

## Courts, Sentencing, and Sentencing Guidelines

Few public issues mobilize more interest, emotion, and fascination in contemporary American society than crime and sentencing. In an attempt to satisfy political constituencies who are increasingly fearful of street crime and demanding that the criminal justice system "get tough," nearly all fifty states and the federal system have implemented various, diverse sentencing policies aimed at achieving greater deterrence, retribution, and incapacitation of criminal offenders (Feeley and Simon 1992; Austin et al. 1994).

On the other hand, the fairness of the criminal justice system in general, and sentencing in particular, is also a long-standing concern in public and scholarly discourse about crime (Savelsberg 1992). For example, does "equal justice under law" prevail, or are criminal justice institutions biased regarding race, gender, age, and other extralegal factors? The extent and sources of unwarranted sentencing disparity have become a particular concern in recent years, given the dramatic increase since 1980 in imprisonment rates for young black males from poor backgrounds—a pattern that characterizes most states as well as the federal prison system (Edna McConnell Clark Foundation 1993). Are such trends, as Wilbanks (1987) or Kleck (1985) argue, due simply to disproportionate involvement in serious crime for certain groups—young black males, for example—or do these patterns indicate systematic bias in sentencing decisions as others maintain (Lizotte 1978; Bridges and Crutchfield 1988)?

The growing nationwide trend toward sentencing guidelines is where these two sets of public issues intersect: concern with increased certainty and severity of punishment and concern with inequality in sentencing. As Samuel Walker (1993) maintains, central to both of these issues is the use and control of sentencing discretion. As Walker notes, the history of American criminal justice

policy in the twentieth century is largely the history of wrestling with these issues of discretion and disparity, which in turn invoke a basic set of sociological questions. What sanctions do various types of criminal offenders receive? What groups or institutions will a society or community trust with the discretion to determine criminal sanctions, and how much discretion will they be allowed? How will these agents of formal social control be held accountable for the use of their discretion, and to what degree will their sanctioning decisions reflect larger structural patterns of social inequality?

The federal court system, and a growing number of states as diverse as Minnesota, Pennsylvania, Washington, Oregon, Tennessee, Florida, North Carolina, Arkansas, and Utah, have or are developing presumptive sentencing guidelines to manage and control sentencing discretion in local trial courts (Austin et al. 1993). The specific goals and characteristics of these various sentencing guidelines systems are very diverse, but they all share the general aims of controlling judicial discretion and unwarranted disparity (Austin et al. 1993, Ch. 4; Tonry and Coffee 1987). Sentencing guidelines are different than the mandatory sentencing schemes adopted by most states, such as the "three strikes and you're out" measures popular in the mid 1990s, in that guidelines seek to structure, yet not remove, local court discretion in sentencing. Guidelines seek to provide formal sentencing norms that should be followed in typical cases, while allowing local courts to adjust sentences to fit unusual circumstances or defendants. The move toward sentencing guidelines is a growing, nationwide trend, and it is probable that more states will adopt guidelines or similar systems in the future (Feeley and Simon 1992; Savelsberg 1992).

### Sociological issues

Research on these and other questions concerning the everyday realities of the "law in action" in local trial courts contributes a great deal to criminology, the sociology of law, and to knowledge of organizational interaction processes and decision making. This book addresses just such issues by investigating sentencing outcomes, organizational relations, and case processing in the context of Pennsylvania's sentencing guidelines, one of the nation's oldest sentencing guidelines systems.

Since courts are crucial deviance processing institutions that mete out material and symbolic sanctions, most of the courts and sentencing literature concerns the location and use of decision-

making discretion, opportunities for unwarranted sentencing disparity, and the degree of such disparity. Unwarranted disparity, in turn, has become a core issue for labeling theory in criminology, given its concern with the relative influence of legally prescribed, organizational, and defendant-related factors on the differential sanctioning of offenders (Bernstein et al. 1977a; 1977b; Farrell and Swigert 1978).

Prior research, such as the ground-breaking studies by Eisenstein and associates (1977; 1988) also shows that any adequate understanding of sentencing must include a focus on the social organizational contexts of courts. In fact, researchers have used criminal courts as a context in which to study general organizational topics such as informal norms and rules (Sudnow 1965; Blumberg 1967; Rosett and Cressey 1976; Eisenstein and Jacob 1977), decision making and discretion (McDonald 1979; Emerson 1983; Padgett 1985; Nardulli et al. 1985; Farrell and Holmes 1991), negotiation (Church 1976; Heumann 1978; Maynard 1984; 1988), loose coupling (Hagan et al. 1979), and organization-environment relations (Levin 1977; Clear et al. 1978; Altheide 1992).

Another broad sociological issue is involved in the study of sentencing under guidelines. The effort to structure sentencing through guidelines involves a philosophical dilemma for agents of formal social control—the balance between the principle of uniformity (similar offenders should receive similar sanctions) vs. individualized justice (social control agents should have the discretion to tailor sanctions to the particular characteristics and situations of individual offenders). Savelsberg (1992) identifies this dilemma as part of a larger issue in the sociology of law, between Max Weber's (1954) ideal types of formal and substantive rationality in social control. Each of these ideological principles, in turn, confronts the organizational realities, such as discretion and its use of local social control institutions (Walker 1993).

Sentencing guidelines, like any broad, formal state policy, are enacted through networks of collective and individual actors with varying degrees of discretion in complex organizational and community contexts, and these contexts in turn condition different substantively rational criteria (Savelsberg 1992) in sentencing. This book addresses these issues in the sociology of law and social control by investigating local court contexts and sources of sentencing disparity under Pennsylvania's sentencing guidelines, which, as described later, leave more opportunity for the dilemma to be played out between the uniformity and structure of formal

rationality and locally defined substantive rationality in sentencing. The basic theoretical framing elaborated in this book is that courts are like communities (Eisenstein et al. 1988) or social worlds with their own local processual orders of legal culture (Friedman 1977), court politics, interorganizational relations, and case processing. These features of court communities condition various locally defined criteria of substantive rationality in sentencing, which in turn may produce varying degrees and bases of sentencing disparity. Court communities are thus policy arenas (Hall 1995; Estes and Edmonds 1981) where two sets of sentencing standards meet—the formally rational ones articulated by guidelines (such as offense severity, prior criminal record) versus the substantive, extra-legal criteria deemed relevant by local court actors and local legal cultures. This argument about state guideline policies and local court cultures is analogous to Herbert Blumer's (1990) analysis of industrialization as an agent of social change: large-scale social processes and state policies are channeled through local cultures and organizational contexts, and enacted, modified, or ignored by local actors with particular substantive interests.

#### Contributions of the Book

The steadily growing movement across the U.S. toward sentencing guidelines, long-standing public and scholarly concern with crime and sentencing, and the above theoretical issues place a premium on empirical research on sentencing in the context of contemporary policies. Although an enormous amount of literature on sentencing has developed over the past three decades, comparatively few studies have investigated sentencing outcomes under guidelines, and most published empirical studies focus only on Minnesota's guidelines (e.g., Miethe and Moore 1985; 1988; Moore and Miethe 1986; Stolzenberg and D'Alessio 1994). In fact, most of what we know about sentencing under guidelines comes from research on Minnesota's guidelines or those of the federal system. These studies have been primarily concerned with statistically modeling unwarranted disparity in sentencing outcomes. However, I know of only one other published empirical study that specifically analyzes the role of guidelines in trial court case processing and organizational relations, and that links these to sentencing outcomes (see Nagel and Schulhofer 1992). Other observers have speculated about trial courts' organizational arrangements under guidelines and the consequences for defen-

dants (Savelsberg 1992; Tonry 1987; Tonry and Coffee 1987; Lagoy et al. 1979), but these propositions have yet to be subjected to adequate empirical scrutiny. Further, much of the existing literature on trial courts and sentencing provides inadequate guidance concerning these issues. As I will argue, many studies are plagued by methodological limitations and/or conceptual flaws, and most are dated by their reliance on old data.

Although this book focuses on courts and sentencing under Pennsylvania's guidelines, it makes at least three broader contributions beyond simply examining one state's sentencing practices and policies. First, it fills an important gap in the literature on criminal courts and sentencing, since very few studies of this kind exist. By studying the sentencing practices, court community contexts and organization, and case processing arrangements in the context of sentencing guidelines, this research provides an understanding of contemporary courts and their sentencing processes. Research of this kind is all the more important in light of the questionable generalizability of existing sentencing research for the growing numbers of jurisdictions with sentencing guidelines (see Feeley and Simon 1992; Goodstein and Kramer 1989). Further, such research can shed light on both the possibilities and limitations of attempts at sentencing reform (see Savelsberg 1992).

Second, this research has broader relevance for interactionist-oriented organizational theory as well. Proponents of social worlds/processual order theory such as Strauss (1978a; 1978b; 1984), Hall and Spencer-Hall (1982), Hall (1995), and Couch (1986) have called for comparative research that investigates the contextual conditions under which various interaction strategies such as negotiation, conflict, unilateral manipulation, or cooperation emerge, and how these in turn maintain or alter organizational arrangements. Although some research has been done along these lines in several substantive settings (e.g., Kling and Gerson 1978; Hall and Spencer-Hall 1982; Levy 1982; Busch 1982; Thomas 1984; Seckman and Couch 1989), more is needed for the further development of social worlds/processual order theory (see reviews by Hall 1987; 1995; Clarke 1991). Comparative research on courts is an ideal arena for investigating these issues, and findings could then inform comparative research in other organizational arenas.

Finally, criminal courts are, first and foremost, deviance defining and processing institutions. Therefore, the most basic issues involved in this study are the consequences of the law in

action for defendants, a core concern of both labeling theory and public policy. This study, like many others, attempts to identify the legal, organizational, contextual, and defendant-related factors that influence the differences in the allocation of criminal sanctions. However, this study is like very few others in that it attempts to go beyond the statistical modeling of unwarranted sentencing disparity to a process-oriented analysis of possible organizational and interactional sources of disparity that statistical models cannot capture. Such research is important both for a theoretical understanding of criminal labeling processes, and for efforts to fashion a sentencing policy that is equitable in both its intent and its consequences.

I begin by reviewing relevant studies of trial court case processing, sentencing, and sentencing guidelines, and noting their contributions and limitations. In chapter 2, I discuss the two complementary theoretical perspectives that frame this study: the "court community" framework developed by Eisenstein and associates (Nardulli et al. 1988; Eisenstein et al. 1988; Flemming et al. 1992), and social worlds/processual order theory (Strauss 1993). Chapter 3 describes the data sources and collection procedures, and outlines my methodological strategy, which consists of three parts. First, I conduct statistical analyses of state-wide sentencing outcomes under Pennsylvania's guidelines system, using data maintained by the Pennsylvania Commission on Sentencing. Second, I use this same statistical data to focus on case processing and sentencing in the trial court communities of three different-sized counties. Finally, I analyze ethnographic data from these three focus counties in order to explore the interface between sentencing guidelines, organizational contexts, and case processing strategies that lie behind the statistical findings.

### Research on Courts and Sentencing

The literature on trial court organization, case processing, and sentencing can be categorized according to two general approaches, and each approach has its particular strengths and weaknesses (see Farrell and Holmes 1991; Levin 1977). One approach statistically models the influence of various factors on sentencing, while the other uses ethnographic or multimethod strategies to study court organization and case processing. I first discuss the statistical literature and focus on the issues of unwarranted sentencing disparity based on race, gender, and mode of

conviction. After outlining some weaknesses of the statistical approach, I then discuss ethnographic studies of court organization, particularly the work of Eisenstein and associates. Finally, I identify reasons why existing statistical and ethnographic studies may provide inadequate guidance regarding sentencing and court organization under sentencing guidelines.

### Statistical Studies

The most common approach centers around the statistical modeling of sentencing outcomes according to legally prescribed variables, aggregate contextual factors, and offender characteristics (see reviews by Thomson and Zingraff 1981; Hagan and Bumiller 1983; Kleck 1981; 1985; Maynard 1984; Myers and Talarico 1987; Albonetti 1991; Kramer and Steffensmeier 1993). This literature has produced some consistencies, and also several mixed and anomalous findings. Generally, research has consistently found that the primary determinants of imprisonment decisions and sentence severity are legally prescribed factors such as offense type/severity and criminal history. This broad consensus in the literature breaks down, however, concerning unwarranted disparity stemming from extralegal factors, particularly race and mode of conviction.

Since the American legal tradition rests on the principle of "equal justice under law," the issue of unwarranted disparity concerns the degree to which doctrines of fairness and equality are actually practiced in the criminal courts. Unwarranted sentencing disparity is defined as occurring when legally similar defendants receive dissimilar sentences.<sup>1</sup> Usually, discussions of unwarranted disparity focus on the influence of extra-legal factors on sentencing, such as race, gender, age, socioeconomic status, mode of conviction, or region (Hagan and Bumiller 1983; Myers and Talarico 1987). For example, unwarranted disparity on the basis of race would be indicated if whites and blacks convicted of the same offenses and with the same prior criminal records received differentially lenient or severe sentences.

Few would argue that legally prescribed factors such as offense and prior record are not the primary determinants of sentences. Instead, the main issue in discussions of unwarranted sentencing disparity is how much influence extralegal factors exert (see Brereton and Casper 1984, p. 52). This question is an important test of the ideologies of equality before the law, because the application of criminal sanctions is supposed to be neutral

regarding the defendant's race, gender, or age, or whether the defendant exercised his/her right to trial.

*Race disparity.* The concern with race disparity in part stems from a basic issue for social stratification: whether racial and ethnic minorities are discriminated against in the processes of administering criminal sanctions (Lizotte 1978; Bridges and Crutchfield 1988). For example, some hold that legal institutions are inextricably tied to the economic and political order of a society. Thus, disparities in criminal punishment reflect economic and political inequalities in the larger society (see Quinney 1970; Spitzer 1975; Swigert and Farrell 1978). The fact that African Americans have traditionally been a politically, socially, and economically disadvantaged minority suggests the proposition that they will be discriminated against in sentencing (Peterson and Hagan 1984).

Findings from the very large research literature on this topic are quite mixed, and cannot be interpreted easily. Some studies find that blacks are incarcerated more often and receive longer sentences than whites, and interpret this as evidence of racial discrimination (e.g., Thomson and Zingraff 1981; Spohn et al. 1982; Peterson and Hagan 1984; Myers and Talarico 1987; Humphrey and Fogarty 1987; Spohn 1990; Albonetti 1991). Others find few substantial differences in the sentencing of blacks and whites, and argue that any racial sentencing differences that do exist reflect: (a) the failure to rigorously control for legal variables in sentencing, and (b) disproportionate participation in serious crime among blacks rather than discrimination by court actors (see Kleck 1981; 1985). Wilbanks (1987) makes these points most strongly, arguing that racial discrimination in criminal justice, and sentencing in particular, is a "myth" created by sloppy research and liberal political agendas.

On the other hand, some studies point to the importance of variation between local jurisdictions in the degree of race disparity in sentencing (e.g., Eisenstein and Jacob 1977; Bridges and Crutchfield 1988; Nelson 1992). For example, Nelson's (1992) study of sentencing in New York found that race differences varied widely between counties, but that analyses of aggregate statewide sentencing patterns masked these differences. Bridges and Crutchfield (1988) find that the degree of disparity between black and white imprisonment rates is greater in states with smaller black populations, higher concentrations of blacks in large urban



areas, and greater black/white income inequality. Furthermore, these differences persisted when controlling for black and white arrest rates, leading Bridges and Crutchfield (1988) to argue that race differences in imprisonment are not solely due to differential involvement in crime.

In one of the most detailed treatments of the issue to date, Kramer and Steffensmeier's (1993) study of race disparity under Pennsylvania's guidelines finds moderate race differences in incarceration decisions (especially departures below guidelines). They suggest, however, that these differences do not necessarily reflect racial discrimination by court actors. Rather, they argue that the influence of race is confounded with a number of other factors that cannot be easily measured quantitatively, such as circumstances of offenses, aspects of defendants' prior convictions that do not show up on official records, plea bargaining strategies, and some judges' reluctance to send whites to state prisons with predominantly black inmate populations (see also Cassia Spohn's [1995] excellent review of race and criminal justice).

*Gender disparity.* Though not nearly as extensively studied, gender is also an important feature in the question of sentencing disparity. A fairly consistent finding in this literature is that adult female defendants are sentenced more leniently than adult male defendants (see reviews by Steffensmeier et al. 1993; Bickle and Peterson 1991; Daly 1987; Kruttschnitt and Green 1984). Explanations for more lenient treatment of women by courts are diverse, and most likely complementary. Some argue that this pattern results from judicial paternalism—predominantly male judges being more patronizing toward women defendants and failing to take seriously the crimes of women (Daly 1987). Others argue that the differential sentencing of men and women is due to the greater social costs of sending women with dependent children to prison (Steffensmeier 1980). Still others argue that court actors make sentencing decisions on the basis of typifications of offenders as more or less dangerous and/or blameworthy, and that gender stereotypes of women militate against their being viewed as a risk of future crime, or as criminally culpable as male offenders (Albonetti 1991; Farrell and Holmes 1991).

*Mode of conviction disparity.* The issue of sentencing disparity based on mode of conviction more directly concerns the organization of court case processing. Decades of research have established that most defendants are convicted through guilty

pleas, and that trials tend to be avoided (Blumberg 1967; Rosett and Cressey 1976; Heumann 1978). The central issue in terms of sentencing disparity is whether courts penalize convicted defendants who exert their right to a trial with more severe sentences, and whether such "trial penalties" are used to coerce defendants into pleading guilty (see McDonald 1979).

Compared to the literature on race, a smaller number of studies have directly focused on sentencing differences according to modes of conviction and other case processing factors (e.g., Bernstein et al. 1977a; 1977b; Hagan et al. 1979; Ryan and Alfini 1979; McDonald et al. 1979; LaFree 1985; Humphrey and Fogarty 1987; Holmes et al. 1987; Feeley 1988; Champion 1989). As with race disparity, evidence is mixed concerning the effects of mode of conviction on sentencing. A number of studies find strong evidence of a trial penalty in sentencing decisions (e.g., Hagan et al. 1979; Uhlman and Walker 1980; Peterson and Hagan 1984; LaFree 1985; Spohn 1990), while others do not (e.g., Eisenstein and Jacob 1977; Nardulli et al. 1988; Albonetti 1991).

The interpretation of sentencing disparity according to mode of conviction is as complex as the interpretation of race differences. For example, LaFree's (1985) study of sentencing in six jurisdictions finds differences in sentence severity not only between guilty pleas and trials, but also between bench trials and jury trials. This suggests that the common strategy of including a simple dichotomy of pleas versus trials in sentence models may oversimplify the issue, and that analyses should also consider the relative influence of different *types* of pleas and trials.<sup>2</sup>

Overall, then, the statistical literature presents mixed findings regarding unwarranted sentencing disparity based on race, gender, and mode of conviction. Difficulties in interpreting these findings are compounded in that many studies exhibit methodological and conceptual weaknesses.

### Problems with the Statistical Literature

The strength of the statistical modeling approach lies in its potential for rigorously analyzing sentencing outcomes using large numbers of cases, and for comparing these outcomes among different jurisdictions. However, most existing literature falls short of this potential due to several common limitations.

A number of studies, particularly many of those conducted in the 1970s and early 1980s, have exhibited key methodological problems. First, the statistical designs of many studies of race

disparity fail to rigorously control for factors such as offense type and severity, criminal history, and mode of conviction (a few studies do not control for these at all—see reviews by Hagan and Bumiller [1983], Kleck [1981; 1985], and Kramer and Steffensmeier, [1993]). More recent studies also exhibit similar limitations. Myers's (1987) and Myers and Talarico's (1986; 1987) well-received studies provide a typical example. They use crude controls such as a dichotomous variable for criminal history (no prior convictions versus at least one prior conviction), and even these data are only included for a subsample of their cases. Further, they use limited measures of offense type and severity, such as the imprecise grouping of offenses into five broad categories: violent, robbery, burglary, property theft or damage, and drug offenses. Such limitations are also shared by other influential studies, such as Lizotte (1978), Thomson and Zingraff (1981), Unnever and Hembroff (1988), and Humphrey and Fogarty (1987). Other sentencing studies fail to examine potential differences due to different modes of conviction while examining other sources of sentence disparity (e.g., Lizotte 1978; LaFree 1985; Thomson and Zingraff 1981; Frazier and Bock 1982; Myers and Talarico 1986; 1987; Myers 1987; Humphrey and Fogarty 1987).

As a final example, Bridges and Crutchfield's (1988) influential study is often cited as evidence of racial sentencing disparity at the level of individual cases and defendants. However, their study is pitched at the aggregate level, using black and white state prison population ratios as their dependent variable and state-level demographic factors, legal characteristics, black and white arrest rates, and state prison capacity as independent variables. Since they rely on such data, they are unable to control for offense, prior record, or mode of conviction in any way. While they convincingly demonstrate race differences in state prison populations and the influence of regional characteristics on such differences, their findings do not establish that comparable individual black and white defendants receive dissimilar sentences.

Other methodological problems in this literature concern the choice of inappropriate modeling techniques. Some studies fail to control for or even consider the possibility of sample selection bias problems that can obscure or confound the effects of predictor variables on measures of sentence lengths, since length decisions follow decisions to incarcerate (Berk 1983). Further, some studies use inappropriate least-squares regression techniques for modeling dichotomous dependent variables such as convictions or incar-

ceration decisions (e.g., Hagan et al. 1979; LaFree 1985; Spohn et al. 1982; 1987; Nardulli et al. 1985). The results of such analyses can be quite misleading when attention is not paid to possible sources of error because of inappropriate estimation techniques (Hanushek and Jackson 1977).

Finally, the large majority of studies published in the past decade use data that are quite old, despite the changes that have occurred in the criminal justice system and its political context. Very often, data used in studies published throughout the 1980s and 1990s were gathered during the early or mid-1970s. For example, at least three more recent studies published in major journals (Albonetti 1991; Bickle and Peterson 1991; Spohn 1990) use data that are more than fifteen years old. Among the many statistical analyses of sentencing, only Miethe and Moore's (1985; 1986; Moore and Miethe 1986) studies of sentencing under Minnesota's guidelines avoid most of the methodological problems noted above. Even their studies, however, rely on data collected in the late 1970s and early 1980s.

More importantly, most solely quantitative approaches of courts and sentencing share a limitation of conceptual focus. By focusing solely on modeling aggregate case *outcomes*, such studies are unable to capture the interactional, organizational, and political *processes* that generate case outcomes (see Nardulli et al. 1988; Maroules 1991; Farrell and Holmes 1991). The fact that most studies' models (even the more methodologically sound ones) only explain about half or less of the variance in sentences suggests the limitations of a preoccupation with case outcome modeling. Most statistical sentencing studies report R-squared values of .50 or less in modeling sentence lengths and incarceration decisions (Bernstein et al. 1977; Lizotte 1978; Hagan et al. 1979; Thomson and Zingraff 1981; Myers and Talarico 1986; 1987; LaFree 1985; Miethe and Moore 1986; Kramer and Steffensmeier 1993). Studies that employ logistic regression models of incarceration decisions seem to enjoy somewhat better prediction, but this is difficult to tell because most of these do not report any meaningful tests of their models' predictive power, such as the percent of cases accurately classified by the models (e.g., Peterson and Hagan 1984; Holmes et al. 1987; Albonetti 1987; Spohn 1990).

In terms of unwarranted sentencing disparity, for example, studies that rely on statistical analyses alone are unable to empirically identify the processes that give rise to disparities and the case processing stages at which they occur. As a recent example of a

lack of conceptual clarity about bases and sources of sentencing disparity, Stolzenberg and D'Alessio's (1994) study of sentencing under Minnesota's guidelines models sentence outcomes by offense severity and offenders' prior criminal convictions, and assumes that any variance in sentences not explained by these two factors is unwarranted disparity. Further, the case processing and sentencing strategies of prosecutors, defenders, and judges are often not apparent from statistical analyses. Finally, analyses that aggregate statistical data from different jurisdictions into general models tend to mask important differences in local legal culture, norms, and political contexts (see reviews by Levin 1977; Thomson and Zingraff 1981; Peterson and Hagan 1984; Maynard 1984).

### Ethnographies of Court Organization

The ability to capture the processual and contextual aspects of trial court organization and case processing is the strength of the second approach found in the literature. This second approach uses ethnographic strategies to analyze the organization of trial courts' case processing and sentencing in an integrated way (e.g., Sudnow 1965; Heumann 1978; Rosett and Cressey 1976; Farr 1984; Maynard 1984; 1988).

The studies carried out by Eisenstein and Jacob (1977), Nardulli et al. (1988), Eisenstein et al. (1988), and Flemming et al. (1992), which will be discussed further in the next chapter, perhaps best exemplify this approach. These studies use both ethnographic and statistical data to study the influence of courts' political contexts, formal and informal organization, and power relations between sponsoring agencies on case processing and sentencing. Such analyses enabled Eisenstein and associates to develop a grounded theoretical approach known as the *court community* framework. The most notable features of this framework are: (1) the metaphor of courts as communities based on local legal culture, members' shared workplace, and interdependencies between key sponsoring agencies (prosecutor's office, bench, defense bar); (2) attention to "going rates," or informal norms concerning routine charges, plea agreement terms, and sentences; (3) an emphasis on interorganizational relations between sponsoring agencies, not only in terms of formal bases of authority but also the informal processes by which agencies and their representatives exert influence in courtroom workgroup strategies and case outcomes; and (4) detailed attention to the guilty plea and sentencing processes as the core organizational activities of courts.

The research of Eisenstein and associates opened a wide agenda for future research. Nardulli et al. (1988, pp. 383–84) state:

We will not learn much by continuing to conduct multivariate analyses of case, defendant, and decision-maker attributes . . . We do not suggest a total abandonment of studies that focus on case outcomes; they are still the bottom line of what criminal courts do. Instead, we suggest a move away from the preoccupation with deviation from system norms to a focus on the differences in norms across court communities. Such a reorientation...would open new vistas for court research and broaden the scope of research into these vital and complex institutions.

They also call for further development and refinement of the court community theoretical framework (pp. 369–70):

At this embryonic stage of its development, the potential utility of the notion of a courthouse community seems significant but is still unclear...A more systematic analysis and mapping of court community norms and values could help identify key differences across court communities and perhaps lead to a fairly inclusive typology of court communities.

Eisenstein et al. (1988, ch. 10–11) expand upon these suggestions for future research. Although they collected their data before the implementation of sentencing guidelines, they do predict the impact of any court and sentencing reform policies. Generally, they hold that the influence of any type of sentencing reform will be filtered through the organizational and political contours of local court communities. It follows that the influence of sentencing guidelines on actual case processing and sentencing practices will vary according to local court system characteristics. The fact that models of statewide sentencing in guideline states such as Minnesota (Miethe and Moore 1985; 1986; Moore and Miethe 1986), Pennsylvania (Kramer and Steffensmeier 1993), and Florida (Griswold 1987) explain half or less of the variance in incarceration decisions and lengths suggests the veracity of this proposition. This study is concerned with a set of issues that flow directly from the court community research agenda: the interface between court community contexts, organizational relations, and the equality of outcomes for defendants under sentencing guidelines.

## Studies of Sentencing Under Guidelines

The comparatively small body of literature on sentencing guidelines provides limited guidance concerning the issues discussed above. In fact, the story of systematic social science research on sentencing under guidelines is largely the story of research on Minnesota's and the federal system's guidelines. Generally, Miethe and Moore's (1985; 1988; Moore and Miethe 1986) studies of Minnesota's guidelines found that race, gender, and class disparity greatly decreased in the early years of implementation, but increased moderately in later years, though it did not return to preguidelines levels. In a later analysis, Jo Dixon (1995) also concluded that Minnesota's guidelines significantly reduced racial sentencing differences (though she did not examine the influence of gender or class).

Even fewer studies have statistically modeled sentencing consequences of different modes of conviction under guidelines systems, and these show mixed results. Miethe (1987), Miethe and Moore (1985; 1988) found little difference in sentencing outcomes due to modes of conviction in Minnesota. On the other hand, Griswold (1987) found that departures below Florida's guidelines were moderately more common among defendants who pleaded guilty. Nagel and Schulhofer's (1992) study of plea bargaining under the federal sentencing guidelines found that a number of federal district court organizational characteristics fostered non-compliance with the guidelines.

Further, Dixon (1995) found that while the strongest influences on sentencing under Minnesota's guidelines were offense and prior record, the effects of guilty pleas and trials on sentencing outcomes varied according to courts' levels of bureaucratization. She found that guilty pleas resulted in significantly shorter sentences in highly bureaucratized courts, but not in less bureaucratized ones. She also stated that the complexity and variability of sentencing processes necessitate more research "to examine the organization of sentencing in jurisdictions that vary in their organizational, political, policy, and social contexts" (Dixon 1995, p. 1193).

The relative scarcity of empirical research on the role of guidelines in formal and informal court organizational arrangements and case processing strategies, as well as ways in which this role is shaped by local political contexts, is a serious gap in this literature (see Goodstein and Kramer 1989). Such research is

crucial, however, because court community contexts and norms may strongly shape sentencing outcomes and the potential influence of guidelines. Further, such research could address the issue of the degree to which court community organizational arrangements and sentencing norms are shaped by externally imposed policies.

A number of scholars have speculated about the role that guidelines play in court organization and case processing, and the consequences for defendants. One important potential role of guidelines concerns the balance of sentencing discretion and power between sponsoring agencies. The "hydraulic displacement of discretion" hypothesis is a commonly cited criticism of guidelines and other determinate sentencing reforms. According to this proposition, guidelines place more sentencing discretion in the hands of prosecutors by restricting judicial sentencing discretion (Alschuler 1978; 1988; Lagoy et al. 1979; Tonry and Coffee 1987). Prosecutors translate this discretion into greater power to coerce defendants into accepting guilty plea agreements, which ultimately preserves sentencing disparity in less visible ways (Rathke 1982).

Savelsberg (1992) holds that guidelines, particularly those that allow the least judicial discretion such as Minnesota's or the federal system's guidelines, foreclose the possibility of sentence bargaining in plea negotiations, and thus lead to a reliance on charge bargaining, which masks sentencing disparities (p. 1372): ". . . future research should test the hypothesis that sentencing guidelines increase the power of prosecutors in the negotiations. Since the sentence for a particular offense is clearly defined through the guidelines, negotiation about the sentence is no longer possible. . . . A shift from sentence to charge bargaining must be expected." For Savelsberg, the result is that such guidelines do not reduce unwarranted disparity, but merely shift and hide its sources (p. 1377): "Guidelines do not appear to be the remedy they were intended to be. . . . The visibility of disparities in criminal justice may be reduced as they are shifted from sentencing into other areas such as prosecution. In this case, guidelines would be a very dangerous treatment."

Miethe (1987)<sup>3</sup> uses measures of unwarranted disparity in guilty plea outcomes as a proxy for the hydraulic displacement of sentencing discretion to prosecutors. She finds little evidence of such disparity, and concludes that hydraulic displacement has not occurred under Minnesota's guidelines. Miethe's findings suggest that a hydraulic displacement of discretion to prosecutors, if it



in fact occurs, does not necessarily produce unwarranted disparity. However, while Savelsberg (1992) and Miethe (1987) tell us about issues of disparity and the interorganizational distribution and use of sentencing discretion under comparatively restrictive guidelines like the federal systems' and Minnesota's, what about these issues in states with "looser," less restrictive guidelines, such as Pennsylvania, Louisiana, Florida, and several others? This book looks at the Pennsylvania context as an example of sentencing under "looser" guidelines, where the interplay between formally rational guideline sentencing criteria and substantively rational sentencing concerns found in local court communities is particularly salient. This focus requires discussion of some background on Pennsylvania's guidelines, their ideological/philosophical goals and characteristics, and how these compare with other states.

### Pennsylvania's Sentencing Guidelines

Pennsylvania's guidelines were developed during roughly the same time as Minnesota's (1978–82), the other state which pioneered sentencing guidelines. The Pennsylvania legislature created the Pennsylvania Commission on Sentencing (PCS) in 1978, and charged it with a broad mandate to develop sentencing guidelines. The PCS then established two principles that frame Pennsylvania's guidelines system. On one hand, the PCS, like the Minnesota sentencing commission,<sup>4</sup> decided to develop prescriptive sentencing standards, rather than the merely descriptive ones found in some states' determinate sentencing systems.<sup>5</sup> In other words, the guidelines were not to establish norms based on the statistical average of past sentencing practices, but were instead to be based on the "informed judgements of those writing the guidelines" (Kramer and Scirica 1986, p. 16). Thus, the PCS did not commit itself to making its sentence recommendations congruent with preguidelines sentences.

While the PCS intended to establish prescriptive sentencing standards, however, the members realized that guidelines are a simplification of a complex decision-making process. Thus, the PCS decided that the guidelines were not to be mandatory sentencing standards, but "benchmarks" for judges' decisions (Kramer and Scirica 1986). The commission took the position that guidelines would not increase fairness in sentencing if judges applied them ritualistically and uncritically. Rather, the guidelines were intended to be applied with due consideration of the characteristics of individual cases: ". . . guidelines should assist—not

replace—the court” (Kramer and Scirica 1986, p. 16). Unlike the sentencing commissions of the federal system and Minnesota, the PCS therefore decided against guidelines that greatly restricted judicial sentencing discretion.

The PCS then submitted a set of guidelines to the state legislature in 1981. These were rejected, and the legislature directed the PCS to increase the severity of guideline sentences and to further increase the judicial discretion allowed. The PCS then increased judicial discretion by increasing the upper limit of each guideline sentence range, and increased the severity of minimum sentences recommended for violent offenders. The legislature adopted this second set of guidelines, with relatively minor revisions, in 1982.

Unlike other states' guidelines, Pennsylvania's apply to both felonies and misdemeanors. But Pennsylvania's guidelines do share with almost all other guideline systems the goal of establishing sentencing standards in which the severity of the convicted offense and the offender's criminal history are the major determinants of sentencing decisions (Kramer and Scirica 1986). The guidelines establish sentence ranges for each combination of offense severity/criminal history scores in the form of a sentencing matrix, shown in Appendix A. Pennsylvania's guidelines are also unique in that they establish three sentence ranges: standard, aggravated, and mitigated. The standard ranges are intended to be the most prescriptive norm. As in other guideline states, sentences that are more lenient or more severe than the guideline recommendations are allowed, but the judge must justify any departure with written statements of the reasons for the departure. Further, both the defense attorney and the prosecutor have the right to appeal sentences that depart from guidelines in this way.

Compared to other guidelines systems such as Minnesota's, Washington's, and the federal system's, Pennsylvania's sentence ranges intentionally allow more judicial discretion (Kramer et al. 1989). In part, this is because the Pennsylvania Judicial Code embraces diverse (and potentially contradictory) sentencing philosophies: rehabilitation, incapacitation, deterrence and retribution. Thus, the Pennsylvania guidelines must allow for some flexibility in sentencing purposes to accommodate the state's Judicial Code (see Kramer and Scirica 1986). The amount of judicial sentencing discretion allowed by the guidelines varies with offense severity and prior record, with wider sentence ranges in the higher offense severity/prior record matrix levels and narrower

ranges at lower matrix levels (see Appendix A). Pennsylvania's guidelines provide normative boundaries for sentences, yet their greater judicial discretion affords ample potential for disparity (Tonry 1987).

In sum, contemporary public interest in sentencing, the growing trend toward sentencing guidelines, and gaps in sociological research literature all point to the need for research on sentencing outcomes, local court organizational arrangements, and case processing strategies under different kinds of sentencing guideline systems. We have a good deal of research on "tight," restrictive guidelines like Minnesota's, but what about sentencing and local court contexts under "loose," less restrictive guidelines like Pennsylvania's? Further, what about the larger sociological issues involved, such as the role of key social statuses like race and gender in sentencing and case processing, even under normative policies like guidelines that seek to blunt their influence? What about social organizational issues, such as potential tensions between local institutional arenas—with their own normative cultures shaped by locally defined substantive rationality—and externally imposed formally rational normative standards? The next chapter provides a theoretical framework and set of conceptual tools for considering these larger sociological questions in more detail.