Comparative Proportionality Analysis: Its Feasibility and Usefulness in Sentencing

Stephen A Gerst, Arizona Summit Law School

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COMPARATIVE PROPORTIONALITY ANALYSIS: ITS FEASIBILITY AND USEFULNESS IN SENTENCING

Hon. Stephen A. Gerst*

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* The author served as a judge on the Superior Court of Maricopa County, Arizona for twenty-one years. Judge Gerst is presently an Associate Professor of Law at Phoenix School of Law, located in Phoenix, Arizona. The author expresses his gratitude and appreciation to the faculty of Phoenix School of Law who read and commented on drafts of this Article. Special appreciation is extended to my student research assistant, Leslie Ross, and to faculty members, Gerry Hess (visiting faculty from the Gonzaga University School of Law), Mary F. Radford (visiting faculty from the Georgia State University College of Law), Victoria Salzmann and Judge Dave Cole (faculty members of Phoenix School of Law), and Commissioner Toby M. Gerst, Ret., for their careful reading, comments, and suggestions as this article moved toward completion. The author also expresses appreciation to the law review board and editorial staff of Phoenix School of Law for their suggestions and careful review of this article for accuracy and readability.
I. INTRODUCTION

Proportionality in punishment means more than the abstract notion that a legislature should establish punishments for crimes based upon the severity of the offense. Proportionality also means that persons convicted of crimes will be punished according to their relative "blameworthiness" and not be given a harsher or more lenient punishment because of their fame, wealth, influence, or power.¹

This Article addresses the proportionality issue of blameworthiness and the means available for judges to determine, within the ranges of sentencing discretion provided by statutes, an appropriate sentence comparable to sentences imposed upon other persons convicted of the same offense with a similar set of circumstances.

The comparative proportionality analysis has largely been restricted to capital cases on appeal.² In both capital cases and non-capital cases, almost no practical means exist for a trial judge, at the time of sentencing, to ascertain and compare the circumstances of persons convicted of similar crimes. With the advent of computer data record-keeping by courts, the means to locate and gather information from files in similar cases is now

¹ The term "blameworthiness" is the term used in a tentative draft proposal by the American Law Institute on sentencing which will be discussed in this Article. See MODEL PENAL CODE § 1.02(2)(a)(i) (Tentative Draft No. 1, 2007) [hereinafter Tentative Draft No. 1].

² The United States Supreme Court has noted that non-capital sentences are subject only to a "narrow proportionality principle," which prohibits sentences that are "grossly disproportionate to the crime." Ewing v. California, 538 U.S. 11, 20, 23 (2003) (O'Connor, J., concurring in the judgment) (quoting Harmelin v. Michigan, 501 U.S. 957, 996-97 (1991) (Kennedy, J., concurring in part and concurring in the judgment)); see also State v. Berger, 134 P.3d 378, 384 (Ariz. 2006) (en banc) (upholding a cumulative sentence of more than 200 years for the knowing possession of child pornography depicting children younger than fifteen).

The United States Supreme Court has held that, even in capital cases, comparative proportionality, as opposed to inherent proportionality (which measures the proportionality of a sentence to the severity of the crime), is not constitutionally required. Pulley v. Harris, 465 U.S. 37, 43-44 (1984) (upholding California's death penalty sentencing statute, which did not mandate comparative proportionality review). Even where a state provides for proportionality review by statute in capital cases, constitutional review on federal habeas is limited to whether the state court engaged in a good faith proportionality review. Walton v. Arizona, 497 U.S. 639, 655-56 (1990); see also State v. Salazar, 844 P.2d 566, 584 (Ariz. 1992) (holding appellate proportionality review was not constitutionally required and the practice discontinued), cert. denied, 509 U.S. 912 (1993).
The feasibility of analyzing case files, to determine how the circumstances of other offenders compare to the circumstances of the offender in a case before a court for sentencing, is one of the subjects of examination in this Article.

The focal point of this Article is a high profile, non-capital Arizona criminal case where the trial judge analyzed sentencings in other cases before imposing a sentence in the case before him. This Author, who was the trial judge in the case, describes the methodology and process he used with a two-fold purpose in mind: (1) to ensure that the defendant’s sentence would be consistent with sentences imposed for similar crimes committed by similar offenders; and (2) to provide assurance to the public that the defendant, who held a high position in his church and the community, was not being given "special treatment."

This Article addresses the feasibility, usefulness, and propriety of a judge performing an analysis of sentencings in other cases in preparation for a particular sentencing decision before the court. Even with the advent of computer record-keeping by courts, other issues may arise, such as the ethical propriety of judges doing independent research on prior cases, and the impracticality of conducting such analyses in most cases.

This Article concludes with a discussion of the American Law Institute’s proposal for changes in the sentencing provisions of the Model Penal Code. These proposed changes include a recommendation that every state charter a permanent sentencing commission with authority to promulgate sentencing guidelines. Guidelines promulgated by a sentencing commission may offer the most practical means of attempting to maintain the objective of proportionate punishment within the ranges of punishment available to a trial judge. As of 2007, seventeen states, the District of Columbia, and the federal system were operating with sentencing guidelines promulgated by a sentencing commission, and several additional states were actively exploring such a framework. Regardless of whether a state

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3 Tentative Draft No. 1, supra note 1. The Tentative Draft was submitted by the Council to the Members of The American Law Institute for Discussion at the Eighty-Fourth Annual Meeting on May 14, 15, and 16, 2007.
4 Id.
5 See generally id. The jurisdictions with sentencing-guhideine systems, listed by earliest effective date, are Utah (1979); Minnesota (1980); Pennsylvania (1982); Maryland (1983); Michigan (1984); Washington (1984); Delaware (1987); United States (1987); Oregon (1989); Tennessee (1989); Virginia (1991); Kansas (1993); Arkansas (1994); North Carolina (1994); Ohio (1996); Missouri (1997); Wisconsin (2003); District of Columbia (2004); and Alabama (2006). According to the Reporter for the ALI Tentative Draft No. 1, efforts to create a permanent sentencing commission are moving ahead in California, Colorado, Connecticut, and New Jersey. Id. at Reporter Notes.
chooses to adopt guidelines to achieve the objective of assuring proportionality among offenders, this Article provides a methodology that may be useful, particularly in the high-profile or extraordinary case.

II. STATE OF ARIZONA V. THOMAS J. O'BRIEN

On February 17, 2004, the Bishop of the Roman Catholic Diocese of Phoenix, Arizona, became the first American bishop arrested, charged, and convicted of the felony offense of leaving the scene of a fatal accident. The arrest of the bishop was reported as the “lead story” of all news events in Arizona for the year 2003. The arrest took place when public media attention nationwide was focused on allegations of criminal conduct within the Catholic Church. In Arizona, the allegations were that certain members of the clergy had sexually abused children for many years, and that church leaders knew of the conduct, but either covered it up, or dissuaded victims from reporting it to authorities.

7 Dennis Wagner, O'Brien Secluded; Power Teetering—Charged with Felony But “Still in Charge,” ARIZ. REPUBLIC, June 18, 2003, at Al.
8 O’Brien was charged under ARIZ. REV. STAT. ANN. § 28-661 (2003):

A. The driver of a vehicle involved in an accident resulting in injury to or death of a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene and,

2. Remain at the scene of the accident until the driver has fulfilled the requirements of § 28-663 [describing the duty to give information and assistance to any person injured in the accident].

B. A driver who is involved in an accident resulting in death or serious physical injury as defined under § 13-105 [definitions under Arizona's criminal statutes] and who fails to stop or to comply with the requirements § 28-663 [describing the duty to give information and assistance] is guilty of a class 4 felony.

ARIZ. REV. STAT. ANN. § 28-661 (2003) (amended 2007). The statute was amended in 2007, which raised the penalty from a class-four felony to a class-three felony. See 2007 Ariz. Legis. Serv. Ch. 154 (West). This Article will cite the law as it existed in 2003, as charged against Bishop O’Brien.

10 “At least 30 priests who have lived or worked in the diocese have been accused of abuse, and dozens of victims have come forward to press their concerns. Many of those concerns have resulted in lawsuits or criminal allegations. The diocese has been sued on
Bishop Thomas J. O’Brien was never accused of any direct sexual misconduct, but he had been a leader within the Diocese of Phoenix, and its bishop since 1981, during the time when alleged sexual abuse occurred. As part of the investigation into the allegations of sexual misconduct in Arizona, the Maricopa County Attorney entered into an agreement with the Phoenix Diocese granting Bishop O’Brien, and the Diocese of Phoenix, immunity from prosecution for any acts or omissions then known to have arisen during his tenure as leader of the Phoenix Diocese (the Agreement).

Many citizens, however, felt intense dissatisfaction with this Agreement. These citizens wanted the Bishop removed from his position and held criminally accountable for his administration of the Diocese during the period of the alleged abuses.

It was against this backdrop that the fatal accident involving Bishop O’Brien occurred on June 14, 2003, a mere two weeks after the settlement agreement with the County Attorney was made public.

III. THE TRIAL

On June 17, 2003, the Maricopa County Attorney filed a Direct Complaint charging Thomas J. O’Brien with the crime of leaving the scene of a serious injury or fatal accident, a class four felony. Bishop O’Brien was not charged with being at fault in the death of Mr. Jim Reed, who ran in front of the defendant’s moving vehicle. At his arraignment, Bishop O’Brien entered a plea of not guilty.


12 The Agreement was entered into on March 3, 2003. See Appendix A.

13 This demand was evidenced by the testimony of several “victims” who testified at the pre-sentence hearing and the numerous letters received by the court urging punishment of the defendant for matters related to his conduct during his church leadership. See court file in State v. O’Brien, No. CR 2003-016197 (Ariz. Sup. Ct. Maricopa County 2004).

14 Although the Agreement contained a confidentiality provision, with disclosure at the discretion of the Maricopa County Attorney, see Appendix A, at ¶13, the Agreement was publicly disclosed on June 2, 2003.


16 The statute under which the Bishop was charged distinguished between a driver who causes the accident and one who does not. If a driver was not the cause of the accident, a violation of the statute was a class-four felony. If a driver was the cause of the accident, a violation of the statute was a class-three felony. ARIZ. REV. STAT. ANN. § 28-661(B) (2003).

At trial, which began on January 12, 2004, Bishop O’Brien raised two defenses. First, he asserted that he did not know he was involved in an injury accident. Second, he contended that a reasonable person in his circumstances could not have reasonably anticipated that “a person” was injured as a result of an impact causing his windshield to shatter.

An official transcript of the proceedings was not prepared by the court reporter because no appeal was filed. The following excerpt, which summarizes the evidence, is taken from the presentence investigation report prepared by Brett M. Whitney, Presentence Investigating Officer for the Adult Probation Department of Maricopa County, Arizona:

**PRESENT OFFENSE:**

On June 14, 2003 at 8:36 p.m., victim Jim Reed crossed ... mid block outside a crosswalk .... A vehicle struck him and the driver did not stop after impact .... [O]ne witness obtained the license plate number of the ... vehicle.... Mr. Reed was transported to a nearby hospital where he was later pronounced dead. Further investigation revealed the vehicle was registered to the Roman Catholic Diocese of Phoenix and assigned to Bishop Thomas J. O’Brien. When police contacted [Bishop O’Brien], he stated that something had hit his windshield, but he did not know what had happened.

**DEFENDANT’S STATEMENT:**

On the evening of the present offense, the Bishop attended a Confirmation ceremony .... [After leaving for home, he] was in the area of Nineteenth and Glendale Avenues when a crashing sound occurred, and his windshield shattered on the passenger side of his vehicle. ... He was ... surprised as he had not seen anything, [but] concluded something had hit him. He did not stop, believing he had no reason to.... He arrived home about five minutes later and completed a cursory inspection of the damage from the driver's side of the vehicle. He never closely examined the damaged area. The next morning he used the same car to travel to a nearby parish to offer Mass. [Later that day, while at his sister’s house], he was contacted by [a church official] and was told the police were looking for his vehicle. ... The defendant went home, but the police did not contact him until the following morning. He was cooperative with them and gave them full access to the vehicle.

Adult Probation Department’s Presentencing Investigation, O’Brien, No. CR2003-016197.

The jury instructions were as follows:

The crime of leaving the scene of a serious injury or fatal accident requires proof beyond a reasonable doubt of the following:

1. The defendant was the driver of a vehicle involved in an accident which resulted in the serious injury or death of another person and,
IV. CONVICTION

On February 17, 2004, the jury returned a verdict of guilty on the crime of leaving the scene of an accident involving injury or death.\textsuperscript{20} Sentencing was scheduled for March 26, 2004.\textsuperscript{21}

The Bishop’s class-four-felony conviction carried a presumptive sentence of 3.75 years imprisonment.\textsuperscript{22} Alternatively, the sentencing statutes authorized the court to suspend the imposition of a sentence and place a defendant, convicted of a class four felony, on supervised probation.

2. The defendant failed to immediately stop at the scene, or as close to the accident scene as possible, and immediately return to the accident scene and fulfill the duty to give information and render aid as required by law; and,

3. In addition, the crime charged requires the State to prove either:

   A. That the defendant actually knew that, as a result of the accident, a person was injured; or

   B. That the defendant knew that the accident was of such nature that one would reasonably anticipate that a person was injured as a result of the accident.

Therefore:

(a) If a driver knows that he was involved in an accident, and he knows that someone was injured, then there is a legal duty to stop at the accident scene or to immediately return to the scene.

(b) If a driver knows that he was involved in an accident, but he does not know that someone was injured, then there is a legal duty to stop at the accident scene or immediately return to the scene, if his knowledge of the nature of the accident would cause a reasonable person, who knew what the driver knew, to reasonably anticipate that someone was injured as a result of the accident.

(c) If a driver knows that he was involved in an accident, but he does not know that someone was injured, and his knowledge of the nature of the accident would not cause a reasonable person, who knew what the driver knew, to reasonably anticipate that someone was injured as a result of the accident, then there is no legal duty to stop at the accident scene or immediately return to the scene.

Knowledge or lack of knowledge may be proven by direct or circumstantial evidence.


for up to four years. As a term and condition of probation, the court was authorized to incarcerate a defendant in the county jail up to one year.

Both the prosecutor and the superior court's probation department recommended that the defendant be incarcerated in the county jail for a period of six months as a term and condition of probation. Defense counsel urged the court to impose terms of probation that would not include any incarceration. Thus, there was no adversarial issue as to whether the defendant should serve time in prison. Instead, the only sentencing issue before the court was whether the defendant should be incarcerated as a term and condition of probation and, if so, for how long.

V. STATUTORY GUIDANCE

Arizona follows a system of determinate sentencing when a person is sentenced to a term of imprisonment for a felony. Sentences for a first conviction of a felony, with some exceptions, may be increased or reduced by the court within certain ranges set by statute. Any reduction or increase must be based on the aggravating and mitigating circumstances set forth by statute. The Arizona statute contains a list of circumstances for the court

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23 Id. § 13-902(A).
24 Id. § 13-901(F).
26 See Defendant's Pre-Sentencing Memorandum, O'Brien, No. CR2003-016197.
28 Id. § 13-702(A), which provides:

Sentences provided in § 13-701 for a first conviction of a felony, except those felonies involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another or if a specific sentence is otherwise provided, may be increased or reduced by the court within the ranges set forth in this subsection.

The O'Brien case was decided before Blakely v. Washington, in which the United States Supreme Court held that a judge may not increase the penalty for a crime beyond the prescribed statutory maximum, and that the finding of aggravating factors that could justify a court in increasing the penalty beyond that prescribed as the presumptive sentence must be submitted to the jury unless they were admitted or a jury trial was waived. 542 U.S. 296 (2004). The United States Supreme Court has also held that a California law authorizing a judge, rather than a jury, to find facts from which to hold a defendant to an increased term of punishment violated the defendant's Sixth Amendment rights. Cunningham v. California, 127 S. Ct. 856, 870 (2007).
to "consider" in determining a variance from the presumptive prison sentence. A trial judge who wishes to reduce a presumptive sentence must set forth the factual findings in mitigation of the crime on the record at the time of sentencing.

If a defendant is convicted of an offense that is eligible for probation, the court may suspend the imposition or execution of the sentence and place the defendant on one of several types of probation. Again, the court is required by statute to set forth on the record the factual and legal reasons in support of a sentence granting probation; however, the court is provided no statutory guidance in making this determination. In addition, no statutory guidance is provided on whether a defendant placed on probation should receive a jail term and, if so, the length of the jail term.

D. For the purpose of determining the sentence pursuant to subsection A of this section, the court shall consider the following mitigating circumstances:

1. The age of the defendant.

2. The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

3. The defendant was under unusual or substantial duress, although not so as to constitute a defense to prosecution.

4. The degree of defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.

5. During or immediately following the commission of the offense, the defendant complied with all duties imposed under sections 28-661, 28-662 and 28-663.

6. Any other factor that is relevant to the defendant's character or background or to the nature or circumstances of the crime and that the court finds it to be mitigating.

Id. § 13-702(D).

32 Id. § 13-901(A).

33 Id. § 13-901(H).

34 Id.
Given the highly public nature of the O'Brien case, the court, for two reasons, chose to study prior cases involving defendants convicted of the same crime. First, the court needed to determine whether the defendant should be incarcerated as a term and condition of probation under the circumstances of this case, or whether he should be placed on probation without incarceration. Second, the court was concerned that confidence in the criminal justice system would be eroded if people generally believed the defendant was treated differently than others who committed the same or similar offense.

VI. RESEARCH OF PRIOR SENTENCING DECISIONS

Most sentencing systems aim to treat like offenders alike.\(^{35}\) Legislative statements of the underlying purposes of criminal sentencing usually include the goal of proportionality in punishment.\(^{36}\) Typically, however, proportionality is articulated as one important objective alongside a number of others, and the articulations of the objectives differ.\(^{37}\) The task of determining which cases are truly alike is impossible.\(^{38}\) No two people are ever similarly situated: Some offenders have dependent children, while

\(^{35}\) The maxim is usually attributed to Aristotle. See ARISTOTLE, NICOMACHEAN ETHICS, Book V, at 162 (Christopher Rowe trans., Oxford Univ. Press 2002).


\(^{37}\) One of the seven general purposes of the criminal code in Arizona is "[t]o differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each." See ARIZ. REV. STAT. ANN. § 13-101(4) (2007); cf. OHIO REV. CODE ANN. § 2929.11(A)-(B) (2006), which provides:

A sentence imposed for a felony shall be reasonably calculated to protect the public from future crime by the offender and to punish the offender commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

COMPARATIVE PROPORTIONALITY ANALYSIS

others do not; some will suffer an irredeemable loss of reputation, while others will not.\footnote{Id.}

Trial judges are generally limited in their ability to research other cases for the purpose of analyzing sentencing decisions. One reason is that most criminal cases are resolved through plea negotiations and are not appealed.\footnote{In the criminal justice system nationwide, 80% of felonies and 95% of misdemeanors are settled by plea bargain. See Douglas W. Maynard, \textit{Defendant Attributes in Plea Bargaining: Notes on the Modeling of Sentencing Decisions}, 29 SOC. PROBS. 347, 360 (1982).} In those cases, there are generally no transcripts of record to review. Other than making an examination and analysis of the documentation in case files involving the same charge, no means exist to gather the information necessary to compare a present sentencing situation with sentencing decisions in similar cases. Realistically, comparative proportionality consideration in sentencing does not exist, and review is generally limited to the issue of whether a defendant was sentenced within the proscribed range set forth by statute. In capital cases, only a few state statutes still require a comparative proportionality review based upon the appellate record.\footnote{In the Ninth Circuit, only Montana and Washington require comparative proportionality review in capital cases. \textit{See} MONT. CODE ANN. § 46-18-310 (2007); WASH. REV. CODE § 10.95.130 (2007).} The high-profile nature of the \textit{O'Brien} case, together with potential damage to public confidence in the integrity of the sentencing system, warranted a comparative proportionality analysis. The following sections describe that analysis in the \textit{O'Brien} case.

\section{A. The Court Files}

Prior to sentencing, the court requested a computer search\footnote{The Administrative Office of the Superior Court for Maricopa County, Arizona, maintains computer records of all cases filed.} of all cases filed in Maricopa County, Arizona, which involved Arizona Revised Statute section 28-611 (Section 28-611) since its amendment in 1995.\footnote{In 1995, punishment for violation of section 28-611 was increased from a class-five felony to a class-four felony. 1995 Ariz. Legis. Serv. Ch. 63 (West).} The search results disclosed ninety-nine cases.\footnote{See Appendix B to this Article. A copy of the original computerized search results may be obtained by contacting the author.} Thus, the \textit{O'Brien} case was the one-
hundredth case under Section 28-611 filed in Maricopa County since the 1995 amendment. The Clerk of the Court was directed to deliver all ninety-nine case files to the judge’s chambers.

B. Review of the Court Files

Each case file contained four standard documents, which provided an information base for analysis, including:

1) A charging document detailing the original charge or charges;

2) A plea agreement containing any agreed upon changes to the original charges, and other stipulations entered into by the parties with respect to the sentence;

3) A pre-sentence report summarizing the relevant facts of the case, which often contained the pre-sentence report writer’s analysis and sentencing recommendations; and,

4) A sentencing order setting forth the court’s sentencing decision.

C. Data

Based upon a review of each of the ninety-nine files, the court created a document entitled, “Summary of All Leaving the Scene of Accident Cases Involving Class 4 Felony Convictions From 1996 to Present” (the Summary). The Summary identified each case by its case number and contained a brief summation of the relevant facts and the sentence imposed.

The Summary organized the cases into four categories:

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45 In 2002, section 28-611 was amended to require that “[t]he department . . . revoke the license or permit to drive and any nonresident operating privilege of a person convicted [under this section] for three years.” 2002 Ariz. Legis. Serv. Ch. 228 (West).
46 Almost all of the cases were resolved with a plea agreement.
47 The 1995 amendment became effective in 1996.
48 See Appendix B.
49 Although the cases were organized into four categories for analysis, the court combined the category of “deferred jail as a term of probation” into the category of “no jail” for the in-court analysis because “deferred jail” means “no jail” as a practical matter. See infra note 60.
1) Cases in which a defendant was imprisoned in the state prison;

2) Cases in which a defendant was placed on probation and was ordered to serve time in the county jail as a condition of probation;

3) Cases in which a defendant was placed on probation that included a jail term that was deferred; and

4) Cases in which a defendant was placed on probation that did not include a jail term.

By organizing the cases into the foregoing four categories, the court could analyze the cases in each sentencing category. The court then looked for sentencing characteristics or factors that were common or unique to each of the four categories.

D. Identification of Sentencing Factors

Although it is not possible to precisely ascertain exactly what each trial judge considered in each of the cases reviewed, there appeared to be a pattern of ten factors commonly taken into consideration at sentencing for Section 28-611. These factors were alphabetized, color coded, and noted on the Summary next to each case in which they were found. The factors were:

1) Evidence showing that the defendant had actual knowledge of injury or death caused by the accident;

2) Evidence of a defendant’s use of alcohol or drugs at the time of the accident;

3) Evidence of a defendant speeding or engaging in other improper driving at the time of the accident;

4) Evidence that a defendant consciously avoided the police or actively concealed evidence of involvement in an accident;

5) Evidence of defendant’s failure to return to the scene of the accident or contact the police within one hour;

6) The fact that a defendant was charged with multiple offenses or had other charges pending;
7) Evidence that a defendant had other significant prior contacts with the criminal justice system;

8) The fact that a defendant was charged with a crime that contained "sentence enhancements" that mandated a prison sentence;\(^5\)

9) Evidence that a defendant had no driver's license or was driving on a suspended driver's license; and

10) Evidence that the defendant was in the United States illegally.

VII. ANALYSIS

A. In Twenty-Five of the Ninety-Nine Cases Examined, the Defendant Was Sentenced to Prison

The cases that included a prison sentence were characterized by defendants who had multiple sentencing factors,\(^5\) had multiple charges or other charges pending,\(^5\) and in some cases, had charges and sentence enhancements that required the imposition of a prison sentence.\(^5\) More than one-half of these cases involved evidence of alcohol or drug usage at the time of the accident.\(^5\)

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\(^5\) See Appendix B.

\(^5\) In eighteen of these cases, the defendant had multiple charges or other charges pending. *Id.*

\(^5\) In thirteen of these cases, evidence of alcohol or drug usage at the time of the accident was present. *Id.*
B. In Forty-Four of the Ninety-Nine Cases Examined, the Defendant Was Placed on Probation and Incarcerated in the County Jail for a Term of One Year or Less, as a Condition of Probation

Many of these cases were also characterized by the presence of multiple sentencing factors including the following: evidence of alcohol or drug use at the time of the accident, defendant's multiple charges or other contacts with the criminal justice system, defendant's attempt to conceal evidence or hide to avoid detection, and defendant having either no driver's license or a suspended license.

C. In Thirty of the Ninety-Nine Cases Examined, the Defendant Was Placed on Probation Without Incarceration

In this category of cases, one-half of the defendants had two or more multiple sentencing factors, but a substantial number had only one or none. Most of the defendants in this group had no prior criminal record or prior contacts with the criminal justice system. There were, however, some cases in this group that could easily have justified a harsher sentence than a term of probation without incarceration.

\[55\] In thirty-nine of these cases, two or more sentencing factors were present. Id.

\[56\] In twenty of these cases, evidence of alcohol or drug use at the time of the accident was present. Id.

\[57\] In twenty of these cases, the defendant had multiple charges or other contacts with the criminal justice system. Id.

\[58\] In nineteen of these cases, the defendant actively attempted to conceal evidence or attempted to hide to avoid detection. Id.

\[59\] In fifteen of these cases, the defendant had no driver's license or was driving on a suspended license. Id.

\[60\] Some defendants were given a "deferred jail sentence." Id. Typically, this deferment was a way of avoiding a probation violation hearing in the event of a probation violation. The violator could simply be ordered to serve the deferred jail sentence. As a matter of custom, the deferred jail sentence was eliminated if the defendant complied with the terms and conditions of probation. In such a case, it was never served.

\[61\] In fifteen of these cases, the defendant had two or more identified sentencing factors, but nine defendants had only one, and six defendants had none. Id.

\[62\] In twenty-six of these cases, the defendant had no significant other contacts with the criminal justice system. Id.

\[63\] During the sentencing proceeding, the court mentioned two cases to illustrate situations where circumstances were much more aggravated than they were in this case, yet the defendant was sentenced to probation without having to serve any incarceration. In CR2003-006188, the defendant struck a bicycle from behind. See State v. Swanson, No. CR2003-006188 (Ariz. Sup. Ct. Maricopa County 2003). The collision was outside the white line marker of the roadway. Id. A sixteen-year-old boy and a fourteen-year-old boy were on the bicycle, and the sixteen-year-old boy died. Id. The other boy was hospitalized with minor
D. Conclusion of Analysis

The only identified sentencing factor in the O'Brien case was his failure to return to the scene or to contact the police within one hour of the accident. Of the ninety-nine cases examined, no defendant received a prison sentence, or incarceration, as a condition of probation, where the only identified sentencing factor was a failure to return to the scene or contact the police within one hour of the accident. These findings suggested that Bishop O'Brien should not be incarcerated as a term of probation.

VIII. THE SENTENCING PROCEEDINGS

Although comparison with other sentencings suggested that incarceration as a term of probation would not be warranted, Bishop O'Brien's case raised two additional issues that were unique to his case. The first issue was how much weight should be given to the evidence of the defendant's failure to exercise appropriate leadership with regard to the allegations of sexual misconduct by others during his tenure as the leader of the Diocese of Phoenix. The prosecutor called several witnesses to testify...
at the pre-sentence hearing on the defendant’s alleged failure to exercise acceptable leadership. The second issue, raised by numerous letters to the court, was whether the defendant should be held to a higher standard of behavior because of his position as a religious leader in the community.

As to the first issue, the court made it clear at the sentencing hearing that it did not give significant weight to the character evidence that related to the defendant’s alleged lack of accountability during his tenure as the leader of the Phoenix Diocese. It was the Maricopa County Attorney (whose deputies prosecuted the case) who entered into the Agreement granting the Diocese and the Bishop immunity from prosecution for any acts or omissions then known that arose during his tenure as a leader of the Diocese. The court noted that it would be unjust to prosecute or punish the defendant indirectly, by way of this case, for matters previously settled with the Maricopa County Attorney by an agreement that was still in effect.

Considering the second issue, the court stated during the sentencing proceeding that, if the defendant’s position within his church was considered as a reason to hold him to a higher standard of behavior, the court would be injecting religion into the case, effectively establishing a standard that treats individuals who do not hold religious positions more leniently than those who do.

IX. THE SENTENCING DECISION

In the O’Brien case, the imposition of a prison sentence was suspended. The defendant was placed on four years of supervised probation with terms that did not include a term of immediate incarceration in the county jail.

As expected, the sentencing decision was greeted with mixed reviews. The court received numerous letters and telephone calls reacting both favorably and unfavorably to the sentence imposed. Arizona’s largest newspaper editorialized the next morning that “[the judge’s] performance punishment in accordance with the general character of both the offense and the party convicted”).

67 Id.
68 The terms included a standard monthly probation service fee, 1,000 hours of community service, which consisted of the defendant providing comfort to the severely injured and dying members of the community, and regular reporting to the adult probation office. See Minute Order re. Suspension of Sentence–Probation Granted, State v. O’Brien, No. CR2003-016197 (Ariz. Sup. Ct. Maricopa County 2003).
69 Id. The terms did include a “deferred period of incarceration,” which was to be deleted upon the defendant’s full compliance with the terms of his probation. Id.; see also supra note 60.
was impressive and meticulous, one that should enhance public respect for
the judicial process, even if you disagree with the decision itself."\textsuperscript{70} E.J.
Montini, a regular columnist for \textit{The Arizona Republic} newspaper,
described the proceedings in his column the following day. He concluded
that the judge “considered all of the evidence, all of the testimony, all of the
mitigating and aggravating factors. Then he ignored the rants of self-
righteous, marginally informed, overly emotional hacks like me and treated
Bishop Thomas J. O’Brien equally under the law.”\textsuperscript{71}

\section*{X. Assessment of Methodology}

If the sentencing in the \textit{O’Brien} case was generally accepted by the
public as being one of equal justice under the law, the court accomplished
what it set out to do. It is important, however, to assess whether the
sentencing methodology described in this Article was worth the time and
effort invested and whether it has value to other judges and lawyers in
similar circumstances.

Bishop O’Brien stepped down from his leadership position within the
Diocese shortly after he was arrested and charged. As of this writing, he
has completed all of his community service work and has been successfully
discharged from probation.\textsuperscript{72} He is still a bishop in the Diocese, but holds
no leadership position. He did not appeal from either the trial or the
sentencing.

\section*{XI. Feasibility and Usefulness}

The sentencing in the \textit{O’Brien} case demonstrates that judges generally
are provided little guidance beyond the statutory sentencing ranges. Judges
have no way of knowing how a sentencing decision compares
proportionately to what other defendants in similar circumstances have

\textsuperscript{71} E.J. Montini, \textit{Judge Hands Down a Harsh Sentence . . . On Columnists}, ARIZ. REPUBLIC,
Mar. 28, 2004, at B10. Not everyone agreed. One letter to the editor stated that “[t]he
incredibly light sentence granted to Bishop Thomas J. O’Brien should affirm for any
doubters that there are different standards of justice for the well-known and well-to-do vs.
the average person.” Edward F. Murphy, Op-Ed., \textit{Sentence Denies Justice}, ARIZ. REPUBLIC,
Mar. 29, 2004, at B6. Another wrote that “I sat in the courtroom for nearly two-hours during
the ‘sentencing’ of Bishop Thomas J. O’Brien. It was sickening to listen to Maricopa
County Superior Court Judge Stephen A. Gerst carry on justifying his inadequate sentence
\textsuperscript{72} See Minute Order Granting Defendant’s Motion for Early Termination of Probation,
received. The means to do comparative proportionality analyses exist, especially where computer information is available to retrieve and differentiate between cases based on specific statutes; however, the examination and interpretation of the data from each case file is a daunting task and, except in the most extraordinary case, beyond the time and resources available to a busy trial judge.

Additionally, an issue exists as to the propriety of a trial judge conducting his or her own research into other sentencing decisions. A judge must at all times "avoid impropriety and the appearance of impropriety." In the *O'Brien* case, the judge notified both attorneys of the court's intention to examine other files. He also invited the attorneys to examine the files in his chambers if they wanted to do so. A judge is prohibited by the Code of Judicial Conduct from considering "ex parte communications, or . . . other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." The examination of other court files to gather general information about sentencing, however, can be distinguished on two grounds. First, the examination of other court files is not "a communication." Second, the examination does not constitute the gathering of additional factual information about the particular case before the court.

A judge is permitted to take judicial notice of other court files or official court records. A judge may also consult with other judges. An analysis similar to the one in the *O'Brien* case, however, is more than taking judicial notice of facts of record. A comparative proportionality analysis involves selection of information from other court files and then the interpretation of that information. At a minimum, the better practice would be to first inform the attorneys on the record of the judge's plan in preparing for the sentencing and then allow the attorneys an opportunity to be heard on the matter. The attorneys may prefer to engage in their own analysis and present their findings to the court. So long as the files examined are public

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73 *ARIZ. CODE OF JUDICIAL CONDUCT*, Canon 2 (2003) ("A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."); *see also id.* at Canon 3 ("[A] judge shall perform the duties of judicial office impartially and diligently.").

74 *Id.* at Canon 3(B)(7) ("A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of parties concerning a pending or impending proceeding . . . .").

75 *ARIZ. R. EVID.* 201.

76 *ARIZ. CODE OF JUDICIAL CONDUCT*, Canon 3(B)(7)(c) ("A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.").
records, the information selected and used for analysis would be available for verification.

One solution may be to encourage courts to expand their computer databases to include more precise sentencing information and then to make such information available to all interested parties. Judges would be required to list the relevant factors considered in each sentencing decision, which would then be entered into the computer as to each case file. This information could be easily retrieved and collated for comparison purposes and be of value to both the judge and counsel in determining an appropriate sentence. Although additional judicial and clerical work would be necessary, a computer database of sentencing information would be available to a trial judge that would assure an opportunity for meaningful consideration of proportionality in reaching a fair sentencing decision.

XII. AN ALTERNATIVE PROPOSAL

The American Law Institute has published a tentative draft proposal on sentencing.\textsuperscript{77} The draft was submitted by the Council to the members of the American Law Institute for discussion at the Eighty-Fourth Annual Meeting.\textsuperscript{78} Since this writing, the members have taken no action with respect to the draft, and the draft cannot be considered as representing the position of the Institute on any of the issues with which it deals.\textsuperscript{79}

The Tentative Draft's general provision states that its purposes include “render[ing] sentences in all cases within a range of severity proportionate to the gravity of offenses, the harms done to crime victims, and the blameworthiness of offenders.”\textsuperscript{80}

The Tentative Draft recommends that every state charter a permanent sentencing commission with authority to promulgate sentencing guidelines.\textsuperscript{81} As noted in the introduction to this Article, seventeen states, the District of Columbia, and the federal system are now operating with sentencing guidelines promulgated by a sentencing commission, and several additional states are actively exploring such a framework.\textsuperscript{82}

The sentencing commission is instructed in the draft code to create presumptive sentencing guidelines for most felonies and misdemeanors

\begin{footnotes}
\item[77] Tentative Draft No. 1, \emph{supra} note 1.
\item[78] \textit{Id.}
\item[79] \textit{Id.}
\item[80] \textit{Id.}
\item[81] \textit{Id.} § 6A.01.
\item[82] \textit{Id.; see also supra} note 5 and accompanying text.
\end{footnotes}
COMPARATIVE PROPORTIONALITY ANALYSIS

based on the commission’s best assessments of proportionate sanctions in “typical” or “ordinary” cases.\(^8\)

The Tentative Draft proposes a number of “Eligible Sentencing Considerations” for the proposed sentencing commission.\(^8\) The draft proposal provides that the commission shall give no weight to an offender’s race, ethnicity, gender, sexual orientation, identity, national origin, religion, creed, political affiliation, or belief.\(^8\) The draft also provides that the commission shall give no weight to “alleged criminal conduct on the part of the offender other than the current offenses of conviction and the offender’s prior convictions and juvenile adjudications or criminal conduct admitted at sentencing.”\(^8\) This would change the view that exists in many jurisdictions (through statute or case law) that grants sweeping authority to decision-makers to weigh virtually all conceivable factors concerning the offense and the offender when making sentencing determinations.\(^8\)

\(^8\) Tentative Draft No. 1, supra note 1, at § 6B.03 (2) cmt. b:

Against this backdrop, subsection (2) requires the commission to apply its best collective judgment to modal or ‘ordinary’ cases expected to arise under presumptive guideline provisions. The experience of commission members is called upon in the first instance to identify those scenarios most often presented in run-of-the-mill cases. Commissioners must then apply their collective moral judgment to the visualized cases. The goal of the process is not to reach a definitive statement of proportionality, nor should the commission attempt to capture in guidelines the full spectrum of potentially just sentences. Neither task is realistic in the abstract, nor can one expect commission members of diverse perspectives to agree with one another to the point of deontological exactitude. What may be expected, however, is that commission members will find agreement that a defined presumptive sentencing range for each category of case is safely within the outer limits of undue lenity or severity.

So understood, the guidelines can play a meaningful role in the furtherance of just sentences without overstating the commission’s powers of moral discernment, and without unrealistic expectations of moral consensus among commissioners. Just as importantly, guidelines that are helpful but modest in their proportionality claims do not purport to tie the hands of sentencing courts in individualized decision-making.

\(^8\) Id. § 6B.06.
\(^8\) Id.
\(^8\) Id.
\(^8\) id.

The common law, still applied in many jurisdictions, places almost no limitations on the information the court is permitted to consider at sentencing. See, e.g., People v. Arbuckle, 587 P.2d 220, 223 (Cal. 1978); People v. Newman, 91 P.3d 369, 371-72 (Colo. 2004); State v. Bletsch, 912 A.2d 992, 1003 (Conn. 2007); State v. Malone, 694 S.W.2d 723, 727 (Mo. 1985); State v. Aldaco, 710 N.W.2d 101, 110-11 (Neb. 2005); State v. McKinney, 699 N.W.2d 460, 466 (S.D. 2005); see also 18 U.S.C. § 3661 (2006) ("No limitation shall be
States that adopt sentencing guidelines still must make a policy decision regarding the judicial weight to be given to the guidelines. No state with an advisory sentencing guidelines system has succeeded in generating a practice of meaningful appellate review of the substance of sentencing decisions. Presumptive guidelines systems, where provision has been made for appellate sentence review, have generally succeeded in promoting this longstanding reform goal.

Guidelines promulgated by a sentencing commission, within a statutory framework that assures important public policy purposes are met, may be the most feasible way of assuring that relevant circumstances and proportionality among offenders are properly considered. Guidelines may provide a useful framework and starting point for a judge. Judges would benefit from the use of guidelines as a tool to ensure consistency and proportionality among offenders in the sentencing process, yet retain the right to exercise reasoned discretion based on the circumstances of the cases before them.

88 See Tentative Draft No. 1, supra note 1.
89 Id.; see, e.g., State v. Williams, Nos. L-00-1027, L-00-1028, 2000 WL 1752889, at *6-7 (Ohio Ct. App. Nov. 30, 2000). In Williams, the appellant was sentenced to six years in prison for causing the death of two people while committing the misdemeanor traffic offense of speeding. Id. The court cited two cases in which drivers caused the deaths of others while speeding. Id. The combined jail sentences for those defendants were eighteen months. Id. Appellant also cited to a case in which people were killed as the result of a driver committing a misdemeanor traffic offense while intoxicated. Id. In that case, the defendant served less than a year for the death of one person. Id. Two of the cases Appellant cited involved defendants who each caused the deaths of four people. Id. One defendant was sentenced to a total of four years, or two years consecutive for each of the four deaths. Id. The court found that Appellant’s sentence was not supported by the record and was contrary to law because it failed to achieve one of the two overriding purposes of felony sentencing, which is consistency with sentences imposed in similar crimes committed by similar offenders. Id.
This Agreement is entered into this 3rd day of May, 2003, by and between the State of Arizona, ex. rel. Richard M. Romley, Maricopa County Attorney; Thomas J. O’Brien, Bishop of the Roman Catholic Diocese of Phoenix and the Roman Catholic Diocese of Phoenix, a corporation sole (“the Diocese”).

DEFINITIONS

For purposes of this agreement, the following definitions apply:

“Priest” means any Diocesan priest, or any priest who is a member of a separate order.

“Diocesan Personnel” means the Bishop, any priest, nun, seminarian or deacon, and all employees and volunteers who perform any type of service or work for the Diocese, whether clergy or layperson.

INTRODUCTION

A Maricopa County Grand Jury is investigating and considering information relating to criminal sexual misconduct by diocesan personnel including, but not limited to, the criminal conduct of individual priests. The grand jury has also been investigating whether Thomas J. O’Brien or the Diocese failed to report to law enforcement authorities criminal sexual misconduct by priests and other Diocesan personnel, and whether Thomas J. O’Brien or the Diocese placed or transferred priests or other Diocesan personnel in or to a position to commit additional criminal conduct after becoming aware of prior criminal conduct.

During the course of the grand jury's investigation, to this date, no credible evidence has been received that would establish that Thomas J. O'Brien personally engaged in criminal sexual misconduct. However, the investigation developed evidence that Thomas J. O'Brien failed to protect the victims of criminal sexual misconduct of others associated with the Roman Catholic Diocese of Phoenix.

This Agreement is executed upon the conclusion that the public interest would be best served by settling the matter without criminal prosecution of Thomas J. O'Brien or the Diocese. The following terms, representations, and conditions will insure that the Diocese complies with all applicable laws relating to criminal sexual misconduct by its agents, representatives, or employees. The following terms, representations, and conditions will contribute to the well-being of the community at large by offering counseling to victims of criminal sexual misconduct, reimbursing the State of Arizona for certain costs expended during the course of this investigation, and assuring compliance by the Diocese with all applicable laws relating to sexual misconduct.

THEREFORE, it is hereby represented and agreed that:

1. Bishop Thomas J. O'Brien has appointed a Moderator of the Curia. The Moderator of the Curia is a canonical position equivalent to "chief of staff". Certain administrative duties have been delegated by Thomas J. O'Brien to the Moderator of the Curia, which shall include the responsibility for dealing with issues that arise relating to the revision, enforcement and application of the sexual misconduct policy.

2. The Diocese has created and appointed the position of Youth Protection Advocate. That person shall be responsible for the implementation and enforcement of the policy on sexual misconduct by Diocesan personnel. Under the Diocesan policy, all Diocesan personnel, including the Youth Protection Advocate, are required to comply with all applicable federal, state and local laws regarding the reporting of incidents of actual, alleged, or suspected sexual misconduct without restriction. The decisions of the Youth Protection Advocate to report allegations of child sexual abuse to Child Protective Services or law enforcement is to be made by the Youth Protection Advocate independently and not subject to the consent of Thomas J. O'Brien, or any other Diocesan personnel.

3. With input from the Maricopa County Attorney's Office, a special counsel will be employed within sixty (60) days of the signing of this Agreement. This attorney shall be counsel for the Youth Protection Advocate. This special counsel's advice will not be subject to approval by anyone within the Diocese including, but not limited to, Thomas J. O'Brien or any other priest.

4. The Diocese's Policy on Sexual Misconduct is to be reviewed and modified. The Maricopa County Attorney's Office and the public shall be offered the opportunity to provide input prior to any adoption and/or revision of such policy.
5. The Diocese, in conjunction with the Maricopa County Attorney's Office, shall implement a training program to educate Diocesan personnel on sexual misconduct issues, including the Mandatory Reporting Law (A.R.S. § 13-3620), and Maricopa County's Multidisciplinary Protocol for the Investigation of Child Abuse. The Maricopa County Children's Justice Project Team will be invited to conduct regular and ongoing training of all Diocesan personnel, including the training of Diocesan school personnel.

6. Thomas J. O'Brien shall, in a written public statement which is incorporated at Tab A, acknowledge that he allowed Roman Catholic priests under his supervision to have contact with minors after becoming aware of allegations of criminal sexual misconduct. He shall further acknowledge transferring offending priests to situations where children could be further victimized. In addition, Thomas J. O'Brien shall apologize and express contrition for any misconduct, hardship or harm caused to the victims of criminal sexual misconduct by Roman Catholic priests assigned to the Roman Catholic Diocese of Phoenix.

7. The Diocese will make a contribution to the Maricopa County Attorney's Victim Compensation Fund (Victim Assistance Fund, A.R.S. § 41-2408) in the sum of Three Hundred Thousand Dollars ($300,000.00) within fourteen (14) days of the execution of this Agreement. These funds shall be used to compensate child victims of criminal sexual misconduct.

8. The Diocese will allocate a total of Three Hundred Thousand Dollars ($300,000.00) of funds received by the Diocese for counseling of those victimized by child sexual abuse. The allocation shall be made at a rate of One Hundred Thousand Dollars ($100,000.00) per year from the signing of this Agreement. It may be accelerated at the discretion of the Diocese.

9. Within 180 days of the signing of this Agreement, the Diocese shall create a Victim Assistance Panel. It will be a three-person panel composed of established and respected mental health professionals. This panel will consider requests from persons who indicate that they are victims of sexual misconduct by Diocesan personnel for counseling assistance for the victim and the victim's immediate family. This process will be available to all victims of sexual misconduct, including those persons whose legal claim for sexual misconduct are foreclosed by the statute of limitations, and those persons who have entered into binding settlement agreements, but now find that those settlement agreements were inadequate to address unforeseen impacts of their victimization. The panel will have the authority to approve requests for counseling. Approved requests for counseling would result in payment of counseling fees and costs to qualified treatment providers of up to Fifty Thousand Dollars ($50,000.00) per any one victim and that victim's family, over the victim's lifetime.

10. The Diocese and the Maricopa County Attorney's Office will host a summit meeting on sexual abuse within twelve (12) months following the execution of this Agreement. The cost of the summit will be borne by the Diocese. Both the County Attorney and the
Diocese may invite anyone to attend the summit. The purpose of the summit is to provide a forum for exchange of information on sexual abuse and the responsibility of public and private employers and others to identify and appropriately deal with these issues.

11. One Hundred Thousand Dollars ($100,000.00) shall be paid by the Diocese to the Maricopa County Attorney's Office as reimbursement for investigative expenses. The sum shall be paid within fourteen (14) days of execution of this Agreement.

12. The State of Arizona agrees not to initiate criminal charges against Thomas J. O'Brien or the Diocese arising out of information relating to the subject matter of this investigation for acts occurring on or before the date of the execution of this Agreement with the following exception: If information is forthcoming of personal, direct involvement of Thomas J. O'Brien in any act of criminal sexual misconduct, then charges shall not be precluded. This Agreement shall not preclude the Maricopa County Attorney's Office from prosecuting any other individual for criminal misconduct.

13. To protect the integrity of on-going investigations and not impede the conclusion of those investigations, this Agreement and its terms shall be kept confidential to be disclosed at the discretion of the Maricopa County Attorney's Office. Upon a decision of the Maricopa County Attorney's Office to disclose this Agreement and its terms, it is acknowledged that this Agreement will be a public document and the parties to the Agreement are free to hold separate and distinct public announcements and to supply supplemental information and to respond to questions posed by the media or members of the public except as prohibited by law.

14. In the event of any material breach of this Agreement, by Thomas J. O'Brien or the Diocese, as first determined by the Maricopa County Superior Court after notice and a hearing, this Agreement shall be rendered null and void and the State of Arizona shall have the right to pursue any and all remedies provided by law including, but not limited to, initiation of criminal proceedings. If Thomas J. O'Brien or the Diocese breaches this Agreement and the State files criminal charges, Thomas J. O'Brien and the Diocese agree that any applicable period of limitation is tolled from the effective date of this Agreement until the date on which the Agreement is rendered null and void.
COMPARATIVE PROPORTIONALITY ANALYSIS

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Thomas J. O'Brien
Bishop of the Diocese of Phoenix

5/3/03
Date

Jordan Green
Lee Stein
Attorneys for Bishop Thomas J. O'Brien

5/3/03
Date

DIOCESE OF PHOENIX

Thomas J. O'Brien
Bishop of the Diocese of Phoenix

May 3, 2003
Date

James Bihanger
Frederick Petri
Attorneys for the Diocese of Phoenix

May 3, 2003
Date

Richard M. Romley
Maricopa County Attorney
STATEMENT OF BISHOP THOMAS J. O'BRIEN

I acknowledge that I allowed Roman Catholic priests under my supervision to work with minors after becoming aware of allegations of sexual misconduct. I further acknowledge that priests who had allegations of sexual misconduct made against them were transferred to ministries without full disclosure to their supervisor or to the community in which they were assigned. I apologize and express regret for any misconduct, hardship, or harm caused to the victims of sexual misconduct by Roman Catholic priests assigned to the Diocese.
XIV. APPENDIX B

SUMMARY OF ALL LEAVING THE SCENE OF ACCIDENT CASES

FACTORS SUPPORTING PRISON OR JAIL TERM IN CASES REVIEWED

A. Acts showing actual knowledge of injury or death
B. Evidence of Alcohol or Drug Usage at time of accident
C. Evidence of Speeding or Improper Driving at time of accident
D. Concealment of Evidence or Active Avoidance of police
E. Failure to return to scene or contact police within one hour
F. Multiple charges or other charges pending
G. Significant other contacts with criminal justice system noted
H. Sentence enhancements
   --- On probation at time of accident
   --- Allegation of prior felony conviction(s)
   --- Allegation of Dangerousness
I. No driver's license or suspended driver's license
J. Illegal alien detainer
Cases Where Defendant Received Prison Time

2003008145  Stipulation to 3 to 6 years in DOC. D charged with a prior felony conviction. This was 5th felony. He served 3 terms in Washington prison for theft and drugs. His car hit a bicycle causing serious injury. D pulled over, checked victim and fled scene. Sentenced to 4.5 years.

2001002072  Stipulation to 3.75 years in DOC where D was on probation for DUI injury accident. In this case 3 victims were injured. D under influence of alcohol (.197). State agreed not to file Aggravated DUI and Assault charges in this case.

1999000117  Sentenced to 3 years DOC where pedestrian killed crossing street and D fled. He was over the speed limit, admitted using alcohol and marijuana, license was suspended, and he had been to prison on Agg. Assault previously.

2003015315  Sentenced to 4.5 years DOC. D charged with a prior felony. The victim died as a result of injuries received. Defendant fled. D was in possession of methamphetamine and was on probation for a drug offense. He has another felony pending.

2001093834  Sentenced to 2.75 years DOC where struck vehicle from behind on freeway ramp, backed up and fled. Abandoned the vehicle and arrested 2 days later. This was 6th felony and on probation for poss. of marijuana at time.
2001095401  Sentenced to 2.5 years DOC per plea agreement where D struck two women in crosswalk causing serious injuries. D fled scene and returned after being chased down. Also charged with DUI. Admitted he had 6 beers (.129) and was on probation for a drug charge at the time.

1998091341  Sentenced to 2.5 years DOC where D struck pedestrian who died and fled. Open beer cans found in truck. D hiding in apartment three hours later. D had 14 referrals as a juvenile and no driver’s license.

199900093  Sentenced to 2.5 years DOC where D struck bicycle rider who died and fled. Also charged with Aggravated DUI (.212 two hours after accident). Driver’s license was suspended. Long history of DUI arrests (2 convictions and 1 pending when this happened.

1998092281  Sentenced to 3 years DOC where D struck five year old child who died. D fled. D told police he had been “drinking throughout the day.” D has two prior felony drug charge (one pending at the time). D turned himself in 3 hours after the accident.

1997093785  Sentenced to DOC where LSA 3 was reduced to LSA 4 and combined with other pending felony charges in plea agreement.

19997093103  Sentenced to DOC where LSA 3 was reduced to LSA 4 with other pending felony charges under plea agreement.
1997094087  Sentenced to DOC where a LSA 3 reduced to LSA 4 and combined in plea agreement with other pending felony charges.

2001095428  Sentenced to DOC for verdict of guilty of Negligent Homicide, Dangerous and LSA 4. (Mandatory prison term).

2003014580  Sentenced to DOC 4.5 years where D struck vehicle causing fatality and fled. D was also charged with DUI and pled to LSA 4 with a prior felony for Kidnapping. D was on probation at the time for Attempted Sexual Assault and has several other felony convictions.

2002018944  Sentenced to 2.5 years DOC for Possession of Dangerous Drugs where D struck vehicle on freeway causing it to roll over with fatality. D was driving a semi truck trailer and said he was not aware the trailer hit anything. D was using amphetamines. He was placed on probation, No jail, on the LSA 4.

2000018118  Sentenced to 1.5 years DOC (mitigated) where D struck two pedestrians crossing street. Both died. D fled but was later turned over to police by her brother. Admitted to drinking 4 beers and 1 hard liquor before accident. (This was a trial where D originally charged with Manslaughter, Dangerous, and LSA 3. The jury found guilty of LSA 4 only.)
1999015671  Sentenced to 2.5 years where D driving vehicle flipped it (mechanical problems) killing one passenger and trapping another. D fled. D turned himself in next day. Charges reduced from 2 counts LSA 3 to LSA 4 and allegations of prior felony convictions and offense committed while on probation were dismissed. (Was facing 11.5 years if convicted).

1997008325  Sentenced to 4.5 years DOC where D failed to stop for red light and hit vehicle causing death of infant and injury to the parents. D ran from scene. D turned self in 12 days later. He had no driver's license and an existing warrant from out of state and other warrants. He was originally charged with LSA3 and LSA 6, three counts. Plea was to LSA 4 with one prior felony conviction and stipulation to DOC.

1996004051  Sentenced to 2.5 years DOC where D caused injury by running over victims foot in family altercation. D fled. The original charge of Aggravated Assault, Dangerous was reduced to LSA 4 and combined with other charges for sentencing (Felony Flight and Possession of Dangerous Drugs for Sale).

2002017958  Sentenced to 7.5 years DOC on a plea to Aggravated Assault with a prior. The LSA was agreed to be a probation case to follow prison term. No additional jail. D charged with LSA and Unlawful Flight and Aggravated Assault with a prior. D was on probation for sale of drugs and fled from a drug house with police chasing. He was driving a stolen car and struck a pedestrian causing serious injuries. He then fled and crashed the stolen car.
2001012072  Sentenced to 3.75 years DOC. Another charge of LSA, allegation of prior conviction and being on probation were dismissed. D, while on probation for Aggravated Assault (which involved his driving into a car causing injuries when he was drunk (.21) and lied about driving) on this occasion was involved in a 2 car accident with 3 people receiving injuries. D fled before police came. He was found several blocks away. Alcohol BA .197. This was fourth alcohol related conviction.

20002011476  Sentenced to DOC for 3.25 years. D struck a pedestrian crossing the roadway in middle of road (BA .10). V died. D was also drinking and fled. D charged with LSA with one prior felony conviction (actually has 2 priors, forgery and drugs).

1999000117  Sentenced to 3.00 years DOC. D struck pedestrian (alcohol and cocaine in system) in street and fled. V died. D later turned himself in. He admitted he was going 5-10 mph over speed limit. License was suspended. D had been released from prison a short time before for Aggravated Assault. The prior conviction allegation was dismissed in plea negotiations.

2003015315  Sentenced to 4.5 years DOC followed by probation on drug charge. D was driving with his girlfriend (who had order of protection against him). He did a quick U-turn and she “fell” out. He ran over her. She died. He fled the scene. D made efforts to go to Mexico. D had methamphetamine in possession when arrested. D was originally charged with LSA, Possession of Drug Paraphernalia, Disorderly Conduct, allegations of prior conviction.
1997014026  Sentenced to 1 year DOC for Aggravated Assault and Probation, No Jail, on LSA. D charged with LSA and Aggravated Assault, Endangerment, both with allegations of Dangerousness. D drove truck which ran red light causing serious injuries to a husband and wife. He had been drinking (.18), left the scene, pulled into a parking lot two blocks away and was apprehended. The original stipulation to prison was rejected by the judge as too harsh. D entered new plea to a Class 3 felony (non-dangerous) and was given a 1 year DOC sentence on the Agg. Assault followed by probation, No Jail, on the LSA.

**Cases Where Defendant Received Jail Time as a Condition of Probation**

2003007605  D received 6 months in jail where he took relatives truck without permission and was in a 3 vehicle accident causing a fatality and fled. He had no license, was speeding, was on probation for possession of marijuana at the time, had a history of driving without a license and extensive contacts with criminal justice system.

2000008222  D received 4 months in jail after plea of guilty to LSA and DUI. His blood alcohol was .21 (12 beers). Serious injury caused.

2000016405  D received 6 months in jail when he struck a postal worker who died. D got out of car, looked at victim, and drove away. She had 8 referrals as a juvenile. She says she panicked.
2000019192  D received 60 days in jail by agreement when one person died and another injured and he fled. This was his second felony conviction. He has 5 arrests and 3 misdemeanor convictions for driving on suspended license. Has a severe drug and alcohol problem. D first lied and claimed someone stole his vehicle.

2001004333  D received 30 days in jail where his vehicle struck a pedestrian who died. D "panicked" and fled and drove home and covered the vehicle with a blanket. D is illegal alien.

2001019152  D received 6 months in jail where his car struck a pedestrian who died. He was driving a vehicle without permission. He removed license plate to avoid detection. He also pled guilty to Unlawful Use of Means of Transportation, a class 5 felony.

2002000369  D received 8 months in jail where his car struck a pedestrian and he got out, looked at victim, and then drove away. He has one prior felony conviction which he tried to lie about. He also has numerous convictions for driving on suspended license and speeding violations. D was at fault for accident.

2000003021  D received 6 months in jail by agreement when his car caused the death of a pedestrian. He first claimed he hit a barricade. He had been drinking (4 or 5 drinks). He turned himself in days later but had the windshield replaced the day after the incident.
2002002499 D received 1 month in jail with work furlough when he hit a motorcyclist who was down in the road. He caused serious injuries. He backed up and then fled with speeds in pursuit up to 70 mph. He was arrested 1 month later.

2002004393 D received 9 months in jail. His car struck a pedestrian. He first said someone threw something at his windshield. He had windshield repaired. He actively tried to avoid capture and lied to cover up his involvement. He said he left because he was "scared." He was on probation at the time for a DUI.

1996001966 D received 4 months in jail where his car struck a pedestrian. (The victim was drunk and walked out into traffic.) D was not forthright with pre sentence report writer re: contacts with the criminal justice system. He had numerous contacts as a juvenile for theft, shoplifting, burglary, weapons. As an adult he was charged with assault and domestic violence. He had been on probation and had spent time in jail.

1997000991 D received 6 months in jail after causing serious injury after running a stop sign. He fled. In the year he acquired 2 felonies and 2 misdemeanor arrests. He was on probation for being in possession of a stolen vehicle and later received a separate arrest for unlawful use of means of transportation. He absconded from supervision. He was arrested for trespass 2 days after this arrest.
1997005921 D received 2 months in jail for fleeing after a car pedestrian accident. D drove to an apartment, parked the vehicle and fled on foot. He turned himself in 3 days later. The victim had serious injury. D failed to appear for sentencing and a bench warrant issued.

1997008363 D received 2 months in jail after he is to be released from DOC on a different charge. He failed to appear for sentencing on the LSA and while on bench warrant committed a residential burglary. He was sent to prison on the burglary for 2.5 years. In the LSA he ran over a 15 month old baby who suffered serious injuries. The D was in US illegally and didn't even know how to drive. He panicked and gave a false name.

1997008375 D received 6 months in jail where his vehicle hit a motorcycle and he took off running. The victim had serious injuries. He failed to appear for trial in 1997 and was apprehended in 2000. He was here illegally. He admits to having had 2 beers and he was in possession of cocaine.

1997008782 D received 29 days in jail where he was involved in a car/pedestrian accident and fled. The victim suffered serious injury. He contacted police the next day and said he panicked. He said victim ran in front of his car. He had extensive juvenile arrest history and was on intensive juvenile probation and sent to Adobe Mt. It is not known if he was drinking at the time.
1997010737  D received 60 days in jail where he was involved in an accident with critical injuries. He got out of his car and walked away leaving the injured. He left because he was driving on a suspended license. He says he panicked and has a panic disorder. He has 2 prior felony convictions and is a long term heroin addict.

1997011031  D received 3 months in jail with work furlough where he fled the scene after his car struck a pedestrian. He turned, saw the victim, and left. He had been drinking earlier in the evening (.04). He has one prior arrest for DUI.

1998001820  D received 12 months in jail when his car struck a pedestrian who died. His driver's license was suspended. He was arrested the next day with beer cans in the truck. He has a history of alcohol offenses spread over 20 years. He was stopped for DUI 2 months before this. He said he was "afraid" to stop.

1998010825  D received 2 months in jail when his car struck a 3 year old child who ran into the street and received multiple fractures. He got "scared" and fled. This was his third felony conviction (violent crimes, drugs). He has been to DOC on drug conviction.

1998015432  D received 6 months in jail when his car hit a pedestrian who died. He was also charged with DUI with a blood alcohol of .185/.190. He was in US illegally. He was not at fault for accident.
1999002941  D received 6 months jail when he drove through a red light and struck a vehicle causing serious injury. He fled on foot and tried to report that his car was stolen. He had been drinking and was on probation for an alcohol related offense.

1999003514  D received 4 months in jail where his car struck a pedestrian who died. The pedestrian was at fault. D fled. He was also charged with DUI (.10). He said he thought he hit a dog and later returned to the scene from his home. He also has an earlier DUI conviction.

1999004692  D received 12 months in jail where his car struck a 14 year old boy on a bicycle. He fled and disposed of a 12 pack of beer and then abandoned the vehicle. He was an illegal alien. He called people to say the car was stolen. He had no drivers' license and used an alias.

1999009578  D received 12 months in where his car struck another car causing critical injuries. D and his passenger fled on foot and were later caught. He had no license and was in US illegally. He took no responsibility and would not admit he fled to pre sentence writer. He was evasive. (He was also not capable of being supervised because he would likely be deported.)

1999010394  D received 6 months in jail by agreement where he was in a collision with a pedestrian and then fled and while fleeing collided with a parked police vehicle while driving without headlights on. He fled again. He had been drinking(.152) and was also charged with DUI. He had a prior DUI arrest. He was in US illegally. His actions caused serious injury.
1999014792  D received 12 months in jail for the LSA concurrent with a 4 month DOC sentence for Aggravated DUI. He hit another car and fled. He was possibly intoxicated. He had one DUI conviction and 2 prior DUI arrests. The DUI conviction had resulted in serious injuries in 1996.

1997000354  D received 6 months in jail when his truck struck a pedestrian causing the body to land in the bed of the truck. The victim died. The D drove to an apartment, opened the tailgate and dragged the body out and then fled.

1997003461  D received 6 months in jail by agreement with work furlough where his vehicle struck a pedestrian and he sped away after stopping and looking at the victim. The victim died. D took his car to a repair shop to be fixed and to conceal the involvement. He had one DUI arrest and was in US illegally.

1997003820  D received 12 months in jail where he was involved in car/pedestrian collision and fled. The victim died. D abandoned his vehicle. He had a prior conviction for poss. of marijuana.

1997007297  D received 5 months in jail with work release from 7 to 7 six days a week. He hit a pedestrian jaywalker and fled. The victim was then struck by other vehicles and died. D drove home, called his lawyer, got his affairs in order, and contacted the police two days later. He had a DUI in 1991. He could have been drinking.
1996091352  D received 12 months in jail where he struck a pedestrian who was running across the street. D fled after slowing down. While D was being pursued he drove up on to sidewalk almost striking a woman and two children. He ran a red light. D turned himself in three days later. He had dismantled his vehicle. D has a prior Felony Flight conviction. He was also charged with Endangerment and Tampering With Evidence.

2001093492  D received 4 months in jail where he struck a pedestrian who died. D fled. D tried to hide his vehicle. He said he hit a dog. His roommate reported that D was drunk. D moved out of house the next day and did not contact police for several weeks. He is a “habitual traffic offender.”

1999003424  D received 9 months in jail where he struck a pedestrian in a crosswalk causing serious injuries. D did not stop or slow down. He told police he “hit a big coyote” while on a trip. His blood alcohol was .204 three hours after the accident. He was also charged with DUI.

1999001074  D received 60 days in jail where he hit a bicycle from behind and fled. He caused serious injuries. He delayed contacting the police until his truck was seized 2 weeks after the accident. He admitted to drinking 1 to 2 beers before the accident.

1998093994  D received 6 months in jail where he struck a pedestrian who died. D fled and hid his vehicle at a friend’s house. He turned himself in to police 5 days later.
1998093978  D received 12 months in jail where he struck two young boys who were crossing the street mid block. He caused on boy serious injury. D fled. He was located the next day and was uncooperative with the police. He had removed his windshield and threw it in a dumpster and attempted to hide the vehicle. He refused to accept responsibility.

1999001225  D received 3 months in jail where he was driving his girlfriend's car without permission and hit two pedestrians crossing the street mid block causing serious injuries. D jumped out of the car and fled. He had active warrants outstanding. He had 7 prior juvenile arrests. A charge of Possession of Dangerous Drugs was dismissed as part of plea. He was also charged with Unlawful Use of Means of Transportation in this case.

20002092983  D received 3 months in jail where he struck a pedestrian crossing a street mid block who died. D fled and was arrested at a restaurant after being followed. He had been drinking (.135).

2001094503  D received no jail but had served 63 days of pre sentence incarceration where he struck a pedestrian crossing a street causing serious injury. D parked his car at home and went to visit his girlfriend. He had no driver's license. He was on juvenile probation at the time. He has 4 adjudications as a juvenile and 3 convictions as an adult. He uses marijuana on a daily basis.

1999015673  D received 6 months in jail under a plea agreement where he struck a man who laid down in the street. The man died. D fled and was found behind a building changing his tire. He was intoxicated (.235). He was here illegally.
1996008920  D received 4 months in jail where he crossed a median, hit a tree and 2 parked cars and the victim sitting in her front yard. He caused serious injury. His car stopped. He started it again and left and then abandoned the vehicle. He turned himself in the next day after trying to report his vehicle as stolen and being advised he would be charged with making a false report. He was originally charged with a LSA3F which was reduced to LSA4F. He signed his plea agreement avowing no prior convictions but had a conviction for possession of marijuana years ago.

1997091452  D served 5 months of pre sentence incarceration where he struck and seriously injured a bicyclist. D parked his car and fled on foot. When he was arrested his blood alcohol was .238. His license was suspended. He was also charged with DUI. No additional jail.

1999004302  Victim ran across road. D car hit V causing death. D let passenger out of car and fled scene. He contacted the police the next day. He said he had "one drink" prior to accident. (This was supported by passengers who said he was not impaired.) D had already served pre sentence time of 85 days. No other jail.
Cases Where "Deferred Jail" was Imposed as a Term of Probation

2003006188  D originally charged as a LSA 3F which was pled to an LSA 4F Stipulation to probation. D struck a bicycle from behind ridden by a 16 year old boy and a 14 year old boy. The 16 year old boy died. The other boy was hospitalized with minor injury. D fled. Her windshield was shattered. Glass was spilling into car and window made whistling sounds as it was driven. She turned her lights off as she drove away to avoid detection. She drove to a casino and started gambling. Police were called by the parking attendant. She said it was dark and she was alone without a cell phone and thought she hit some object. The collision was outside the white line on the right side of the road. The casino is 28 miles from the scene. She had many opportunities to stop at businesses. She made no effort to hide damage or conceal it. Not speeding at time. She pled, No contest. She received 6 months of deferred jail. It has been deferred for another six months. (It may be deleted altogether.)

1999008290  D struck a lady pushing two shopping carts. He was speeding at 55 or 60 mph. He failed to stop. He had no driver's license. It was revoked due to a DUI conviction. He said he thought he hit "an object." His Aggravated DUI prior was alleged but it was more than 10 years old. He had 2 prior DUI misdemeanors. He was given 3 months deferred jail. (The jail term would have been deleted except that D committed another DUI and his probation was revoked and he was sent to DOC).
2001009915  D struck a pedestrian crossing an unmarked street. He received serious injury. D fled but was detained a short time later. He admitted he had 3 beers before the accident. He was in the US illegally and has on prior deportation. He was originally charged with LSA 3F and Aggravated Assault 3F. He pled to LSA 4F. He received a 3 month deferred jail term "to help motivate him to comply" with terms of probation. He has been deported. No jail served. 

1998092260  D struck a vehicle making a U-turn in front of him. The vehicle struck a motorcycle and the motorcycle rider died. D fled. The vehicle was abandoned at a nearby apartment. Knowing police were looking for him D turned himself in 10 hours later. He had no driver's license due to a prior DUI conviction. He admitted to having a beer prior to the accident. (He had 2 prior DUI convictions and may have been intoxicated at the time of the accident.) D received 30 days deferred jail which was later deleted. 

2003017154  D lost control of his vehicle and slid into an intersection colliding with another vehicle and causing serious injuries. D fled. He returned to the scene after witnesses got his license number. He was driving his employer's vehicle and said he left because he was afraid he would be fired because he was involved in another collision in the past. He was placed on probation with 30 days jail deferred for six months. It may be deleted. 

2000008593  D received 10 days deferred jail after hitting a 73 year old lady in crosswalk causing serious injury. D fled because "scared." Called police one half hour later. Has prior speeding. The jail term was later deleted.
1997007591  D received 3 months deferred jail after her car hit a cyclist. She says she panicked and went to her sister’s house. She was followed by witnesses and returned to the scene. The victim died. (There is nothing in the file that indicates the deferred jail was ever served).

1999007885  D received 2 months of deferred jail which was later deleted. She was originally charged with LSA and False Reporting for a car/pedestrian accident where the victim died. Victim was walking on I-17. She fled the scene and drove to a secluded parking lot where she smashed up her truck with a baseball bat and concocted a story about being attacked.

1997003814  D received 1 month in jail deferred jail. (No indication it was ever served.) He has several prior felony convictions. There is no pre sentence report in the file. No further information.

2003018055  D received 3 months deferred jail sentence (which he may not have to serve) where his car struck a motorcycle causing serious injury. D stopped, asked if an ambulance had been called, then left the scene. He had been drinking before the accident. He was on probation in Colorado for possession of dangerous drugs for sale.
Cases Where No Jail Was Imposed As a Term of Probation

2000005908  D originally charged with LSA Class 4 and LSA Class 6 where his car hit pedestrians crossing a street. He stopped, backed up, drove around them, and left. There were serious injuries. He was placed on 12 months house arrest with electronic monitoring and allowed to go to college. After 3 months the house arrest and monitoring were deleted from his probation terms.

2000012526  D placed on 1 year probation, no jail. D struck a pedestrian who was crossing the street. He went home and called 911. He had been drinking earlier. He claimed he didn’t know what he hit until he got home. The victim was seriously injured.

2001000179  D was charged with LSA and Aggravated DUI. The DUI carried a mandatory 4 months in the DOC as a term of probation. His car hit a pedestrian on a bicycle and the victim was dragged by the car. He left the scene because he had been drinking. (.124) The victim received serious injuries. D received no jail on the LSA.

2001014635  D struck pedestrian in a parking lot of Home Depot in daylight. Victim rolled up onto hood and received serious head injuries requiring surgery. D let his passenger out and then fled the scene. He turned himself in to police one hour later saying he was afraid the people who gathered at the scene were going to beat him up. No jail.
2002001199  D involved in a two car collision for which he was not at fault. D fled. He had a blood alcohol of .203 and ran because he was scared. He did not have a driver's license and was in US illegally. Other driver was seriously injured. No jail. (deported)

2002005790  D vehicle struck a pedestrian crossing street in a wheelchair. She died. She sped away doing around 60 mph and talked to someone about repairing her windshield. She also removed her license plate and hid it. She was talked into turning herself in the next day. D said she “freaked out.” She claims she is addicted to pain medication. No jail.

1996003737  D car struck pedestrian who died. D fled in car. He had consumed 6 glasses of beer (.085) He wasn’t sure he hit anyone. He went to his parent's house, called his wife, then called the police. Victim had a blood alcohol of .15, it was dark, victim was wearing headphones, and carrying a diary with notes about death and suicide. She may have stepped in front of the car. No jail.

1997014026  D charged with LSA and Aggravated Assault, Endangerment, both with allegations of Dangerousness. D drove truck which ran red light causing serious injuries to a husband and wife. He had been drinking (.18), left the scene, pulled into a parking lot two blocks away and was apprehended. The original stipulation to prison was rejected by the judge as too harsh. D entered new plea to a Class 3 felony (non-dangerous) and was given a 1 year DOC sentence on the Aggravated Assault followed by probation, No Jail, on the LSA.
1998010615 Victim walked right in front of D vehicle and received serious injury. D panicked and drove away. Two weeks later police contacted D. No Jail. ("Jail not appropriate as offense was result of panicked reaction, poor judgement, and no criminal intent." (PSR) An allegation of prior conviction was dismissed.

1999095692 D struck a 17 year old pedestrian crossing the street while he was passing another car doing 50 mph. D stopped briefly and then fled. V was seriously injured. D was arrested on unrelated warrants 4 months later. No jail.

2001095430 D was in a fight with 5 other persons. Being outnumbered she tried to get away in her car and backed over the V. She drove 1000 feet with V under her car. V was seriously injured. D and passenger changed positions and fled. She later returned to scene and admitted. The charge was reduced by plea to LSA 6U. No jail.

1999092662 D was charged with Aggravated DUI and LSA 4F. No pre sentence report is in the file. The plea agreement provides D is to do the mandatory 4 months in DOC on the Aggravated DUI. No jail on the LSA.

2003030719 D was involved in a 2 car accident. D fled on foot and was arrested more than 3 weeks later. He had no driver’s license or insurance. V suffered serious injury. The LSA4 was reduced to LSA 6U. No jail.
1998011363  D struck a guard at the Biltmore when he was crossing the street. D fled. The V died. D was questioned the next day. He first denied being involved in the accident. After his father showed the police the car damage he admitted he hit something "or a human being." D has several medical issues including diabetes, valley fever and waste syndrome. He was originally charged with LSA 3F and Aggravated Assault 3F, Dangerous. He pled to LSA 4F. He received 2 years probation. No jail.

1998002927  D struck a pedestrian walking on I-10 who died. D fled. He went to work and told his boss he hit something. He was driving his employer's vehicle. When he saw the police talking to his employer he said he thought he might have killed someone. He left work and made efforts to flee to Mexico. One month later he turned himself in. He claimed it was early morning, dark, foggy and he did not see V until "she was running in front of me." He was originally charged with LSA 3F. He pled to LSA 4F with stipulation to probation. No jail.

1997006290  D struck a bicycle causing a child serious injuries. D fled. One-half hour later he called 911 and advised he was in an accident and was returning to the scene. He returned five minutes later. He said kids were riding bikes from an alley. No evidence that he was speeding or using alcohol. He had heart valve replacement surgery and has pulmonary stenosis. He received FARE probation. No jail.
1997090342 D struck a motorcycle and fled. The V received serious injuries and later died. D returned to the scene after a few minutes. There was no evidence of drugs or alcohol or reckless driving. He said he had “a momentary lack of judgment” in leaving. This case was originally filed as LSA 3F and amended to Endangerment 6U. The court designated it a misdemeanor at the time of sentencing. No jail.

2001093472 D was driving his four-wheel drive vehicle up a hill when it flipped over end over end. Three passengers were injured—none life threatening. D fled and was arrested 3 days later. He said he had had 3 beers and that his friends told him to leave because he had been drinking. The case was originally filed as LSA 3F and LSA 6F. It was reduced to Endangerment 6U. D received 3 months DRC program. No jail.

2001093482 D struck a motorcycle and fled. He caused serious injury. He shortly returned to the scene saying he didn’t notice any damage until he got home and then immediately returned. Apparently the V had caused his own fall by improperly applying his motorcycle brakes and flipped the motorcycle which was then struck by D. The original charge of LSA 4F was reduced to Tampering With Evidence, Class 6F offense, and D was placed on probation. No jail.

2002000415 D in auto accident with another car left area on foot. She was not the cause of accident. She came back to the scene with her father-in-law saying she left because she was scared, pregnant, and confused and went to get help. She was given 1 year probation. No jail.
SUMMARY OF SENTENCING DATA REGARDING LEAVING THE SCENE OF THE ACCIDENT CASES INVOLVING CLASS 4 FELONY CONVICTIONS – FROM 1996 TO MARCH 2004
MARICOPA COUNTY (ARIZONA) SUPERIOR COURT

State v. O'Brien, Maricopa County (Arizona) Cause No. CR2003-016197-DT.

Editors' Note: This table is a summary of an analysis prepared by Judge Stephen Gerst of all case files maintained by the Clerk of Superior Court in Maricopa County, Arizona, from 1996 through March 2004 involving a sentencing for a violation of Ariz. Rev. Stat. § 28-661(B), where the offense was a Class 4 felony:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of cases reviewed by Judge Gerst for O'Brien sentencing</td>
<td>99</td>
</tr>
<tr>
<td>Total number of cases in which Factor E (failure to return to the scene of accident or contact police) (Factor E was the only factor in the O'Brien sentencing)</td>
<td>33</td>
</tr>
<tr>
<td>Total number of cases in which Factor E was the only factor in sentencing</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Sentences where Factor E was only factor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CR1997005921 – 2 months*</td>
</tr>
<tr>
<td></td>
<td>CR2002005790 – no jail time</td>
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<tr>
<td></td>
<td>CR1998010165 – no jail time</td>
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<tr>
<td>O'Brien Sentence:</td>
<td>No jail time (probation)</td>
</tr>
</tbody>
</table>

* In this case, the defendant, in addition to Factor E, failed to appear for sentencing and a warrant for arrest issued.
### SUMMARY TABLE I: SENTENCING FACTORS FOR ALL CONVICTIONS FOR LEAVING THE SCENE OF THE ACCIDENT (Class 4 Felony):

All Cases 1996 to March 2004 (Total: 99)

<table>
<thead>
<tr>
<th></th>
<th>A: Actual Knowledge of Injury or Death</th>
<th>B: Alcohol or Drug Use at Time of Accident</th>
<th>C: Speeding or Improper Driving</th>
<th>D: Concealment of Evidence or Avoidance of Police</th>
<th>E: Failure to Return to Scene or Contact Police</th>
<th>F: Other Charges Pending</th>
<th>G: Significant Past Criminal Record</th>
<th>H: Sentence Enhancement Mandated</th>
<th>I: No Drivers License or Suspended License</th>
<th>J: Illegal Alien Detained</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Cases (99 total)</td>
<td>24</td>
<td>39</td>
<td>18</td>
<td>29</td>
<td>33</td>
<td>36</td>
<td>32</td>
<td>24</td>
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<td>11</td>
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<tr>
<td>Cases that included Factor E (33 out of 99)</td>
<td>10</td>
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<td>4</td>
<td>14</td>
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<td>Cases where Factor E was only factor</td>
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</tbody>
</table>
### SUMMARY TABLE II: SENTENCING FACTORS FOR CONVICTIONS
FOR LEAVING THE SCENE OF THE ACCIDENT (Class 4 Felony)
WHERE SENTENCE WAS IMPRISONMENT WITH ARIZONA DEPARTMENT OF CORRECTIONS:
1996 to March 2004 (Total: 25)

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<th>B</th>
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<th>D</th>
<th>E</th>
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<td>18</td>
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<td>Failure to Return to Scene or Contact Police</td>
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<tr>
<td>No Drivers License or Suspended License</td>
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**Note:** Rows labeled 'Cases that included Factor E' include only 33 out of 99 cases.
### SUMMARY TABLE III: SENTENCING FACTORS FOR CONVICTIONS

FOR LEAVING THE SCENE OF THE ACCIDENT (Class 4 Felony)
WHERE SENTENCE WAS A TERM OF PROBATION THAT INCLUDED A JAIL TERM (Up to Twelve Months):
1996 to March 2004 (Total: 44)

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
<th>J</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Cases</strong> (99 total)</td>
<td>15</td>
<td>17</td>
<td>5</td>
<td>19</td>
<td>14</td>
<td>11</td>
<td>21</td>
<td>7</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td><strong>Cases that included Factor E</strong> (33 out of 99)</td>
<td>4</td>
<td>7</td>
<td>1</td>
<td>7</td>
<td>14</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td><strong>Cases where Factor E was only factor</strong></td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1*</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

* Two month jail term imposed as term of probation where the defendant failed to appear for sentencing and a warrant for arrest issued.
### Table IV: Sentencing Factors for Convictions Where Sentence Was Probation That Did Not Include an Immediate Jail Term

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
<th>J</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual</td>
<td>Alcohol or Drug Use at Time of Accident</td>
<td>Knowledge of Injury or Death</td>
<td>Failure to Call Injuries to Police</td>
<td>Significant Past Criminal Record</td>
<td>Sentence Enhancement</td>
<td>eterminate Sentence</td>
<td>Detention</td>
<td>License</td>
<td>Suspended</td>
</tr>
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<td>All Cases (Total: 30)</td>
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<td>5</td>
<td>3</td>
<td>5</td>
<td>11</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases where Factor F or other non-Facto factor</td>
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</tbody>
</table>