David McKay.

CHAPTER V

- Abraham, H.
1968 "Courts, Courtrooms, and Juries," The Judicial Process. New York: Oxford University Press.
- DeB. Katzenbach, N.
1967a "Task Force Report: The Courts," The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- DeB. Katzenbach, N.
1967b "Task Force Report: The Police," The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- DeB. Katzenbach, N.
1967c "Task Force Report: Corrections," The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- Eldefonso, E., et. al.
1968 Principles of Law Enforcement. New York: John Wiley and Sons.
- Glaser, D.
1964 The Effectiveness of a Prison and Parole System. Indianapolis: The Bobbs-Merrill Company.
- Jacob, H.
1972 Justice in America. Boston: Little, Brown and Company.

- James, H.
1971 "Jail or Bail?", Crisis in the Courts. New York: David McKay Company.
- Johnson, E.
1968 Crime, Correction, and Society. Homewood, Illinois: The Dorsey Press.
- Judicial Council Report
1970 The Thirteenth Report of the Judicial Council of the State of New Hampshire. Concord: State Printing Office.
- Knudten, R.
1970 Crime in a Complex Society. Homewood, Illinois: The Dorsey Press.
- New Hampshire
1970 1970 Resident Population Figures: New Hampshire. Concord: Office of Planning and Research.
- State Comprehensive Plan
1970 New Hampshire Comprehensive Law Enforcement Plan. Concord: Commission on Crime and Delinquency.
- Sykes, G.
1967 Crime and Society. New York: Random House.
- Wolfgang, M., et. al. (editors)
1970 "Measuring Crime." The Sociology of Crime and Delinquency. New York: John Wiley and Sons.

CHAPTER VI

- Clinard, M.
1974 Sociology of Deviant Behavior. New York: Holt, Rinehart and Winston.
- Durkheim, E.
1893 The Rules of Sociological Methods. Paris: Alcan.
- UCR
1970 Federal Bureau of Investigation Uniform Crime Report. Washington: United States Government Printing Office.
- Sykes, G.
1967 Crime and Society. New York: Random House.

CHAPTER VII

- Carter, R. et. al.
1972 Correctional Institutions. Philadelphia: J. B. Lippincott Company.

- Goffman, E.
1961 Asylums. Garden City, New York: Anchor Books.
- Haskell, M. and L. Yablonsky
1970 Crime and Delinquency. Chicago: Rand McNally and Company.
- Manhattan Bail Project
1963 "The Manhattan Bail Project" by Ares, C., et. al. New York University Law Review 38 (January, 1963).
- Newman, D.
1966 Conviction. Boston: Little, Brown and Company.
- Newsweek
1973 Newsweek (July 23, 1973) New York: Newsweek, Inc.
- Richmond, M. and G. Aderhold
1969 "New Roles for Jails" in Correctional Institutions edited by Carter, et. al. Philadelphia: J. B. Lippincott Company.
- Sykes, G. and D. Matza
1958 "Techniques of Neutralization," American Sociological Review (December, 1958).
- Task Force Report--Corrections
1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- Task Force Report--Courts
1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.
- UCR
1970 Federal Bureau of Investigation Uniform Crime Report. Washington: United States Government Printing Office.

CHAPTER VIII

- Federal Bureau of Investigation
1970 Uniform Crime Report. Washington: United States Government Printing Office.
- Law Enforcement Assistance Administration (LEAA)
1970 Consultant Report on New Hampshire Jails. Unpublished.
- Palmer, S.
1973 The Prevention of Crime. New York: Behavioral Publications.

Quinney, R.

1971 The Problems of Crime. New York: Dodd, Mead and Company.

Skolnick, J.

1969 The Politics of Protest. New York: Ballentine Books.

Task Force Report: The Courts

1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.

Task Force Report: Assessment of Crime

1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.

Task Force Report: Science and Technology

1967 The President's Commission on Law Enforcement and Administration of Justice. Washington: United States Government Printing Office.

Time

1974 Time-Life Publishing Company, New York: June 17, 1974.

BIBLIOGRAPHY

BIBLIOGRAPHY

1. Abraham, Henry J., The Judicial Process. New York: The Oxford University Press, Inc., 1968.
2. Adoff, George and Jon Ray Hamann, "A Model for the Analysis of Sentencing Decision of the Criminal Justice System," an unpublished paper, Center for Theoretical Biology, State University of New York at Buffalo.
3. Aron, Raymond, Main Currents in Sociological Thought (Volume II). New York: Basic Books, Inc., 1967.
4. Barber, Bernard, "Structural Functional Analysis," American Sociological Review, Volume 21, Number 2, April, 1956) pp. 129-135.
5. Barker, Ernest, editor and translator. The Politics of Aristotle. New York: Oxford University Press, 1962.
6. Barnes, Harry E. and Negley K. Teeters, New Horizons in Criminology. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959.
7. Becker, Howard S., Outsiders. New York: The Free Press, 1968.
8. Bierstedt, Robert, editor. The Making of Society. New York: Random House, 1959.
9. Blalock, Hubert M., Jr., Causal Inferences in Nonexperimental Research. Chapel Hill: The University of North Carolina Press, 1964.
10. Bloch, Herbert A. and Gilbert Geis, Man, Crime and Society. New York: Random House, Inc., 1970.
11. Buckley, Walter, Sociology and Modern Systems Theory. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1967.
12. Campbell, James S., et. al., editors. Law and Order Reconsidered. New York: Praeger Publishers, 1970.
13. Cavan, Ruth S. and Jordan T. Cavan, Delinquency and Crime: Cross Cultural Perspective. Philadelphia: J. B. Lippincott Company, 1968.
14. Clinard, Marshall, editor. Anomie and Deviant Behavior. Glencoe, Illinois: The Free Press, 1961.

15. Cloward, Richard A. and Lloyd E. Ohlin, Delinquency and Opportunity. Glencoe, Illinois: The Free Press, 1961.
16. Cohen, Albert K., Delinquent Boys. New York: The Free Press, 1955.
17. Cohen, Albert K., Deviance and Control. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1966.
18. Cole, George F., "The Decision to Prosecute," Law and Society Review #4, February, 1970.
19. Cook, Fred I., The F.B.I. Nobody Knows. London: Jonathan Cape, 1964.
20. Coser, Lewis A., Continuities in the Study of Social Conflict.
21. Coser, Lewis A., editor, Georg Simmel. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1965.
22. Coser, Lewis A., The Functions of Social Conflict. New York: The Free Press, 1966.
23. Dahrendorf, Talf, Essays in the Theory of Society. Stanford: Stanford University Press, 1968.
24. Darwin, Charles, Selections in Relations to Sex. New York: Appleton, 1906.
25. Darwin, Charles, The Descent of Man. New York: Appleton, 1906.
26. Denzin, Norman K., Sociological Methods. Chicago: Aldine Publishing Company, 1970.
27. Dinitz, Simon, et. al., editors, Deviance. New York: Oxford University Press, 1969.
28. Dollard, John, et. al., Frustration and Aggression. New Haven: Yale University Press, 1967.
29. Douglas, Jack D., Crime and Justice in American Society. New York: Basic Books, Inc., 1970.
30. Douglas, Jack D., Deviance and Respectability. Edited by Jack D. Douglas. New York: Basic Books, Inc., 1970.
31. Durkheim, Emile, Suicide. Edited by George Simpson. Translated by John A. Spaulding and George Simpson. New York: The Free Press, 1967.
32. Durkheim, Emile, The Rules of Sociological Method. Translated by S. A. Solovay and J. H. Mueller. Glencoe, Illinois: The Free Press, 1968.

33. Eldefonso, Edward, Alan Coffey and Richard C. Grace. Principles of Law Enforcement. New York: John Wiley and Sons, Inc., 1967.
34. Erikson, Kai T., Wayward Puritans. New York: John Wiley and Sons, Inc., 1966.
35. Evans, E. P., The Criminal Prosecution and Capital Punishment of Animals. London: Hainemann Publishing Company, Inc., 1906.
36. Freedman, Robert, editor. Marx on Economics. New York: Harcourt, Brace and Company, 1961.
37. Freud, Sigmund, Civilization and its Discontents. Edited by James Strachey. New York: W. W. Norton and Company, Inc., 1962.
38. Fromm, Erich, Marx's Concept of Man. New York: Frederick Ungar Publishing Company, 1966.
39. Gerth, H. H. and C. Wright Mills, editors, From Max Weber. New York: Oxford University Press, 1967.
40. Glaser, Daniel, The Effectiveness of a Prison and Parole System. Indianapolis: The Bobbs-Merrill Company, Inc., 1964.
41. Goffman, Erving, Stigma. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1963.
42. Goode, Erich, The New Social Drug. Edited by David E. Smith. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1970.
43. Goslin, David A., editor. Handbook of Socialization Theory and Research. Chicago: Rand McNally and Company, 1969.
44. Gross, Llewellyn, Social Theory: Inquiries and Paradigms. New York: Random House, 1961.
45. Guenther, Anthony L., editor, Criminal Behavior and Social Structure. Chicago: Rand McNally and Company, 1970.
46. Gusfield, Joseph, Symbolic Crusade: Status, Politics and the American Temperance Movement. Chicago: The University Press, 1963.
47. Hall, Calvin S., A Primer of Freudian Psychology. New York: The World Publishing Company, 1954.
48. Hamilton, Edith and Huntington Cairns, editors. The Collected Dialogues. New York: Pantheon Books, 1966.
49. Haskell, Martin R. and Lewis Yablonsky, Crime and Delinquency. Chicago: Rand McNally and Company, 1970.

50. Hinkle, Roscoe C., Jr. and Gisela J. Hinkle, The Development of Modern Sociology. New York: Random House, 1967.
51. Horton, John, "Order and Conflict Theories of Social Problems or Competing Ideologies," The American Journal of Sociology, 71 (May, 1966), pp. 701-713.
52. Jacob, Herbert, Justice in America. Boston: Little, Brown and Company, 1972.
53. James, Howard, Crisis in the Courts. New York: David McKay Company, Inc., 1971.
54. Johnson, Elmer Hubert, Crime, Correction and Society. Homewood, Illinois: The Dorsey Press, 1968.
55. Kerner, Otto, Report on the National Advisory Commission on Civil Disorders. New York: Ballantine Books, Inc., 1969.
56. Kitsuse, John I., "Societal Reaction to Deviant Behavior," Social Problems, Volume 9, Number 3, (Winter, 1962) pp. 247-256.
57. Knudten, Richard D., Crime in a Complex Society. Homewood, Illinois: The Dorsey Press, 1970.
58. Lemert, Edwin M., Social Pathology. New York: McGraw-Hill Book Company, 1951.
59. Lewis, W. David, From Newgate to Dannemora. Ithaca, New York: Cornell University Press, 1965.
60. Manis, Jerome G. and Barnard N. Meltzer, Symbolic Interaction. Boston: Allyn and Bacon, Inc., 1967.
61. Marx, Karl and Friedrich Engels, The Communist Manifesto. Edited by Francis Randall. New York: Washington Square Press, 1967.
62. Marx, Karl and Friedrich Engels, The Communist Manifesto. Translated by Samuel Moore and edited by Joseph Katz. New York: Washington Square Press, 1965.
63. Merton, Robert K., Social Theory and Social Structure. New York: The Free Press, 1968.
64. Miller, Walter B., "Violent Crime in City Gangs," The Annals in the American Academy of Political and Social Science, 364 (March, 1966), pp. 97-112.
65. Mills, C. Wright, White Collar. New York: Oxford University Press, 1966.
66. Olsen, Marvine E., editor, Power in Societies. New York: The Macmillan Company, 1970.

67. Palmer, Stuart, Deviance and Conformity. New Haven: College and University Press, 1970.
68. Palmer, Stuart, "On the Unintended Consequences of Social Control." A paper read at the Annual Meetings of the American Sociological Association, San Francisco, September, 1969.
69. Palmer, Stuart, The Psychology of Murder. New York: Thomas Y. Crowell Company, 1962.
70. Palmer, Stuart, The Violent Society. New Haven: College University Press, 1972.
71. Palmer, Stuart, The Prevention of Crime. New York: Behavioral Publications, in press.
72. Park, Robert E., et. al., The City. Edited by Morris Janowitz. Chicago: University of Chicago Press, 1967.
73. Parsons, Talcott, "Application of Parsonian Theory," Sociological Inquiry (Volume 38, Number 2). Edited by A. Paul Hare. Belgium: United Chapters of Alpha Kappa Delta, 1968.
74. Parsons, Talcott, et. al., editors, Theories of Society. New York: The Free Press, 1968.
75. Quinney, Richard, editor, Crime and Justice in Society. Boston: Little, Brown and Company, 1969.
76. Quinney, Richard, The Problem of Crime. New York: Dodd, Mead and Company, 1971.
77. Reckless, Walter C., The Crime Problem. New York: Appleton-Century-Crofts, 1967.
78. Reeves, Steward K., consultant, L.E.A.A. Report on County Jails and Houses of Correction. Prepared by the Commission of Crime and Delinquency, 1970.
79. Saint Augustine, Philosophy of Saint Augustine. Edited by John A. Mourtant. University Park: The Pennsylvania State University Press, 1964.
80. Scheler, Max, Ressentiment. Edited by Lewis A. Coser, New York: The Free Press, 1968.
81. Sellin, Thorster, Conflict and Crime. New York: Social Science Research Council, 1938.
82. Shapiro, Herman, editor, Medieval Philosophy. New York: Random House, 1964.

83. Skolnick, Jerome H., The Politics of Protest. New York: Ballantine Books, Inc., 1969.
84. Spencer, Herbert, The Study of Sociology. Ann Arbor: The University of Michigan Press, 1966.
85. Sudnow, David, "Normal Crimes." Social Problems, Volume 12, Number 3, pp. 255-276.
86. Sutherland, Edwin H. and Donald R. Cressey. Criminology. Philadelphia: J. B. Lippincott Company, 1970.
87. Sykes, Gresham M. and David Matza, "Techniques of Neutralization: A Theory of Delinquency," American Sociological Review. (December, 1957).
88. Sykes, Gresham M., Crime and Society. New York: Random House, Inc., 1967.
89. Sykes, Gresham M., The Society of Captives. New York: Atheneum, 1966.
90. Tannenbaum, Frank, Crime and Community. New York: Columbia University Press, 1938.
91. Tarde, Gabriel, Penal Philosophy. Edited by Edward Lindsey. Translated by Rapelje Howell. Montclair, New Jersey: Patterson Smith Publishing Corporation, 1968.
92. Task Force Report, The President's Commission on Law Enforcement and Administration of Justice, Washington: United States Government Printing Office, 1967.
93. Thomas, William I., Social Behavior and Personality: Contributions of W. I. Thomas to Theory and Social Research. Edited by Edmand H. Volkkart. New York: Social Science Research Council, 1951.
94. Time, New York: Time-Life Publishing Company, June 17, 1974.
95. Turner, Ralph H., editor, On Social Control and Collective Behavior. Chicago: The University of Chicago Press, 1967.
96. Weber, Max, Economy and Society (Volume II). Edited by Guenther Roth and Claus Wittich. New York: Bedminster Press, Inc., 1968.
97. Weber, Max, General Economic History. Translated by Frank H. Knight. New York: The Macmillan Company, 1966.
98. Weber, Max, The Protestant Ethic and the Spirit of Capitalism. Translated by Talcott Parsons. New York: Charles Scribner's Sons, 1958.

99. Wolff, Kurt H., editor, The Sociology of Georg Simmel. New York: The Free Press, 1969.
100. Wolfgang, Marvin E. and Franco Ferracuti, The Subculture of Violence. London: Tavistick, 1967.
101. Wolfgang, Marvin E., Patterns in Criminal Homicide. Philadelphia: University of Pennsylvania Press, 1958.
102. Wolfgang, Marvin E., The Sociology of Crime and Delinquency. New York: John Wiley and Sons, Inc., 1970.
103. Yablonsky, Lewis, The Violent Gang. New York: The Macmillan Company, 1962.

APPENDIX

APPENDIX I: BAIL TABLES

TABLE I: AVAILABILITY OF BAIL:
Statewide Superior Court Sample

Personal Offense	Bail Awarded	Bail Awarded But Not Met	Bail Not Awarded	Sample Size
Murder	1	1	5	7
Attempted Murder	0	1	1	2
Manslaughter	0	1	0	1
Kidnapping	0	0	0	0
Rape	7	0	2	9
Assault with Intent to Rape	1	0	0	1
Attempted Rape	1	1	1	3
Aggravated Assault	6	3	1	10
Assault and Robbery	3	2	0	5
Armed Robbery	0	3	1	4
Robbery	1	4	2	7
Reckless Driving-- Death Resulting	3	1	1	5
Incest	0	1	1	2
GRAND TOTAL	23	18	15	56

TABLE II: AVAILABILITY OF BAIL:
Statewide Superior Court Sample (Cont.)

Property Offense	Bail Awarded	Bail Awarded But Not Met	Bail Not Awarded	Sample Size
Grand Larceny	2	2	1	5
Burglary	15	22	2	39
Breaking and Entering	0	1	1	2
Breaking and Entering and Larceny	1	0	0	1
Attempted Breaking and Entering	1	0	0	1
Attempted Burglary or Larceny	2	2	0	4
Auto Larceny	3	0	0	3
Forgery	1	3	0	4
Fraud	1	1	0	2
False Pretense	3	4	1	8
Attempted False Pretense	3	0	0	3
Uttering	0	1	0	1
Receiving Stolen Goods	4	2	0	6
Concealing Stolen Goods	3	0	0	3
Possession of Weapons	0	1	0	1
GRAND TOTAL	42	40	5	87

TABLE III: AVAILABILITY OF BAIL:
Statewide Superior Court Sample (Cont.)

Non-Victim Offense	Bail Awarded	Bail Awarded But Not Met	Bail Not Awarded	Sample Size
Lascivious Behavior	1	1	0	2
Lewd and Lascivious Behavior	0	0	0	0
Unnatural Act	4	1	0	5
Sale of Narcotics	6	6	0	12
Jail Break or Escape	0	0	2	2
GRAND TOTAL	11	8	2	21

TABLE IV: AVAILABILITY OF BAIL:
Statewide Superior Court Sample (Cont.)

Misdemeanor Offense	Bail Awarded	Bail Awarded But Not Met	Bail Not Awarded	Sample Size
Larceny	6	2	0	8
Possession of Narcotics	9	4	0	13
Malicious Destruction of Property	0	0	2	2
GRAND TOTAL	15	6	2	23

APPENDIX II: STATEWIDE SAMPLE TABLES

TABLE I-A: PERSONAL OFFENSES:

An investigation of the relationship between the charges brought before the Superior Court and their subsequent disposition

CHARGES: Personal Offenses:	Non-judicial Disposition		Non-confinement Disposition			
	Nol Process	Dis-missed	Not Guilty	Fined	Suspended Sentence	Suspended Sentence & Probation
1. Murder			3			
2. Attempted Murder		1				
3. Manslaughter	1					
4. Kidnapping						
5. Rape	4	3				
6. Assault with Intent to Rape		1				
7. Attempted Rape		1			1	
8. Aggravated Assault	3	4				
9. Assault and Robbery	1			1	1	
10. Armed Robbery					1	
11. Robbery					1	
12. Reckless Driving--Death Resulting	1			1	2	
13. Incest						
GRAND TOTAL	10	10	3	2	5	

TABLE I-B: PERSONAL OFFENSES:

CHARGES: Non-confinement Disposition (cont)		Confinement Disposition						Sample Size
Personal Offenses:	Probation	House of Correc- tion	State Prison*					
			1-4	5-9	10-14	15+	life	
1. Murder				1	2	1	1	8
2. Attempted Murder						1		2
3. Manslaughter								1
4. Kidnapping			1					1
5. Rape			2					9
6. Assault with Intent to Rape								1
7. Attempted Rape		1						3
8. Aggravated Assault			4	1				12
9. Assault and Robbery		2		1				6
10. Armed Robbery			2	1	1			5
11. Robbery		2	5		1			8
12. Reckless Driving-- Death Resulting			1					5
13. Incest			1					1
GRAND TOTAL		5	16	4	4	2	1	62

*Years of sentence

TABLE II-A: PROPERTY OFFENSES:

An investigation of the relationship between the charges brought before the Superior Court and their subsequent disposition

CHARGES:	Non-judicial Disposition		Non-confinement Disposition			
	Nol Process	Dis-missed	Not Guilty	Fined	Suspended Sentence	Suspended Sentence & Probation
1. Grand Larceny	2					
2. Burglary	7	2		1	1	1
3. Breaking & Entering	1				1	
4. Breaking & Entering & Larceny			1			
5. Attempted Breaking & Entering						
6. Attempted Burglary or Larceny	2	1				
7. Auto Larceny	4					
8. Forgery						
9. Fraud	1			1		
10. False Pretense	3	1				
11. Attempted False Pretense		2				
12. Uttering						
13. Receiving Stolen Goods	4					
14. Concealing Stolen Goods	1			1		
15. Possessing of Weapons				1		
GRAND TOTAL	26	6	1	4	2	1

TABLE II-B: PROPERTY OFFENSES

Property Offenses	Non-confinement Disposition (cont)		Confinement Disposition					Sample Size
	Probation	House of Correction	State Prison*					
			1-4	5-9	10-14	15+	life	
1. Grand Larceny		3	1					
2. Burglary	3	8	3	14	1			41
3. Breaking and Entering								2
4. Breaking and Entering and Larceny	1	1	3					6
5. Attempted Breaking and Entering								1
6. Attempted Burglary or Larceny		1	1	1				6
7. Auto Larceny								4
8. Forgery			3					3
9. Fraud								2
10. False Pretense			2					6
11. Attempted False Pretense	1							3
12. Uttering			2					2
13. Receiving Stolen Goods	2							6
14. Concealing Stolen Goods								2
15. Possession of Weapons								1
GRAND TOTAL	7	13	15	15	1			91

*Years of sentence.

TABLE III-A: NON-VICTIM OFFENSES:

An investigation of the relationship between the charges brought before the Superior Court and their subsequent disposition

CHARGES	Non-judicial Disposition		Non-confinement Disposition			
	Nol Process	Dis-missed	Not Guilty	Fined	Suspended Sentence	Suspended Sentence & Probation
1. Lascivious Behavior		1				
2. Lewd and Lascivious Behavior	1					
3. Unnatural Acts		1				
4. Sale of Narcotics	1	1		2		
5. Jail Break or Escape						
GRAND TOTAL	2	3		2		

TABLE III-B: NON-VICTIM OFFENSES:

CHARGES		Non-confinement Disposition (cont)	Confinement Disposition					Sample Size
Non-Victim Offenses	Probation	House of Correc- tion	State Prison*					
			1-4	5-9	10-14	15+	life	
1. Lascivious Behavior			1					2
2. Lewd and Lascivious Behavior								1
3. Unnatural Acts	1	1	2					5
4. Sale of Narcotics		2	6	1				13
5. Jail Break		2	1					3
GRAND TOTAL	1	5	10	1				24

*Years of sentence

TABLE IV-A: MISDEMEANORS:

An investigation of the relationship between the charges brought before the Superior Court and their subsequent disposition

CHARGES: Misdemeanor Offenses	Non-judicial Disposition		Non-confinement Disposition			
	Nol Process	Dis- missed	Not Guilty	Fined	Suspended Sentence	Suspended Sentence & Probation
1. Larceny	1	2		2		
2. Possession of Narcotics	5	3		2	1	
3. Malicious Destruction of Property				2		
GRAND TOTAL	6	5		6	1	

TABLE IV-B: MISDEMEANORS

CHARGES: Misdemeanor Offenses	Non-confinement Disposition (cont)		Confinement Disposition					Sample Size
	Probation	House of Correc- tion	State Prison*					
			1-4	5-9	10-14	15+	life	
1. Larceny			1					6
2. Possession of Narcotics		2						13
3. Malicious Destruction of Property		1						3
GRAND TOTAL		3	1					22

*Years of Sentence

APPENDIX III: MERRIMACK SAMPLE TABLES

TABLE I-A: PERSONAL OFFENSES:

N=16 Merrimack Superior Court Data:

An investigation of felony charges filed with the county attorney for action before the state Superior Court and the subsequent handling of these charges

CHARGES	Non-judicial Disposition			Non-confinement Disposition	
	Nol Process	Indictment Waived	No True Bill	*Bargain Plea	Not Guilty by Insanity
1. Murder 2nd					1
2. Arson					
3. Aggravated Assault			2	2	
4. Armed Robbery				3	
5. Reckless Driving-- Death Resulting					
6. Statutory Rape	2		1	1	
7. Inticing Female Child				1	
GRAND TOTAL	2	0	3	7	1

*Cases involving pre-arraignment, prosecutor's discretion.

TABLE I-B: PERSONAL OFFENSES

Merrimack Superior Court Data

CHARGES	Non-confinement Disposition (cont)			Confinement Disposition				Sample Size
	Not Guilty	Suspended Sentence	Pro- bation	House of Correc- tion	State Prison*			
I. Personal Offense					1-3	3-5	5+	
1. Murder, 2nd								1
2. Arson							1	1
3. Aggravated Assault			1		1			4
4. Armed Robbery					2	1	1	4
5. Reckless Driving-- Death Resulting				1				1
6. Statutory Rape			1					4
7. Inticing Female Child				1				1
GRAND TOTAL	0	0	2	2	3	1	2	16

*Years of Sentence

TABLE II-A: PROPERTY OFFENSES:

N=20 Merrimack Superior Court Data

An investigation of felony charges filed with the county attorney for action before the state Superior Court and the subsequent handling of these charges

CHARGES:	Non-judicial Disposition			Non-confinement Disposition	
	Nol Process	Indictment Waivered	No True Bill	Bargain Plea*	Not Guilty by Insanity
II. Property Offense					
1. Burglary	7	2	2	27	2
2. Grand Larceny	1		2	3	
3. False Pretense	3	2	1	11	
4. Passing Counterfeit Money				1	
5. Receiving Stolen Goods					
6. Concealing Stolen Goods				1	
7. Forgery				2	
GRAND TOTAL	11	4	5	45	2

*Cases involving pre-arraignment, prosecutor's discretion.

TABLE II-B: PROPERTY OFFENSES:

Merrimack Superior Court Data

CHARGES:	Non-confinement Disposition (cont)			Confinement Disposition				Sample Size
	Not Guilty	Suspended Sentence	Pro- bation	House of Correc- tion	State Prison*			
II. Property Offense					1-3	3-5	5+	
1. Burglary		1	20	2	3	2		41
2. Grand Larceny	1		1	2				7
3. False Pretense		1	8	1	1			17
4. Passing Counter- feit Money			1					1
5. Receiving Stolen Goods				1				1
6. Concealing Stolen Goods					1			1
7. Forgery			2					2
GRAND TOTAL	1	2	32	6	5	2	0	70

*Years of Sentence

TABLE III-A: NON-VICTIM OFFENSES:

Merrimack Superior Court Sample

An investigation of felony charges filed with the county attorney for acting before the state Superior Court and the subsequent handling of these charges

CHARGES:	Non-judicial Disposition			Non-confinement Disposition	
	Nol Process	Indictment Waivered	No True Bill	Bargain Plea*	Not Guilty By Insanity
III. Non-Victim Process					
1. Possession of Narcotics				5	
2. Selling of Narcotics				4	
3. Manufacturing Narcotics	1				
4. Lewd and Lascivious Behavior					
5. Alien in Possession of Weapon				1	
GRAND TOTAL	1	0	0	10	0

*Cases involving pre-arraignment, prosecutor's discretion.

TABLE III-B: NON-VICTIM OFFENSES:

Merrimack Superior Court Sample

CHARGES: III. Non-Victim Offense	Non-confinement Disposition (cont)			Confinement Disposition				Sample Size
	Not Guilty	Suspended Sentence	Pro- bation	House of Correc- tion	State Prison*			
					1-3	3-5	5+	
1. Possession of Narcotics			5					5
2. Selling of Narcotics				4				4
3. Manufac- turing Narcotics								1
4. Lewd and Lacivious Behavior	1			1				2
5. Alien in Possession of Weapon		1						1
GRAND TOTAL	1	1	5	5	0	0	0	13

*Years of Sentence

APPENDIX IV

SUPERIOR COURT SAMPLE CODE SHEET

ITEM		COL. NO.	CODE
1. I D NUMBER	_____	1- 8	_____
2. COURT	COUNTY _____	9-11	_____
3. OFFENSE	_____	12-14	_____
4. ARREST DATE	MO _____ DAY _____ YEAR _____	15-20	_____
5. ARREST AUTH	ST. POL _____ SHERIFF _____ MUN _____ OTHER _____	21	_____
6. DATE INDICTMENT	MO _____ DAY _____ YEAR _____	22-27	_____
7. CODEFENDANT	YES _____ NO _____	28	_____
8. BAIL GRANTED	YES _____ NO _____ YES/NOT BAILED _____	29	_____
9. JAIL/ARRAIGN- MENT	MONTHS _____ DAYS _____	30-33	_____
10. DISPOSITION	_____	34-35	_____
11. DATE DISPOSITION	MO _____ DAY _____ YEAR _____	36-41	_____
12. DATE BIRTH	MO _____ DAY _____ YEAR _____	42-47	_____
13. CITIZEN	YES _____ NO _____	48	_____
14. ENTRY DATE	MO _____ YEAR _____	49-54	_____
15. PRESENT RESIDENT	TOWN _____ STATE _____	55-62	_____
16. PREVIOUS RESIDENCE	TOWN _____ STATE _____	63-70	_____
17. CARD NUMBER	_____	80	<u>1</u>
18. RELIGION	PROT _____ CATH _____ JEW _____ OTHER _____ NONE _____	9	_____
19. CHURCH ATTEND	YES _____ NO _____ RARELY _____	10	_____
20. MARITAL STATUS	NEV MAR _____ MAR _____ SEP _____ DIV _____ WID _____	11	_____

ITEM		COL. NO.	CODE
21. PLACE MARRIAGE	TOWN _____ STATE _____	12-19	_____
22. DATE MARRIAGE	MO _____ DAY _____ YEAR _____	34-39	_____
21. PLACE MARRIAGE	TOWN _____ STATE _____	40-47	_____
22. DATE MARRIAGE	MO _____ DAY _____ YEAR _____	48-53	_____
23. FATHER RESIDENCE	TOWN _____ STATE _____	54-61	_____
24. FATHER OCCUPATION	_____	62-63	_____
25. MOTHER RESIDENCE	TOWN _____ STATE _____	64-71	_____
26. MOTHER OCCUPATION	_____	72-73	_____
27. M/F SAME RESIDENCE	YES _____ NO _____	74	__
28. HIGHEST GRADE	-6 <u> </u> 6 <u> </u> 7 <u> </u> 8 <u> </u> 9 <u> </u> 10 <u> </u> 11 <u> </u> 12+ <u> </u>	75-76	__
29. AGE LEFT SCHOOL	YEARS _____	77-78	__
30. LITERATE	YES _____ NO _____	79	__
17. CARD NUMBER	_____	80	<u> </u> 2
1. I D NUMBER	_____	1- 8	_____
31. PLACE SCHOOL	TOWN _____ STATE _____	9-16	_____
32. SOC SEC NUMBER	_____	17-25	_____
33. OCCUPATION	_____	26-27	__
34. USUAL INDUSTRY	_____	28-30	__
35. CURRENT OCC STATUS	EMP _____ UNEMP _____	31	__
36. LENGTH EMP/ UNEMP	YEARS _____ MOS _____	32-35	_____
37. PREVIOUS EMPLOYMENT INDUSTRY ONLY	_____	36-38	_____

ITEM		COL. NO.	CODE
38. LENGTH EMPLOYMENT	YEARS _____ MOS _____	39-42	_____
39. PREVIOUS EMPLOYMENT INDUSTRY ONLY	_____	43-45	_____
38. LENGTH EMPLOYMENT	YEARS _____ MOS _____	46-49	_____
39. MILITARY SERVICE	ARMY ___ NAVY ___ M.C. ___ C.G. ___ NO ___	50	___
40. LENGTH MIL SERVICE	YEARS _____ MOS _____	51-54	_____
41. KIND OF DISCHARGE	HON ___ GOSH ___ GOSWOH ___ DISH ___	55	___
42. DATE OF DISCHARGE	MO _____ DAY _____ YEAR _____	56-61	_____
43. MEDICAL HISTORY	YES _____ NO _____	62	___
44. USE DRUGS	YES _____ NO _____	63	___
45. USE ALCOHOL	YES _____ NO _____	64	___
46. SEX DEVIATE	YES _____ NO _____	65	___
47. NO. TRAFFIC OFF	_____	66-67	___
48. NO. DRUNK OFF	_____	68-69	___
49. NO JUVENILE OFF	_____	70-71	___
17. CARD NUMBER	_____	80	<u>3</u>
1. I D NUMBER	_____	1- 8	_____
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	9-14	_____
51. COURT	COUNTY/DISTRICT _____ STATE _____	15-19	_____
52. OFFENSE	_____	20-21	___
53. DISPOSITION	_____	22-23	___
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	24-29	_____

ITEM		COL. NO.	CODE
51. COURT	COUNTY/DISTRICT _____ STATE _____	30-34	--- --
52. OFFENSE	_____	35-36	--
53. DISPOSITION	_____	37-38	--- --
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	39-44	--- --
51. COURT	COUNTY/DISTRICT _____ STATE _____	45-49	--- --
52. OFFENSE	_____	50-51	--
53. DISPOSITION	_____	52-53	---
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	54-59	--- --
51. COURT	COUNTY/RESIDENCE _____ STATE _____	60-64	--- --
52. OFFENSE	_____	65-66	--
53. DISPOSITION	_____	67-68	--
17. CARD NUMBER	_____	80	<u>4</u>
1. I D NUMBER	-----	1- 8	-----
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	9-14	--- --
51. COURT	COUNTY/DISTRICT _____ STATE _____	15-19	--- --
52. OFFENSE	_____	20-21	--
53. DISPOSITION	_____	22-23	--
50. DATA APPEARANCE	MO _____ DAY _____ YEAR _____	24-29	--- --
51. COURT	COUNTY/DISTRICT _____ STATE _____	30-34	--- --
52. OFFENSE	_____	35-36	--
53. DISPOSITION	_____	37-38	--
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	39-44	--- --
51. COURT	COUNTY/DISTRICT _____ STATE _____	45-49	--- --

ITEM		COL. NO.	CODE
52. OFFENSE	_____	50-51	--
53. DISPOSITION	_____	52-53	--
50. DATE APPEARANCE	MO _____ DAY _____ YEAR _____	54-59	-- -- -- --
51. COURT	COUNTY/DISTRICT _____ STATE _____	60-64	-- -- --
52. OFFENSE	_____	65-66	--
53. DISPOSITION	_____	67-68	--
17. CARD NUMBER	_____	80	<u>5</u>