

THE EFFECT OF RACE ON SENTENCING: A RE-EXAMINATION OF AN UNSETTLED QUESTION

CASSIA SPOHN*
JOHN GRUHL
SUSAN WELCH

Although the possible effect of race on sentencing decisions is a much-studied question, even recent studies suffer from methodological problems. This paper attempts to correct these problems by using a large number of cases and a large number of offenses, by dividing the sentencing decision into two separate decisions, by using an appropriate scale to measure sentence severity, by including controls for relevant legal and extra-legal factors, and by using multivariate analysis. Our major findings are that race does not have a direct effect on sentence severity, but that blacks are more likely than whites to be incarcerated.

I. INTRODUCTION

Observers have noted that black criminal defendants tend to receive more severe sentences than white defendants do. For years social scientists have examined this disparity (Sellin, 1928) and have put forth three explanations to account for it. Some researchers have suggested that it is due to racial discrimination. Others have emphasized wealth discrimination resulting from poor defendants' inability to obtain a private attorney or pretrial release. As the effect of wealth discrimination on black defendants is likely to be greater than on white defendants, since blacks are more likely to be poor, it amounts to indirect racial discrimination. Still others have suggested that this disparity is due to the effect of legal factors, such as the seriousness of the charge or prior criminal record. Since blacks are more likely to have a serious charge or prior

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criminal record, they are also likely to receive a more severe sentence.

Early studies often concluded that this disparity in sentencing was due to racial discrimination (see studies cited in Hagan, 1974). But in his review of these studies, Hagan found that most employed inadequate controls or improper statistical techniques and were thus methodologically unsound. The evidence of racial discrimination in capital cases in the south could be supported, but little else could.

More recent sentencing studies by social scientists sometimes concluded that the continued disparity in sentencing is due to racial discrimination (Pope, 1975; Levin, 1977; Uhlman, 1977; Sutton, 1978a; Unnever *et al.*, 1980)¹ or wealth discrimination (Lizotte, 1978),² but these studies more often concluded that the disparity is due to the effect of legal factors (Baab and Furgeson, 1967; Engle, 1971; Cook, 1973; Burke and Turk, 1975; Chiricos and Waldo, 1975; Tiffany *et al.*, 1975; Clarke and Koch, 1976; Eisenstein and Jacob, 1977; Lotz and Hewitt, 1977; Gibson, 1978; Sutton, 1978b).³ These recent studies generally corrected the obvious methodological defects of the earlier research. Nevertheless, many of them had less obvious defects which cast some doubt on their findings. These defects include:

1) Use of a relatively small number of cases (Clarke and Koch, 1976; Bernstein *et al.*, 1977; Unnever *et al.*, 1980). Presumably to avoid this problem, some researchers lumped numerous federal or state jurisdictions together (Tiffany *et al.*, 1975; Sutton, 1978a; 1978b; Pope, 1975). Given different regional perspectives toward racial matters, this approach risks obscuring discrimination which may exist in some jurisdictions but not in others. Some studies included both men and women defendants but did not provide adequate controls for gender (Unnever *et al.*, 1980). Given the potential for different treatment of men and women, this approach, too, risks distorting the amount of racial discrimination which may exist.⁴

¹ Two studies have concluded that the disparity may be in the opposite direction—against whites (Greenwood *et al.*, 1973; Bernstein *et al.*, 1977).

² Another study has concluded that there is disparity in convicting, due to wealth discrimination (Swigert and Farrell, 1977).

³ In addition to these studies on adults, some have been conducted on juveniles (Terry, 1967; Arnold, 1971; Scarpitti and Stephenson, 1971; Thornberry, 1973; Wellford, 1975; Thomas and Cage, 1977; Cohen and Kluegel, 1978).

⁴ While the extent to which female defendants may be treated differently from male defendants is by no means clear, the most common view is that females are treated more leniently than are males (Spohn *et al.*, 1981). In analyzing our Metro City data, we found that black females, who comprised the bulk of females, were treated significantly more leniently than black males

2) Use of a relatively small number of offenses (Cook, 1973; Tiffany *et al.*, 1975; Clarke and Koch, 1976). No particular offenses are so “typical” that just one or two or three or four of them can be analyzed to ascertain the existence of a pattern of discrimination.⁵ Certainly draft evasion (Cook, 1973) is not necessarily generalizable to other crimes;⁶ neither are auto theft, bank robbery, and forgery (Tiffany *et al.*, 1975).

3) Use of inadequate controls for relevant “legal” and “extra-legal” variables. Some researchers failed to control adequately for the seriousness of the charge when they collapsed disparate offenses into broad categories (Baab and Furgeson, 1967; Burke and Turk, 1975; Pope, 1975; Gibson, 1978). Collapsing offenses into categories of “violent crimes,” “theft crimes,” or “vice crimes” (Burke and Turk, 1975) does not adequately control for the seriousness of the charge. Collapsing offenses into categories based upon some statutory classification, when the result is a single category encompassing driving while intoxicated, auto theft, rape, and murder (Baab and Furgeson, 1967), also does not adequately control for the seriousness of the charge. Some researchers failed to control for prior criminal record (Uhlman, 1977), and some failed to control for such extra-legal variables as type of attorney or pretrial bail status (Pope, 1975; Levin, 1977; Gibson, 1978).

4) Use of one sentence decision rather than two. The sentence is actually a product of two decisions—the decision whether to incarcerate and the decision on length of sentence. These are separate decisions based upon different criteria; the seriousness of the prior criminal record may be the best predictor of the decision to incarcerate, while the seriousness of the charge may be the best predictor of length of sentence (Sutton, 1978a). Consequently, it is necessary to analyze the two decisions separately in order to avoid masking discrimination which may exist (Nagel, 1969). Very few recent studies have done this (but see Eisenstein and Jacob, 1977; Levin, 1977; Sutton, 1978a; 1978b).

(though, interestingly, not more leniently than white males). Thus, if we had included females in this study on the effect of race on sentencing, we would have drawn misleading conclusions regarding the effect of race (Spohn *et al.*, 1981).

⁵ This is illustrated by a study which found evidence of discrimination for four offense categories but not for 23 other categories (Engle, 1971).

⁶ Of course, the analysis of only one crime can illustrate something useful regarding the treatment of defendants charged with that crime. See, for example, Hagan and Bernstein (1979).

5) Use of an inadequate measure of sentence severity. Most researchers employed a scale to measure severity. Some of these scales do not distinguish sufficiently between degrees of severity (Bernstein *et al.*, 1977; Lotz and Hewitt, 1977; Lizotte, 1978). The range is quite wide, but certainly a scale which has three categories of fines, one category of probation, and just one category of incarceration (Bernstein *et al.*, 1977) does not make fine enough distinctions between degrees of severity.

6) Use of inadequate statistical techniques. Some researchers did not use adequate multivariate analysis or tests of significance (Greenwood *et al.*, 1973; Chiricos and Waldo, 1975; Clarke and Koch, 1976; Levin, 1977). Failure to control for other factors influencing sentence may allow spurious relationships between race and sentence to be interpreted as valid ones.

The findings of prior studies, even recent ones, are contradictory and often inconclusive because of the methodological problems we have noted. The findings of these studies are not necessarily invalid, but additional research on this unsettled question is needed.

II. THE STUDY

Our study of the relationship between race and sentencing replicates and elaborates upon the research conducted by Uhlman (1977), who concluded that there seemed to be evidence of racial discrimination in "Metro City." His study was one of the most sophisticated yet done in its use of an appropriate scale to measure sentence severity and in its use of path analysis. However, it had two serious defects. One, which Uhlman himself pointed out, was its failure to control for prior criminal record; this information was not available to him.⁷ Another, in our judgment, was its failure to divide sentencing into two decisions and analyze them separately.

We examine the sentences imposed on 2,366⁸ black and white defendants in Metro City. Although we analyze data from the same city studied by Uhlman, we expect that our findings, unlike his, will show no direct relationship between

⁷ Because of this missing data, Uhlman qualified his conclusion by noting that this information might have led him to an opposite conclusion. The qualification was prompted by his finding that there was no significant racial disparity in convicting where prior record should not have been a relevant factor, but that there was a significant disparity in sentencing where prior record presumably would have been a relevant factor.

⁸ There were 1,939 black defendants, 427 white defendants.

race and sentencing once we control for the seriousness of the charge and prior criminal record. Accordingly, we hypothesize that we will find no direct racial discrimination either in the decision to impose a more or less severe sentence or in the decision to incarcerate.

The Data

The data for this project were drawn from a file of nearly 50,000 felony cases heard between 1968 and 1979 in Metro City, a city in the Northeast which is one of the largest cities in the United States.⁹ The initial data file consisted of a stratified random sample of all felony cases disposed of during this time period.¹⁰ From this sample we selected those cases where the "maximum charge"¹¹ was one of the 14 most common offenses appearing in the sample: murder, manslaughter, rape, robbery, assault, minor assault, burglary, auto theft, embezzlement, receiving stolen property, forgery, sex offenses other than rape, drug possession, and driving while intoxicated. We then eliminated cases where all charges were dismissed.

Our master data file included information on the race and sex of the defendant; the charges against the defendant; and, for each charge, the type of plea entered, whether or not the defendant was convicted, and, when the defendant was convicted, the sentence imposed. Information on the amount of bail set and whether or not the defendant made bail also was included in this data file. Data on the prior criminal record of the defendant and on the type of attorney representing the defendant were not included in the master data file, but instead were contained in a separate file. Due to the difficulty and expense of adding this information to the master file for all defendants, we randomly selected over 4,000 defendants for whom to code this information.¹² After eliminating defendants who were not convicted, and thus not sentenced, and

⁹ We had to guarantee anonymity for the city in order to get access to the data.

¹⁰ One in five cases heard by male judges were included as part of the sample; all cases heard by female judges were included. An earlier study found no significant differences in the treatment of male defendants by male and female judges (Gruhl *et al.*, 1981).

¹¹ Operationalizing the "maximum charge" was not an entirely simple process. The following were our procedures. First, if the person was convicted on at least one charge, the maximum charge was the charge for which he was given the maximum sentence. Second, for those cases where there was a "tie," that is, where two or more charges yielded the same sentence, the maximum charge was selected at random among the charges for which there was a tie.

¹² The difficulty was due principally to the fact that in one file the case was the unit of analysis, while in the other file the individual was the unit of analysis. Thus, in order to add information on prior criminal record and type of

defendants for whom there was missing data on one or more variables, we had a base of about 2,700 cases. To eliminate one possible source of variation, we then dropped all cases with female defendants. This left us with 2,366 cases.

The Variables

Two dependent variables measuring sentence severity were used in the analysis. The first measures sentence severity on a 93-point scale which ranges from a suspended sentence at one end to life imprisonment at the other.¹³ The second measures sentence severity by focusing on the decision to incarcerate or not; this decision is measured by a dichotomous prison/no prison variable. This variable reflects the important distinction between sanctions involving suspended sentences, fines, or probation, on the one hand, and those involving prison terms, on the other hand.

Eight independent variables were employed: the defendant's race, charge, prior criminal record, type of attorney, type of plea, evidence of charge reduction, bail amount, and pretrial bail status. The prior criminal record variable was chosen from 13 separate measures of prior record for each defendant.¹⁴ The measure of prior record selected—the number of times the defendant had been sentenced to prison for more than one year—was the one that had the strongest relationship with the sentence given for the current charge, controlling for type of crime. The dependent and independent variables and their codes are summarized in Table 1.

The Analysis

Our analysis includes correlation, regression, and path analysis. Path analysis, based on multiple regression, allows one to examine both the direct and indirect effects of an

attorney to the master file, it had to be hand coded, keypunched, and then merged.

¹³ Obviously, this is another scale that is not really interval, even though we will treat it as such in the following analysis. Our rationale is that not only has it (and variants thereof) been used before (Cook, 1973; Uhlman, 1977), but that, while not truly interval, it does measure a wide range of sentencing severity, and the sentences given in the cases in our sample did array themselves along the full range of the scale. For our sample the mean sentence was 30.9, and the standard deviation was 17.7.

¹⁴ The raw measures of prior criminal record included: number of arrests, number of felony arrests, number of convictions, number of felony convictions, number of times sentenced to prison, and the number of times sentenced to prison for over one year. From this raw data, we also created various scales and dummy variables, the total of which was 13.

Table 1. Independent and Dependent Variables Included in the Study

Variable	Description	Code
Defendant Race	Whether the defendant was black or white; persons of other racial groups were eliminated from the analysis	1 = black 0 = white
Charge	14 felonies were included (see text)	Dummy variables were used to measure the charges
Prior Criminal Record	The number of times the defendant had been sentenced to prison for more than one year	A number ranging from 0 to 9
Type of Attorney	Representation by either a private attorney or a public defender	1 = private attorney 0 = public defender
Type of Plea	Plea of guilty or not guilty	1 = guilty plea 0 = no guilty plea
Evidence of Charge Reduction	Sentencing on either the most serious charge or a lesser charge	1 = sentencing on lesser charge 0 = sentencing on most serious charge
Bail Amount	Amount of bail requirement in dollars	Dollar amount
Pretrial Bail Status	Released or detained prior to trial	1 = pretrial release 0 = pretrial detention
Sentence Severity	The severity of the sentence imposed on the defendant	Measured by a 93-point scale
Prison/No Prison	Whether or not the defendant was sentenced to prison	1 = sentenced to prison 0 = not sentenced to prison

independent variable on a dependent variable. Thus, for example, we can analyze not only the direct effects of race on sentence controlling for other factors, as we could with multiple regression, but also the indirect effects of race on sentence resulting from the effect of race on other factors related to sentencing (see Asher, 1976, for a good discussion of path analysis). In this path analysis, the impact of our group of dummy variables measuring type of charge was handled through the block variable approach suggested by Heise (1972).¹⁵

¹⁵ We used dummy variables, rather than an ordinal scale, to measure the seriousness of the charge because of the difficulty in adequately measuring it

Because of precautions taken in the design and execution of this study, we believe we have been able to avoid the most troublesome methodological problems of previous studies. Our study includes a large number of cases and a large number of offenses. It controls for relevant legal and extra-legal variables.¹⁶ It examines two sentence decisions—the decision to impose a more or less severe sentence and the decision to incarcerate or not. It uses a 93-point scale to distinguish between more or less severe sentences, and it employs path analysis.

III. FINDINGS

Data from Metro City reveal consistent differences between black and white male defendants on both the dependent and the independent variables utilized in this study. Table 2, which presents the zero-order correlations between the variables, shows an absolute disparity in the sentences imposed on black and white defendants. Black males receive harsher sentences than white males; more specifically, they are more likely than whites to receive prison terms. These black and white defendants also differ in terms of legal factors (prior criminal record and charge) and extra-legal factors (type of attorney, charge reduction, bail amount, pretrial status). Blacks have more serious criminal records and are charged with more serious crimes. They also are more likely than whites to be represented by a public defender, to engage in plea bargaining, to have high bail set, and to be detained prior to trial.

These findings are in accord with previous research. They also indicate the plausibility of the earlier noted explanations of racial disparities in sentencing. Blacks may receive harsher sentences than whites 1) because of racial discrimination within the criminal justice system, 2) because of wealth discrimination, or indirect racial discrimination, resulting from their inability to obtain a private attorney or pretrial release, or 3) because they are charged with more serious crimes and have more serious criminal records.

with an ordinal scale. Dummy variables explained substantially more variation in the dependent variables than the ordinal scale did, thus ensuring a better control for charge.

¹⁶ While we do not measure the defendant's socioeconomic status directly, we do measure it indirectly. The type of attorney representing the defendant and whether or not the defendant made bail are surrogate measures of social status.

Table 2. Matrix of Intercorrelations

	Sentence Severity	Prison/No Prison	Race	Prior Record	Charge	Type of Attorney	Type of Plea	Charge Reduction	Bail Amount	Pretrial Status
Sentence Severity	—									
Prison/No Prison	.79 ^a	—								
Race	.09	.14	—							
Prior Record	.07	.14	.12	—						
Charge	.58	.54	.17	-.25	—					
Type of Attorney	.20	.13	-.12	-.06	.31	—				
Type of Plea	-.09	-.12	.00	-.01	.20	-.02	—			
Charge Reduction	-.12	-.14	-.06	.01	.72	-.03	.01	—		
Bail Amount	.23	.22	.04	.08	.27	.08	.00	.06	—	
Pretrial Status	-.22	-.32	-.17	-.25	.31	.12	.03	.05	-.18	—

^aAll correlations are Pearson's *r* except with charge variable, whose correlations are Multiple R. Coding: See Table 1.

Race and Sentence Severity

We expected to find no direct relationship between race and sentence severity, as measured by the 93-point sentence scale, once we controlled for the charge against the defendant and the defendant's prior criminal record. The data presented in Table 3 and in Figure 1 confirm this hypothesis.

Table 3. Relationship of Race to Sentence Severity with Various Controls^a

	Sentence
No controls	.092*
Control for charge	.025*
Controls for charge and prior record	.017
Controls for charge, prior record, and extra-legal factors ^b	.009

^aThe measure of the bivariate relationship between race and sentence is Pearson's *r*. All of the other measures are betas.

^bThe extra-legal factors include type of attorney, type of plea, charge reduction, pretrial bail status, and bail amount.

**s* ≤ .05

As shown in Table 3, the bivariate relationship between race and sentence severity (Pearson's *r* = .092) is statistically significant. Controlling the seriousness of the charge against the defendant reduces the correlation substantially (beta = .025), but the relationship between the two variables is still significant. Adding a control for the seriousness of the defendant's prior criminal record, however, further reduces the correlation (beta = .017) to the point where the relationship between race and sentence severity no longer is significant.¹⁷

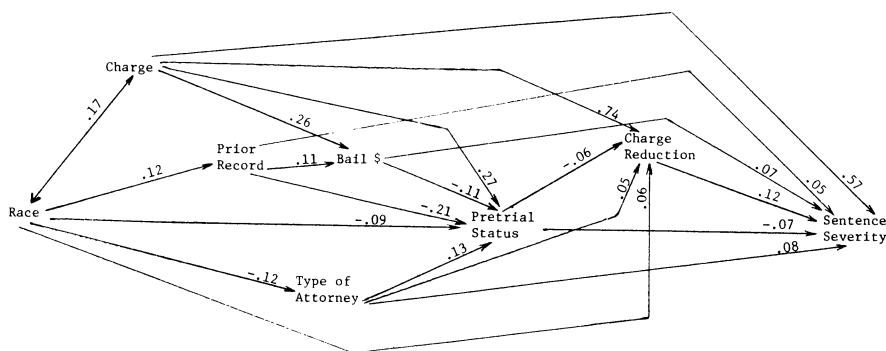
These findings illustrate the importance of the legal factors, including prior criminal record, in explaining sentence severity. Merely controlling for the seriousness of the charge against the defendant, without taking into account the seriousness of the defendant's prior criminal record, might lead one to conclude, incorrectly, that racial disparities in sentencing are due to

¹⁷ In this study, controlling for prior record did not lead to a large reduction in the correlation between race and sentence severity. However, since we controlled for the type of charge first, the correlation between the two variables (.025) was not large before we controlled for prior record. Given this, we would not expect a large reduction. Nevertheless, controlling for prior record did reduce the correlation by about one-fourth and did reduce it to the point where it is no longer significant.

racial discrimination. Instead, it appears that these disparities can be attributed to racial differences in the seriousness of the charges against the defendants and to racial differences in the seriousness of the defendants' prior criminal records.

Our hypothesis was tested further using path analysis. We defined and operationalized a causal model that would allow us to explore the direct and indirect influences of race on sentence severity. We began with a fully defined model, one in which all of the relevant paths linking race to sentence were identified and all of the correlations were calculated. We then eliminated paths which were not significant ($p \leq .01$).¹⁸ The reduced model is presented in Figure 1.

Figure 1. The Impact of Race and Other Variables on Sentence Severity^a



$$R^2 = .37$$

$$R = .61$$

^aAll paths significant at .01

The data presented in Figure 1 substantiate the lack of direct racial discrimination in determining sentence severity in Metro City. After removing the effects of the six other independent variables, no direct path remains between race and sentence. Judges in Metro City apparently do not take the defendant's race into consideration when determining sentence severity.

From this alone, however, we cannot conclude that race has *no* effect on sentence severity. As Figure 1 clearly reveals, there are a number of significant indirect relationships between these variables. The most important compound paths,

¹⁸ For the sake of parsimony in presentation, we used $s = .01$ rather than $s = .05$ in reducing our path model. Using the less stringent test of statistical significance results in only minor changes; the main one was the elimination of a weak path from type of plea to charge reduction.

measured by the percent of the total variance in sentence severity explained by the path, are those from race to the legal factors to sentence. After controlling for all other factors included in the model, we still find that blacks' harsher sentences can be attributed, first and foremost, to the fact that they are charged with more serious crimes and have more serious prior criminal records. But Figure 1 also reveals that race affects sentence length in other, less explicable, ways. There are a number of indirect paths from race to extra-legal factors to sentence. Although these paths clearly are less important than those involving the legal factors, they nonetheless are statistically significant. While space limitations prohibit analyzing each of these paths, the nature of the relationships can be illustrated by examining the two most significant of them:

- Black males are less likely than white males to be released prior to trial and thus receive harsher sentences than whites.
- Black males are less likely than white males to be represented by private attorneys, who are more likely than public defenders to get their clients released prior to trial. Because they are less likely than whites to be released, blacks receive harsher sentences.

These findings are a further indication of indirect racial discrimination in Metro City. A defendant's socioeconomic status influences, at least to a moderate degree, the sanction imposed. Defendants who cannot obtain a private attorney or pretrial release receive slightly harsher sentences than those who can.

To put our findings thus far in perspective, we again emphasize that race has no direct effect on sentence severity in Metro City. Rather, black males receive harsher sentences than white males primarily because of legal factors¹⁹ but secondarily because of extra-legal factors.

Race and the Decision to Incarcerate

In addition to exploring the relative severity of sentences imposed on black and white male defendants, we also examined the frequency with which defendants of each race were sentenced to prison. For most defendants this is probably the critical decision. As Uhlman (1977: 22) has noted, "Qualitatively, there is almost an incalculable jump between nonprison sanctions . . . and a jail term."

In accord with our first hypothesis, we expected to find no direct relationship between race and the decision to incarcerate

¹⁹ For a discussion of whether recourse to nonlegal factors is more or less "justified," see Farrell and Swigert (1978).

once we controlled for the seriousness of the crime and prior record. But as shown in Table 4 and Figure 2, this hypothesis was not confirmed. A statistically significant relationship between race and incarceration remains after controlling for both legal and extra-legal factors. After entering all controls in the regression equation, the b-value is .048, indicating that black males are incarcerated about five percent more often than white males. Twenty-nine percent of convicted blacks, but only 24 percent of convicted whites, were sent to prison. Thus, black defendants are 20 percent more likely than white defendants to be incarcerated.²⁰

Table 4. Relationship of Race to Incarceration with Various Controls^a

	Prison/No Prison
No controls	.144*
Control for charge	.074*
Controls for charge and prior record	.061*
Controls for charge, prior record, and extra-legal factors	.042* ^b

^aThe measure of the bivariate relationship between race and incarceration is Pearson's *r*. All of the other measures are betas.

^bThe *b* here is .048 (*se* = .020), which means that blacks are incarcerated about five percent more than whites.

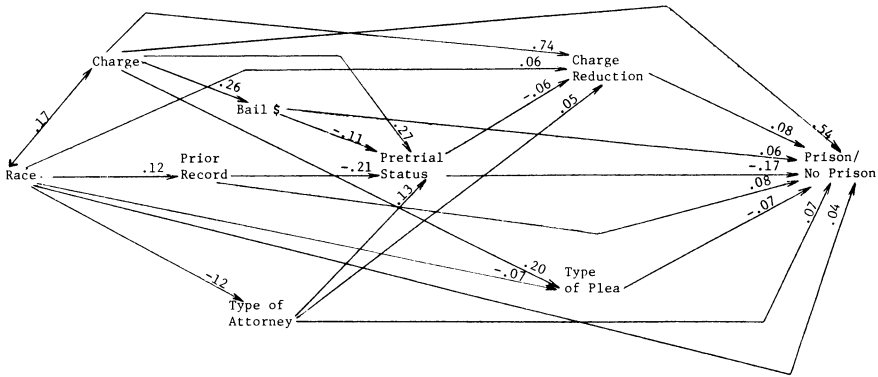
**s* ≤ .05

That judges do discriminate against black males in deciding whether or not to sentence defendants to prison is confirmed further by the causal model presented in Figure 2. We should point out, however, that the direct path from race to incarceration is not as predictive as the indirect path from race to charge to incarceration. The correlation of the indirect path, obtained by multiplying the individual coefficients that comprise the path (Asher, 1976), is .09, while the correlation of the direct path is only .04. Thus, black males receive prison sentences more often than white males because they are charged with more serious crimes *and* because they are black.

Since both dependent variables are based on the same sentence severity scale, it might seem inconsistent that the first hypothesis was confirmed but the second hypothesis was not. The data presented in Table 5, however, reconcile this seeming inconsistency.

²⁰ The difference between 29 and 24 is 5, and 5 is about 20 percent of 24. Defendants with an incarceration rate of 29 percent have about a 20 percent greater likelihood of being sent to prison than defendants with an incarceration rate of 24 percent.

Figure 2. The Impact of Race and Other Variables on the Decision to Incarcerate^a



^aAll paths significant at .01

R² = .35
R = .59

Table 5. Comparison of the Effect of Race on Sentence Severity Among Defendants not Incarcerated, Incarcerated^a

	Not Incarcerated	Incarcerated
Pearson's r	-.10	.07
beta	-.05	-.02
b	-.82	-1.31
s.e.	.41	2.18
F	4.08*	0.36
N	1767	599

^aAll of the legal and extra-legal factors were controlled for in calculation of the beta, b, and standard error.

*s ≤ .05

We divided all defendants into two groups—those not sentenced to prison and those sentenced to prison—and, controlling for the legal and extra-legal factors, compared the severity of sentences imposed on defendants of each race within each group. We found that within each group blacks received *lighter* sentences than whites and that the differences between the races were statistically significant in the “not incarcerated” group.

Thus, while black males *are* more likely than white males to receive prison terms, those who do are, as a group, given lighter sentences than their white counterparts. We interpreted this to mean that in “borderline cases”—cases where the judge could either decide to impose a lengthy (eight to nine years) probation sentence or a short (one to two years) prison sentence—the judge selected the probation option for whites more than blacks, the prison option for blacks more than whites. Consequently, more whites than blacks are found at the upper end of the “not incarcerated” category, while more blacks than whites are found at the lower end of the “incarcerated” category. Our findings, therefore, are not inconsistent. The way in which black and white male defendants were distributed along the 93-point sentence scale, and the comparison of defendants across the entire continuum, tended to mask important differences.

IV. CONCLUSION

We expected to find no direct relationship between race and sentence severity once we controlled for the seriousness of the charge and prior criminal record. Accordingly, we hypothesized that we would find no direct racial discrimination either in the decision to impose a more or less severe sentence, or in the decision to incarcerate.

Our first hypothesis was confirmed. Black males did receive harsher sentences than white males, but this disparity was due primarily to the fact that blacks were charged with more serious offenses and had more serious prior criminal records. We found no statistical evidence of direct racial discrimination in determining sentence severity. We did, however, find some evidence of wealth discrimination. Defendants who could not obtain a private attorney or pretrial release received harsher sentences than those who could.²¹ Since blacks are more likely than whites to be poor, this type of discrimination affects blacks more than whites. It can, therefore, be seen as a possible source of indirect racial discrimination.

Our second hypothesis was not confirmed. Even after controlling for both legal and extra-legal factors, black males still were sentenced to prison five percent more often than white males, resulting in a 20 percent higher rate (see note 20).

²¹ Income statistics by race show that in 1972, for example, black family income averaged \$4400 per year less than white family income (U.S. Bureau of the Census, 1975).

Race by itself accounted for four percent of the variation in this sentencing decision. Thus, judges in Metro City apparently do discriminate against black males in deciding between incarceration and lengthy probation. White males are more likely to receive probation, black males a short prison term. This is consistent with the findings of Nagel (1969), Pope (1975), Levin (1977), and Unnever *et al.* (1980), all of whom concluded that blacks were less likely than whites to receive probation. These earlier findings, then, hold up even when given a more rigorous test.

One might question whether a five percent difference between blacks and whites in the rate of incarceration is substantively significant. As we noted earlier, however, this five percent difference means that blacks are 20 percent more likely than whites to be incarcerated. We have been so sensitized to racial discrimination that the absence of a glaring disparity may seem trivial (cf. Hagan, 1974). But as Nagel (1977: 189) has pointed out, the relationship between race and sentence severity should not be treated “as if it were just another statistical relationship like the relation between the religion of voters and whether they vote Democratic or Republican.” Even though race accounts for “only” four percent of the variation in our study in the decision to incarcerate, the tremendous difference between being confined and being free makes it a difference which is both “substantial and disturbing” (Nagel, 1977: 194). Our study examined only the most visible aspect of the criminal justice process. It says nothing about the well-documented and pervasive discrimination elsewhere in the process—the police officer’s decision to arrest, the prosecutor’s decision to charge, the judge’s or jury’s decision to convict, and the parole board’s decision to grant parole (cf. Black, 1974).

We think that our findings are an advance over previous work on race and sentencing. The large number of cases and offenses, controls for relevant legal and extra-legal factors, the division of the sentencing decision, and the use of multivariate analysis, have contributed to somewhat more refined conclusions about the influence of race on sentencing. But our study also has its limitations. It only examined sentences imposed on male offenders in one large city in the Northeast. And there is other evidence that the patterns found here might not apply to females (Spohn *et al.*, 1981; also see Kruttschnitt, 1980). In short, our findings support, but certainly do not prove, the existence of racial discrimination in sentencing.

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