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## Crime and Punishment in Gold Country : A Historical Case-Study

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# Crime and Punishment in Gold Country: A Historical Case-Study<sup>1</sup>

Lawrence M. Friedman<sup>†</sup> & Shih-Chun Chien<sup>††</sup>

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<sup>1</sup> Much of this article is based on criminal files from El Dorado County, California between the years 1951-1961. These files are located in the Stanford Law Library. This collection has no official name, but hereinafter will be referred to as the following: Stanford Law El Dorado Collection.

<sup>†</sup> Lawrence M. Friedman is a Marion Rice Kirkwood Professor, Stanford University School of Law. This piece is dedicated to Frank Zimring, whose work on criminal justice is unparalleled for its rigor and insight.

<sup>††</sup> Shih-Chun Chien is a JSD Candidate, Stanford University School of Law.

In late 1956, a resident of El Dorado County, California, Jack B.,<sup>2</sup> found himself in trouble. The basic problem was that he was accused of executing and delivering checks, mostly drawn on a Placerville bank, although Jack knew full well “that he did not have sufficient funds in nor credit with said bank” to cover the checks. At a preliminary hearing that was held on December 31, 1956, Jack, represented by a court-appointed attorney, Charles F. Fogerty, pleaded not guilty. Fogerty waived further preliminary hearing. Consequently, by order of the judge, Jack B. was “held to answer in the Superior Court of El Dorado County,” and was “remanded to the custody of the Sheriff in lieu of bail,” which had been set at \$2,500.

On January 4, 1957, the district attorney and the defendant appeared in Superior Court. At this time, the defendant pleaded guilty, and asked for probation. The matter was referred to R. A. Sinclair, a probation officer (hereinafter: PO) of the county. Sinclair filed his report on January 10<sup>th</sup>. By that point, Jack B. had been in jail for 22 days.

Jack B., according to the report, was an auto mechanic and cook. He was born in 1923, the youngest of four children. His childhood was “happy;” “harmony. . . prevailed in his home life.” He left high school in eleventh grade in order to earn some money. He served in the navy for two years. He married and fathered five children; the oldest was 12-years old, the youngest one-and-a-half at the time when the report was produced. He worked as a cook in canneries, and also had jobs in the lumber and construction industries. He had never been arrested before.

In December 1956, Jack B. was unemployed and “his children were out of food.” Instead of “appealing to the country welfare department,” according to the report, “he saw fit to issue and pass for payment about thirty (30) checks,” amounting to some \$300. He used the money “for purchasing necessities of life;” “liquor” was not involved. Defendant said he thought he “would be able to pay the money back before I was picked up by the police. It is the first time I ever did such a thing.” He was essentially broke; his assets consisted of an old Ford Two Door auto and some furniture.

Jack named three character references. Two of them were

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<sup>2</sup> We will not use the full names of defendants and others; many of them are still alive, and certainly members of their families are alive and perhaps still living in El Dorado County. The records are, of course, public records, and hence those who have an interest in any of the files can learn the full names, if they need to. The file is EC Criminal 8496.

contacted: Mrs. Montgomery, of Sacramento called him a “gentleman” who loved his family; she “never saw him drinking liquor.” George Kyle, owner of a general store in Garden Valley, said that Jack “always paid his bills and acted like a gentleman.” Jack stated that “if granted probation, I will make restitution in full.” The PO, noting that Jack “has displayed no vicious or brutal tendencies,” recommended probation.

The judge then suspended sentence “until further order.” The defendant was “admitted to probation” for a three-year term. The terms of probation were as follows: defendant was to report to the PO “as directed by said Probation Officer,” giving him “such information as he shall request from time to time.” Defendant was also not to use “any spirituous [sic], fermented or malt liquors, or any intoxicating beverages of any kind, or any narcotics or drugs of any kind,” except during illness, if prescribed by a doctor. Defendant was not to “commit any breach of the peace nor violate any law,” or “engage in any criminal practices, nor consort with evil associates, nor frequent saloons or gambling houses, nor gamble nor engage in gambling of any kind or description. . . nor lead a vicious life, but must always seek and pursue employment.” Defendant was also not to leave the county without permission. He was required to make restitution, “payable in monthly installments,” as soon as he had a job, payments to be made “through the Probation Officer.”

The order added, as a “special condition of this probation,” that Jack spend three months in the county jail, but if he got a job, he could apply to the court “for the suspension of this special condition.” Probation could be revoked for violation of any of the conditions; in that case, defendant would be deemed guilty and dealt with accordingly. But if Jack were to fulfil all the conditions of probation, at the end of the period the Court would allow him to withdraw his plea of guilty, plead not guilty; and the court would “dismiss the information” against him, and release him “from all penalties and disabilities resulting from the offenses or crimes of which he has been convicted.” In fact, in March, the Cannery Workers and Warehouseman’s Union, Local No. 857, in Sacramento, offered Jack a job and Jack was released from jail.

Jack B. is not an important historical figure, not even of any particular significance in the county or town where he lived. But he can more or less represent the men (and they were overwhelmingly men) who ran afoul of the law in El Dorado County. His story comes out of a yellowing file, contained in a number of boxes of criminal records—35 boxes in all— from El Dorado County; the cases run from 1951 to 1961. These boxes are housed in the Stanford Law School library. These files

preserve the fossil record, as it were, of criminal justice in that county for the decade that they cover. This pilot study looks at files in thirteen of these boxes, beginning with cases from 1957; the total number of files covered in this study is 104. A few of the files are incomplete in one way or another, so our figures at times do not quite add up to 104.

There is, of course, an immense literature about the criminal justice system, and how it works (and doesn't work). Some of these studies are historical. But not many of them take a worm's eye view of the subject. This paper tells the courtroom story of men like Jack B.; it gives us a snapshot of the system as it operated, in a small county in California, at one particular point in time.

### GOLD COUNTRY

El Dorado County stretches from Folsom Lake in the West, to the Nevada border and Lake Tahoe in the East, with a land area of some 1700 square miles. It begins in the lowlands and rises into the Sierra Nevadas. It is one of the smaller California counties in terms of population. As of the 2018 census, 188,399 people lived in the county.<sup>3</sup> This represents a sizeable increase from the figures for the years of this study. The population in 1950, according to the census, was 16,207, less than a tenth of what it is today, and less than it was in 1850, at the height of the gold rush.<sup>4</sup> By 1960, the population had risen to 29,390; this must be about what the population was when the cases we sampled were decided.<sup>5</sup> Between 1950 and 1960, El Dorado was one of the "fastest growing counties in California;" it gained some 67% of people between the two census years.<sup>6</sup>

The great California gold rush began in El Dorado County; the county name reflects this historical fact. Its very name, according to the 1961 City Directory, "conjures in the mind. . . visions of great wealth."<sup>7</sup> The name of the county literally means "the gilded one."<sup>8</sup> The county seat

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<sup>3</sup> PROFILE & DEMOGRAPHIC DATA 2018-2019, EL DORADO COUNTY, <https://www.edcgov.us/government/cao/documents/2018-2019%20budget/demographic.pdf>.

<sup>4</sup> EL DORADO CHAMBER OF COMMERCE, COMMUNITY ECONOMIC PROFILE FOR EL DORADO COUNTY, CALIFORNIA 1 (1974).

<sup>5</sup> *Preface* to PLACERVILLE CITY DIRECTORY 4 (1961).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Willie Drye, *El Dorado: The Legend of El Dorado is Popular Folklore, and Even Ensnared Sir Walter Raleigh*, NAT. GEO. (Feb. 14, 2019), <https://www.nationalgeographic.com/archaeology-and-history/archaeology/el-dorado/>.

is Placerville, a town whose name also is redolent of the gold rush; it is based on the gold rush technique of placer mining. Placerville was once known as the “Old Hangtown,” which referred to its turbulent early days, and an incident in which “a few culprits, caught almost red-handed, were led to the middle of the street, given a short trial, and then hanged from a great oak tree.”<sup>9</sup> In 1960, the population of Placerville was 4,438 and the “trading area” population was about 22,000.<sup>10</sup> By the time of the 2010 census, Placerville had grown in population to 10,389, but it was not the largest town in the county.<sup>11</sup> That title today goes to South Lake Tahoe, which is about twice as big as Placerville. And a large portion of El Dorado’s population today lives in the far western part of the county—part of the sprawling growth of Sacramento.

Gold has long since been dethroned from its place of honor in the county. The population of the county actually dropped between the 1850’s and the 1930’s, as low as 6,000; in 1930, it was 8,325.<sup>12</sup> In 1950, the county had 16,207 residents, and in 1960, 29,390.<sup>13</sup> The increase of population in the Sacramento metropolitan area has spilled over into El Dorado, and is responsible for much of the recent growth in the county. There is a certain amount of ranching and agriculture in the county. Today, tourism is also a crucial part of the economic base. Thousands of tourists, no doubt, pass through El Dorado County on their way to the Sierras or Lake Tahoe; many of them probably stop in Placerville or other towns in the county for a bite to eat, or a night in a motel and perhaps to look at some of the historic buildings left over from the gold rush period. And a good many of them end up at Lake Tahoe, at the eastern edge of the county.

The data that form this study come, as we mentioned, primarily from the criminal files of the Superior Court of El Dorado County. The Superior Court is the basic trial court in every California county. Each county has its own superior court. The El Dorado County Superior Court, in the period of this study, worked out of the county courthouse. An old courthouse, in Placerville, was destroyed by fire in 1910, and replaced

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<sup>9</sup> William M. Ripley, *Preface* to PLACERVILLE CITY DIRECTORY 1 (1947).

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Census Bureau, U.S. CENSUS (2010).

<sup>12</sup> DEPT. OF COMMERCE, U.S. BUREAU OF THE CENSUS, POPULATION DIVISION, POPULATION OF STATES AND COUNTIES OF THE UNITED STATES: 1790 – 1990 20-21 (Richard L. Forstall ed., 1996).

<sup>13</sup> EL DORADO COUNTY CHAMBER OF COMMERCE, COMMUNITY ECONOMIC PROFILE FOR EL DORADO COUNTY, CALIFORNIA I (1974).

with a new concrete and steel courthouse on the same site.<sup>14</sup> From 1962 to 1971, the building was vacated: the courthouse, according to an engineer's report, was in "structural danger of creating a public calamity."<sup>15</sup> All of the trials and proceedings covered in this study were, however, conducted in this courthouse building.

In counties with big populations, there would be many Superior Court judges, and the court would sit in many different places; Los Angeles County's Superior Court has more than 45 separate sites, and the court employs thousands of workers.<sup>16</sup> But this, of course, was not the case for small, sparsely populated counties like El Dorado County in the 1950's. The sole judge of the Superior Court, during the period of this study, was Robert E. Roberts. Roberts had been the district attorney of the county. In 1954, he was appointed to the Superior Court by the Governor, and Jack R. Winkler replaced him as district attorney. Roberts served on the court until his retirement in 1974. He died in 1988.<sup>17</sup>

#### EL DORADO: THE DEFENDANTS

Who were the defendants in criminal cases in El Dorado County, and what were they accused of? They were, in the first place, men: of the 104 defendants, only 5 were women.<sup>18</sup> Table One shows the crimes defendants were charged with:

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<sup>14</sup> Cole Mayer, *Courthouse Turns 100*, MOUNTAIN DEMOCRAT (May 4, 2013), <https://www.mtdemocrat.com/news/courthouse-turns-100/>.

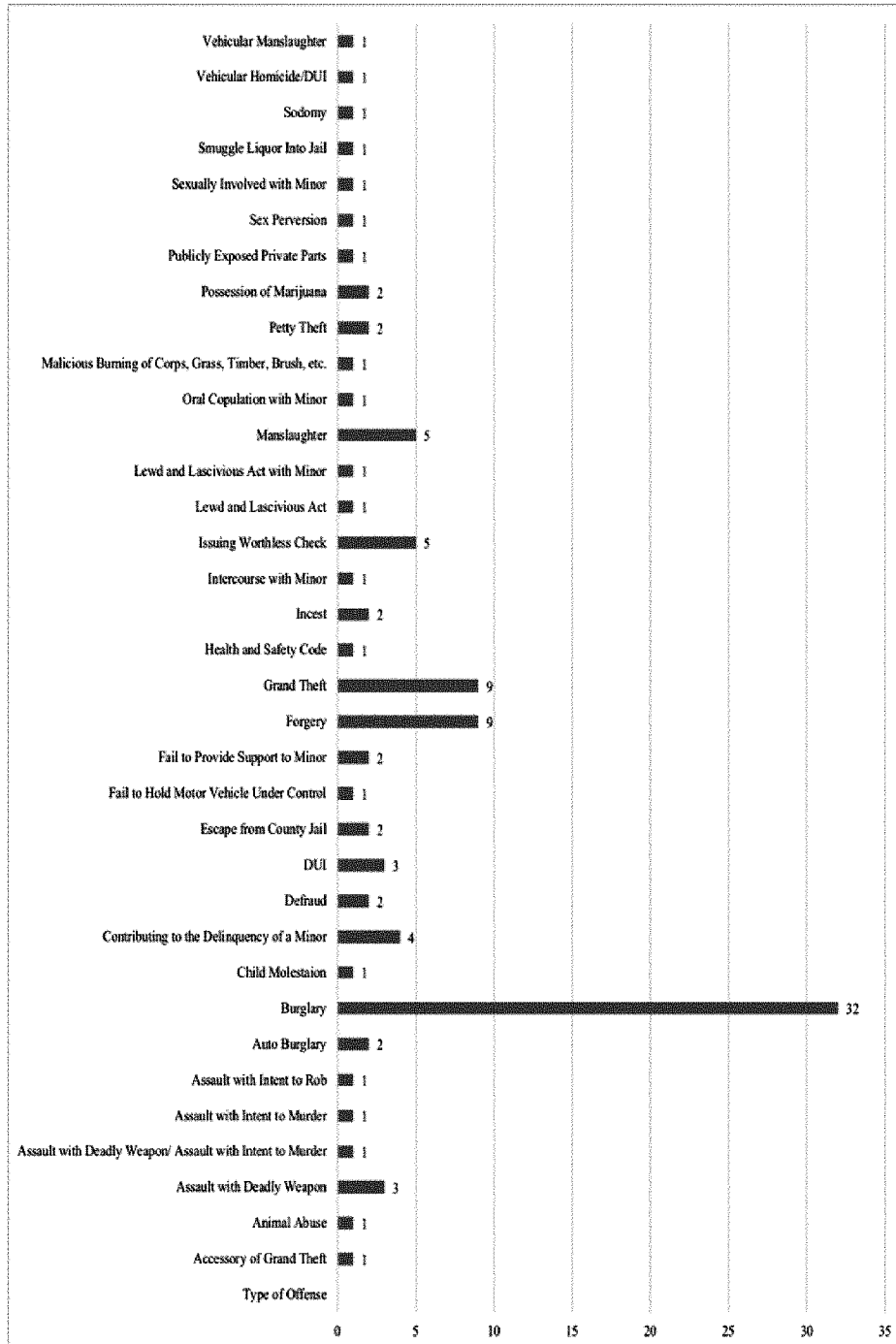
<sup>15</sup> *Superior Court Moving to Veterans' Building*, MOUNTAIN DEMOCRAT & PLACERVILLE TIMES, June 21, 1962, at 1.

<sup>16</sup> JUDICIAL COUNCIL OF CALIFORNIA, COURT STATISTICS REPORT 24 (2013).

<sup>17</sup> *Memorial Service Scheduled for Judge Robert E. Roberts*, MOUNTAIN DEMOCRAT (Placerville, CA), March 16, 1988, at 3.

<sup>18</sup> The crimes the five women were charged with were: intercourse with minor; forgery; DUI; vehicular homicide/DUI; and failure to provide support to minor. Stanford Law El Dorado Collection.

**Table One: Type of Crimes<sup>19</sup>**

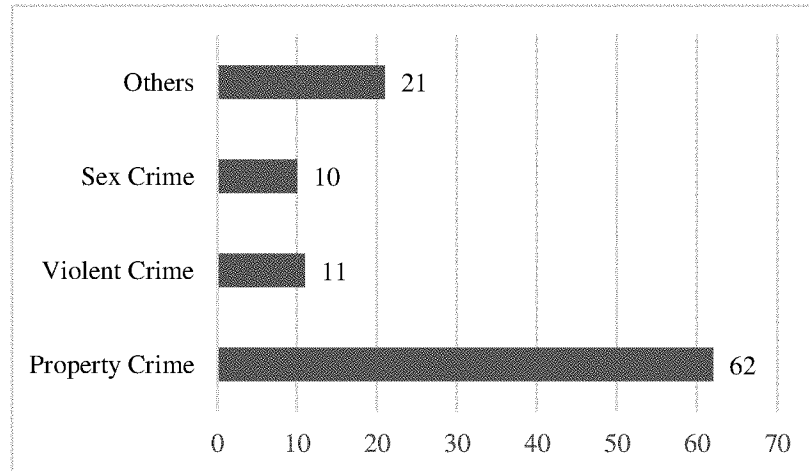


<sup>19</sup> Stanford Law El Dorado Collection.



In Table Two, these crimes are divided into four categories: property crimes (the most common category), violent crimes, crimes against morality; and all others.

**Table Two: Summary of Crimes<sup>20</sup>**



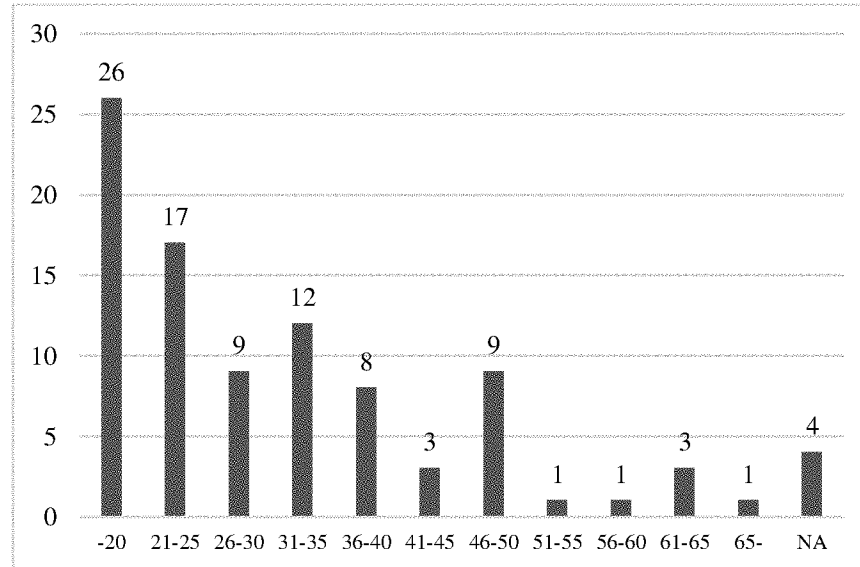
Property crimes were the most frequent; 32 of the total—almost one-third of the total crimes—were charged with burglary. Serious violent crimes do not make much of a mark; violence is a feature in a small number of cases. Morals crimes amount to about 10% of the total; they are discussed below.

In 76 of the cases, the defendant pleaded guilty. In at least six of these cases, a previous plea of not guilty was withdrawn. In these cases, we are surely in the presence of plea bargaining; but this was probably also in the background of many other cases. In these 76 cases, of course, no trial took place. There were jury trials in 17 cases; the defendant was found guilty in 11. In six cases, the defendant was acquitted. In a few cases, the defendant waived a jury and agreed to a bench trial; this was true of Jack G., charged with manslaughter.<sup>21</sup>

From the files, taken as a whole, we get a pretty clear picture of who the criminals were; or, to be more accurate, who were the men (and the few women) who got in trouble with the law in El Dorado County. They were mostly quite young (*see* Table Three).

<sup>20</sup> Stanford Law El Dorado Collection.

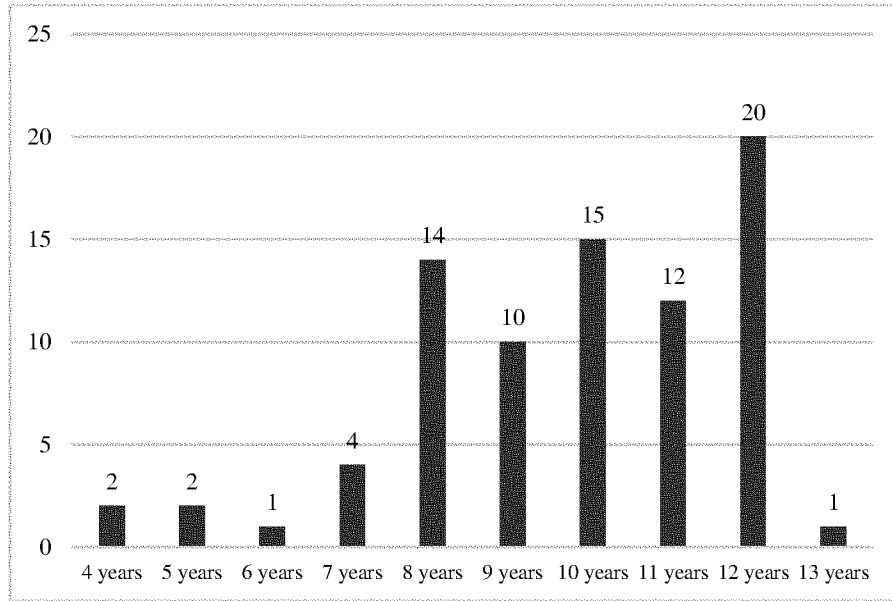
<sup>21</sup> EC 9747.

**Table Three: Age of the Defendant<sup>22</sup>**

On the whole, they had little education (*see* Table Four) and on the whole, they were quite poor. Twenty-seven of them were unemployed, and among the others we find many low-paying jobs—a laborer, a service station attendant, a busboy, for example. There were also some skilled workers—a carpenter and a roofer, for example. Aside from a handful of small business people (with very small businesses), the professional and entrepreneurial class does not appear in the ranks of the defendants (*see* Table Five). As the files make clear, many of the defendants had a drinking problem. And indeed many of the crimes were committed by men who were drunk at the time; intoxication can often be causally linked with the crime. The defendants were, for the most part, at the bottom of the social ladder. They seemed to lack the skills to succeed in life. They also seem rather luckless. In any event, the dice of life were loaded against them. Almost all of them were probably guilty of whatever they were charged with; but almost none of them seem, frankly, like dangerous criminals.

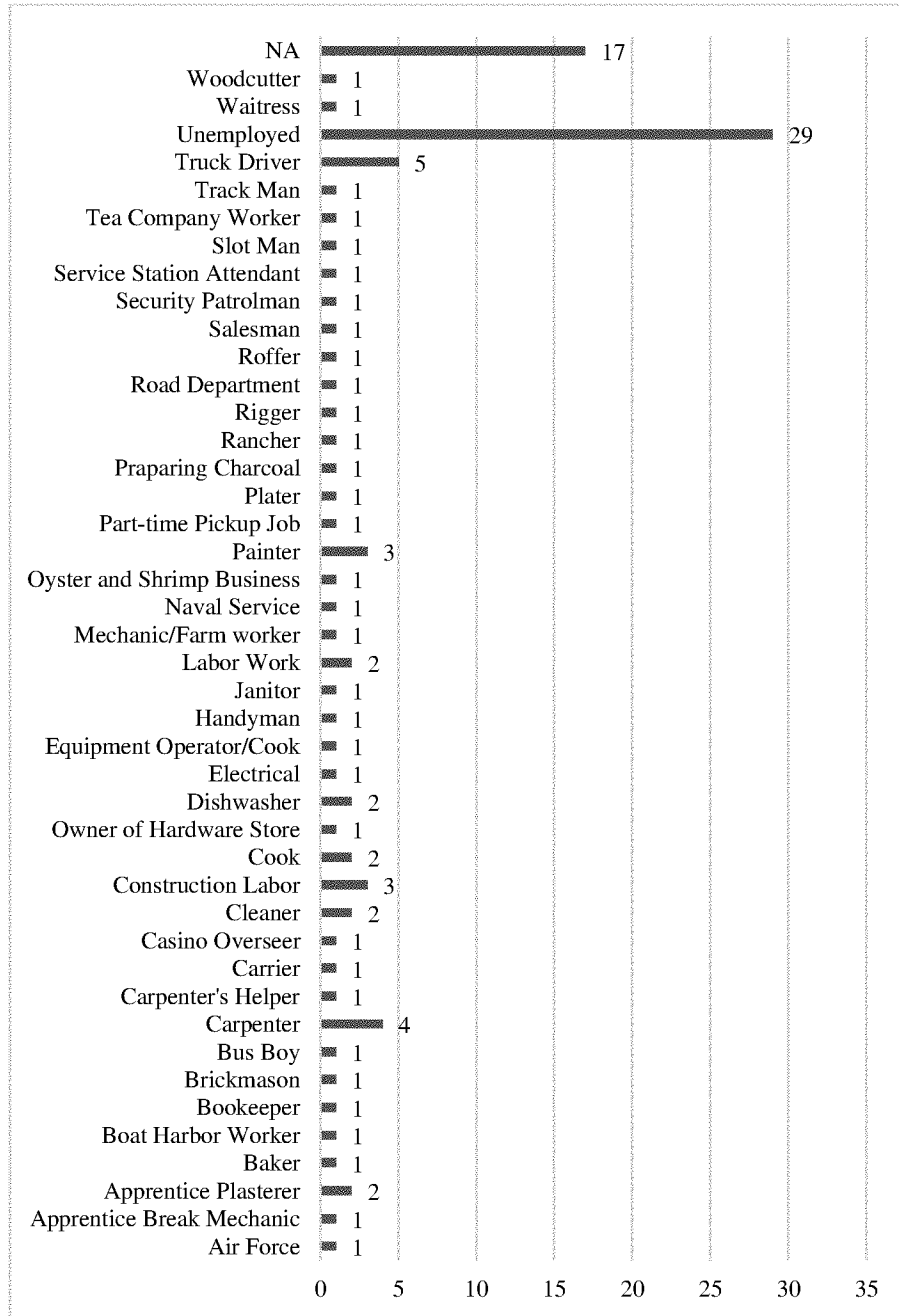
<sup>22</sup> Stanford Law El Dorado Collection.

**Table Four: Education, Defendant's Years of General Education<sup>23</sup>**



<sup>23</sup> Stanford Law El Dorado Collection.

**Table Five: Defendant’s Occupation<sup>24</sup>**



<sup>24</sup> Stanford Law El Dorado Collection.

Zenon H. was in some ways not a typical defendant.<sup>25</sup> For one thing, he was 67 years old. For another, this was one of those cases where the judge granted probation, even though the PO had recommended against it. But in other ways, Zenon can serve as a stark example of his cohort of luckless and unfortunate defendants, men who led lives on the edge of society, narrow, unfortunate lives. Zenon was Mexican; he had lived in the United States for many years but was not a citizen. He was single, and had “never married.” He had “never attended school” and was “unable to read or write English or Spanish.” He had had eleven brothers and one sister; all of them were dead. He worked as a ditch cleaner, sometimes as a cook and dishwasher in the Acapulco Restaurant in Marysville, California; he had also worked as a seasonal farm worker. He lived mostly in Placerville, but had no permanent address. His crime? Contributing to the delinquency of a minor. This sounds quite serious. But what had actually happened? Zenon, trying to be friendly, bought beer for some boys who were underage (though barely). The drinking age was 21; Irving L., one of the boys Zenon befriended, was 20. Irving was even more luckless than Zenon. He got seriously drunk, and was killed in an auto accident. As Zenon put it: “I tried to do the kids a favor and they go and get in a wreck.”

A jury found Zenon guilty, which is hardly surprising. The PO recommended against probation: true, Zenon had no criminal record. But supervision would not be possible because “he has been very nomadic and has no single place of residence or employment.” Denying probation, the PO thought, would have a “deterrent factor;” juvenile drinking was a serious problem in the county; but the fault was not in the liquor stores and bars. Rather it was people like Zenon, who bought liquor for minors. As we said, the judge, perhaps taking pity on Zenon, overrode this recommendation, and granted a two-year period of probation (after a three-month stint in jail).

Nellie L., one of the few women defendants, was thirty-one years old.<sup>26</sup> She left school at 16 because she was pregnant. At the time of her run-in with the law, she had been married four times. She was separated from the latest husband. She was also unemployed, though she had had jobs in the past, as a sales-clerk, a waitress, a fry-cook, a housekeeper, and a photographer. Her two sons were being raised by foster parents. She was arrested for driving under the influence of alcohol; she had been drinking vodka, she had an accident, and a passenger in the car was seriously injured. To be arrested for drunk driving was a matter of bad luck; thousands of people drink and drive, and so long as they do not cause

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<sup>25</sup> EC 10714.

<sup>26</sup> EC 10227.

an accident, or somehow attract the eye of a policemen, they get away with this offense.<sup>27</sup> In this case, Nellie's problem simply continued a run of bad luck in her life. In court, however, she did get something of a break: although the PO thought she had a "serious drinking problem," and did not recommend probation, the judge nonetheless granted it to her.<sup>28</sup>

Each of the defendants had a story, of course; and each story was unique. But the overall themes seemed depressingly similar to the story of Zenon and the story of Nellie L.: lack of judgment, lack of skill, lack of luck.

### PROPERTY CRIMES

Property crimes were the most common type of offense, and burglary most common of all. Burglary is a serious crime, but these burglaries, for the most part, are simply not on the scale of the typical urban burglary. The burglars in El Dorado County were not skilled, cunning men, men who specialized in plundering houses of well-off citizens, as is true of burglars in metropolitan areas.<sup>29</sup> There, the typical burglar carefully examines the house he plans to break in to; and makes sure, among other things, that nobody is at home. In El Dorado County, the burglaries were mostly petty crimes— minor break-ins of stores, not of houses. Joe M., perhaps, is typical; this 22-year-old, a high school dropout, confessed to the crime, and pleaded guilty.<sup>30</sup> He had burglarized

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<sup>27</sup> LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 280–82 (1993).

<sup>28</sup> In each of the four cases involving drunk driving that we examined, the court granted probation to the defendants. But the court also ordered special probation conditions based on the severity of the crime that was articulated. We found that there are three levels of severity the court had in mind: in EC 9888 and EC 10634—where there were no major injuries—the POs suggested probation be granted. The court followed the suggestions and granted probation for a period of two years and imposed driver license suspensions and fines on the defendants. In EC 10547—a drunk driving case involving the death of a pedestrian—the court, against the recommendation of the PO for denial, granted probation for a period of three years but imposed jail time of three months on the defendant. Nellie's case was somewhat in-between. Nellie's behavior resulted in the serious injury of her passenger. Her personal record did not help her, as she had five prior arrests and was unemployed at the time. These were all aggravated elements in the eyes of the PO and the judge. The court granted probation for a period of three years but ordered Nellie to be confined in the county jail for thirty days and to surrender her driver's license and be prohibited from driving any vehicle for six months. These individualized conditions, at least as far as the judge was concerned, were intended to teach Nellie a harsh but important lesson.

<sup>29</sup> See generally RICHARD T. WRIGHT & SCOTT H. DECKER, *BURGLARS ON THE JOB: STREETLIFE AND RESIDENTIAL BREAK-INS* (1994).

<sup>30</sup> EC 10279.

Patterson Motors, with a friend: he was drunk, he said, they broke a window in the back of Patterson's, and "entered a store room. . . and took four tires." With the same friend, he also robbed a jewelry store, Peterson's Gem Shop, after "being drunk all evening." He stole some "stuff;" but it wasn't apparently worth much; and they never were able to get rid of the "stuff." All this was small potatoes; and Joe, in a letter said he realized "the terrible thing I have done and the hurt and embarrassment I have caused my family and friends." He promised to stop drinking. Probation was recommended and granted.

Fred R. was 19; he had a 7<sup>th</sup> grade education.<sup>31</sup> He had been a ward of Sacramento County Juvenile Court but was dismissed when the wardship ended in 1956. In 1957, he was working at a motel at Bijou, in El Dorado County. He and a 15-year-old bought three six-packs of beer. They got drunk on the beer, vandalized the apartment they were living in, went out on a highway and ripped "telephone handles from four booths," smashed a glass door at "Nel's Variety Store," went in, "ransacked the cash registers and helped themselves to whatever items struck their fancy." Fred had no criminal record; he said he had "no intention of committing burglary. It was the beer. . . that caused me to do this." He was described as "underweight," with "soft teeth." He had occasionally "drunk liquor to excess," but now he too promised to stop drinking. The PO recommended probation; it was granted in June, 1957. The usual conditions were imposed (but without any jail time).

These were the typical cases: break-ins of stores, fairly ineptly done. The burglars did not usually get much in the way of loot. One of the "burglars" pried open a juke box, taking about \$25 in coins; he also got \$35.75 and some cigarettes from the cigarette machine.<sup>32</sup> In another case, the defendant stole between \$8.50 and \$10.50 in coins, and a jar of instant coffee, from a school house; he also did some damage to property at the school (about \$23 worth); defendant admitted he had also entered the Federated Church, stole \$1.01, and did some property damage.<sup>33</sup> Hauls in commercial garages were more substantial: \$5500 worth of parts and tools in one case.<sup>34</sup> Residential burglaries are poorly represented in the sample. *The Mountain Democrat* reported on March 31, 1960, that three young men (one of them a juvenile) had been arrested for burglarizing a home on Big Cut Road.<sup>35</sup> The "loot" included "blankets and a quantity of food

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<sup>31</sup> EC 8609.

<sup>32</sup> EC 8900.

<sup>33</sup> EC 10335.

<sup>34</sup> EC 10399.

<sup>35</sup> *Three Youths Nabbed for Home Burglary*, MOUNTAIN DEMOCRAT & PLACERVILLE TIMES, Mar. 31, 1960, at 1.

and canned goods.” One of the men, a 19-year-old, was also charged with “drunkenness.”<sup>36</sup> In one of the few residential cases in our sample, the defendant and his buddy entered a house; they stole some items, and also helped themselves to the family’s stock of liquor.<sup>37</sup> The two boys then got into a fight, which caused damage to the house. The boys got drunk on the liquor they found—so drunk that they simply passed out. When the homeowner came home, he found them lying there, dead to the world. You can imagine what a skilled urban burglar would have thought of these two boys.

### VIOLENT CRIMES

The sample does not contain many crimes that could be classified as “violent.” Nor do the crimes in this category fit very well with what we conventionally think of as violent—even during a period in which violent crimes, truly violent crimes, were rising dramatically in urban areas of the United States. The “violence” seems muted, even when it resulted in a tragic death. The manslaughter cases in the sample were cases of involuntary manslaughter: negligent or drunk driving that resulted in an accidental death. In 1960, for example, Jack G. was charged with two counts of manslaughter.<sup>38</sup> Jack was the driver of a car involved in an accident; he admittedly ran a stop sign (he was, he claimed, unfamiliar with the area). The victim, a woman named Irene E., lived for about a week before dying. Jack G. was convicted on one of the counts.

There were a few cases of assault with a deadly weapon. In the case of Donald M., the weapon was a knife. The case was dismissed for lack of evidence.<sup>39</sup> In another case, the jury found the defendant not guilty.<sup>40</sup> The defendant, Fred B., had been sitting around drinking with some friends. The conversation turned ugly, and Fred shot and wounded one of the other men in his house. The jury obviously thought the case was weak—perhaps they saw this as an instance of self-defense, in a brawl between two drunk men. In one case, Elmer H., a middle-aged man, had developed serious drinking problems.<sup>41</sup> As a result, he was at times mentally confused; he experienced “visual hallucinations.” During one of these periods, he took his pistol, which he had concealed under his

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<sup>36</sup> *Id.*; In 1963 the police were mopping up a group of burglary suspects—almost all of them young men between 18 and 20 years old. *Cops Bag Burglary Suspects*, MOUNTAIN DEMOCRAT & PLACERVILLE TIMES, Feb. 14, 1963, at 1.

<sup>37</sup> EC 9125.

<sup>38</sup> EC 9747.

<sup>39</sup> EC 10674.

<sup>40</sup> EC 10692.

<sup>41</sup> EC. 9781.



mattress, and fired at what he thought was a “hairy monster some six or seven feet tall,” who had burst into his room; in fact he had shot his own twenty-two year old son. In the county hospital he “continued to have visual hallucinations and saw imaginary people in his room.” Two doctors concluded that he had certainly not intended to shoot his son; he had pulled the trigger while “suffering from delirium tremens, which is a mental disease.” He was found not guilty by reason of insanity.

The most serious case, perhaps, was that of James M.<sup>42</sup> Like virtually all of these cases, liquor was involved. James met one William G. in a bar in Placerville, one afternoon; and the two of them went to a number of bars, no doubt drinking heavily; and ended up at 9:30 P.M. at the “50 Grand Bar at Pollock Pines,” east of Placerville. A policeman was called a bit later, with the news that “a drunk man with a gun was heading for the 50 Grand Bar.” The officer arrived to see James M. fire two shots at William G., injuring him badly; he was taken to the hospital in critical condition. James was found guilty. The judge and the district attorney filed a statement with the Department of Corrections recommending “the usual term for this offence,” but suggested a “careful psychiatric study be made of defendant.” While they believed he was “legally sane, some degree of emotional instability may have been a factor in the motivation of this offense.”

Curiously enough, the most serious and violent crime that turned up in the course of this research was not in the case files at all. Doris M., whose case will be discussed below, had sex with Michael M., the fifteen-year-old son of her “common law” husband. Michael came to the attention of the authorities when he “fatally clubbed his father with a baseball bat.” The boy, who had brutally murdered his own father, was turned over to the California Youth Authority.<sup>43</sup> None of the cases in the files sampled rose to this level of violence.

#### CRIMES AGAINST MORALITY

Ten percent of the cases were morals or sex crimes, a somewhat surprising percentage. Morals crimes, as a general category, overlaps the category of violent crimes—rape, for example, is a violent crime; but also a morals crime. There are, however, no rape cases in the sample. This does not mean that these were not serious offenses. The morals charges typically concerned sexual behavior with minors, sometimes quite young minors. David G., for example in 1961 was accused of performing “a lewd

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<sup>42</sup> EC 8813.

<sup>43</sup> *Baseball Bat Slayer Faces Hearing Today*, MOUNTAIN DEMOCRAT, (Placerville, CA), Feb. 21, 1957, at 1; *Mrs. M. Faces Hearing, Sentencing*, MOUNTAIN DEMOCRAT, (Placerville, CA), Mar. 28, 1957, at 1.

and lascivious act” on an 8-year-old girl, Elizabeth I., “willfully, lewdly and unlawfully.”<sup>44</sup> David was 30 years old at the time; he more or less admitted that he fondled the child, and that he “opened his pants and enticed her to fondle his penis.” He claimed that he was drunk at the time; that he “had drank approximately eighteen cans of beer;” he also claimed the girl led him on. At the preliminary examination, in the Justice Court in Placerville, he was represented by a public defender. The public defender, in the middle of testimony by the girl, waived “further proceedings on preliminary examination,” and consented to be “bound over to the Superior Court.”

The case was adjourned, and set over for an examination “to determine whether said defendant is a sexual psychopath.” The report, out of Dewitt State Hospital, in Auburn, California, detailed David’s life, from the time he was “born prematurely. . . and weighed 2 ½ pounds.” From age 9 on, he “started to masturbate,” a “habit” he had continued; in the Army in Japan, “he was introduced to Japanese prostitutes.” He was a veteran, who “drank heavily while in the service.” He spent time in a Veterans Administration Hospital in Fresno, because of an “emotional disturbance.” He was married to a 19-year-old girl (now pregnant); he had “a strong sexual drive,” but no “past history to indicate any sexual interest in children.” He had one prior arrest for drunkenness and disturbing the peace; and another for “failure to provide for his children.”

The probation report recommended probation, expressing the belief that “this offense was an isolated act,” and would not recur. A company had made a job offer, provided the court granted probation and the defendant agreed to stop drinking. David had “intentions of seeking psychiatric treatment,” and said he would join “Alcoholics Anonymous after his release from the County Jail,” where he had been a “cooperative prisoner.” The Court found that David G. “was not a sexual psychopath;” he was arraigned, pleaded guilty, and was granted probation. Unfortunately, David G. continued to have problems. His probation was revoked after an arrest for drunkenness, failure to keep up payments of his fine, and, most significantly, simply disappearing from El Dorado County, without letting the PO know where he was going and why.

Another defendant, Richard P. was accused of “lewd” and “lascivious” acts committed on Bonnie M., who was 12 years old, including touching, rubbing, and fondling her.<sup>45</sup> Harold H. was accused of fondling a girl of 15, although he claimed the girl had a “crush” on him, and was in fact the more aggressive party.<sup>46</sup> Harrison J. was accused of

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<sup>44</sup> EC 10550.

<sup>45</sup> EC 9787.

<sup>46</sup> EC 9865.

“lewd and lascivious conduct” with two boys under the age of 14.<sup>47</sup> He was granted probation. Defense counsel told the court that “sympathetic neighbors” were “prepared to testify that they would welcome him back into the community.”<sup>48</sup>

By no means were the victims of morals crimes always girls. Neil M. was accused of three acts of “sex perversion” with Jimmy L.<sup>49</sup> These acts were consensual, without any “force or menace,” according to the file; but Jimmy was a boy of 14, while Neil M. was 38. Neil pleaded guilty; a report was solicited under Section 5503.5 of the California Welfare and Institutions Code. The hearing, before two doctors, ended up with the conclusion that the defendant, like David G., was not a sexual psychopath. He was, however, an extremely limited person: “mentally retarded,” unable to read and write. “He speaks in a rather high-pitched, baby-like voice.” He had “never dated girls or learned to dance.” His behavior with Jimmy, the doctors felt, was not “a long established pattern of behavior,” and he only “indulged in these acts while he was intoxicated.”

The PO recommended against probation. Neil had been employed as a dishwasher at Mac’s Jumbo Drive Inn, in Placerville; and the owner was willing to rehire him, if probation was granted. But this did not persuade the PO, who considered Neil a menace to society—a “potential sex criminal.” It would be wrong, he said, to return him to society without a program of psychiatric treatment and therapy.<sup>50</sup> The Probation Office “is unable to offer this defendant the close supervision and psychiatric counseling which he should receive.” The officer recommended that Neil should be placed in the Vacaville Medical Facilities, where he would get “treatment.” The judge followed this advice, which was the usual practice. The case was reported to the California Adult Authority (under Section 1203.01 of the California Penal Code) recommending the “usual sentence for this offense and such treatment in prison as is available to reduce his menace to society upon his release.” Nothing further appears in the file.

Another defendant, William S., was accused of pedophilia, committing “lewd and lascivious” acts on the bodies of a nine-year-old boy and his twelve-year-old brother.<sup>51</sup> The defendant pleaded guilty. In

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<sup>47</sup> EC 10777.

<sup>48</sup> *Probation Granted Morals Offender*, MOUNTAIN DEMOCRAT, (Placerville, CA), Dec. 27, 1962, at 10.

<sup>49</sup> EC 9926, 1961.

<sup>50</sup> See CHRYSANTHI S. LEON, SEX FIENDS, PERVERTS, AND PEDOPHILES: UNDERSTANDING SEX CRIME POLICY IN AMERICA (2011) (describing the historical development of the criminal justice policy regarding sex crimes and the treatment of sex offenders in California).

<sup>51</sup> EC 10308.

his statement he said he really didn't know why he committed the offense. "I am emotionally insecure and have been for quite some time. I feel that if I had a period of help from a hospital that I could adjust." The proceedings were suspended and William was sent for observation and treatment to Atascadero state hospital. In 1961, the medical director of the hospital informed the court that William S. "would not benefit by further treatment," even though he was "still considered a sexual psychopath." Returned to El Dorado County, Judge Roberts, remarking that William was "a menace to society," sentenced him to state prison.<sup>52</sup> Another defendant, Peter H., was also accused of sex acts on a young boy (Paul B., who was nine).<sup>53</sup>

Everett M., 46 years old, described as a "transient agricultural worker," was accused of the "infamous crime against nature, committed with an animal."<sup>54</sup> He was discovered in the barn of the Wadsworth of Garden Valley, standing in front of a calf with his pants down, aiming his penis at the calf's mouth. He pleaded not guilty to the charges, and waived his right to a jury trial. He was convicted of attempted sodomy with a farm animal, but put on probation (which included a fine and three months in the county jail).<sup>55</sup>

Doris M. was accused of sex with a minor boy and contributing to his "delinquency."<sup>56</sup> Doris had been born in Alabama; her father died while she was young. She was "picked up by the police for begging" in Louisiana, and spent time in a Reformatory for girls. She never went past the 5th grade, and was "slow" in school work. She started having sex at 15; she married and had children; but at the time of her arrest, she was living in a trailer with a married man M., as his "mistress." The fact that he was married seemed to matter very little; he and Doris had "sexual intercourse at least once a day." Doris M. also had an 11-year-old son, Michael, and Doris, who considered herself "highly sexed," slept in bed with the boy, who she described as well-developed for his age. As soon as he more or less reached puberty, their relationship escalated into full-blown intercourse. He was 15 years old at the time of Doris' arrest.

Doris was examined by doctors, who decided she was not a sexual psychopath, although she had "very poor judgment," and was "in the

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<sup>52</sup> *Atascadero to Return Man Here for Trial on Morals Charges*, MOUNTAIN DEMOCRAT (Placerville, CA), Oct. 19, 1961, at 28; *Sentenced to State Prison for Morals Offenses in 1960*, MOUNTAIN DEMOCRAT (Placerville, CA), Nov. 2, 1961, at 28.

<sup>53</sup> EC 9537.

<sup>54</sup> EC 10552.

<sup>55</sup> *See Pleads Innocent*, MOUNTAIN DEMOCRAT (Placerville, CA), May 11, 1961, at 6; *Fine and Probation*, MOUNTAIN DEMOCRAT (Placerville, CA), June 8, 1961, at 28.

<sup>56</sup> EC 8547.

Dull-Normal range.” The PO recommended against probation; the file is incomplete, but the newspaper reported that probation was denied; and Judge Roberts sentenced her to a year in the county jail, in the charge of contributing to the delinquency of a minor.<sup>57</sup> As we mentioned, Michael M., her teen-aged sex partner, had murdered his father; he ended up in the hands of the juvenile authorities.

### OTHER CRIMES

A miscellaneous group of offences do not fall within the three categories just discussed. The nature of these crimes appears in Table One. One defendant was charged with smuggling liquor into jail<sup>58</sup>; another of possession of marijuana<sup>59</sup>; still another for failing to keep a motor vehicle under control.<sup>60</sup> Others include unlawfully furnishing and supplying water to a user<sup>61</sup>; violating the duty to take care of an animal<sup>62</sup>; burning growing or standing grain.<sup>63</sup>

Harley and Vaelora T., in 1961, were accused of child neglect.<sup>64</sup> What set off the complaint was a report that the two defendants had “been at the Pilot Hill Bar” all afternoon; seven children, from twelve down to eleven months, were home alone. All of the children were Vaelora’s; Harley was the father of the youngest three. The children were “without clothing;” the house was “very dirty. . .there were dirty clothes thrown about;” there was a terrific stench, and it looked as if the kitchen “had not been cleaned in months.” An older daughter, 14, was pregnant, and had gone with her boyfriend to Idaho. Harley had no regular job; he worked as a handyman, without pay, but was getting “butter and eggs in return for his work.” He seemed to “possess below average mental abilities.” He and Vaelora had left Washington State, where they lived, in order (it seems) to avoid trouble over child neglect in that state; apparently, their home there was also in “deplorable” condition. Probation for Harley and Vaelora was denied; and they were each sentenced to six months in the county jail. Vaelora and Harley had gone through a marriage ceremony; but she had never actually gotten a divorce from a former husband. He came and took custody of the children.

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<sup>57</sup> *Judge sentences Mrs. Markham to one year term in county jail*, MOUNTAIN DEMOCRAT (Placerville, CA), April 4, 1957, at 1.

<sup>58</sup> EC 9494.

<sup>59</sup> EC 9793.

<sup>60</sup> EC 10563.

<sup>61</sup> EC 9101.

<sup>62</sup> EC 9890.

<sup>63</sup> EC 10690.

<sup>64</sup> EC 10623.

### PROBATION IN EL DORADO

Probation for adults entered California law in 1903.<sup>65</sup> It was one of a package of reforms in criminal justice in the late 19th and early 20th centuries.<sup>66</sup> Parole and the indeterminate sentence were other reforms that were widely adopted in that period.<sup>67</sup> The general idea of all these reforms was to make criminal justice more humane and more flexible; and to distinguish between defendants who could be turned into decent citizens, as opposed to the incorrigibles, the hopeless cases.<sup>68</sup> Probation meant a second chance. Probationers would be spared a prison term. Ideally, men and women on probation would be free to resume their lives—though under the beady eye of a PO; the PO was supposed to see to it that the probationer complied with whatever terms and conditions the judge imposed.<sup>69</sup> And if the probationer went wrong, the prison doors would swing open. In fact, in El Dorado County, probation did not mean what it may have meant in some jurisdictions, a complete avoidance of jail. In fact, a short jail sentence was a normal part of most probation orders.

The first PO in El Dorado County was Christina M. Duffey, at about the time of the first World War.<sup>70</sup> Probation was very commonly used in the County in the 1950's, and indeed in the country in general. In the 1950's, it was reported that between 40% and 45% of the men convicted of felonies in American courts were granted probation.<sup>71</sup>

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<sup>65</sup> LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 406 (1993);

David H. Melnick, *Probation in California: Penal Code Section 1203*, 50 CALIF. L. REV. 651, 651–71 (1962).

<sup>66</sup> See JOAN PETERSILIA, *REFORMING PROBATION AND PAROLE IN THE 21<sup>ST</sup> CENTURY* 17–20 (2002) (detailing the origins and evolution of probation); Joan Petersilia, *Probation in the United States*, 22 CRIME & JUST., 155–57, 149–200 (1997).

<sup>67</sup> See JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 55–77 (2003); *Parole and Prisoner Reentry in the United States*, 26 CRIME & JUST., 487–98, 479–528 (1999).

<sup>68</sup> LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 161–62, 304–05, 407 (1993);

LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 455–56 (2005); see generally CHRISTINE L. GARDINER & STACY L. MALLICOAT, *CALIFORNIA'S CRIMINAL JUSTICE SYSTEM* 123–25 (2012); NORVAL MORRIS, *THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY* 162–63 (1995).

<sup>69</sup> See generally Faye S. Taxman, *Probation, Intermediate Sanctions, and Community-based Corrections*, in *THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS* 363–85 (Joan Petersilia & Kevin R. Reitz eds., 2012) (reviewing community-based correctional supervision programs).

<sup>70</sup> FRANK C. JORDAN, *ROSTER OF STATE, COUNTY, CITY, AND TOWNSHIP OFFICIALS OF THE STATE OF CALIFORNIA*, CAL. STATE PRINTING OFFICE SACRAMENTO 34 (1917).

<sup>71</sup> David H. Melnick, *Probation in California: Penal Code Section 1203*, 50 CALIF. L.

Probation, of course, remains a common outcome in the criminal justice system. It is on the whole an American specialty: vastly more common than in Europe, for example. In 2013, states on average had 1,596 individuals on probation, for every 100,000 inhabitants.<sup>72</sup> The European average was 297, in Italy, 39.<sup>73</sup> But probation is not the end of the story for many probationers; nor is it part of the journey to a respectable life. Many probationers are doomed to end up in prison. When they fail to toe the line, their probation can be and will be revoked. This too was not and is not a rare event. A review of the literature, published in 1993, reported figures for failure of probation as low as 14% in some places, and in others as high as 51%.<sup>74</sup>

In any event, in El Dorado County in the late 1950's, most men and women accused of crime pleaded guilty and asked for probation; and some who were convicted by judge or jury also asked for probation. The next step was to hand the matter over to a PO. Four of these PO's figure in the files; one of them, Ted L. Smith, was responsible for no less than 51 of the probation reports; R. A. Sinclair accounted for another 21. When Sinclair announced (in 1957) that he was "not seeking reappointment," the "county probation committee" sent out a call for applications. Applicants were supposed to have some combination of "training and experience equivalent to . . . one year of graduate study in an accredited school of social work or psychology," and two years of experience in probation work or some equivalent field; they were supposed to know "modern principles of adult and juvenile probation work and related court procedures," knowledge of the relevant law, of community "welfare resources," and also of "the social economic and psychological forces that create case problems."<sup>75</sup> The PO dealt with both adults and juveniles (our files are only adult files); in 1956, R. A. Sinclair issued a report that showed 37 boys and 14 girls under "supervision as wards of the juvenile court;" 52 men and one woman were on probation in the county on Dec. 31, 1955; during the year a total of 74 adults had been on probation.<sup>76</sup>

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REV. 651, 651-71 (1962).

<sup>72</sup> Mariel Alper, Alessandro Codra & Kevin R. Reitz, *American Exceptionalism in Probation Supervision*, ROBINA INSTITUTE OF CRIMINAL LAW AND CRIMINAL JUSTICE (Mar. 2, 2016), <https://robinainstitute.umn.edu/publications/data-brief-american-exceptionalism-probation-supervision>.

<sup>73</sup> *Id.*

<sup>74</sup> Kathryn D. Morgan, *Factors Influencing Probation Outcome: A Review of the Literature*, 57 FED. PROBATION 23 (1993).

<sup>75</sup> *County Seeks Qualified Man for Probation Officer Post*, MOUNTAIN DEMOCRAT (Placerville, CA), Dec. 19, 1957, at 1.

<sup>76</sup> *51 County Wards, 55 on Probation, Reports Officer R. A. Sinclair*, MOUNTAIN DEMOCRAT (Placerville, CA), Feb. 2, 1956, at 4.

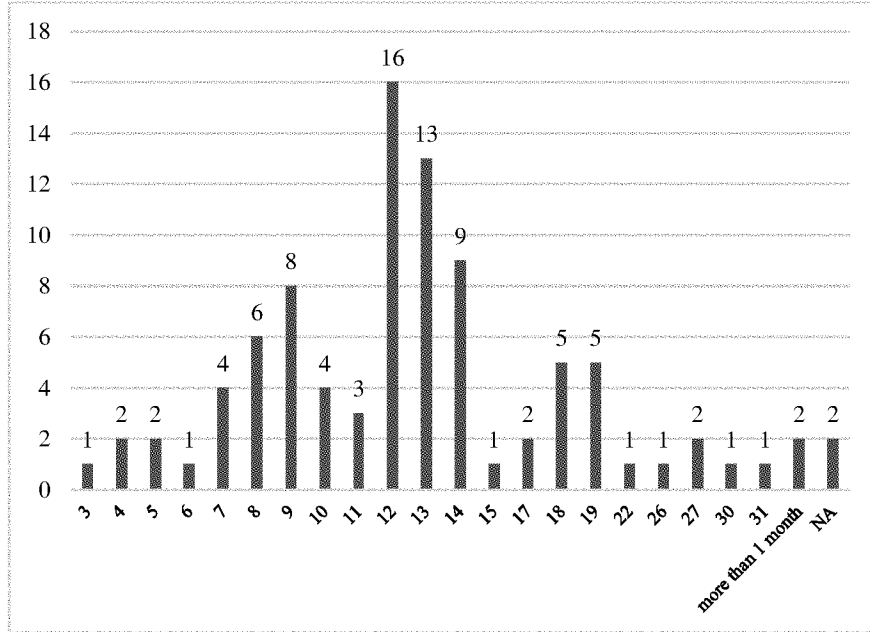
Today, probation is a fairly complex process. The emphasis is on sophisticated quantitative-based “risk and needs assessment” techniques, which attempts to measure probabilities of violation of probation conditions and to provide supervision strategies accordingly.<sup>77</sup> In the period of our study, the process was, apparently, much less sophisticated. Nonetheless, the PO’s report was a crucial document. In some cases, the report was produced with astonishing rapidity: in 16 instances, the PO finished his work in a week or less—sometimes a few days. Most of the reports were completed in less than two weeks; a few took longer, as long as, perhaps, a month. On this issue, *see* Table Six:

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<sup>77</sup> See also Ellora Thadane Israni, Opinion, *When an Algorithm Helps Send You to Prison*, N.Y. TIMES (Oct. 26, 2017), <https://www.nytimes.com/2017/10/26/opinion/algorithm-compas-sentencing-bias.html>; *see generally* NATHAN JAMES, RISKS AND NEEDS ASSESSMENT IN THE CRIMINAL JUSTICE SYSTEM, CONG. RESEARCH SERV., 3–4 (2018); Christopher Slobogin, *Risk Assessment*, in THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS 196–203 (Joan Petersilia & Kevin R. Reitz eds., 2012); EBONY L. RUHLAND ET AL., THE CONTINUING LEVERAGE OF RELEASING AUTHORITIES: FINDINGS FROM A NATIONAL SURVEY, ROBINA INST. CRIM. LAW & CRIM. JUST. 23–33 (2017).

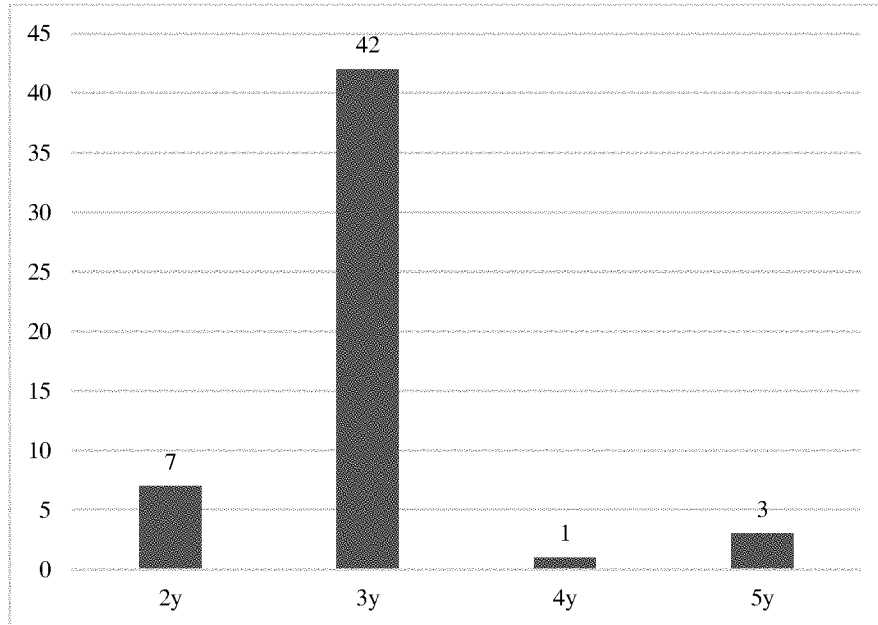


**Table Six: Total Days Spent to Generate Probation Officer’s Report<sup>78</sup>**



In 46 cases, the PO recommended probation; in 42 cases, the officer felt that probation should be denied. The judge usually followed the recommendation, especially if the PO recommended probation. Probation was actually granted in 52 cases; denied by the judge in 33 cases. As these figures indicate, the judge at times granted probation even when the PO recommended against it; we have mentioned a couple of these instances. We found no case in which the judge denied probation when the PO recommended it. The period of probation (*see* Table Seven) was usually for three years; in a few cases, it was less than this, but in a few cases it was more.

<sup>78</sup> Stanford Law El Dorado Collection.

**Table Seven: Years of Probation If Granted<sup>79</sup>**

Joe W. is perhaps typical of the defendants who lost out in the probation lottery.<sup>80</sup> Joe was a divorced man of around 40. Fresh out of money, he spent an afternoon drinking with another man, in the bar of a place called Ivy House. His companion, who he had not met before, was Jesus C., a laborer, who had \$900 in cash in his billfold. Jesus C. got so drunk in this session of binge drinking that he passed out, and when he woke up—in Joe W.’s room—his billfold with the money was gone. Joe W. somehow had the money, in \$100 bills; he left some of it with the bartender. He told a complex, and not terribly convincing story, to explain how he got the money. A jury, not surprisingly, seemed not to believe a word of it. Joe was convicted of grand larceny. The probation report was negative: Joe W. “appears to possess less than average mental abilities;” his employers said he was “an alcoholic who was in need of treatment.” The PO felt that Joe would not be able to “satisfy an order of probation due to his apparent drinking problem.” The PO did feel that, although the crime was “serious,” it did not “warrant a commitment to the California State Prison.” Instead, the PO recommended that probation be denied; and that Joe should be sentenced to six months in the El Dorado County Jail.

<sup>79</sup> Stanford Law El Dorado Collection.

<sup>80</sup> EC 1071.

On November 10, 1960, the judge did exactly this: probation was denied, and Joe W. was sentenced to six months in the County Jail.

The probation reports are interesting documents—usually by far the most interesting document in the file. The report typically gives details of the life, background, and character of the defendant, and ends with a recommendation. The reports, of course, are all quite different from each other. They cite many different reasons for a yes or a no to probation. A previous record, or previous offenses, is a negative factor, mentioned in most of the reports that ask the judge to deny probation. First-time offenders, not surprisingly, did a lot better than these repeat players. In quite a few cases, the PO mentioned (as a negative) that the defendant needed psychiatric help, or treatment for drug or alcohol problems, none of which the PO was in a position to provide. A good attitude was a plus; a bad attitude, or lack of self-control was a minus. Character references and a good employment record, of course, were positive indicators.

The typical conditions of probation had already been spelled out. The probation orders were fairly stereotyped, and followed the pattern mentioned in the case of Jack B. usually word for word.<sup>81</sup> In a fair number of cases the judge added special conditions; the most common, for property crimes, was to require the defendant to make restitution, usually in monthly payments. In one case, Phil. S., a 36 year-old “hair stylist,” convicted of “attempted extortion” from a Placerville druggist, was granted probation, but the “special terms” of the probation called for Phil S. to “be admitted to Mt. Calvary monastery in Santa Barbara for two months for spiritual guidance and out-patient psychiatric treatment.”<sup>82</sup> Did probationers do what they were told? For the most part, probably yes. But in at least 13 files (the records are surely incomplete), probation was revoked because the defendant violated the conditions of probation. A bench warrant would then issue, for arrest of the defendant. The files do not normally tell us what happened next. A certain number of these violators probably slipped away into the night, leaving the county, and were never brought back to face the music.

Jack B. was one of those who kept a clean record, did not violate any conditions, and stayed out of trouble. Bill S., charged with burglary, did not. The order of probation was issued in May, 1957. In February, 1958, the PO reported to the Superior Court that Bill S. had “violated his probation in that he has failed during the past six months to report to the Probation Officer;” and he was also “in default in payments of restitution.” The judge issued a bench warrant, addressed to “any sheriff,

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<sup>81</sup> See EC 8496.

<sup>82</sup> *Snow Probationed; Terms-Two Months in Monastery*, MOUNTAIN DEMOCRAT (Placerville, CA), Dec. 19, 1957, at 1.

constable, marshal or policeman in this state,” to arrest Bill S. and bring him before the Court or the sheriff of El Dorado County.<sup>83</sup> Calvin C. was another violator, clearly somebody who could not stay out of trouble. He was arrested in Mendota, California, for battery, while on probation, and paid a fine; he was then arrested for robbery and forgery in San Diego, but the victim declined to prosecute. Later, he and a friend “entered the Zipper Club in Glendale where they locked themselves in a restroom at closing time and after the bar was vacated left the restroom and stole between \$600 and \$800.” The two were caught at a filling station, three blocks away. All this was more than enough to get Calvin C.’s probation revoked.<sup>84</sup> Patricia B., who forged a check for \$150, was released on probation; but her probation was revoked, and she ended up in prison, on a drug charge, after skipping town and failing to make restitution payments.<sup>85</sup>

The PO clearly had a lot of discretion, he could easily, in many cases, come down on either side either for or against probation. The judge, as we said, usually followed the recommendation of the PO. In the case of Kenneth Y., the PO turned Kenneth down.<sup>86</sup> Kenneth was a white male, 22 years old; his wife was pregnant. Kenneth was in debt—owing some \$15,000 to “several wholesalers in Sacramento;” he was a “self-employed produce wholesaler,” but apparently not a successful one. In August, 1960, he broke into the “dwelling and office” of one Lloyd Austin, together with a minor, and they stole some money—bills and coins—and also “about eight packages of cookies which belonged to the office employees.” They split the money and “hid the cookies on the bank of anFalse Irrigation . . .ditch.” A friend of the minor helped eat the cookies; then he ratted out Kenneth and his young friend to the Sheriff’s office. Kenneth applied for probation; but foolishly told the PO probation was his wife’s idea. The PO felt Kenneth was a “probation risk;” and because he had contributed to the delinquency of a minor, and lacked a

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<sup>83</sup> Bill S. may be one of those who simply moved away; the file shows no indication that Bill S. was returned to custody, despite the bench warrant. EC 8582.

<sup>84</sup> EC 8831.

<sup>85</sup> EC 9169; The Mountain Democrat reported on another instance of revocation of probation—in this case, Theodore L., 21, had been revoked by Judge Roberts; Theodore had been put on probation in 1961, after he was convicted of felony hit-run driving. The probation conditions included paying a fine; and Theodore’s driving privileges were suspended for a year. Theodore, however, paid no attention to this; did not make the payments, and PO Smith heard that Theodore was “driving a new 1962 automobile around the Placerville area.” Roberts sentenced him to six months in jail and a \$500 fine. *Hit-run probation is revoked*, MOUNTAIN DEMOCRAT (Placerville, CA), Nov. 1, 1962, at 11.

<sup>86</sup> EC 10140.

“sincere desire to succeed on probation,” the PO recommended that probation be denied. Kenneth had pleaded guilty. The judge sentenced him to nine months in the county jail.

Was the experience of El Dorado County typical, or at least typical of smaller counties? A study of the three-year period, 1956-1958, in 56 of the 58 counties of California, reported that 11,638 defendants were granted probation.<sup>87</sup> As of the end of 1962, most of these—62.5%—had no reported violations; 9.3% had violations that had been reported; and 28.2% of the probations had been revoked.<sup>88</sup> The population size of the county was a significant factor. The smallest counties (under 25,000 population) had a revocation rate of 20.9%; counties from 25,000 to 50,000 had a revocation rate of 23.5%.<sup>89</sup> The rate in El Dorado County seems lower than the norm; most probationers apparently did not violate. But the state of the records makes it hard to be sure.

### SOME CONCLUDING REMARKS

El Dorado county was and is small, partly rural, and unlike the bustling urban centers of California. Clearly, one would not expect the criminal justice system in El Dorado County to mirror the system in New York or Los Angeles. Or perhaps even a rural county in Iowa or Alabama. And it would be foolish to extrapolate from this snapshot, taken in the late 1950's, to either earlier or later times. Nonetheless, there is value in this close-grained look at El Dorado. Even a great mosaic is made up of hundreds of tiny colored tiles.

What do we learn from our one small tile? Some of what we take away confirms what we might have guessed. That crime, for example, is mostly a matter of men, and young men at that. No surprise too that most defendants plead guilty, probably as a result of some sort of plea bargain. A minority (15% or so) go to trial. Property crimes are the most common offenses.

Other findings are a bit less obvious. In El Dorado, burglary is the most common offense. But the burglars of El Dorado, as we saw, were not like the burglars of big cities. And what was true of burglary is true of other property crimes; and of the crimes of violence. Criminal justice in El Dorado County seems worlds away from the situation in the big urban centers; the 1950's was a period in which serious crime exploded in the

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<sup>87</sup> George F. Davis, *A Study of Adult Probation Violation Rates by Means of the Cohort Approach*, 55 J. CRIM LAW AND CRIMINOLOGY 70, 73 (1964) (omitting two important counties: Los Angeles County, and Alameda County).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 75.

cities: a period of gangs, drug wars, murders, civil warfare in the slums.<sup>90</sup> In El Dorado, crime seems, relatively speaking, small potatoes.

The defendants are, for the most part, young males who have somehow lost their way—at least from the standpoint of respectable society. They are poor. They have low skills. Many of them have a drinking problem. Their personal lives are a jumbled mess. They fail in every aspect of their lives. Their crimes are mostly crimes of petty theft, drunkenness, vandalism, sometimes shop-lifting. None of them seem to be master criminals, or drug lords, or serial killers. They lead aimless, unlucky lives; part of their bad luck is to fall into the clutches of the criminal justice system. On the other hand, that system, on the whole, deals with them as a parent might deal with a disobedient child: firmly, but not harshly. About half of them get probation. Jail and prison sentences tend to be short.

Rural life, small town life, is not and has never been idyllic. It has always had its share of pathology, sometimes deep pathology.<sup>91</sup> Small town life is not necessarily traditional life, close-knit family life, neighborly life. That kind of life certainly exists; but America was never a traditional society in that sense. Its small towns were full of strangers. The population of El Dorado County, small as it was, had been growing rapidly. Like America in general, El Dorado County had its share of anomie; rootless men (and women), without strong relationships: ships without anchors, driftwood on the sea of society. Most of the defendants had families, but (apparently) not successful families. Life was a steady downward slide. Some defendants, perhaps, would eventually be able to patch together a reasonably successful life. For some, their brush with the law might even have been at least mildly deterrent or therapeutic. Teaching a lesson is, after all, one of the goals of criminal justice. How often this happens is a question these files cannot answer. The chronicles revealed in the files of El Dorado County are on the whole chronicles of wasted lives, chronicles of chronic and dismal failure.

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<sup>90</sup> See, e.g., LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 277–93 (1993); see also BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, *REPORT TO THE NATION ON CRIME AND JUSTICE* 13–15 (2d ed. 1988).

<sup>91</sup> See e.g., MICHAEL LESY, *WISCONSIN DEATH TRIP* (1973).