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RESEARCH ON BIAS IN JUDICIAL SENTENCING
JON'A MEYER* and PAUL JESILOW**

A great deal of research has been conducted to determine whether and under what circumstances extra-legal factors, such as race and gender, affect the severity of criminal sentences handed out by judges. Most of these studies, however, depended more upon increasing sophistication in research methodologies and statistical techniques than well-formed research plans. Although academic research necessarily involves building upon earlier works and increasing sophistication as improved methods become available, the research on judicial bias in sentencing can best be described as a methodological battle that has intensified with each new publication. Researchers appear to react to the work of others in the field by quickly submitting a study that is “superior” due to more sophisticated methods or a better choice of variables. Published research appears to focus on the use of improved methods rather than adding to the field’s understanding of judicial bias in sentencing.

This piece reviews the existing literature and highlights the pitfalls immersed in this research.

JUDICIAL BIAS

In 1764, in the first edition of Dei delitti e delle pene (An Essay on Crimes and Punishments), Cesare Beccaria noted that a judge’s ruling does not always reflect the legal merits of the case.1 He argued that justice often meant judicial favoritism; the courts favored the powerful, while severely sanctioning the powerless.2

Beccaria felt punishment should prevent people from committing crimes.3 Among his proposed reforms, Beccaria argued for certainty and swiftness of punishment, a legally educated citizenry, revision of the sentencing structure to reflect the severity of each crime, and replacement of judicially determined punishments with those set by legislators.4 The judiciary, he believed, with their deeply rooted biases and inconsistent sentences, were incapable of implementing his philosophy of deterrence. Beccaria noted that justice suffered when judges set sentences according to whim:

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2. Id.
3. Id. at 2-3.
4. Id. at 4-9, nn.31-32.
The spirit of the laws will then be the result of the good, or bad logic of the judge; and this will depend on his good or bad digestion; on the violence of his passions; on the rank, and condition of the accused, or on his connections with the judge; and on all those little circumstances, which change the appearance of objects in the fluctuating mind of man.  

By allowing judicially determined sentences, Beccaria argued, society permits divergent outcomes that legal reasoning cannot explain: "We see the same crimes punished in a different manner at different times in the same tribunals."  

The notion of judicial bias did not end with Beccaria's comments. Throughout American history, judges have been accused of discrimination, primarily for sentencing non-whites more severely than whites. Judicial bias, which occurred during earlier, more turbulent times, may have been based upon institutionally created differences between whites and their former slaves. For example, the United States Supreme Court in *Plessy v. Ferguson* held that one could not expect the courts to guarantee equality to blacks. The Court stated: "If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."  

Furthermore, some laws were designed to sentence black offenders more harshly than whites and other minorities. An 1848 Virginia statute, for example, required the death penalty for any offense committed by a black person that could result in three or more years in prison for a white individual. Judges could not ignore race when determining sentences pursuant to this statute.  

Despite such discriminatory laws and acts, the courts have clung to the notion of equality connoted by the image of Lady Justice, in her blindfold, holding a scale that allows only legal evidence to tip the pans in favor of the state. They maintain a trusting faith that the powerful and the powerless stand as equals before the law. While it is conceivable that most judicial acts do not involve any form of extra-legal prejudice against minorities, examples of individual judicial bias do exist. In one instance, when sentencing a Spanish-surnamed defendant to death, the judge referred to him as a "cold-blooded, copper-colored, blood-thirsty, throat-cutting, chili-eating, sheep-herding, murdering son-of-a-bitch."
The question is not whether bias exists in the judicial system, but rather, what kinds of biases exist and under what circumstances are they maximized or minimized.

POSSIBLE SOURCES OF BIAS

There are several potential sources for extra-legal bias in the judicial system. Those sources that have received the most attention in criminal justice literature are race and ethnicity, socio-economic status, gender, and age. Other factors that are prevalent in the literature include the type of legal counsel available to defendants, whether or not the defendants are detained before trial, and the strength of cooperation between the judge, the prosecutor, and the defense attorney.

The race or ethnicity of the defendant is the primary, and most controversial, demographic factor scholars have scrutinized in relation to sentencing. For the most part, the race/ethnicity debate has focused on whether blacks are treated more harshly than their white counterparts during the sentencing phase. The argument, as noted earlier, has become an escalating methodological fight in which researchers denounce one another's work in a game of academic one-upmanship.

The first empirical examination of racial bias, written by Thorsten Sellin in 1928, concluded that blacks were discriminated against at both the trial and sentencing stage. After comparing government conviction rates and sentencing records for 1926 Detroit, he found that blacks were more likely to be convicted and more harshly punished than whites.

Sellin specifically analyzed the percentage of arrests that resulted in convictions for nineteen different crimes, ranging from begging and vagrancy to murder. For eleven of these offenses, the court was more likely to convict blacks than whites. Sellin argued that, once convicted, blacks were sentenced more harshly than whites, noting that 30.9% of black felons received a jail sentence compared with only 15.5% of the whites. This finding, as Sellin points out, may be an artifact of the higher number of “serious offenses calling for heavier penalties” committed by blacks.

By including data regarding the number of suspects arrested, Sellin, in his conclusions, unintentionally introduced several factors associated with the police. Such factors, for example police policy on arrest, likely distorted the conviction rates for both blacks and whites. Sellin recognized that the conviction rates may have been affected by “unwarranted arrests of Negroes” that were the result of broad sweeps in which police arrested blacks on “the flimsiest charges.”

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13. Id. at 53.
14. Id. at 57.
15. Id. These eleven crimes were burglary, armed robbery, simple larceny, assault and battery, disturbing the peace, accosting and soliciting, common prostitute, sex crimes, offenses against the state drug and prohibition laws, and offenses involving embezzling, forgery, and similar crimes. Sellin argued that, once convicted, blacks were sentenced more harshly than whites, noting that 30.9% of black felons received a jail sentence compared with only 15.5% of the whites. This finding, as Sellin points out, may be an artifact of the higher number of “serious offenses calling for heavier penalties” committed by blacks. Id. at 59.
16. Id.
17. Sellin, supra note 12, at 54.
have affected conviction rates regardless of how judges handled the cases at a later stage.

Another important factor to consider, when interpreting Sellin’s findings, is the notion of reduced charges. Prosecutorial discretion before trial and the fact finder’s discretion at the judgment stage may distort conviction rates. The conviction rates may fail to adequately reflect the offenses for which the perpetrators were originally arrested. The degree of a specific offense may be lowered, defendants may be acquitted of some charges but not others, charges may be dismissed, or transformed altogether. For example, defendants arrested for burglary may be convicted of trespassing due to weak evidence. This phenomenon may well taint Sellin’s data. While only three blacks were arrested for manslaughter/negligent homicide, ten were convicted of this offense. One might argue that some of these convictions were for offenses that had originally been charged as murder. Assuming this is true for other offenses, the reported conviction rates may be invalid.

Sellin’s initial report fails to include the statistical significance of his findings. Today, Sellin’s methodology for determining which of the two conviction rates was higher would be insufficient for supporting his conclusion that bias exists. Indeed, the differences between the two were not always large; discrepancies for six out of eighteen offenses were less than 2.2 percent. His figures for assault and battery, for example, yielded a discrepancy of one-tenth of one percent or 49.0 percent for blacks versus 48.9 percent for whites, hardly a meaningful difference.

Another concern with the validity of Sellin’s findings stems from his use of government data. The manner in which such information is collected is of interest to researchers. Data can be gathered from existing records, usually government statistics, or by a researcher’s observations. Official records are usually much easier to obtain, both in terms of time and money. A researcher will encounter obstacles when attempting to collect original data. A defendant’s prior record, for example, which strongly influences penalties, is often deemed confidential by the system, and, therefore, is unavailable to the researcher.

The use of existing records has its own set of complications. The analysis of existing records necessarily limits the information researchers may consider to those items that were originally recorded. Unfortunately, researchers wish to consider at least one tidbit of information that the original source failed to examine. Furthermore, researchers must accept existing records in whatever form they appear, although they may be

18. See id. at 62.
21. Id.
incomplete, incorrect or biased. Sellin appropriately noted, "The records of our police departments, our courts, and our penal institutions have not been compiled to suit the purposes of criminological research."23

Sellin was obliged to accept the data as complete and correct, free from any biases.24 As the figures for manslaughter indicated, more blacks were convicted for this offense than were arrested. It is apparent that errors crept into the data and Sellin recognized this problem. For example, he was unable to offer a clear interpretation of a government table that showed types of sentences by race:

The study from which this table has been compiled does not indicate the exact meaning of the data presented in this column or the process by which they were secured. I assume these figures represent average minimum and maximum sentences; the heading is far from clear.25

More than forty years later, a courtroom expert argued that inaccuracies in data were sometimes due to the courtroom workgroups' efforts to protect themselves and their sentencing practices from scrutiny.26 This self-protecting behavior led to omissions in the data that were more than coincidental; bureaucrats cataloged a host of factors in order to present judges in a favorable light, while ignoring other factors that would accurately reflect the manner in which they carried out their judicial duties.

A final methodological problem with Sellin's attempt to study judicial bias was that his data may have included cases where juries, rather than judges, determined final sentences. Jurors often determine the penalties in murder cases. Often times these decisions include penalties of execution or life imprisonment.27 Early researchers failed to report who comprised the actual sentencing body that they studied and labeled biased. This may be due to either a lack of interest in the matter or, more likely, because of an inability to procure this information from existing governmental records.28 It is likely that juries ordered some of the punishments in the early studies. Sentences that tend to reflect a jury's biases demonstrate the inadequacies of the jury system, rather than actual judicial bias.29

It is difficult to determine whether Sellin's findings can be cited as evidence of racial bias in sentencing. Questionable data combined with unsophisticated methods and conflicting results make this article difficult to rely upon as irrefutable evidence of bias.

24. Id.
25: Id. at 61.
28. See, e.g., Sellin, supra note 12, at 54.
The 1940s saw the introduction of a new method for studying judicial bias. In 1941, Guy Johnson introduced the concept of victim-offender dyads as a determining factor in the severity of sentences. He argued that a “caste definition of crime” defined offenses against whites as more serious than offenses against blacks:

Obviously the murder of a white person by a Negro and the murder of a Negro by a Negro are not at all the same kind of murder from the standpoint of the upper caste’s scale of values, yet in crime statistics they are thrown together.

Johnson found that blacks who killed whites were more likely to be convicted and punished severely than blacks who murdered other blacks. Blacks who murdered other blacks “probably go unpunished” or are lightly punished. Johnson concluded that victim-offender dyads impacted sentences because intragroup homicides by blacks did not disturb white majority group members.

Harold Garfinkel examined court records and death certificates in North Carolina. He explained that the criminality of blacks who killed other blacks was determined at trial, while the criminality of blacks accused of killing whites was determined, or rather assumed, at the point of accusation. Blacks who killed other blacks were presumed innocent until proven guilty, while blacks who killed whites were assumed guilty even before trial.

Later researchers were unprepared to accept the victim-offender dyad results reported by Johnson and Garfinkel as proof of racial bias by judges or the criminal justice system. Edward Green, for example, argued that circumstances of crimes committed by blacks against whites were more serious. Such crimes were “of a more aggravated nature, indicating a deeper internalization of the value of violence,” while crimes by blacks against blacks were “high in impulsiveness and low in . . . malicious intent.” For Green, the seriousness of the actual offense explained why blacks received harsher treatment in the courts.

Two methodological problems that plagued Sellin also faced Johnson and Garfinkel: questions regarding whether a judge or jury determined sentences and a lack of statistical sophistication. First, since both Johnson and Garfinkel studied murder cases, it is probable that juries rather than judges determined which offenders would be executed. Both studies

31. Id.
32. Id.
34. Id. at 377.
36. See generally notes 30 and 33.
were conducted in states where murder trials were often heard by juries.\textsuperscript{37} Garfinkel noted, for example, that North Carolina’s rules of trial procedure prohibited bench trials, unless the defendant pled guilty to a homicide charge, besides murder in the first degree.\textsuperscript{38} In such situations, the judge only presided over the sentencing phases of trials.\textsuperscript{39}

A North Carolina statute further invalidated Johnson’s and Garfinkel’s work regarding judicial bias. This statute mandated the death penalty for defendants convicted of first degree murder.\textsuperscript{40} Thus, it is more valid to ascribe the extra-legal biases to prosecutors who chose the charges to be levied against defendants. Prosecutors are usually conceded to be the most powerful actors in the criminal justice drama since they may, without official review, choose to review or drop charges.\textsuperscript{41}

The second methodological mystery with Johnson’s and Garfinkel’s studies is the exclusion of significance levels for their statistics. Without such information, we are left to guess whether their results were merely a chance conclusion created by the sample they chose to study or valid representations of sentencing.\textsuperscript{42} Both authors used simple comparisons of percentages. Although their comparisons may have appealed to the uninitiated reader of yesterday, contemporary research audiences demand more sophistication before accepting a study’s results. For the foregoing reasons the extent of bias ascribed to judges in these studies is suspect.

**FURTHER REFINEMENTS**

Edwin Lemert and Judy Rosberg were the first widely published researchers to include tests of significance in their findings regarding judicial bias.\textsuperscript{43} They criticized research that failed to include controls for an accused’s prior record.\textsuperscript{44} Evidence of continuing illegal activity, they posited, was important in judicial decision making.\textsuperscript{45} Their work, for example, indicated that defendants with prior records were less likely to receive probation and that defendants with no previous criminal convictions were seldom sentenced to prison.\textsuperscript{46} The types of offenses for which defendants had previously been sentenced also swayed their punishments.\textsuperscript{47} Judges, as with the rest of us, rank past criminal activities on a scale of subjective importance. The judges consider: “Was anybody injured?

\textsuperscript{37} See Johnson, supra note 30, at 98; Garfinkel, supra note 33, at 373. Johnson’s study included cases from Virginia, North Carolina and Georgia; Garfinkel’s included cases from North Carolina.

\textsuperscript{38} See Garfinkel, supra note 33, at 373.

\textsuperscript{39} Id.

\textsuperscript{40} Id. at 375.

\textsuperscript{41} See Albometti, supra note 19 at 624.

\textsuperscript{42} Tests of significance allow the researchers to state that results are not apt to be due to coincidence. Most research prior to 1950 did not determine the likelihood of findings being attributable to fluke, leaving readers to peruse the tables and statistics and speculate for themselves whether or not the findings were statistically valid.

\textsuperscript{43} See generally Lemert & Rosberg, supra note 22.

\textsuperscript{44} See id. at 8-9.

\textsuperscript{45} Id.

\textsuperscript{46} Id.

\textsuperscript{47} Id. at 11.
Was there the potential for serious harm? How much money was stolen?''

Serious prior records led judges to dispense harsher sentences. Lemert and Rosberg noted that whites were convicted of less dangerous offenses: grand thefts, second degree burglaries, and victimless crimes. Minorities, on the other hand, had a higher number of prior felonies, such as assaults with deadly weapons. Whites and minorities convicted of similar offenses might possess widely differing past criminal records. Thus, the appearance of judicial bias in early studies might have been explained by this fundamental difference.

NEW FOLLY

A methodological message from Lemert's and Rosberg's work was that researchers had to expand the number of items they considered when attempting to extract the effect of bias from apparent sentencing disparities. In other words, judicial decisions are based on several matters and research should reflect this complexity. With this in mind, Henry Bullock collected information on race, types of offenses, previous felonies, types of plea agreements, counties of residence, and length of sentences for inmates in the Texas State Prison serving sentences for burglary, rape, and murder. He posited that those studies which failed to control for these factors may "have derived conclusions concerning racial bias from comparisons of white and Negro subjects whose characteristics differed significantly in factors other than race."

While Bullock's attempt to study bias was admirable he failed to adequately address a significant issue: who was doing the sentencing?

49. See Lemert & Rosberg, supra note 22 at 11.
50. See Id. at 7 tbl. 7.
51. See id. at 6.
52. See generally Lemert & Rosberg, supra note 22.
53. By collecting data for inmates in prison, Bullock effectively eliminated two potentially important types of defendants whose inclusion might have altered his results: those sentenced to death and those assigned to chain gangs. Offenders sentenced to death were excluded by Bullock because he omitted inmates awaiting execution and could not gather data for those already executed. It is possible that this affected his unexpected finding that black murderers were sentenced more leniently than white murderers. Garfinkel's work on offender-victim dyads suggests that all murders are not viewed the same by sentencing agents. If blacks were sentenced to death for murders of whites, but given short sentences for murders of other blacks, it is likely that only blacks who killed other blacks were included in Bullock's study. And if whites are more likely than non-whites to have their death sentences commuted, it is possible that a number of white murderers had their sentences changed to life imprisonment while black murderers were executed, making them unavailable for study. See, e.g., Hugo A. Bedau, Death Sentences in New Jersey 1907-1960, 19 Rutgers L. Rev. 1, 20 tbl. IX (1964). Similarly, chain gang members would not be included in Bullock's study. Steiner and Brown noted that blacks were more likely to be sentenced to chain gangs while whites convicted of the same offenses would be sent to prison. Jesse I. Steiner & Roy M. Brown, The North Carolina Chain Gang 136-37 (Univ. of N.C. Press 1927), cited in Sellin, supra note 12, at 59, 62 n.16. Offenders sentenced to chain gangs would not be represented in Bullock's prison sample, which could easily bias his findings.
55. Id. at 412.
Bullock refers to his work as a study of "bias at the judicial level," but he limited his research to offenders sentenced by juries. Nonetheless, Bullock's work is often cited in the judicial bias literature and forms part of the foundation upon which later studies were built.

Bullock's study was one of many projects that fueled conflict in the methodological battle to determine whether judicial bias existed. He was one of the first researchers to determine the extent to which the severity of a particular sentence and sentence-affecting criteria were related. For example, Bullock reported the strength of the association between types of crimes for which defendants were convicted and their respective punishments, rather than simply identifying that a relationship existed.

Bullock reported that the severity of an offense, the region where the case was heard, the extent of urbanization in that region, and the type of plea agreement a defendant entered influenced sentencing. As the severity of an offense or the degree of urbanization increased, so did the length of a defendant's sentence. Furthermore, those who pled not guilty or were tried in East Texas, received longer sentences than those who pled guilty or were tried in West Texas.

The importance of Bullock's research is not in his findings, but in the trend he started. Researchers later refined the factors Bullock believed contributed to punishment severity and included them in their studies. Bullock's "degree of urbanization" measure, which he based on whether the county contained at least one large city, is certainly a precursor to the later use of ecological variables to determine effects of community context on sentencing by judges.

Bullock's research sheds little light on judicially ordered penalties because he only surveyed offenders sentenced by juries. Some of his findings, however, may be applicable to judges. Criminal court judges and jurors are usually drawn from the same community and, in theory, represent that locale. Because the fact finders' beliefs may reflect local sentiment regarding crime, one could argue that their respective beliefs are similar to one another.

56. Id.
58. See generally Bullock, supra note 54.
59. Bullock, supra note 54, at 414. Unlike many jurisdictions, juries in Texas can sentence in both misdemeanor and felony cases where the defendant has pleaded guilty. Defendants choose between being sentenced by the judge or jury. When a defendant pleads guilty to a jury, the jury hears the case and is then directed by the judge to "find" the defendant guilty. After "finding" the defendant guilty, the jury proceeds with the penalty phase of the case. Interview with Maureen Bailey, El Paso, Texas, Court Coordinator (1993).
60. Bullock, supra note 54, at 414.
61. Id.
63. See Bullock, supra note 54.
DIFFERENCES IN CRIMINALITY

In his review of sentencing studies, Edward Green noted several methodological deficiencies. He criticized the lack of adequate controls for an accused's prior record. The exact number of felony convictions an offender accumulated, Green hypothesized, would have a greater effect on judicially determined sentences than a vague conception of the defendant's prior record. He chastised researchers for the use of faulty data and addressed their inadequate statistical controls:

Thus the complexity of the sentencing process, not to mention the process of human judgement [sic], has been all but submerged in simplistic interpretations based upon fragmentary data. The neglect, in comparing the sentences of various groups of cases, to impose statistical controls appropriate to the subject of inquiry has resulted in a circularity of reasoning—the lack of proper and uniform criteria for sentencing is inferred from the disparities in sentences; and these in turn are attributed to the lack of adequate criteria.

In order to alleviate his concerns, Green examined a sample of cases tried in a “non-jury prison court” of the Philadelphia Court of Quarter Sessions, during its 1956 and 1957 terms. This study is significant for two major reasons. First, Green limited his study to cases where judges had imposed sentences. Second, he identified three categories of criteria that could affect judicially determined sentences: legal, extra-legal, and process related matters.

First, legal matters included the types and number of offenses for which the defendants were being sentenced, the defendants' prior criminal records and official recommendations made to the court through pre-sentence and neuropsychiatric reports. Second, extra-legal or "legally irrelevant" items included the offenders' individual characteristics, such as their sex, age, race, and place of birth. Process related considerations were composed of factors relating to the dispositions of cases: whether the defendants pled guilty, whether the defendants were represented by private or public counsel, and the quirks and idiosyncracies of individual judges and prosecutors.

Green found that the types of crimes offenders committed were the primary determinants of the severity of their punishments; the greater
the physical harm to the victims, the harsher the penalties.\textsuperscript{74} The number of offenses for which the defendants were ultimately convicted was the second most important sentence determinant—the greater the number, the more severe the sentences.\textsuperscript{75} The defendants' prior records, as predictors of sentence severity, took third place—as the number of prior offenses increased, so did the severity of the judicially imposed punishments. Finally, the recency of the defendants' prior convictions ranked fourth in explaining sentence severity—the more recent the convictions, the harsher the penalties.

Extra-legal and process related matters did not significantly affect the judges' sentencing decision once legal matters were taken into consideration.\textsuperscript{76} Green concluded that those who attributed sentence disparities to judicial bias were erroneous:

\begin{quote}
To sum up, the results provide assurance that the deliberations of the sentencing judge are not at the mercy of his passions or prejudices but comply with the mandate of the law. The criteria for sentencing recognized in the law, the nature of the crime and the offender's prior criminal record, are the decisive determinants of the severity of the sentence.\textsuperscript{77}
\end{quote}

**ORGANIZATIONAL THEORISTS: THE COURTROOM WORKGROUP**

Abraham Blumberg was one of the first researchers to argue that the organization of the courts affected judicial decision making.\textsuperscript{78} Earlier research virtually ignored the realities of the court system, that it operates much like other organizations, with a "community of human beings who are engaged in doing certain things with, to, and for each other."\textsuperscript{79} The mutual cooperation between key players in the court system may explain judicial decisions regarding sentencing.

James Eisenstein and Herbert Jacob maintained that those who form the courtroom workgroup (the judge, prosecutor, and defense attorney) are driven by similar incentives and shared goals.\textsuperscript{80} These motivating factors have a greater impact on sentencing than judicial biases against particular defendants.

Peter Nardulli argued that the courtroom workgroup is composed of the judge, prosecutor, and defense attorney because "[w]ithin the courtroom setting these three individuals enjoy a virtual monopoly of power."\textsuperscript{81}

\begin{flushright}
\textsuperscript{74} \textit{Id.} at 97.
\textsuperscript{75} \textit{Id.} at 98.
\textsuperscript{76} \textit{Green, supra} note 64, at 98, 101.
\textsuperscript{77} \textit{Id.} at 102.
\textsuperscript{78} \textit{See Abraham S. Blumberg, Criminal Justice} (1967).
\textsuperscript{79} \textit{Id.} at ix.
\textsuperscript{80} \textit{James Eisenstein & Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts} 10 (Little, Brown and Co. 1977).
\textsuperscript{81} \textit{Peter F. Nardulli, The Courtroom Elite: An Organizational Perspective on Criminal Justice} 70 (1978).
\end{flushright}
According to Nardulli, members of the courtroom workgroup conduct their operations in a way that benefits both themselves and the group as a whole.  

Nardulli criticized the work of earlier researchers for failing to consider sentencing apart from other stages in the dispositional process and their ignorance of:

> [sentencing's] role within the court's overall dispositional strategy. This impeded their ability to validly assess the role of extraneous factors in criminal court sentencing. It also hampered their ability to identify sources of disparities in sentencing.

Nardulli further noted that considering the concerns of the courtroom elite, could "yield significant and unique contributions to the study of criminal courts."

The presence or absence of legal counsel is a fundamental situational variable to those who study the effects of the courtroom workgroup on judicial sentencing. Some judges have been accused of a heavier hand with unrepresented defendants. In the ideal, attorneys advance their clients' interests and safeguard their legal rights. They also identify mitigating factors that a judge might consider when imposing sentences. Often times, judges offer defendants lenient sentences based on their attorneys' reputations or political connections. In other instances, where the defendant has a "particularly adept" attorney, the prosecutor may exercise his discretion and dismiss the case, even when evidence of guilt is strong. Thus, there are several ways in which presence of an attorney could significantly affect a judge's sentencing.

Whether defendants obtain private or public representation may also affect their potential sentences. Judges may severely sentence those represented by public defenders because the court regards them as less competent than private counsel. A court administrator, for example, posited that some black defendants in a large metropolitan area were disadvantaged because their attorneys, public defenders, "are not considered 'real' lawyers by some, [and as a result] judges do not take defense arguments as seriously."

The addition of the aforementioned factors, to the analyses of sentencing decisions, greatly increased the number of items a researcher must consider. Maureen Mileski, for example, observed misdemeanor court proceedings and collected information on the defendants' offenses, prior

82. *Id.* at 69-70.
83. *Id.* at 55.
84. *Id.* at 77.
85. See generally BLUMBERG, * supra* notes 78 and 81; NARDULLI, * supra* note 82.
87. See Mileski, * supra* note 26, at 491.
88. *Id.* at 492.
records, and individual characteristics such as race, age, and gender. In addition, she noted whether the defendants were represented by counsel, whether the attorneys were court appointed or privately employed, as well as the defendants' pleas, specific interactions between judges, and the length of such discussions.

Mileski did not find the existence of judicial bias against blacks. On the contrary, for at least one class of crimes—public intoxication—whites were more likely to be sentenced to jail. In place of jail, blacks were fined. Mileski offered an explanation; whites who were intoxicated in public were more likely to be classified by the courtroom workgroup as "skid row drunks"—older, homeless indigents who were nearly or already passed out. Conversely, intoxicated blacks, who tended to be younger and employed, were arrested for engaging in rowdy behavior. The different sentences can be attributed to different types of behaviors, not to race. Mileski further concluded that sentences for blacks were akin to those for whites: "it is simply that proportionately more white defendants" are likely to be skid row drunks.

Peter Nardulli argued that sentencing is the "most potent tool" for enforcing compliance with norms that allow the courtroom workgroup to operate expeditiously. The court punishes those defendants who frustrate the workgroup's efficiency efforts more severely than those who cooperate. Nardulli reexamined existing data on sentencing decisions in 429 felony cases processed in Chicago during 1972-73. Using a multiple regression equation, he concluded that penalties increased significantly for defendants who failed to cooperate with the courtroom workgroup. For example, a defendant who made one or no legal motions could expect a sentence of 25 months for armed robbery, while a similar defendant would receive a sentence of 64 months if he or she made between two and five motions. If the same defendant made more than five motions, he or she could expect a sentence of 102 months.

James Eisenstein and Herbert Jacob also examined the effects of organizational factors on judicial sentencing. They interviewed members...
of courtroom workgroups, observed cases, and collected case file data for a sample of felonies processed in 1972, in Baltimore, Chicago, and Detroit. The researchers found that the identity of the courtroom workgroups (that is, which group specifically processed the case) and the type of crimes for which defendants were convicted influenced the decision of whether to send offenders to prison. The defendants' individual characteristics did not significantly affect the lengths of their imprisonments.

Eisenstein and Jacob's study was not without its methodological problems. First, while they examined the "combined effects" of race, age, type of attorney, bail status, and prior record in their multivariate analysis, the authors did not specifically discuss how they combined factors in order to form this multi-variable. Prior record alone, for example, might have driven any relation, since numerous studies have found that it has a significant affect on sentencing. Additionally, while some factors had the tendency to increase sentences, others tended to decrease them. In the final analysis, these individual factors may have canceled each other out, thereby resulting in "no effect." If prior record, for example, greatly influenced sentences while gender and race only had a minimal effect, a construct composed of all three variables may appear to have irrationally impacted sentences.

Eisenstein and Jacob's analysis signaled the end of bivariate research. Their employment of multivariate statistics allowed them to examine the "simultaneous" effects of several factors on sentence determinations. Earlier researchers scrutinized one variable, and its effect on sentencing, at a time. The authors explained that multivariate methods were necessary to obtain an accurate picture of the courts' dispositions of cases.

Eisenstein and Jacob wrote:

Felony dispositions result from a very complex set of social interactions. No single variable or factor can explain them. Consequently, we cannot simply classify dispositions according to race of defendants, their prior record, or their bail status, and expect to demonstrate a strong relationship. These characteristics—together with others—interact in complex ways to produce the final results.

By the time Eisenstein's and Jacob's book was published, other researchers were also using multivariate methods, in large part due to the spread of computers and packaged statistical programs which facilitated sophisticated analyses. Bivariate analysis eventually lost its prominence in the research community.

102. Id. at 182.
103. See supra note 22 and accompanying text.
104. See supra note 80 and accompanying text.
105. EISENSTEIN & JACOB, supra note 80, at 185.
106. Id.
108. See generally, EISENSTEIN & JACOB, supra note 80, at 185, 189 n.4, using a very early version of SPSS (Statistical Program for the Social Sciences) for their computations, thus indicating that computer resources were available for those completing research in the social sciences.
The availability of computer-assisted analyses altered the arena where the methodological fight over bias in judicial sentencing occurs. John Hagan's excellent 1974 review of the effects of extra-legal factors on judicial sentencing drew new battle lines.109

Hagan noted that earlier research failed to control for the effects of significant legal factors and unsatisfactorily explained the variation in sentence severity. He was struck by the minute relationships that had previously been observed. He calculated a measure of association, Goodman and Kruskal's tau-b, for studies that failed to incorporate such measures, in order to determine how well earlier researchers predicted sentence severity in their models. Hagan concluded that while a number of relationships indicating bias were statistically significant, they revealed little regarding sentencing decisions.110 He attributed findings of statistical significance in past studies to the large sample sizes that were often used in judicial bias research. Statistical significance can be easily obtained with large studies.

Hagan also addressed the inconsistent findings reported by researchers.111 While one study found that blacks were sentenced more harshly, another found that blacks were treated leniently. This problem, Hagan surmised, could be related to differences in the way each researcher defined the length of sentences and/or the lack of controls for appropriate legal factors, including the severity of offenders' crimes and their prior records. For the purposes of simplifying statistical analyses, data were often dichotomized. Bullock, for example, classified the lengths of sentences into two separate categories: less than ten years and ten years or longer.112 Thus, different definitions among researchers, regarding what constituted a long sentence versus a short sentence, could easily influence findings and give results the appearance of fluctuation.

While many researchers were already doing what they could to avoid the problems Hagan raised, this would not minimize his work. At a time when many academics were rushing to analyze existing data sets with new statistical models, he alone stopped to address the methodological problems.

MORE ADVANCED MODELS

Theodore Chiricos and Gordon Waldo were among the first researchers studying judicial sentencing to put increasingly sophisticated math models and statistical analyses to use.113 They collected government data for individuals convicted of felonies committed between 1969 and 1973 in
North Carolina, South Carolina, and Florida. Rather than dichotomizing the data, sentence length was measured in months to preserve its continuous nature. For example, life sentences were coded as 480 months. Chiricos and Waldo also employed a stepwise multiple correlation model, using seven variables, to predict sentence length in Florida. These variables included race, socio-economic status, age, the degree of urbanization, prior convictions, prior incarceration in a juvenile institution, and number of arrests. Unlike simple correlations, the stepwise model ranks each factor in order of importance. Using this process, the authors decided that extra-legal matters had little impact on sentencing.

Alan Lizotte built on the work of Hagan and Chiricos and Waldo. He employed a sophisticated statistical technique known as path analysis, to evaluate the effects of many variables at one time. Lizotte sought to show, among other things, that "judges and juries assign sentences along racial . . . lines . . . due to prejudice and economic discrimination." Using Nardulli's data, Lizotte reanalyzed a sample of 816 cases processed by the Chicago trial courts in 1971 and 1972.

Lizotte's first model hypothesized significant relationships between eight variables and the length of an offender's sentence. His analysis also examined relationships between race and (1) sentence length, (2) prior arrests, (3) bail amount, (4) ability to post bail, (5) offense seriousness, and (6) extent of evidence. Lizotte's analysis failed to establish a direct correlation between race and sentence length. However, he found that the inability to make bail led to longer estimated prison sentences. Lizotte concluded that black defendants, because of financial inabilities, were sixteen percent less likely to make bail than whites. He noted that the sentences of blacks were approximately four months longer than those of whites.

114. The felonies examined included second degree murder, voluntary manslaughter, involuntary manslaughter, forcible rape, statutory rape, aggravated assault, armed robbery, unarmed robbery, burglary, larceny, receiving stolen property, auto theft, embezzlement, forgery, drug offenses, escape, and arson. Id. at 760. These crimes were selected because they were the only offenses for which at least 20 offenders were convicted. Id. at 758. First degree murder was excluded because of the lack of variation; murders in the first degree were punished almost exclusively with life imprisonment or death. Id.

115. Florida was the only state for which demographic data and prior records were available to the researchers. Chiricos & Waldo, supra note 107, at 761.

116. Race, for example, explained less than two percent of the variance for twelve of thirteen Florida offenses. Id. at 763. For the one exception, second degree murder, race was the most important predictor of sentence length and explained seven percent of the variance. Id. at 761.


118. Id. at 564.

119. See id.

120. See id. at 567. The independent variables fell into three categories: (1) legal (prior arrests, offense seriousness, and amount of evidence); (2) extra-legal (race, socioeconomic status, and ability to post bail); and (3) organizational (bail amount, defense attorney's degree of success in sentencing). Id.

121. Race and occupation were presented together as exogenous variables. Id.

122. Findings by others support Lizotte. Researchers on the Manhattan Bail Project found that defendants held in custody before trial were more likely to be convicted than those who were free before their trials. See Charles E. Ares et al., The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole, 39 N.Y.U. L. Rev. 67, 90 (1963).
Lizotte recognized that his findings were insufficient proof of racial bias in judicial sentencing. Instead, his “model represents the complicated interweaving of extra-legal and legal characteristics and the way in which they affect criminal sentencing.” He argued, “[t]o view class-based extra-legal characteristics of defendants as the prime mover in the criminal justice system would be as naive as claiming that they have no effect at all on criminal sanctioning.”

COMBINING MODELS

Thomas Uhlman noted that earlier researchers had tested three model hypotheses with respect to judicial bias: (1) blacks are sentenced more harshly than whites because their offenses are more serious (criminality); (2) blacks are treated harsher because they are poor (class status); and (3) blacks are discriminated against because of their race (racism). Uhlman argued that to fully understand the influence of race on sentence, researchers must consider the three models jointly. Whatever relationship remained after the criminality and class status models “have had the chance to operate” could be attributed to racism.

To test his theory, Uhlman obtained official sentencing data for 34,258 black defendants and 9,344 white defendants who appeared in a metropolitan trial court between 1968 and 1974. He performed two separate analyses. First, he determined whether there was a relationship between the type of offenses defendants committed and (1) their likelihood of being convicted, (2) their likelihood of being sent to prison, and (3) the length of their sentences, in months. Based upon his analysis, Uhlman reported that blacks were punished more severely than whites for 15 out of 16 crimes, ranging from gambling to murder. He also found that blacks were twice as likely as their white counterparts to receive prison sentences. However, Uhlman did not find evidence that blacks were substantially more likely than whites to be convicted.

In Uhlman’s second inquiry, he utilized path analyses designed to measure the effects of the three aforementioned models on the length of defendants’ sentences. He also sought to measure the effects of the following: (1) the types of offenders’ offenses, (2) the seriousness of their acts, (3) the number of charges against them, (4) their bail amounts,

123. Lizotte, supra note 117, at 578.
124. Id.
126. Id. at 31.
127. Id. at 19.
128. Id.
129. Id. at 78.
130. Although the difference was statistically significant, blacks were only four percent more likely than whites to be convicted. Id.
131. UHLMAN, RACIAL JUSTICE, supra note 89, at 82.
(5) their pretrial status, (6) the types of attorney representation, (7) the types of plea agreements entered into, and (8) any charge reductions.\textsuperscript{132} Using this approach, Uhlman was able to attribute part of his finding that blacks were punished more severely than whites to their inability to secure adequate counsel or make bail.

Uhlman did, however, find a direct association between race and sentences, which indicated that blacks may have been sentenced more severely by judges simply because they were black. However, this result did not escape self-criticism.\textsuperscript{133} He recognized that part of his "racism" findings could have been associated with prior record, socio-economic status, and unknown defendant characteristics.\textsuperscript{134} Despite the sophistication of his analysis, Uhlman was plagued by the same methodological problem that had troubled Sellin\textsuperscript{135} fifty years earlier—those who had originally collected the data had not done so with his research in mind.\textsuperscript{136}

MEASUREMENT OF PRIOR RECORD

Researchers began recognizing that valid results could only be obtained if they paid much more attention to the quality of their data and measures. Highly sophisticated analyses cannot produce valid results when flawed data is the foundation of the analyses.\textsuperscript{137} Past research using the accused's prior record in examining sentencing decisions is an example of how results can be misleading.

Susan Welch and her associates noted that although many researchers included some measure of prior record in their analyses, they did so in varied ways.\textsuperscript{138} Some academics used only arrests as evidence of a criminal past, while other researchers required some form of a conviction to establish a prior record for defendants.\textsuperscript{139} Moreover, other scholars limited their definition of a prior record to include only those who had been incarcerated.\textsuperscript{140} There were even some academics who developed a four-point summary scale that incorporated the number of arrests, convictions, and prison terms into their research.\textsuperscript{141} In all, Welch and associates identified eleven different ways prior records were incorporated into research on sentencing decisions.\textsuperscript{142}

Welch and her colleagues examined whether or not the eleven measurements were interchangeable.\textsuperscript{143} They studied a sample of 2,600 male

\textsuperscript{132. Id. at 87-88.}
\textsuperscript{133. Id. at 94-95.}
\textsuperscript{134. Id. at 94.}
\textsuperscript{135. See Sellin, supra note 12, at 54.}
\textsuperscript{136. Id.}
\textsuperscript{137. Joseph E. McGrath, Dilemmatics: The Study of Research Choices and Dilemmas, in JUDGEMENT CALLS IN RESEARCH BEVERLY HILLS 69, 102 (Joseph E. McGrath et al. eds. 1982).}
\textsuperscript{139. Id. at 216-17.}
\textsuperscript{140. Id. at 216.}
\textsuperscript{141. Id. at 219.}
\textsuperscript{142. Id.}
\textsuperscript{143. Id.}
defendants who committed one of fourteen felonies. These cases were all processed in large cities located in the northeastern United States between 1968 and 1979.\textsuperscript{144} The authors concluded that the measures of prior criminal records were not interchangeable. They found that "researchers who use misdemeanor or felony arrest as an indicator of prior record are tapping something very different from those who use some measure of incarceration."\textsuperscript{145} If researchers used arrests only, they would easily conclude that prior records failed to affect the likelihood of imprisonment or the severity of sentences. On the other hand, if they used a form of prior incarceration, their conclusions would be quite the opposite. Judges punished those with prior convictions more severely than those who were merely arrested but never convicted.

Welch and her associates found that the eleven diverse measures of prior record affected blacks and whites differently.\textsuperscript{146} For example, whites who had previously served time in prison were seventeen percent more likely to be reincarcerated than their white counterparts who had never served prison terms.\textsuperscript{147} The difference for blacks was less; blacks who had served a prior prison term were ten percent more likely to be reincarcerated than blacks who had never been in prison.\textsuperscript{148} Welch and her associates concluded that researchers should use a measure of prior record that reflects some form of incarceration because such measures consistently affect sentences for blacks and whites.\textsuperscript{149}

THE EFFECT OF SENTENCING GUIDELINES ON MINORITIES

By the mid-1970s there was no indisputable evidence that judges were biased against blacks or any other group.\textsuperscript{150} There was, however, plenty of anecdotal evidence that some offenders were not getting fair prison sentences due to indeterminate sentencing.\textsuperscript{151} The philosophy that criminals could be rehabilitated led legislatures to enact indeterminate sentences for offenses.\textsuperscript{152} For example, a robber might expect to receive a sentence of one year to life. Consequently, with indeterminate sentencing, a parole board later decides the exact moment of release for the robber. Some offenders, however, ended up serving long sentences for minor offenses when their parole boards proved unforgiving or the offender "misbe-

\textsuperscript{144} Welch et al., supra note 138, at 217-18.
\textsuperscript{145} Id. at 219-20.
\textsuperscript{146} Welch and her associates regressed their two dependent variables (whether the defendant was sent to prison and sentence severity) on the eleven measures of prior record, while controlling for type of offense. They did this for blacks, then for whites. See id. at 223.
\textsuperscript{147} Id. at 222.
\textsuperscript{148} Id.
\textsuperscript{149} Id. at 223.
\textsuperscript{150} See Hagan, supra note 27, at 357-58.
\textsuperscript{151} See, e.g., Marvin E. Frankel, CRIMINAL SENTENCES: LAW WITHOUT ORDER 86-102 (1973).
\textsuperscript{152} Donald E.J. MacNamara, The Medical Model in Corrections: Requiescat in Pace, 14 Criminology 439, 440-41 (1977).
haved” in prison. These sentencing inconsistencies, combined with the perceived failure of rehabilitation, led to a national restructuring of sentencing ideology.

Legislatures enacted sentencing guidelines in an attempt to limit disparities in penalties due to racial or other biases. These guidelines establish specific sentences based on the characteristics of the defendant’s crime and prior criminal record. The enactment of the guidelines sparked a new round of research that no longer was obsessed with trying to universally prove or disprove racial bias. Instead, academics devised methodologies designed to answer specific questions.

“RACIALLY TAINTED” CRITERIA

One of the first questions academics tackled was whether sentencing guidelines would eliminate racial disparities in punishments. Joan Petersilia and Susan Turner examined the effects of guidelines on the dispositions of 16,500 males sentenced to California prisons in 1980. The offenders were sentenced for crimes of robbery, assault, burglary, theft, forgery, or drug possession. California’s 1977 Determinate Sentencing Act presumably limited judicial discretion in sentencing.

Petersilia’s and Turner’s results indicated that some of the criteria utilized to establish sentences were likely to be associated with one race or the other. For example, blacks were more likely to be on probation or parole at the moment of their offenses. Blacks were also more likely to injure their victims or use weapons during the crimes. Under California’s Sentencing Act these three facts and circumstances increase the length of defendants’ sentences. In comparison, crimes relating to alcoholism and drug abuse, two criteria used to determine the appropriateness of probation, were more likely to be found among white offenders. The authors concluded that the guidelines would not eliminate racial disparities in sentencing because of the “racially tainted” criteria that judges employed.

CHICANOS AS A DISTINCT GROUP

Punishments ordered by judges pursuant to California’s Determinate Sentencing Act were also examined by Marjorie Zatz. Zatz contended that findings from earlier research may have been tainted because “Hispanics” were not included in the research samples. Hispanics, she

157. Id. at 17.
158. Id.
159. Id.
161. Id. at 148. The terms “Hispanics” and “Chicanos” are both used by Zatz.
argued, are different from both whites and blacks.\textsuperscript{162} Research in areas where they form a sizable part of the population should include Hispanics as a third important study group:

- The vast majority of studies compare sentencing patterns either for Whites and Blacks or for Whites and the ambiguous group “non-whites.” The former categorization of race totally ignores the racial/ethnic minorities. The latter assumes without any empirical basis that all minorities are treated similarly, at least in comparison with Whites . . . . [I]nclusion of Hispanics in sentencing research is critical.\textsuperscript{163}

Zatz used an advanced multivariate statistical technique to examine the length of sentences doled out to 4,729 Hispanics, whites, and blacks in California during 1978.\textsuperscript{164} She found that the prior criminal records of Hispanics significantly influenced their sentences whereas prior records were relatively unimportant for whites and blacks.\textsuperscript{165} In addition, judges generally penalized Hispanics who entered “slow pleas” more harshly than their white or black counterparts.\textsuperscript{166} Slow pleas are defined as instances where defendants change their initial pleas of not guilty to guilty after their arraignments. Zatz concluded that Hispanics are treated differently from blacks and whites by the courts. Zatz concluded that researchers should treat Hispanics as a distinct category instead of lumping them together with other minorities when studying white/non-white comparisons.\textsuperscript{167}

**ECOLOGICAL VARIABLES**

In the late 1980s researchers explored the possibility that factors outside the courtroom might affect punishments ordered by judges. For example, researchers hypothesized that in a district known for its substantial income inequality, magistrates may severely punish property offenders in order to protect the interests of the powerful. However, intra-class assaults among the poor may be lightly penalized because the powerful are unconcerned with what happens in poverty stricken neighborhoods.\textsuperscript{168} To examine such notions, Martha Myers introduced a number of ecological matters, such as a county’s ethnic composition and income, into her research.\textsuperscript{169}

Myers scrutinized the punishments ordered by Georgia judges for 15,270 felons between 1976 and 1982.\textsuperscript{170} Her analyses indicated that harsher
penalties for blacks were more common in areas characterized by greater income inequality.171 In counties with a majority black population, however, blacks were treated with more favor. Myers attributed this to the presence of a “relatively powerful black middle or upper-middle class” that may be less likely to condone racial bias.172 However, in areas with few blacks, this source of power may be non-existent.

In an analogous study, George Bridges and his colleagues examined imprisonment rates for whites and nonwhites in thirty-nine Washington counties between 1980 and 1982.173 The authors concluded that increases in a county’s ethnic makeup and degree of urbanization were associated with heightened likelihoods of imprisonment for minorities. These factors, however, appeared to have no effect on the chances of incarceration for whites.174

The work of Myers and Bridges and colleagues, demonstrates the need for academics to consider characteristics of the area in which sentencing takes place. Their work indicates that sentencing can be affected by forces outside of the case at hand. In considering these forces, these researchers expanded the methodological battlefield.

JUDICIAL RACE

Changes in societal attitudes and laws have increased the numbers of minorities attending law schools and receiving appointments as jurists.175 At a time when black judges were almost nonexistent, researchers assumed that disparities in sentences resulted from racism by white judges against black defendants.176 Recent increases in the number of black judges have given rise to studies that consider both the defendant’s and judge’s ethnicity. Cassia Spohn, for example, considered whether white judges were more likely than black judges to discriminate against black defendants.177 To explore this possibility, Spohn collected information on 4,710 felony cases processed in Detroit between 1976 and 1978.178

Spohn concluded that legal matters, such as the offenses for which defendants were convicted or their prior criminal records, “clearly over-

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171. Myers, supra note 62, at 754-55. Income inequality is “indicated by county income standard deviation based on 1979 Census family income data.” Id. at 750. Those areas with high variance (areas with large income differences between citizens) have greater income inequality. Id.
172. Id. at 761.
174. Id. at 354.
176. See Katz, supra note 86, at 126-38.
178. Id. at 1201. In addition to race of judge and defendant, Spohn examined the effects on sentence severity of type of offense, number of instant offenses, prior record, weapon use, injury to victim, whether the victim was a stranger, type of attorney, type of plea, pretrial detention, and the defendant’s age and gender. Id. at 1203-04.
shadowed” the effects of any other items with respect to sentencing. Overall, the race of judges and defendants played a minimal, if any, role in sentencing. However, there were some circumstances in which judicial race may have affected penalties. Black judges were slightly less likely than white judges to send offenders to jail. This judicial leniency, however, did not favor black defendants. Black defendants were sentenced more harshly than whites by both black and white judges.

**BIAS IN ALTERNATIVE SENTENCING**

Most studies of sentencing have focused on felony courts where increased use of sentencing guidelines have attempted to limit judicial discretion. James Meeker and his colleagues took a different tactic. They collected data on 106 first-time, non-serious misdemeanor offenders sentenced to community service work after pleading guilty in a southern California municipal court district. The municipal court judges were free to exercise their discretion and determine the length of sentences as well as where sentences were to be served.

The strategy employed by the researchers allowed them to avoid some methodological problems. For example, because the defendants were all first-time offenders, measurement of prior criminal record was not a concern. Furthermore, the study was not limited to the sentencing of offenders guilty of a limited list of crimes. Instead, defendants had committed an extensive variety of crimes, yet there was little variation between the seriousness of the offenses since they were all misdemeanors. In addition, all the offenders had entered pleas of guilty, so there was no need to consider the effects of trials or other items associated with the courtroom workgroup.

Meeker and his colleagues found that the duration of the offenders’ community service was determined by the seriousness of their offenses whereas their placements might be affected by other matters. In particular, Hispanics and males were more likely to be ordered by judges to pick up trash and do other tasks along California's freeways, a

179. *Id.* at 1206.
180. *Id.* at 1211.
181. *Id.* at 1208.
182. *Id.* at 1209. To determine if black and white judges sentenced black and white offenders differently, Spohn ran separate regressions to test for differences between judges when sentencing those of their own race versus others. The regressions were run on four separate samples: (1) black judge/black offender, (2) black judge/white offender, (3) white judge/white offender, and (4) white judge/black offender. *Id.* at 1208-09.
185. *Id.* at 199-200.
186. *Id.* at 199.
187. *Id.* at 201.
188. Meeker et al., *supra* note 184, at 199.
189. *Id.* at 199-200.
punishment that the judges felt was very unpleasant. However, whites and women did their community service in more pleasant surroundings. The authors suggested that the placement bias was due to the unrestricted ability of the judges to assign offenders as they saw fit. Therefore, Meeker and his colleagues concluded that discretion led to bias.

**BRIEF SUMMARY OF BIAS LITERATURE IN JUDICIAL SENTENCING**

It is readily apparent from our review of the relevant studies that the seriousness of the offenders' crimes, combined with their prior criminal records have the greatest influence upon the severity of punishments judges impose on them. These two factors consistently explain most of the variability in sentence severity.

Extra-legal matters appear to have minimal effects on judicially ordered penalties. While early researchers, before 1950, often found evidence of racial bias, they seldom considered the impact of important legal items on their results. In response to criticisms raised during the 1970s, researchers utilized sophisticated methods and statistics to study judicial sentencing. These examinations, for the most part, reported limited effects of extra-legal offender characteristics on judicial punishments.

The research suggests that judges are fairly color blind when sentencing defendants. Legally relevant criteria are much more important than racial bias. However, the research also shows that sentencing is a complex decision that is not simply limited to legally relevant criteria. Sentencing may reflect many external factors including the social mores of the surrounding communities from which the judges are often drawn, the pressures on key personnel in the justice system, and the amount of unrest between racial or other groups in the district. Studies that utilize official government data may never disentangle all the important items.

Future studies might prove more fruitful from the perspective of policymakers if researchers collected their own data on the operation of the courts. Projects could be designed that explore a broad range of potential influences on judicial decisions and avoid many of the inadequacies that are associated with studies of court bias that rely on government data.

190. Id. at 200.
191. Id.
192. See Green, supra note 64; Uhlman, Racial Justice, supra note 89; Myers, supra note 62; Zatz, supra note 160; Spohn, supra note 177; Petersilia & Turner, supra note 156; Uhlman, supra note 125; Margaret A. Gordon & Daniel Glaser, The Use and Effects of Financial Penalties in Municipal Courts, 29 CRIMINOLOGY 651 (1991).
193. See, e.g., Hagan, supra note 27 and accompanying text.
194. See, e.g., Eisenstein & Jacob, supra note 80 and accompanying text.
195. Bridges, supra note 173; Chiricos & Waldo, supra 107; Eisenstein & Jacob, supra note 80; Lizotte, supra note 117; Meeker, supra note 184; Myers, supra note 62; Nardulli, supra note 81; Petersilia & Turner, supra note 156; Spohn, supra note 177; Uhlman, Racial Justice, supra note 89; Uhlman, supra note 125; Welch et al., supra note 138; Zatz, supra note 160.
Such comprehensive work can better pinpoint where problems may exist and suggest possible solutions.