

HAVING THEIR DAY IN COURT: DEFENDANT EVALUATIONS OF THE FAIRNESS OF THEIR TREATMENT

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Defendants in criminal cases were asked to evaluate the fairness of the treatment they received. Several correlates of defendant evaluations are discussed, including "predisposing" variables (race, past record, and political alienation) and "case-specific" variables (sentence received, disposition by trial or plea, and a defendant's sense of how his sentence compares with those given to others). All are related to a sense of fair treatment, sentence received and comparison level most strongly. The implications of these findings for recent discussions of plea bargaining and greater sentence equity are discussed.

I. INTRODUCTION

How do criminal defendants evaluate the treatment they receive in court? The invocation of the criminal process is one of the most serious and stressful interactions between citizen and government, for the potential consequences are so severe. Even if a citizen is eventually freed, as a result of a dismissal or acquittal, he or she has to endure the tension, anxiety, and perhaps the physical danger, of arrest and pretrial detention. For those who are ultimately convicted, incarceration under conditions of great deprivation, sometimes for long periods of time, is a not infrequent result.

There is a variety of reasons why one might pay attention to defendant evaluations of their court experiences. The recent trend in our society toward citizen evaluation of government programs (often in the context of some notion of consumerism) is based on the premise that evaluations of the effectiveness of government activities ought to include the views of those whose lives are touched by such programs (Katz, 1975). In addition, discussion of "reform" of criminal justice institutions in recent years has often involved assumptions or assertions about the effects of various changes upon defendant attitudes. Two of these debates are of particular concern here. The first involves plea bargaining. Opponents have suggested that the practice increases defendant cynicism towards law and legal institutions and thus undermines "rehabilitation" (Casper, 1972). Defenders reply that plea bargaining increases a defendant's sense of participation, so that the plea of

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guilty represents the "first step" to rehabilitation (Enker, 1967). I shall attempt to gauge the effects of plea bargaining upon defendant evaluations of the fairness of their treatment.

A second controversy concerns the disparities in criminal sentences that are produced by judicial discretion. Many have suggested that reducing, possibly even eliminating judicial discretion will not only produce greater equity but also increase the defendant's sense of fair treatment (Frankel, 1973; Von Hirsch, 1976). We shall see that a defendant's notion of how his sentence compares to that imposed upon others convicted of the same crime is strongly related to his overall evaluation of the fairness of his treatment.

The data reported here come from a study of defendant attitudes toward criminal courts conducted in three large cities: Detroit, Phoenix, and Baltimore.¹ The research involved interviews with a random sample of men charged with felonies. In the first-wave interviews, we talked with 812 men who had recently been arrested on felony charges. We then tracked their progress through the court system and were able to reinterview 628 of the men after their cases had been completed.² Both interviews dealt with a large number of issues, including general attitudes toward legal and political institutions; perceptions of court personnel in general and evaluations of the specific lawyers, prosecutors, and judges who participated in adjudication of the defendant's case; and general demographic and criminal history information. Reports dealing with the overall findings and with lawyer-client relations have been presented elsewhere (Casper, 1977, 1978). Here I shall deal with defendant evaluations of the fairness of the treatment they received.

First, I shall discuss the general notion of fairness, analyzing both its various philosophical connotations and the ways in which these respondents appear to be applying the term. Then, I shall turn to the correlates of judgments about fairness among defendants who are subjected to the criminal process. Two types of correlates are discussed: "predispositions" (attitudes that defendants bring with them to court) and "case-specific" variables (events that occur during the defendant's present encounter with the court). I will argue that both types of variables are related to

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1. This research was financed by Grant 74-NI-99-0027 from the National Institute of the Law Enforcement Assistance Administration. Such financial assistance implies no endorsement by LEAA or any other government agency of the views expressed here. The field work was conducted by the National Opinion Research Center.
 2. The respondents in the study were young, predominantly black, and had fairly extensive experience with criminal justice agencies (see Appendix).

defendant evaluations of the fairness of their treatment, but that case-specific variables are more strongly related. Defendants judge their treatment less on the basis of antecedent stereotypes and more in terms of their actual experiences in court. Finally, I will argue that these judgments apply a common set of dimensions often associated with the notion of fairness, and will discuss the implications of these judgments for current discussions of increased sentence equity and plea bargaining.

II. DEFENDANT EVALUATIONS OF THEIR TREATMENT: AN OVERVIEW

The concept of “fairness” is complicated and rich in connotations. Philosophers (Rawls, 1958), legal theorists (Stone, 1965; Packer, 1968), and developmental psychologists (Piaget, 1932) have devoted considerable energy to unraveling its meanings. This literature suggests that fairness is often equated with “justice,” understood in three ways: (a) just desert—a sense that the events befalling a person are somehow appropriate; (b) equality of treatment;³ (c) adequate procedures—the way in which decisions are made or outcomes occur.

The notion of just desert or appropriate response is itself complicated. It seems to mean one thing when we review the histories of others but quite another when we reflect on what happens to us—less a notion of just desert and more an evaluation of whether these events are desirable or undesirable. For example, when asked whether they were treated fairly, some defendants asserted that the outcome was not fair: “I feel I should have received less time.” “The time that I have to do. It’s too much time.” Although the rhetoric is that of just desert, the defendant may in fact be saying simply that he does not *like* the outcome of his case. In this sense, then, fairness may mean that an outcome or event serves one’s interest and unfairness that it is detrimental to one’s interest. Children frequently appear to apply the concept in this fashion, as do most of us at one time or another.

The second sense of fairness connotes equity or equality: “My brother got 7½ [years] for the same charge and I got life and we were in it together.” “I felt I should have gotten personal bond

3. Piaget (1932:197) focuses upon the first two notions when he asserts that
 There are in existence two distinct ideas of justice. We say that an award is unjust when it penalizes the innocent, rewards the guilty, or when, in general, it fails to be meted out in exact proportion to the merit or guilt in question. On the other hand, we say that a division is unjust when it favors some at the expense of others. In the first acceptation of the term, the notion of justice is inseparable from that of reward and punishment, and is defined by the correlation between acts and their retribution.

earlier. A white man was in there for a worse crime and he got personal bond." Although this judgment is still predicated upon outcome, the standard is not just desert or self-interest but treating like things alike.

Finally, fairness often rests upon an assessment of the process by which decisions are made or events occur: "The judge knew the witness was lying and he still sentenced me." "I never got to tell them my side of the story." "[My lawyer] came to me with a year's cop and it ended up a 3 year [sentence]." In American jurisprudence, the notion that due process guarantees "fundamental fairness" reflects this version. It implies, among other things, that decision-makers in criminal cases ought not to be biased in advance; that each side should have the opportunity to present its case fully; and that decisions ought to be based upon the evidence presented. "Fairness" here is process not outcome: an outcome may be fair procedurally even though it is personally undesirable.

A concrete judgment may express one or more of these notions of fairness, and the criminal accused we interviewed did appear to use all three. But to acknowledge that the concepts are complicated, and that we were asking a great deal of our respondents, is not to despair at discerning any patterns in their responses, for patterns do exist. Nor is it to dismiss my findings as the random musings of men in trouble. But the reader must recognize that the question—were you treated fairly?—is truly complex. Therefore the discovery of what appear to be measured judgments is itself of some significance. Despite our desire to believe that criminal defendants form an outlaw culture radically different from that of the law-abiding citizenry, the defendants interviewed here are much like the rest of us. They are not always clear in their judgments; prejudice and self-interest color their views; and many find the world quite bewildering. Yet they are sensitive to what happens to them; they do not simply blame others for their own misfortunes; and they employ criteria not dissimilar to those that the rest of us would use.

III. CORRELATES OF JUDGMENTS ABOUT FAIRNESS

A. Predispositions

A defendant's evaluation of his treatment may be a function of preexisting beliefs about the nature of legal institutions, independent of the events in the particular case. We measured predispositions in three ways: an idea of political alienation, which elicits general feelings about governmental institutions;⁴ race, which in

4. The measure of political alienation is derived from a set of items developed by the Survey Research Center at the University of California,

this sample is associated with a many attitudes toward legal institutions (Blacks being generally less favorable than whites⁵); and past record, as an index of prior experience with criminal justice agencies.⁶

All three are related to defendant evaluations of the fairness

Berkeley (see, e.g., Sniderman 1978).

The scale used here involves five item-pairs:

- (1) There is almost no way people like me can have an influence on the government.
People like me have a fair say in getting the government to do the things we care about.
- (2) The way our government works, almost every group has a say in running things.
This country is really run by a small number of men at the top who speak only for a few special groups.
- (3) Our government leaders usually tell the truth.
Most of the things government leaders say can't be believed.
- (4) The way this country is going, I often feel that I don't really belong here.
Although our country may be facing difficult times, I still feel that it's a worthwhile place and that I really belong here.
- (5) I am proud of many things about our government.
I can't find much in our government to be proud of.

Summed scores on the five items form the alienation measure. It was initially divided into three approximately equal groups. The relationship between the score and judgments about fairness is as follows:

<i>Fairness Evaluation^a</i>	<i>Alienation Score</i>		
	Low	Medium	High
Yes	68% (143)	66% (109)	50% (119)
No	32% (69)	34% (56)	50% (118)
	100% (212)	100% (165)	100% (237)

$\chi^2=16.6$ significant at 0.0002 level.

a. The question eliciting defendant's sense of fairness was: "All in all, do you feel you were treated *fairly* or *unfairly* in your case?"

The proportions saying they were fairly treated are nearly identical among those scoring low and medium on the alienation measure. As a result, the respondents were dichotomized into low and high for further analysis.

5. Because of the small number of Chicano respondents, the analysis focuses upon Blacks and whites. The relationship between race and evaluation of fairness if as follows:

<i>Fairness Evaluation</i>	<i>Race</i>	
	Blacks	Whites
Yes	55% (225)	73% (118)
No	45% (185)	27% (43)
	100% (410)	100% (161)

$\chi^2=16.3$ significant at 0.001.

6. In examining the relationship between past record and fairness evaluation, the only significant differences we found were between those who have no prior arrests and those who have any record:

of their treatment, but two are also related to case outcomes. Because those with no past record were almost never sentenced to prison terms it was impossible to separate the direct effect of record on evaluation from its effect as mediated by its influence upon disposition; consequently the variable of record was eliminated from the analysis. Race is also moderately related to sentence received (Blacks receive harsher sentences), but its relationship to evaluations of fairness remains when sentence is controlled, and hence it is retained.

Thus defendant predispositions do appear to make a difference in their evaluations of fairness, which may reveal the effect of a self-fulfilling prophecy. Defendants possessing attributes associated with distrust of government institutions are more likely to conclude that their treatment was unfair. Yet the fact that what happens in the particular encounter also makes a difference undermines the power of the self-fulfilling prophecy as an explanation.

B. Case-Specific Variables

Three variables describing the disposition of the defendant's case are related to evaluations of the fairness of the treatment received: (1) the outcome of the case (dismissal, probation, jail, and prison);⁷ (2) the mode of disposition for convicted defendants (trial or guilty plea); and (3) the defendant's sense of whether his sentence was lighter than, the same as, or heavier than that received by others convicted of the same offense (to be called

<i>Fairness Evaluation</i>	<i>Prior Record</i>	
	None	Any
Yes	81% (73)	57% (305)
No	19% (17)	43% (230)
	<u>100%</u> (90)	<u>100%</u> (535)

$\chi^2=18.5$ significant at 0.001.

7. In analyzing the effects of sentence received, I have combined those who received probation with those who were jailed. Given the necessity to combine jail sentences with some other disposition in order to attain cells of a sufficient size, it might intuitively appear more appropriate to collapse jail sentences (less than a year in local facilities) and prison sentences (more than a year in state facilities), since the defendant is incarcerated in both. The data were initially coded in this fashion, but it turned out that those who are jailed are more like those placed on probation than they are like those imprisoned, in terms of their evaluations of the fairness of their treatment. Perhaps those who are jailed consider that they were "eligible" for a prison term and are relatively happy not to get it; for this reason, their satisfaction levels turn out to be closer to those of persons placed on probation. Some support for this explanation comes from the fact that, among defendants sentenced to

“comparison level”).⁸ We can see their effects in Table 1, which permits us to look at the relationship between fairness and each of our independent variables while controlling for the others, for each cell represents a unique combination of the three variables.

TABLE 1
CORRELATES OF A SENSE OF FAIR TREATMENT^a

<i>Comparison Level</i>	<i>Outcome</i>			
	<i>Probation or Jail</i>		<i>Prison</i>	
	<i>Mode of Disposition</i>		<i>Mode of Disposition</i>	
	<i>Plea</i>	<i>Trial</i>	<i>Plea</i>	<i>Trial</i>
Lighter than or same as others	81% (173)	62% (47)	52% (48)	24% (25)
Heavier than others	40% (43)	36% (14)	14% (35)	0% (26)

a. Each cell entry comprises the percentage of respondents saying they were fairly treated.

Thus, for example, the first cell in the left-hand column consists of individuals who pled guilty, received a sentence of probation or jail, and evaluated the sentence as lighter than or the same as that of others similarly convicted. Eighty-one percent of these respondents say they were treated fairly. In the lower right corner are 26 respondents who received prison terms after a trial, and who felt that their sentences were heavier than sentences given most others

probation, jail, or prison, those who received jail terms were most likely to say that their sentences were lighter than those of others convicted of similar offenses.

The measure of case outcome is admittedly very crude. We would much have preferred to ask the defendant at the first interview to predict what he thought would be a desirable or a likely outcome, and then measure the discrepancy between expectations and outcome. In the process of getting research permission from court personnel it became clear that great difficulties would arise if we asked any questions during the first interview that might lead the respondent to admit guilt. Thus, we had to fall back upon a measure of the “absolute” severity of the outcome, acknowledging that it probably lumps together people with somewhat different experiences.

8. The defendant’s comparison level is based upon responses to the following item: “Compared with most people convicted of the same crime as you were, would you say that your sentence was . . . about the same as most people get . . . lighter than most people get . . . or, heavier than most people get?” The concept of comparison level is similar to the often-discussed notion of “relative deprivation” (see, e.g., Thibaut and Kelley, 1959). In reporting and analyzing comparison levels, I have combined the first two categories. Again, this is done in order to increase cell size and does not distort relationships. Those who feel that they received especially light treatment and those who say their treatment was the same as others are about equally likely to say they were fairly treated:

<i>Comparison Level</i>	<i>Percentage Saying Treated Fairly</i>
Lighter than others	70% (146)
Same as others	66% (148)
Heavier than others	23% (120)

convicted of the same crime; none said he was fairly treated.⁹

All three of the case-specific variables are related to defendant evaluations about the fairness of their treatment. Those who received prison sentences are consistently less likely than those with lighter sentences to say that they have been fairly treated (the average difference is 32 percent). Those who assert that their sentences were heavier are less likely to characterize their treatment as fair (the average difference is 37 percent).¹⁰ Finally, the mode of disposition is also related, though somewhat less strongly: those who plead guilty are more likely to assert that they have been treated fairly (the average difference is 16 percent).

These relationships are consistent with the general dimensions of the concept of fairness discussed earlier. A sense of just desert or self-interest (outcome), a concern for equity (comparison level), and attention to procedure (mode of disposition) all appear to be related to defendant notions of the fairness of their treatment.

Before turning to a discussion of the implications of these relationships, we may briefly look at the relative influence of predispositions and case-specific variables. Using multiple dis-

9. Sixty-nine percent of respondents who received dismissals or acquittals reported that they were fairly treated, presumably expressing their relief at having their ordeal over with. If we examine the remainder, we find that they tend to have been subjected to somewhat longer periods of pretrial detention (a mean of 50 days, compared with 22 days for those who said they were treated fairly).
10. It was possible to compare the sentences of some respondents in my sample with data on median prison sentences gathered by Eisenstein and Jacob in Detroit and Baltimore (1977). We were able to evaluate whether our respondents received sentences that were lighter than, roughly the same as, or heavier than those generally given to defendants convicted of similar crimes in these two cities. The relationship between the "actual" severity of sentence and the "perceived" severity is as follows:

<i>Perceived</i>	<i>Actual</i>		
	Lighter	Same	Heavier
Lighter	41%	27%	27%
Same	41	54	11
Heavier	19	18	62
	<u>101%</u>	<u>99%</u>	<u>100%</u>
	(27)	(11)	(52)

Defendants who have received heavier than average treatment are likely to perceive this fact correctly and those who have received relatively light treatment are *not* likely to assert mistakenly that they have been punished severely. This pattern emerges more clearly if we collapse our first two categories:

<i>Perceived</i>	<i>Actual</i>	
	Lighter/Same	Heavier
Lighter/same	82%	38%
Heavier	18	62
	<u>100%</u>	<u>100%</u>
	(38)	(52)

criminant analysis, a technique appropriate for dichotomous dependent variables, predispositions are forced into the equation first, so that their contribution is taken into account before that of the case-specific variables (see Table 2).¹¹

TABLE 2
RELATIVE INFLUENCE OF PREDISPOSITIONS AND CASE-SPECIFIC
VARIABLES UPON DEFENDANT EVALUATIONS OF FAIRNESS

	<i>Discriminant Function Coefficient</i>	<i>Proportion of Explained Variance Accounted for</i>
<i>Predispositions</i>		
Race	.20	13%
Alienation	-.17	7
<i>Case-Specific Factors</i>		
Sentence	-.41	26
Mode of Disposition	.30	12
Comparison Level	-.60	42
		<u>100%</u>
Canonical Correlation Squared .31		
Proportion of cases correctly classified 74%		

All of the variables are significantly related to the evaluation of fairness, and a modest amount of the total variation in evaluations can be accounted for by these five independent variables. The discriminant function coefficients (analogous to betas in a regression equation) suggest that comparison level and sentence are the most strongly related to the dependent variable. Finally, the discriminant analysis suggests that the case-specific variables are associated with defendant evaluations even after the effects of predispositions are removed.

Seventy percent fall on the main diagonal—those who have correctly gauged the relative severity of their sentences. Moreover, among those who make “mistakes,” the bulk assert that their sentences were relatively *lighter* than they were in fact. Thus, the evidence available suggests that (1) defendants’ judgments of the relative severity of their sentences are quite realistic; and (2) when they err, they tend to exaggerate their good fortune.

Finally, it is worth noting that we asked our respondents to compare themselves with others convicted of the same crime. Had we used other benchmarks—for example, those with similar criminal records, or those with different socioeconomic statuses—we might have obtained different results.

11. There do not appear to be problems of multicollinearity among the independent variables that might render the relative contributions suspect.

Intercorrelations among Independent Variables

	Comparison Level	Mode of Disposition	Race	Alienation
Sentence	.24	-.13	-.26	.13
Comparison Level	—	-.10	-.04	.13
Mode of Disposition	—	—	.20	-.09
Race	—	—	—	-.19

What do the case-specific variables suggest about the process by which defendants make judgments about the fairness of the treatment they receive in criminal court? Perhaps the least surprising relationship is that of sentence received to defendant evaluations. As the outcome becomes less pleasant, defendants are more inclined to brand their treatment as unfair. In many ways, though, what is striking is that sentence received does not, by itself, carry the day. Defendants are not just saying that they find their sentences palatable or unpalatable.

This brings us to the second case-specific variable—comparison level. Its strong relationship to a sense of fair treatment suggests that a notion of equality is an important component of the evaluation. As noted above, there is evidence that defendants are fairly accurate in their assessment of the comparison level. To the extent this is true, it suggests that more even-handedness in sentencing may reinforce a defendant's sense of fair treatment, even if the sentence itself is harsh. If we restructure Table 1 to disregard the effects of mode of disposition, the relationship between sentence, comparison level, and evaluation of fairness is as follows:

TABLE 3
FAIRNESS RELATED TO OUTCOME AND COMPARISON LEVEL^a

<i>Comparison Level</i>	<i>Outcome</i>	
	Probation or Jail	Prison
Lighter/same	77% (220)	42% (73)
Heavier	39% (57)	8% (61)

a. Each cell entry comprises percentage saying they were fairly treated.

Defendants who are imprisoned but believe that their sentences were lighter than or the same as those of others convicted of the same crime are slightly *more* likely to characterize their treatment as fair than defendants who received lighter sentences but believe that they received harsher treatment than average. Thus, a defendant's sense of equity may overcome an unpleasant penalty (the mean prison sentence for those in the upper right-hand cell is more than five years).

The third case-specific variable, mode of disposition, is most weakly related to a sense of fairness, despite the sometimes impassioned debate over whether the practice increases defendant cynicism or a feeling of participation in the criminal process. Referring back to Table 1, we see that those who plead guilty do appear to be somewhat more likely to accept their treatment as fair.¹² The

12. In exploring the reasons why those who plead guilty are somewhat more

differences are strongest among those who believe their sentences were equitable or lenient. Among those who believe their sentences are unduly severe, the difference is minimal if they receive light sentences; for those who received prison terms there is a difference, but the overwhelming number simply brand their treatment as unfair.

In analyzing the effect of the mode of disposition upon fairness, it is difficult to separate the *process* of plea bargaining from the belief it induces in a defendant that he has obtained a more lenient sentence. It is also ambiguous whether plea-bargaining increases defendant satisfaction or the experience of a trial decreases it. The latter hypothesis is worth exploring because it is less obvious. If those who plead guilty are “rewarded” with lesser sentences than they might have received after trial, then those who do go to trial may be forgoing a real advantage, presumably in the hope of avoiding punishment altogether. The experience of trial may itself raise the expectations of the defendant: he hears his witnesses offer alibis, and listens to his lawyer seek to impeach the credibility of prosecution witnesses. When the trial results in a conviction, as it typically does (89 percent of the trials in this sample led to conviction), the defendant may feel an enhanced disappointment. If the sentence imposed is severe, these defendants may be particularly disillusioned or embittered.¹³

The data do offer some support for this hypothesis. Among defendants who felt they had been treated unfairly, there is a difference between those who went to trial and those who pled in the specific complaints they offered in response to an open-ended question (see Table 4). The first three response categories form a coherent image of the court process as a conspiracy of the state

likely to call their treatment fair, it does not appear that this relationship is the product of an interaction between comparison level and mode of disposition. Those who plead guilty are not more likely to believe that their sentences are lighter than or the same as the sentences of others convicted of the same crimes. The relationship between mode of disposition and comparison level is as follows:

<i>Comparison Level</i>	<i>Mode of Disposition</i>	
	<i>Trial</i>	<i>Plea</i>
Lighter/same	64% (72)	74% (221)
Heavier	36% (40)	26% (78)
	100% (112)	100% (298)

$\chi^2=3.7$, not significant at 0.05

- The absence of a relationship between comparison level and mode of disposition remains when sentence is controlled.
- An experienced public defender suggested to me that for him one of the most distressing aspects of his criminal trials was that often the only participant or observer convinced by the defense’s case was the defendant himself.

against the defendant. The first suggests innocence, the second and third that the defendant was not given an opportunity to present his case, or was confronted by officials who had prejudged him. Half of those who had trials and said they were unfairly treated volunteered one of these three reasons, more than twice the proportion of respondents who pled guilty. That a significant proportion of defendants complained that they were not permitted to present their side is puzzling, since one might have thought that the opportunity offered by a trial to present witnesses, cross-examine the prosecution witnesses, and make opening and closing arguments would produce an increased sense of procedural fairness.

TABLE 4

RELATIONSHIP OF MODE OF DISPOSITION TO DEFENDANT REPORTS
OF TYPES OF UNFAIR TREATMENT^a

<i>Type of Unfairness</i>	<i>Mode of Disposition</i>	
	Trial	Plea
Defendant should never have been arrested or charged at all	18%	7%
Defendant not given opportunity to talk, present his side of case	14	4
Judge and/or prosecutor biased against defendant	19%	11%
Sum of 1, 2, and 3	51%	22%
Defendant's lawyer acted in uncaring, dishonest, or incompetent manner	12%	19%
Sentence imposed too harsh	11	14
Defendant coerced into making unfavorable choices (e.g., to plead guilty, waive rights, etc.)	5	10
All other response categories	21%	35%
	100%	100%
	(74)	(112)

- a. All respondents who said that they were treated unfairly were asked: "In what ways were you treated unfairly?" Up to three responses were recorded for each respondent. This table is based upon the first-mentioned response.

IV. CONCLUSION

This exploration of defendant evaluations of the treatment they received in criminal courts suggests several conclusions. First, defendants are by no means unanimous. Rather, they appear to pass a measured judgment upon their treatment. Even those whose dispositions were severe do not always denounce them. The data do not support the common image of a subculture of hardened criminals sitting around berating the ill-treatment they have received.

Second, we have seen that the variation in judgments about the fairness of treatment is related both to predispositions and to events during the course of the prosecution. Preexisting beliefs about the criminal process do matter, but they are not decisive. Rather, the sentence received, the mode of disposition, and the defendant's sense of equity are at least as important.

Debates over plea bargaining have sometimes involved assertions about the effects of this institution on defendant satisfaction. The data suggest that those who plead guilty are slightly more likely to accept their treatment as fair than those who go to trial, though the relationship is not strong. Although it is difficult to sort out whether this is a product of increased satisfaction associated with a plea or decreased satisfaction associated with a trial, or both, there is support for a view that the defendant's sense of fairness may be related to the mode of disposition.

Finally, and most important, a defendant's sense of equity is most strongly related to his sense of fair treatment. Like the rest of us, defendants are very concerned about equity, and quick to express dissatisfaction if they believe they have been singled out for harsh treatment. The nature of the sentencing process in most jurisdictions, which grants considerable discretion to judge and later to the parole board, tends to create sentence inequities among those convicted of similar offenses. The justification for such discretion is the ability of the judge or parole board to tailor the penalty to the "needs" of the offender or of society. But scholars have criticized such inequalities as morally indefensible. The data reported here suggest that defendants also share this sense of the injustice of unequal penalties. If we wish to strengthen the defendant's sense that his treatment has been fair and his punishment appropriate (whether because as a matter of ultimate values we believe that punishment should be acceptable to the punished, or because of a utilitarian desire to affect future behavior—perhaps to decrease recidivism) then it may be necessary to reduce perceived sentence inequity. Limiting discretion and increasing consistency in sentencing those convicted of similar offenses would not only satisfy our sense of justice, but also the sense of those most immediately affected—the defendants themselves.

APPENDIX

The following data give a broad demographic picture of the 628 men who are discussed in this report, and indicate that the "drop-outs" (who responded to the first interview but not the second) do not appear to be significantly different:

	<u>T₁/T₂ Sample</u>	<u>Drop-Outs</u>
RACE/ETHNICITY		
White	25.9%	30.6%
Black	65.6	61.1
Spanish surname	8.5	8.3
	<u>100.0%</u>	<u>100.0%</u>
	(625)	(180)
AGE		
Younger than 18 years	6.1%	6.5%
18-21 years	40.3	26.7
22-25 years	19.8	32.0
26-30 years	17.1	12.9
Older than 30 years	16.7	21.9
	<u>100.0%</u>	<u>100.0%</u>
	(628)	(184)
Mean age	25.1 years	25.5 years
Median age	22.2 years	23.2 years
EDUCATION		
Less than 8 years	15.9%	12.0%
Some high school	53.4	48.4
High school graduation	21.1	26.6
Some college or above	9.6	13.0
	<u>100.0%</u>	<u>100.0%</u>
	(627)	(184)
EMPLOYMENT STATUS		
Working	40.1%	39.7%
Unemployed	51.8	51.6
Other	8.1	8.7
	<u>100.0%</u>	<u>100.0%</u>
	(628)	(184)
MARITAL STATUS		
Married	21.2%	23.9%
Never married	61.4	64.0
Other	17.4	12.1
	<u>100.0%</u>	<u>100.0%</u>
	(628)	(184)
CRIMINAL RECORD		
Never arrested	14.4%	13.0%
Arrested	22.4	21.7
Convicted	16.8	19.0
Served jail sentence	20.1	18.5
Served prison sentence	26.4	27.7
	<u>100.1%</u>	<u>99.9%</u>
	(628)	(184)

REFERENCES

- CASPER, Jonathan D. (1972) *American Criminal Justice: The Defendant's Perspective*. Englewood Cliffs, N.J.: Prentice-Hall.
- (1977) "Improving Defender-Client Relations," 34 *NLADA Briefcase* 114.
- (1978) *Criminal Courts: The Defendant's Perspective*. Washington, D.C.: Government Printing Office.
- EISENSTEIN, James and Herbert JACOB (1977) *Felony Justice*. Boston: Little, Brown & Co.
- ENKER, Arnold (1967) "Perspectives on Plea Bargaining," in President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: The Courts*. Washington, D.C.: Government Printing Office.
- FRANKEL, Marvin (1973) *Criminal Sentences*. New York: Hill & Wang.
- KATZ, Daniel (1975) *Bureaucratic Encounters*. Ann Arbor: Institute for Social Research, University of Michigan.
- PACKER, Herbert (1968) *The Limits of the Criminal Sanction*. Stanford, California: Stanford University Press.
- PIAGET, Jean (1932) *The Moral Judgment of the Child*. New York: Harcourt, Brace & Co.
- RAWLS, John (1958) "Justice as Fairness," 67 *Philosophical Review* 164.
- SNIDERMAN, Paul (1978) "The Politics of Faith," 8(1) *British Journal of Political Science* (forthcoming).
- STONE, Julius (1965) *Human Law and Human Justice*. Stanford, California: Stanford University Press.
- THIBAUT, J.W. and H.H. KELLEY (1959) *The Social Psychology of Groups*. New York: John Wiley & Sons.
- VON HIRSCH, Andrew (1976) *Doing Justice: The Choice of Punishment*. New York: Hill & Wang.