

THE SENTENCING DECISIONS OF BLACK AND WHITE JUDGES: EXPECTED AND UNEXPECTED SIMILARITIES

CASSIA SPOHN

Those who champion the representation of blacks on the bench argue that black judges may make a difference. Indeed, some suggest that increasing the proportion of black judges might result in more equitable treatment of black and white defendants. In this study we test these expectations. Using data on defendants charged with violent felonies, we compare the sentencing decisions of black and white judges in Detroit. We find remarkable similarities and conclude that judicial race has relatively little predictive power. More important, we find that both black and white judge sentence black offenders more severely than white offenders. Our results raise questions about the appropriate interpretation of racial disparity in incarceration rates and suggest that the harsher treatment of black offenders cannot be attributed to the racism of white judges.

The vast majority of state and federal judges in the United States have been white males. Robert Morris became the nation's first black judge when he was appointed to Boston's Magistrate Court in 1852. Over the next century, progress in recruiting blacks to the judiciary was slow, with only a handful of blacks presiding over state or federal courts (Smith, 1983). As the civil rights movement lobbied for increased representation of blacks on the bench, however, more were appointed or elected at both the state and federal levels. By 1989 there were nearly five hundred black judges nationwide.

With the increase in the number of blacks on the bench, it has now become possible to compare their decisions with those of white judges. The study reported here examines the sentencing decisions of black and white judges in Detroit for systematic differences in the treatment of felony defendants.

This research was supported by a Summer Research Fellowship from the National Institute of Justice. The data, made available by the Inter-University Consortium for Political and Social Research, were originally collected by Colin Loftin and Milton Heumann for their study of "Firearms Violence and the Michigan Felony Firearm Law: Detroit, 1976-1978." Neither they nor the Consortium bear any responsibility for the analyses or interpretations presented here.

LAW & SOCIETY REVIEW, Volume 24, Number 5 (1990)

PREVIOUS RESEARCH

Those who champion the representation of blacks on the bench argue that black judges can make a difference. While some believe racial minorities should hold office in rough proportion to their population simply for reasons of "fair play," others contend that their election or appointment to the bench may bring about significant policy changes. Goldman (1979: 494), for example, has suggested that minorities will bring to the court "a certain sensitivity—indeed, certain qualities of heart and mind—that may be particularly helpful in dealing with [issues of racial and sexual discrimination]." Noting that blacks tend to view themselves as liberal rather than conservative, Welch and her colleagues (1988: 127) speculate that black judges might be "more sympathetic to criminal defendants than white judges are, since liberal views are associated with support for the underdog and the poor, which defendants disproportionately are."

These assertions reflect the view that black public officials provide substantive as well as symbolic representation (Pitkin, 1972). This view holds that blacks have different policy preferences and priorities than whites; consequently, their election or appointment to public office may produce policy changes. Some (Crockett, 1984; Welch *et al.*, 1988) suggest that greater judicial representation of blacks might reduce racism in the criminal justice system. More to the point, they suggest that increasing the proportion of black judges will result in more equitable treatment of black and white defendants.

A number of recent studies have found that black defendants are sentenced more severely than white defendants (for reviews see Hagan and Bumiller, 1983; Kleck, 1981; Spohn *et al.*, 1981–82; Zatz, 1987). If this pattern comes about because white judges discriminate against black defendants, while black judges treat black and white defendants alike, then black judges can play more than a symbolic role on the bench.

Decisionmaking by Federal Court Judges

Researchers who have compared the decisions of black and white judges have reached contradictory conclusions. Two studies examined the consequences of the affirmative action policies of President Carter, who appointed a record number of blacks and women to the federal bench. Walker and Barrow (1985) compared decisions handed down by Carter's black and white federal district court judges. They found no significant differences in decisions in criminal cases or in four other types of cases, which led them to speculate that black judges do not view themselves as advocates for the disadvantaged or see themselves as especially sympathetic to the policy goals of minorities. They conclude that Carter's appointment of increased numbers of black judges "had, at best, only

a marginal impact on the policy making patterns of the district courts" (Walker and Barrow, 1985: 608).

In contrast, Gottschall (1983) did find differences in the decisionmaking behavior of black and white judges appointed to the U.S. Courts of Appeals. He analyzed appellate court decisions in terms of "attitudinal liberalism"—that is, in terms of votes cast in favor of the claims of criminal defendants or prisoners, racial minorities, and women. He found that the judge's race had a "dramatic impact" (*ibid.*, p. 172) on voting in cases involving the rights of the accused; black judges handed down much more liberal decisions than did white judges. Black judges also were more likely to vote in favor of the claimant in sex discrimination cases. Surprisingly, there were no differences in race discrimination cases.

Decisionmaking by State Court Judges

Research analyzing the sentencing decisions of black and white judges assigned to state trial courts also has yielded somewhat mixed results. Most researchers have uncovered few differences and have concluded that judicial race has limited predictive power. Engle (1971) analyzed Philadelphia judges' sentencing decisions and found that although the judge's race was a statistically significant variable in explaining the variance in these decisions, nine other variables were better predictors. Engle concluded that the judge's race exerted "a very minor influence" (*ibid.*, pp. 226–27). Uhlman (1978) analyzed "Metro City" judges' convicting and sentencing decisions and found that the judge's race was a significant predictor of both decisions, even when the defendant's race was taken into account. However, the association between race and these decisions was not strong. Like Engle, Uhlman concluded there were no important differences between black and white judges. Finally, Spohn (1990) compared decisionmaking in sexual assault cases by black and white judges assigned to Detroit Recorder's Court. She found that black judges convicted and incarcerated defendants at about the same rate as did white judges; they also imposed similar sentences.

Welch *et al.* (1988), on the other hand, found some differences in the sentencing decisions of black and white judges. They found that black judges in "Metro City" were more likely than white judges to send white defendants to prison. Further analysis led them to conclude that this difference reflected black judges' tendency to treat black and white defendants alike and white judges' tendency to treat black defendants more harshly than white defendants. They also found, however, that black judges, but not white judges, favored defendants of their own race when determining the length of the sentence.

The Indirect Effect of Judicial Race

Although few studies of judicial decisionmaking reveal important differences between black and white judges, some research suggests that earlier studies did not examine sentencing decisions with sufficient scrutiny, and thus may have missed more indirect, subtle racial effects. Myers (1988) was unable to examine the effect of the judge's race, but she did analyze the impact of four other judicial background characteristics—age, religion, prosecutorial experience, and local background. She found that although these characteristics had few direct effects on sentencing outcomes, a number of significant interactions emerged between judicial background characteristics and offense and case attributes. Older judges, for example, imposed more lenient sentences on white offenders and on offenders convicted of burglary; judges who had been former prosecutors were more likely than those who had not been prosecutors to incarcerate female offenders and violent offenders.

Considered together, these findings suggest the need to untangle the direct and indirect effects of the judge's race on sentencing. This study compares sentences imposed by black and white trial court judges in Detroit, Michigan. We examine the effect of the judge's race on sentences imposed on all defendants and on various subgroups of defendants. While we are particularly interested in testing the assumption that black judges will be less likely than white judges to discriminate against black defendants, we also test for interactions between judicial race and defendant characteristics. On the basis of past research which shows that judicial race has little predictive power, we expect to uncover few significant differences between black and white judges.

RESEARCH DESIGN AND METHODS

One problem encountered in designing a study analyzing the effect of race on judicial decisionmaking is the scarcity of black trial court judges. To control for such factors as differences in legal definitions of crimes, differences in sentencing guidelines, differences in state appellate court rulings, and differences in local legal norms and practices, one must compare decisions handed down by judges in the *same* jurisdiction. Although very few jurisdictions in the country have more than one or two black judges, the Detroit Recorder's Court has had a substantial number of black judges on the bench for some time. Of the judges on the bench from 1976 through 1978 (the period covered by this study), thirteen were black and twenty-five were white.

Data

The data for this study were collected by Colin Loftin and Milton Heumann (see Heumann and Loftin, 1979; Loftin *et al.*, 1983) for their analysis of the impact of the Michigan Felony Firearm Law on the processing of defendants in Detroit Recorder's Court. The sample¹ includes all defendants who were originally charged with at least one of eleven violent felonies² during 1976, 1977, and 1978. The data file includes detailed information on the characteristics of defendants and the processing of their cases. For a subset of the sample,³ the data file also includes information on the race, age, and gender of the victim.

The Loftin-Heumann data file included information on 8,414 defendants. Since we were interested in judges' sentencing decisions, we eliminated cases in which all charges were dismissed or in which the defendant was acquitted of all charges ($N=3,283$).⁴ Since we intended to compare the sentences handed down by black and white judges and the sentences imposed on black and white offenders, we also eliminated cases in which the race of either the sentencing judge or the offender could not be determined. This left 4,710 cases.

Dependent Variables

Judges must make two distinct and somewhat independent sentencing decisions. They must first decide whether to incarcerate the offender. Once this decision has been made, they then must determine the length of the prison sentence. Research has demonstrated that these decisions are empirically distinct; that is, different variables, or different sets of variables, are associated with each decision (Spohn *et al.*, 1981–82; Sutton, 1978). Research

¹ The original data file included *all* defendants charged with one of eleven violent felonies during 1976, 1977, and 1978. Since we eliminated cases with missing data on race for the judge and the defendant, we refer to the remaining cases as a sample of cases.

² The eleven felonies are first degree murder, second degree murder, manslaughter, criminal sexual conduct (first degree), criminal sexual conduct (second degree), criminal sexual conduct (third degree), armed robbery, assault with intent to commit murder, assault with intent to commit great bodily harm, assault with intent to rob and steal (armed), and felonious assault.

³ Information on the victim's age, race, and gender was not collected for all (mainly 1976) cases. This portion of the analysis, therefore, may not be representative of all defendants processed during the study period.

⁴ Multivariate analyses revealed that defendant race did not have a statistically significant effect on dismissals ($MLE = .05$; $SE = .04$; $MLE/SE = 1.41$) or convictions ($MLE = -.14$; $SE = .33$; $MLE/SE = -.42$). Similarly, probit analysis of the decision to convict or not revealed that the judge's race was not a significant predictor of that decision ($MLE = -.08$; $SE = .05$; $MLE/SE = -1.40$).

The data file did not identify the judge who dismissed the case.) These results suggest that certain types of cases (i.e., cases with black defendants, cases with white defendants, or cases decided by black or white judges) were not systematically excluded from the sentencing sample.

Table 1. Dependent and Independent Variables: Codes and Frequencies

| Variable | Code | N | Percent |
|---|------------------------|----------------|--------------|
| Sentenced to prison | 0 = no 1 = yes | 1,273 3,437 | 27.0 73.0 |
| Minimum expected sentence | Sentence in days | Mean = 1,455 | |
| Race of judge | 0 = white 1 = black | 2,891 1,819 | 61.4 38.6 |
| Race of offender | 0 = white 1 = black | 736 3,974 | 15.6 84.4 |
| Race of judge/race of offender | | | |
| White judge/white offender | | 486 | 10.3 |
| White judge/black offender | | 2,405 | 51.1 |
| Black judge/white offender | | 250 | 5.3 |
| Black judge/black offender | | 1,569 | 33.3 |
| Gender of offender | 0 = female 1 = male | 351 4,359 | 7.5 92.5 |
| Age of offender | Age in years | Mean = 26.5 | |
| Prior felony convictions | 0 to 18 | Mean = .87 | |
| Most serious conviction charge ^a | | | |
| First degree murder | | 131 | 2.8 |
| Second degree murder | | 368 | 7.8 |
| Manslaughter | | 241 | 5.1 |
| Rape | | 348 | 7.4 |
| Other sex offenses | | 288 | 6.1 |
| Robbery | | 1,621 | 34.4 |
| Assault | | 1,130 | 24.0 |
| Other felony | | 578 | 12.3 |
| No. of conviction charges | 0 to 9 | Mean = 1.42 | |
| Gun present | 0 = no 1 = yes | 1,997 2,678 | 42.7 57.3 |
| Victim injured | 0 = no 1 = yes | 2,882 1,791 | 61.7 38.3 |
| Victim stranger | 0 = no 1 = yes | 1,930 2,627 | 42.4 57.6 |
| Private attorney | 0 = no 1 = yes | 3,319 1,320 | 71.5 28.5 |
| Type of disposition ^b | | | |
| Guilty plea | | 3,687 | 76.8 |
| Bench trial | | 436 | 9.3 |
| Jury trial | | 655 | 13.9 |
| Released prior to trial | 0 = no 1 = yes | 3,158 1,509 | 67.7 32.3 |

^aEight dummy variables: "other felony" is the omitted category.

^bThree dummy variables: "bench trial" is the omitted category.

also has shown that judges' background characteristics may have differential effects on the two sentencing outcomes (Myers, 1988; Welch *et al.*, 1988). Consequently, we analyze the two decisions separately.

We use a dichotomous dependent variable to measure whether the offender was sentenced to prison. As shown in Table 1, 72.7 percent of the offenders were incarcerated. Our second dependent variable, the expected minimum sentence (EMS), measures the amount of time (in days) an offender could expect to spend in confinement. For this part of the analysis, we included only offenders who were sentenced to prison; we excluded offenders who were given nonincarceration sentences.

The EMS, developed by Loftin and Heumann to “avoid problems posed by indeterminate sentencing, suspended sentences, good-time discounts, life sentences, and the like” (Loftin *et al.*, 1983: 290), requires some explanation. The measure reflects the minimum prison sentence imposed by the judge *minus* the maximum amount of good-time credit available to the offender.⁵ All life sentences and minimum sentences of more than ten years after applying the good-time discount were recorded as ten-year sentences; this is consistent with Michigan Department of Corrections policy which during the time of the study granted the parole board jurisdiction over cases after ten calendar years of imprisonment. As the authors note, the EMS “roughly corresponds to the expected length of sentence, but more precisely it is the length of time to first possible release” (*ibid.*, p. 291).

Control Variables

The focus of this article is the sentencing behavior of black and white trial court judges. Accordingly, in all of our analyses we controlled for the race of the judge. As shown in Table 1, black judges sentenced 1,819 offenders (1,569 black offenders and 250 white offenders) during the three years covered by the study; white judges sentenced 2,891 offenders (2,405 black offenders and 486 white offenders).

Since it is possible that racial differences in judicial decision-making might reflect differences in the types of cases assigned to black and white judges, we also controlled for variables which have been shown to affect judges’ sentencing decisions. We controlled for the offender’s gender, race, age, and number of prior felony convictions, and for the seriousness of the crime for which the offender was convicted. We took into account the most serious conviction charge,⁶ the number of conviction charges, whether the

⁵ Loftin and his colleagues (1983: 291) reported that in calculating good-time credit they used the same procedures as were used by the Michigan Department of Corrections. These procedures are defined in sec. 33, Act No. 118, as amended, sec. 800.33, Compiled Laws of 1948.

⁶ All defendants were originally charged with one of eleven violent felonies. Defendants were, however, convicted of a number of crimes in addition to these eleven felonies. We used eight dummy variables to measure the conviction charges. *First degree murder*, *second degree murder*, and *manslaughter* are self-explanatory. *Rape* includes first and third degree criminal sexual conduct (both of which require penetration). *Other sex offenses* includes second- and fourth-degree criminal sexual conduct (both of which involve only contact), assault with intent to rape, and attempted criminal sexual conduct for four degrees of severity. *Robbery* includes armed robbery, unarmed robbery (there were too few unarmed robbery cases to analyze separately), assault with intent to rob and attempted robbery). *Assault* includes assault and battery, aggravated assault, felonious assault, and attempted assaults. *Other felony* includes burglary, larceny and other theft offenses, drug offenses, and weapons offenses. We used these comprehensive categories rather than more refined categories because we intended to analyze various subgroups of the sample and we were concerned about the small number of cases in some of the subgroup/offense combinations. (We did analyze the incarceration rate for all

offender used a gun to commit the crime, whether the victim was injured, and whether the offender victimized a stranger rather than an acquaintance. Finally, we controlled for characteristics of the offender's case that might have influenced the severity of the sentence imposed by the judge: whether the offender was represented by a private attorney, the type of disposition in the case,⁷ and whether the offender was released pending trial. These variables, their codes, and their frequencies are displayed in Table 1.

Researchers also have suggested that sentencing decisions may be influenced by the race of the victim or, more specifically, by the racial composition of the victim-offender dyad. A number of recent studies (Baldus *et al.*, 1983; Bowers and Pierce, 1980; LaFree, 1989) have shown that blacks who victimize whites are treated more harshly, while blacks who victimize other blacks are treated less harshly. Given these findings, we wanted to compare the sentences imposed by black and white judges on the four victim-offender racial combinations. Unfortunately, information on the race of the victim was available for only some of the cases in the Loftin-Heumann data file; this portion of the analysis, then, is based on a subset of the total data file.

Analytic Procedures

We used probit analysis in examining the decision to sentence the offender to prison or not⁸ and ordinary least squares regression analysis to analyze the EMS, an interval-level measure. In analyzing the expected minimum sentence, we included a correction for sample selection bias (Berk, 1983; Berk and Ray, 1982). Sample selection bias results when some observations are systematically excluded from the sample being analyzed. Here offenders who were not sentenced to prison are excluded from the sentence-

offenders using fourteen dummy variables measuring charge seriousness. The coefficients for the other independent variables, including the race of the judge, were nearly identical.)

⁷ We created three dummy variables to measure the type of disposition in the case. *Plea* indicates if the defendant pled guilty or not; *bench* indicates if the defendant requested a bench trial or not; and *jury* indicates if the defendant requested a jury trial or not. In the multivariate analyses, *bench* is the omitted category. We used all three dispositions, rather than simply trials and guilty pleas, because of the case assignment system used in Detroit. Cases first go by blind draw to one of the floor executive judges, who are not known to be the harshest sentencers. Their role is to try to work out a plea agreement or to encourage a waiver trial, and they do not take any jury trials. If a plea or waiver trial is not agreed to with the floor executive judge, then the case goes by blind draw to one of the other judges. (The incarceration rates for each type of disposition are 70 percent for guilty pleas, 64 percent for bench trials, and 95 percent for jury trials.)

⁸ Probit parameters are estimated using a technique called maximum likelihood estimation (MLE), which generates parameter estimates that imply the highest probability of likelihood of having obtained the observed values (Aldrich and Nelson, 1984). The MLEs divided by their standard errors are similar to *z*-scores.

length sample. Incarcerated offenders, in other words, are a selected population from the population of all convicted offenders; they were sentenced to prison because they exceeded some threshold of “case seriousness.” This means that the expected minimum sentence “is a function not just of the usual linear combination of regressors (which suffices in the original population), but [of] a hazard rate capturing the impact of the selection equation” (Berk and Ray, 1982: 369).

We used the procedures outlined by Heckman (1974) and Berk (1983) to correct for this problem. We used probit analysis to estimate the likelihood that the offender would be sentenced to prison. For each case the probit model produced its predicted probability of exclusion from the sentence length sample—the hazard rate. The hazard rate was then included as a control in the regression equation for the expected minimum sentence.

We used a two-stage analytic strategy to test for the effect of the race of the judge. We first estimated the additive effects of the judge’s race on the two sentencing outcomes, controlling for the remaining independent variables. We performed this analysis for all offenders and then for various subgroups of offenders. We speculated that the effect of the judge’s race might be dependent upon the race of the offender, the gender of the offender, and the race of the victim and thus might be masked when all offenders were analyzed together. Accordingly, we performed separate analyses on black offenders and white offenders, on three of the four race-gender combinations,⁹ and on the four victim-offender racial combinations.

At the second stage of our analysis we tested for interactions between the judge’s race and the other independent variables. Using arguments advanced by Gibson (1978, 1980, 1983) and Myers (1988), we reasoned that the judge’s race might subtly affect sentences by “determining the weight judges assign to the criteria they use during sentencing” (Myers, 1988: 651). The effect of the judge’s race, in other words, might be indirect rather than direct; black judges might impose more severe or more lenient sentences than white judges only for certain types of defendants, certain types of crimes, or certain types of cases.

To examine the interaction between the judge’s race and the independent variables, we created interaction terms by multiplying the judge’s race by each independent variable (for similar analyses see LaFree, 1981; Myers, 1988; Myers and LaFree, 1982; Myers and Talarico, 1987). For each of the two dependent variables we then estimated two separate regression equations, one including all of the independent variables and the other including the independent variables and interaction terms. We then compared the R^2 s ob-

⁹ There were only thirty-six convicted white females, which precluded a separate analysis of this group.

tained in the two equations to see if the addition of the interaction terms produced a significant increase in the proportion of explained variance at the .005 level.¹⁰ If it did not, we could conclude that the judge's race did not influence the effect of the other independent variables on sentence severity.

If, on the other hand, inclusion of the interaction terms significantly increased the proportion of explained variance, we could conclude that the impact of the independent variable on sentence outcomes was affected by the judge's race. The source of this difference could then be determined by the presence of significant interaction terms. That is, a significant interaction term signals that the effect of the independent variable (e.g., the offender's gender) on the dependent variable (e.g., whether the offender was sentenced to prison or not) varies between black and white judges.

FINDINGS

Results of the Additive Analysis

We first estimated the additive effects of the judge's race on sentencing decisions, controlling for offender and case characteristics. These results, shown in Table 2, reveal that the judge's race had a slight but statistically significant effect on the decision to incarcerate or not. Black judges (coded 1) were less likely than white judges (coded 0) to sentence the offender to prison. In contrast, judicial race had no effect on the expected minimum sentence.

The results presented in Table 2 also reveal that the effect of judicial race, even where significant, was clearly overshadowed by the effect of the other independent variables. Judges' sentencing decisions are determined, first and foremost, by the seriousness of the crime committed by the offender and by the length of the offender's prior criminal record—factors of explicit legal relevance to the sentence. Not surprisingly, offenders convicted of a more serious charge or of a number of charges are punished more harshly, as are offenders who used a gun, injured the victim, or victimized a stranger.

Both sentencing decisions are also affected by a number of ex-

¹⁰ We used the procedures specified by Myers and Talarico (1987: 37) to test for the significance of the increment in explained variance. The formula used was:

$$F = \frac{(R^{2l} - R^{2a}) / (kl - ka)}{(1 - R^{2l}) / (N - kl - 1)}$$

where

R^{2l} = the proportion of variance explained by the interactive model,

R^{2a} = the proportion of variance explained by the additive model,

kl = the number of regressors in the interactive model,

ka = the number of regressors in the additive model,

N = the total number of cases.

Because the sample size was large, we used the .005 level of significance.

Table 2. Results of the Multivariate Analyses of Sentencing Decisions

| | Prison/No Prison | | | Expected Minimum Sentence | |
|---------------------------------------|------------------|------|-----------|---------------------------|-----------------|
| | MLE | SE | MLE/SE | <i>b</i> | <i>T</i> -Value |
| Race of judge (white=0; black=1) | -0.11 | .05 | -2.03* | -26.46 | -0.39 |
| <i>Offender/case characteristics</i> | | | | | |
| Gender of offender | 0.44 | .09 | 4.84*** | 292.04 | 2.15* |
| Race of offender | 0.26 | .07 | 3.88*** | 96.17 | 1.00 |
| Age of offender | -0.02 | .003 | -5.82*** | -13.61 | -3.34*** |
| Prior felony convictions | 0.23 | .03 | 8.55*** | 181.44 | 7.36*** |
| <i>Most serious conviction charge</i> | | | | | |
| First degree murder | 1.62 | .52 | 3.12** | 1,342.76 | 5.15*** |
| Second degree murder | 1.50 | .17 | 8.60*** | 1,427.75 | 6.86*** |
| Manslaughter | 0.58 | .13 | 4.44*** | 90.82 | 0.45 |
| Rape | 0.79 | .13 | 6.04*** | 667.75 | 3.46*** |
| Other sex offenses | 0.18 | .12 | 1.54 | 36.19 | 0.20 |
| Robbery | 1.12 | .09 | 12.53*** | 471.75 | 2.93** |
| Assault | 0.14 | .08 | 1.66 | -297.46 | -2.35* |
| No. of conviction charges | 0.49 | .06 | 7.90*** | 139.42 | 3.14** |
| Gun present | 0.16 | .06 | 2.66** | 269.21 | 3.45*** |
| Victim injured | 0.12 | .06 | 1.98* | 251.14 | 2.86** |
| Victim stranger | 0.19 | .06 | 3.11** | 143.95 | 1.83 |
| Private attorney | -0.18 | .06 | -3.18** | -143.41 | -1.88 |
| Guilty plea | 0.09 | .08 | 1.08 | 131.19 | 1.14 |
| Jury trial | 0.95 | .13 | 7.14*** | 1,078.13 | 7.04*** |
| Released prior to trial | -0.82 | .05 | -14.88*** | -643.49 | -5.07*** |
| Hazard rate | | | | 594.73 | 1.58 |

* $p < .05$ ** $p < .01$ *** $p < .001$ $R^2 = .43$

tralegal factors, two of which merit additional discussion. The data reveal that Detroit judges impose harsher sentences on male offenders than on female offenders. Males are more likely than females to be sentenced to prison, and their expected minimum sentence is 292 days longer than the EMS for females. These judges also sentence black offenders more harshly than white offenders. Blacks are more likely than whites to be incarcerated; there are, on the other hand, no significant differences in the EMS for blacks and whites. These findings are consistent with other studies demonstrating preferential treatment of females and whites.

The data examined thus far reveal only slight differences between black and white judges, at least when all offenders are considered together. In the analysis presented in Table 3 we consider the possibility that black and white judges behave differently in sentencing certain types of offenders. We examined the sentences imposed on black and white offenders; on black male and female offenders and on white male offenders; and on four victim-offender racial combinations. We performed separate analyses on each of these subgroups. For example, we created a subsample consisting of all black offenders, and we then used probit analysis to examine the effect of the judge's race on the incarceration rate for them. We used the same procedures to analyze the effect of judicial race on the incarceration rate for white offenders. The re-

Table 3. Effect of Judge's Race on Sentencing Decisions, for Subgroups of Offenders^a

| | Prison/No Prison | | | Expected Minimum Sentence | |
|---|------------------|-------|--------|---------------------------|-----------------|
| | MLE | SE | MLE/SE | <i>b</i> | <i>T</i> -Value |
| All offenders | -.11 | 0.05 | -2.03* | -26.46 | -0.39 |
| <i>By race of offender</i> | | | | | |
| Black offenders (<i>N</i> =3,974) | -.12 | 0.06 | -2.00* | 6.57 | 0.08 |
| White offenders (<i>N</i> =736) | -.10 | 0.13 | -0.75 | -117.04 | -1.78 |
| <i>By race and gender of offender^b</i> | | | | | |
| Black male offenders (<i>N</i> =3,659) | -.16 | 0.06 | -2.45* | -0.46 | 0.00 |
| Black female offenders (<i>N</i> =315) | .28 | 0.20 | 1.38 | -42.99 | -0.55 |
| White male offenders (<i>N</i> =700) | -.12 | 0.13 | -0.91 | -115.32 | -1.69 |
| <i>By race of offender and victim^c</i> | | | | | |
| Black offender/black victim (<i>N</i> =1,852) | -.13 | 0.09 | 1.44 | 166.91 | 1.45 |
| Black offender/white victim (<i>N</i> =572) | -.19 | 0.19 | -1.00 | -69.41 | -0.91 |
| White offender/black victim (<i>N</i> =51) | -.12 | 11.87 | -0.01 | -254.71 | -0.45 |
| White offender/white victim (<i>N</i> =384) | -.01 | 0.18 | -0.06 | -152.25 | -1.58 |

^aBoth the probit and regression analyses include all of the independent variables listed in Table 1. The regression analyses also include the hazard rate.

^bBecause of the small number of white female offenders (*N*=36), we did not analyze them separately.

^cInformation on the race of the victim was not available for 1,851 cases (primarily cases filed in 1976).

**p* < .05.

sults of these analyses reveal that black judges, with only three exceptions, impose slightly more lenient sentences than white judges. Most of these differences, however, are not statistically significant.

The data presented in Table 3 reveal that judicial race does have a significant effect on the incarceration rate for black offenders. Black judges are less likely than white judges to sentence black offenders to prison. Examination of the results for the race/gender subgroups shows that this difference is restricted to black male offenders; black and white judges do not impose significantly different sentences on black female offenders.

Sentencing of Black and White Defendants

The findings discussed thus far indicate that black judges are less likely than white judges to sentence black offenders to prison and that black offenders are generally more likely to be sent to prison than are white offenders (see Table 2). These differences could arise if black judges treated black and white offenders alike while white judges discriminated against black offenders. Further analysis, however, tells a different story.

We used the results of a regression analysis of the decision whether to incarcerate to calculate adjusted incarceration figures for black and white offenders sentenced by black and white

judges.¹¹ These adjusted figures, shown in Table 4, take all the other independent variables listed in Table 1 into account. The results of the analysis reveal, first, that the differences between black and white judges, although statistically significant, are actually quite small. Black judges sentenced 72.9 percent of black offenders to prison, while white judges incarcerated 74.2 percent of black offenders, a difference of less than two percentage points. The adjusted figures for white offenders were 65.3 percent (black judges) and 66.5 percent (white judges), again a difference of less than two percentage points.

More important, the data presented in Table 4 reveal that both black and white judges sentence black offenders more harshly than white offenders. For both black and white judges, adjusted incarceration rates for black offenders were seven percentage points higher than for white offenders. Contrary to expectations, the harsher treatment of black offenders was not attributable solely to white judges. We discuss the implications of this finding below.

These results contradict those found by Welch and her colleagues (1988) in Metro City. They found that black judges sentenced black and white offenders to prison at about the same rate, while white judges sentenced black offenders to prison at a higher rate than white offenders. Our analysis revealed similar patterns of sentencing for black and white judges; both were more likely to incarcerate black offenders. These disparate results may reflect differences in the types of cases examined. All the offenders in our sample were charged with a violent felony. Welch *et al.*'s sample also included such nonviolent offenses as larceny, driving while intoxicated, and drug law violations. The results we found, in other words, may be limited to violent crimes.

We also calculated adjusted figures for the four victim-offender racial combinations. The results (Table 4) reinforce our conclusion that there are few differences in the sentencing behavior of black and white judges. Black judges sentenced offenders to prison at about the same rate as white judges, regardless of the race of the offender *or* the race of the victim.

The results also suggest that neither black nor white judges take the race of the victim into account when deciding whether to incarcerate. When we examined the sentencing decisions of all judges, we found that the incarceration rate for blacks who victimized whites (76.8 percent) was very similar to the rate for blacks who victimized blacks (75.1 percent). And the rate for whites who victimized whites (68.5 percent) was only slightly higher than the

¹¹ See Table 4 note a for a discussion of the computation of the adjusted percentages. Since some might question using OLS regression for this part of the analysis, we replicated all the analyses using probit. We found that the results were nearly identical; all the variables which were statistically significant in the regression analysis were also significant in the probit analysis.

Table 4. Adjusted Percentages—Black and White Offenders Sentenced to Prison by Black and White Judges^a

| | Percentage Sentenced to Prison by | | |
|------------------------|-----------------------------------|--------------|--------------|
| | All Judges | Black Judges | White Judges |
| Black offenders | 73.7 | 72.9 | 74.2 |
| White offenders | 66.0** | 65.3** | 66.5** |
| <i>Black offenders</i> | | | |
| Black victims | 75.1 | 75.0 | 75.2 |
| White victims | 76.8 | 75.0 | 79.2 |
| <i>White offenders</i> | | | |
| Black victims | 65.8 | 62.1 | 67.1 |
| White victims | 68.5 | 69.3 | 67.8 |

^aThe adjusted percentages for black and white offenders were calculated as follows. We ran regressions on the prison/no prison dependent variable, controlling for the race of the offender (a dummy variable with black offenders coded 1 and white offenders coded 0) and for the other independent variables listed in Table 2. We did this separately for all judges, for black judges, and for white judges. Briefly, the difference between black and white offenders is equal to the unstandardized regression coefficient for the dummy variable measuring the offender's race. So, e.g., the difference of .076 between incarceration rates for black and white offenders sentenced by black judges reflects a .076 unstandardized regression coefficient for black offenders when whites are the omitted category.

The adjusted figures were calculated using the following formulas:

$$b^1 = -1[(b^2)(\text{prop}^2)],$$

$$\text{adjmean}^1 = M + b^1,$$

$$\text{adjmean}^2 = \text{adjmean}^1 + b^2,$$

where

- b^1 is the adjusted unstandardized regression weight (b weight) for the omitted category (white offenders);
- b^2 is the b weight for the included category (blacks offenders) and prop^2 is the mean of the dummy variable for offender race (or the proportion of black offenders);
- M is the mean of the dependent variable (prison/no prison); and adjmean^1 , adjmean^2 are the adjusted means for white and black offenders.

The adjusted figures for the four defendant/victim racial groups were calculated in the same way. Dummy variables for three of the four groups were entered into the regression equations. The formulas used in calculating these adjusted figures included the b weights (b^2 , b^3 , b^4) and the proportions (prop^2 , prop^3 , prop^4) for these variables.

** $p < .01$.

rate for whites who victimized blacks (65.8 percent). These patterns were consistent for both black and white judges. They suggest that judges in Detroit, regardless of their race, do not value the lives of white victims more than the lives of black victims.

Results of the Interactive Analysis

The data examined thus far indicate that judicial race has little direct effect on sentencing outcomes. Black and white judges impose very similar sentences on offenders charged with violent felonies. As Myers (1988) has recently demonstrated, however, the effects of judicial background characteristics may be more subtle and indirect. The results of our interactive analysis do not support

this contention. Addition of the interaction terms did not significantly increase the proportion of explained variance for either sentencing outcome.¹² This suggests that the effects of offender and case characteristics do not depend on the race of the sentencing judge. Rather, black and white judges attach the same weight to legal and extralegal factors considered during the sentencing process.

DISCUSSION

We examined the sentencing decisions of black and white judges in Detroit for systematic differences in the treatment of offenders charged with violent felonies. We found remarkable similarities. Although black judges were generally less likely than white judges to impose prison sentences, the disparity was quite small. Even when we probed for more subtle and indirect effects, we found that judicial race had little predictive power and was clearly overshadowed by the seriousness of the crime committed by the offender.

These findings are not surprising. Although they challenge widely held presumptions about the role of black criminal justice officials, they are not at odds with the results of other studies comparing black and white decisionmakers. Studies have documented similarities in the behavior of black and white police officers (Fyfe, 1981; Smith and Klein, 1983). More to the point, a number of researchers have concluded that background characteristics, especially race, do not explain judicial decisionmaking at the state trial court level.

This can be attributed in part to the judicial recruitment process, which produces a more or less homogeneous judiciary within a particular jurisdiction. Levin's (1972) study of judges in Pittsburgh and Minneapolis, for example, demonstrated that judges in the two cities had very different pre-judicial careers and, consequently, very different sentencing philosophies. Levin (1972: 345) argued that there was a causal linkage "between the cities' political and judicial selection system, the judges' socialization and recruitment patterns, the judges' views and decision-making processes, and finally their sentencing decisions."

Other researchers have also commented on the homogeneity of the judiciary. Glick and Vines (1973), for example, showed that most judges recruited to state courts are middle or upper class and were born and attended law school in the state in which they serve. Even black and white judges apparently share similar background characteristics. Studies indicate that "both the black and

¹² For the prison/no prison variable the increase in explained variance was less than 1 percent (0.6 percent), yielding an *F*-ratio of 2.2. For the EMS the increase was also less than 1 percent (0.7 percent), yielding an *F*-ratio of 1.55. Neither of the *F*-ratios was statistically significant.

white benches appear to have been carefully chosen from the establishment center of the legal profession" (Uhlman, 1978: 893). The judicial recruitment process, in other words, may screen out candidates with unconventional views, with the result that "minority persons selected for judgeships may well tend to be 'safe' candidates who are generally supportive of the system" (Walker and Barrow, 1985: 615).

These similarities are reinforced by the judicial socialization process, which produces a subculture of justice (Frazier and Bock, 1982) and encourages judges to adhere to prevailing norms, practices, and precedents. They also are reinforced by the courtroom work group—judges, prosecutors, and public defenders who work together day after day to process cases as efficiently as possible. To expedite sentencing, for example, members of the courtroom work group may informally establish a range of "normal penalties" for each type of crime and agree to sentence within that range. Even unconventional or maverick judges may be forced to conform. As one black jurist (Wright, 1973: 22–23) noted, "No matter how 'liberal' black judges may believe themselves to be, the law remains essentially a conservative doctrine, and those who practice it conform."

Two other findings from our study are more surprising and merit comment. We did not set out to analyze the impact of the offender's race on sentencing. The large effect of the race of the offender on incarceration, however, led us to explore this relationship further. Even after relevant legal and extralegal factors were taken into account, we found that blacks still were sentenced to prison more often than whites; in fact, there was a difference of nearly eight percentage points in the incarceration rates for the two groups. Further analysis revealed that the discriminatory treatment of black offenders was not conditioned by the race of the victim. Blacks were more likely than whites to be sentenced to prison, regardless of whether the victim was white or black.

Unless other unmeasured variables can account for this difference, it suggests overt discrimination, at least with respect to the decision to incarcerate, against black felony offenders in a non-Southern, nonrural context. It is yet another piece of evidence that "discrimination has not gone away" (Zatz, 1987: 87). Moreover, this difference of eight percentage points may be only the tip of the iceberg. As we have argued elsewhere (Spohn *et al.*, 1981–82), disparity in sentencing says nothing about well-documented and pervasive discrimination at other stages in the criminal justice process.

Researchers have generally assumed that discrimination against black defendants reflects prejudicial or racist attitudes on the part of white criminal justice officials. Our study suggests that the explanation is more complex. Contrary to expectations, both black and white judges in Detroit imposed harsher sentences on

black offenders. Harsher sentencing of black offenders, in other words, cannot be attributed solely to discrimination by white judges.

This significant finding contradicts the widely held assumption that blacks do not discriminate against other blacks. It also contradicts conventional wisdom about the role of black judges and suggests that we should be considerably less sanguine in predicting that discrimination against black defendants will decline as the proportion of black judges increases. Although we examined the sentencing of felony offenders in only one city, we analyzed a city with a large number of black judges. If an increase in black judges were sufficient to reduce discrimination, we would have expected to find evidence of it in Detroit.

The fact that both black and white judges sentenced blacks more harshly than whites also raises questions about the appropriate interpretation of the racial disparity in incarceration rates. One might argue that the disparity does reflect discrimination against black offenders, but that black judges are just as likely to discriminate as are white judges. If so, the discriminatory treatment of black defendants is the product of something other than the racism of white judges.

This conclusion that both black and white judges discriminate against black offenders must only be tentative, however. Although we controlled for thirteen variables that have been shown to affect the severity of the sentence before testing for the effect of the race of the offender, we obviously were not able to control for all of the decisionmaking criteria used by judges. Given the high unemployment rate for blacks in Detroit, for example, both black and white judges might see black offenders as less employable than white offenders, and thus as more likely than white offenders to commit additional offenses. We might question the legitimacy of using employability to determine whether the offender is incarcerated or not, but it, rather than race, might be responsible for the apparent race effect of judges' sentencing decisions.

Both black and white judges also might perceive black offenders as more threatening, more dangerous than white offenders. A number of researchers (Balbus, 1973; Poole and Regoli, 1980; Swigert and Farrell, 1977) have documented that minorities are seen as more threatening than whites. All the defendants in our sample were charged with a violent felony, and the vast majority of them (85 percent) were black. This overrepresentation of blacks among violent felons might reinforce the stereotype of blacks as especially prone to violence. Both black and white judges might be affected by this stereotype and might sentence accordingly.

The foregoing assumes that black and white judges use a similar decision calculus in deciding whether to incarcerate. It assumes, in other words, that the harsher sentences imposed on black offenders by both black and white judges can be attributed

to similar factors. This may not be the case. It is also possible that different factors, or different combinations of factors, explain these decisions. For example, at least some of the discriminatory treatment of black offenders by white judges may be due to racism. It is also possible that a portion of the discriminatory treatment of black offenders by black judges can be attributed to concern for the welfare of black victims. Black judges, in other words, may see themselves not as representatives of black defendants but as advocates for black victims. This, coupled with the fact that black judges might see themselves as potential victims of black-on-black crime, could help explain the harsher sentences imposed on black offenders by black judges. As the Committee on the Status of Black Americans of the National Research Council (1989: 497) recently concluded, it may be that black judges "are sending a new message to black offenders—the life of a black person is indeed important and the full weight of the law will be used in order to protect black victims."

All these explanations are, of course, highly speculative. We cannot know with any degree of certainty what goes through a judge's mind during the sentencing process. We cannot know precisely how the race of the offender is factored into the sentencing equation. Although the data reveal that both black and white judges sentence black offenders more harshly than white offenders, the data do not tell us *why* this occurs. Future research should address this issue.

Researchers also should continue to probe for systematic differences in the sentencing decisions of black and white judges. We examined the effect of judicial race in only one city and during a relatively short period. Our results may not generalize to other jurisdictions, to other types of crimes, or to other time periods. Moreover, our results contradict those of Welch and her colleagues (1988), who found that black judges in Metro City did not discriminate against black offenders. Thus, definitive conclusions concerning the decisionmaking behavior of black trial court judges await additional research.

REFERENCES

- ALDRICH, John H., and Forrest D. NELSON (1984) *Linear Probability, Logit, and Probit Models*. Beverly Hills, CA.: Sage Publications.
- BALBUS, Isaac D. (1973) *The Dialectics of Legal Representation: Black Rebels Before the American Criminal Courts*. New York: Russell Sage Foundation.
- BALDUS, David C., Charles PULASKI, and George WOODWORTH (1983) "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience," 74 *Journal of Criminal Law and Criminology* 661.
- BERK, Richard A. (1983) "An Introduction to Sample Selection Bias in Sociological Data," 48 *American Sociological Review* 386.
- BERK, Richard A., and Subhash C. RAY (1982) "Selection Biases in Sociological Data," 11 *Social Science Research* 352.

- BOWERS, William J., and Glenn L. PIERCE (1980) "Arbitrariness and Discrimination Under Post-Furman Capital Statutes," 26 *Crime & Delinquency* 563.
- CROCKETT, George W. (1984) "The Role of the Black Judge," in D. Georges-Abeyie (ed.), *The Criminal Justice System and Blacks*. New York: Clark Boardman.
- ENGLE, Charles Donald (1971) "Criminal Justice in the City: A Study of Sentence Severity and Variation in the Philadelphia Court System." Ph.D. dissertation, Temple University.
- FRAZIER, Charles E., and E. Wilbur BOCK (1982) "Effects of Court Officials on Sentence Severity: Do Judges Make a Difference?" 20 *Criminology* 257.
- FYFE, James (1981) "Who Shoots? A Look at Officer Race and Police Shooting," 9 *Journal of Police Science and Administration* 367.
- GIBSON, James (1978) "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," 72 *American Political Science Review* 911.
- (1980) "Environmental Constraints on the Behavior of Judges: A Representational Model of Judicial Decision-Making," 14 *Law & Society Review* 343.
- (1983) "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior," 5 *Political Behavior* 7.
- GLICK, Henry Robert, and Kenneth N. VINES (1973) *State Court Systems*. Englewood Cliffs, NJ: Prentice-Hall.
- GOLDMAN, Sheldon (1979) "Should There Be Affirmative Action for the Judiciary?" 62 *Judicature* 488.
- GOTTSCHALL, Jon (1983) "Carter's Judicial Appointments: The Influence of Affirmative Action and Merit Selection on Voting on the U.S. Courts of Appeals," 67 *Judicature* 164.
- HAGAN, John, and Kristin BUMILLER (1983) "Making Sense of Sentencing: A Review and Critique of Sentencing Research." Presented at National Academy of Sciences Panel on Sentencing Research.
- HECKMAN, James J. (1974) "Shadow Prices, Market Wages, and Labor Supply," 42 *Econometrics* 679.
- HEUMANN, Milton, and Colin LOFTIN (1979) "Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute," 13 *Law & Society Review* 393.
- KLECK, Gary (1981) "Racial Discrimination in Criminal Sentencing," 46 *American Sociological Review* 783.
- LaFREE, Gary D. (1981) "Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases," 28 *Social Problems* 582.
- (1989) *Rape and Criminal Justice: The Social Construction of Sexual Assault*. Belmont, CA.: Wadsworth.
- LEVIN, Martin A. (1972) "Urban Politics and Policy Outcomes: The Criminal Courts," in G. F. Cole (ed.), *Criminal Justice: Law and Politics*. Belmont, CA: Wadsworth.
- LOFTIN, Colin, Milton HEUMANN, and David McDOWALL (1983) "Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control," 17 *Law & Society Review* 287.
- MYERS, Martha (1988) "Social Background and the Sentencing Behavior of Judges," 26 *Criminology* 649.
- MYERS, Martha, and Gary LaFREE (1982) "Sexual Assault and Its Prosecution: A Comparison with Other Crimes," 73 *Journal of Criminal Law and Criminology* 1282.
- MYERS, Martha, and Susette M. TALARICO (1987) *The Social Contexts of Criminal Sentencing*. New York: Springer-Verlag.
- NATIONAL RESEARCH COUNCIL, COMMITTEE ON THE STATUS OF BLACK AMERICANS (1989) *A Common Destiny: Blacks and American Society*. Washington, DC: National Academy Press.
- PITKIN, Hanna F. (1972) *The Concept of Representation*. Berkeley, CA: University of California Press.
- POOLE, Eric D., and Robert M. REGOLI (1980) "Race, Institutional Rule Breaking, and Disciplinary Response: A Study of Discretionary Decision Making in Prison," 14 *Law & Society Review* 931.

- SMITH, Michael David (1983) *Race Versus the Robe: The Dilemma of Black Judges*. New York: National University Publications.
- SMITH, Douglas A., and J. R. KLEIN (1983) "Police Agency Characteristics and Arrest Decisions," in G. P. Whitaker and C. D. Phillips (eds.), *Evaluating Performance in Criminal Justice Agencies*. Beverly Hills, CA: Sage Publications.
- SPOHN, Cassia (1990) "Decision Making in Sexual Assault Cases: Do Black and Female Judges Make a Difference?" 2 *Women & Criminal Justice* 83.
- SPOHN, Cassia, John GRUHL, and Susan WELCH (1981-82) "The Effect of Race on Sentencing: A Re-examination of an Unsettled Question," 16 *Law & Society Review* 72.
- SUTTON, L. Paul (1978) *Variations in Federal Criminal Sentences: A Statistical Assessment at the National Level*. Albany, NY: Criminal Justice Research Center.
- SWIGERT, Victoria L., and Ronald A. FARRELL (1977) "Normal Homicides and the Law," 42 *American Sociological Review* 16.
- UHLMAN, Thomas M. (1978) "Black Elite Decision Making: The Case of Trial Judges," 22 *American Journal of Political Science* 884.
- WALKER, Thomas G., and Deborah J. BARROW (1985) "The Diversification of the Federal Bench: Policy and Process Ramifications," 47 *Journal of Politics* 596.
- WELCH, Susan, Michael COMBS, and John GRUHL (1988) "Do Black Judges Make A Difference?" 32 *American Journal of Political Science* 126.
- WRIGHT, Bruce McM. (1973) "A Black Broods on Black Judges," 57 *Judicature* 22.
- ZATZ, Marjorie S. (1987) "The Changing Forms of Racial/Ethnic Biases in Sentencing," 24 *Journal of Research in Crime and Delinquency* 69.