

SYMBOLIC POLICY AND THE SENTENCING OF DRUG OFFENDERS

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This paper examines the sentencing behavior of judges in a context characterized by significant legislative and social change. Data from Georgia are used to explore the ways in which judges accommodated their sentencing practices to a general crusade against drug use and to specific legislation that identified trafficking as criminal, set harsh penalties, and limited judicial discretion. The results suggest that judges *selectively* mitigated the harshness embodied in legislative pronouncements. The extent of mitigation depended on when sentencing occurred, the offense under consideration, and the offender's race. The impact of legislative changes appeared to be short-lived for the initial incarceration decision and more sustained for outcomes involving imprisonment, but modest for both. The target of symbolic policies, the trafficker, bore the brunt of increased punitiveness, but some spillover severity affected less serious drug offenders. Finally, the effect of race on sentences was influenced by legislative changes. During the height of legislative activity, differential treatment by race increased, further disadvantaging blacks, particularly black traffickers.

I. INTRODUCTION

Since the early 1880s, anti-drug crusades have been a recurring feature of American social and political life.¹ Public concern about the use of opiates, marijuana, cocaine, and other drugs has waxed and waned with time. In 1971, for example, President Nixon launched a strong offensive against drug abuse as part of a broad "law and order" campaign (Epstein, 1977). By 1975, however, "the drug problem [had] passed the apex of public attention and concern" (Gusfield, 1975: 15). Seven years later, President Reagan officially declared another war on drugs, directing his at-

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¹ For a general overview, see Austin (1978) and Hagan (1980). For accounts of crusades against opiates, see Lindesmith (1967), Cook (1969; 1970), Duster (1970), Musto (1973), Reasons (1974), Epstein (1977), Morgan (1978), and Kaplan (1983). Wisotsky (1986) chronicles the recent crusade against cocaine. Legislation prohibiting the use of marijuana is examined by Dickson (1968), Musto (1973), Bonnie and Whitebread (1974), Galliher *et al.* (1974), Helmer (1975), Galliher and Walker (1977), and Himmelstein (1983).

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tention to financiers of the drug trade (Wisotsky, 1983; Trebach, 1987). Although the public continues to be concerned about trafficking, current law enforcement initiatives are now described as at an impasse (Wisotsky, 1986) or on the verge of failing (Trebach, 1987).

The current crusade, like those in the past, has generated public policies with a strong symbolic component.² Laws that criminalize trafficking, for example, draw a clear boundary between acceptable and morally reprehensible behavior. The mere presence of these laws, quite apart from any enforcement efforts, symbolizes public contempt for the actions of persons who sell, manufacture, or possess large quantities of drugs.

The crusade against drugs and the accompanying legislative mandate for heavy penalties pose a dilemma for sentencing judges. As public servants, they are expected to "do something" about the drug problem. Yet as members of organizations, they are constrained by the limits of existing resources. The relationship between the ritual world of public statements and the real world of situated activities is therefore problematic (Gusfield, 1975).

This paper examines the sentencing of drug offenders in a changing legal context. Trafficking was criminalized and heavily penalized in Georgia during the early 1980s. Judicial discretion was curtailed. The analysis of data on drug offenders convicted between January 1977 and May 1985 addresses several questions about the relationship between the punishment of drug offenders and these legal changes. To what extent did sentences reflect legislatively mandated harshness toward drug traffickers? How long-lived was such apparent compliance? Finally, to what extent did changes in the law lead judges to draw distinctions based not only on the kind of drug offense committed but also on legally irrelevant characteristics such as race?

II. THE "DRUG WAR" IN GEORGIA AND THE NATION

In October 1982, President Reagan requested and received the "weapons" considered essential for successfully waging a war against the drug problem in America. Chief among these were more personnel, more aggressive law enforcement, more money, stiffer legislation, better inter-agency coordination, and additional prison space. Congress had already begun to lay the necessary groundwork for law enforcement activity by considering a number of bills that would provide for stricter sentences, restrict pretrial bail, and limit the use of the exclusionary rule (Wisotsky, 1983). As in the late 1960s and early 1970s, the drug trafficker was now designated the key target of public policy, and twelve (now 13) re-

² Gusfield (1963; 1975) and Edelman (1964; 1971) offer general discussions of the distinction between the symbolic and instrumental uses of political acts.

gional task forces were charged with the task of combating the drug trade.

In the state of Georgia, regional task force efforts were headquartered in Atlanta. They were quickly supplemented at the state level by the formation of the Governor's Task Force on Drug Suppression in November 1982. While charged with the task of destroying the lucrative marijuana-growing enterprise, this inter-agency force received no additional state funding. The six contributing agencies were required to absorb the cost of eradication efforts.

Legislative changes preceded and facilitated the state's crusade against drug financiers. Before 1980, Georgia law distinguished between offenders who possessed drugs and those who manufactured, sold, delivered, or distributed them. Then, as today, penalties depended on the drug involved; within each class of drug, possession was punished less severely than was manufacture, sale, or distribution. For example, possession of a Schedule I drug³ can result in a two- to fifteen-year sentence, while its sale or manufacture can result in a five- to thirty-year sentence.

In the early 1980s, trafficking in controlled substances was criminalized. Trafficking was distinguished from other drug offenses solely by the amount possessed, sold, manufactured, or distributed. For example, possession of 28 grams or more of cocaine or 100 pounds of marijuana currently constitutes grounds for a trafficking prosecution. The first and most comprehensive act, passed in 1980, prohibited trafficking in cocaine, marijuana, and other illegal drugs such as heroin (1980 Ga. Laws 432, § 1). Two years later, methaqualone trafficking was prohibited (1982 Ga. Laws 2215, § 1).

The penalties for trafficking differ from those imposed for other drug offenses in two major respects. First, judges can impose much stiffer fines for trafficking, ranging from \$25,000 to \$500,000. Second and more important for our purposes, judicial discretion is restricted. Judges cannot suspend or defer sentences, nor can they impose probation before the offender serves the mandatory minimum in prison. Mandatory minimums vary dramatically and depend both on the drug class and amount. Traf-

³ The Georgia criminal code recognizes five schedules of drugs, based on potential for use and dependence, the presence of currently accepted medical uses, and the absence of accepted safety for using the drug under medical supervision. Examples of Schedule I drugs are opiates, heroin, and many hallucinogens. Schedule II includes cocaine, narcotic drugs not listed in Schedule I, and many amphetamines and barbiturates. Included in Schedule III are drugs with lower potential for abuse, moderate to low physical dependence, and a currently accepted medical use (e.g., benzphetamine). Schedule IV includes other stimulants and depressants with a potential for abuse lower than Schedule III, an accepted medical use, and limited physical or psychological dependence relative to Schedule III (e.g., diazepam). Finally, Schedule V drugs have an accepted medical use and the least potential for abuse and dependence. Marijuana is in a category by itself.

ficking involving between 100 and 2,000 pounds of marijuana mandates a minimum of five years in prison, while trafficking involving over 10,000 pounds requires a fifteen-year minimum. In the final hours of its 1985 session, the legislature increased the mandatory minimums for trafficking in cocaine from between five and fifteen years to between ten and twenty-five years (1985 Ga. Laws 552, § 1).

Although most legislation focused on trafficking, penalties were also increased for repeat drug offenders. After 1980, judges could impose a prison sentence of five to thirty years for a second conviction involving possession of a Schedule I drug (for a first conviction, the range is two to fifteen). Similarly, imprisonment for life (rather than thirty years) became a legitimate maximum sentence for manufacturing or selling Schedule I drugs (1980 Ga. Laws 432, § 1).

The consequences of this legislation for law enforcement were swift and clear. The arrest rate for all drug offenses increased between 1977 and 1985, with the sharpest increases in the two more serious categories of trafficking and sale/distribution.⁴ Press coverage of federal and state law enforcement activity also increased dramatically. Most attention focused on "massive drug crackdowns," such as the arrest of twenty-seven men and the seizure of thirty tons of marijuana off the Georgia coast in early 1983 (*Atlanta Constitution*, February 7, 1983: A8). The press also focused attention on local and state officials implicated in drug trafficking. In 1982 alone, forty-four law enforcement officials were indicted or convicted on drug charges, largely for trafficking or trafficking-related offenses (*Atlanta Journal*, May 11, 1983: C8).

This paper addresses three major questions about the relationship between sentencing and the legislative and social changes discussed above. First, to what extent did the sentences imposed on drug offenders after 1980 differ from those imposed prior to 1980? The expectation was that they would generally be more severe after 1980, with the greatest amount of punitiveness occurring at the height of legislative activity (1980–82), when official and public attention was focused on drug abuse. Thereafter, I expected that other more enduring considerations, most notably prison overcrowding, would resurface and that judges would return to earlier sentencing levels.

The second question focuses on the selective nature of punish-

⁴ The arrest rate for drug possession increased fitfully during this period, from a low of 244 per 100,000 in 1978 to a high of 343 in 1984. Arrest rates for sale, manufacture, or distribution also rose steadily, from 9.3 in 1978 to 42 in 1985. Arrest rates for trafficking increased from .1 in 1980 to nearly 3 per 100,000 in 1985. Arrest rates for Index property and violent crime showed no comparable pattern of increase. The violent crime rate increased between 1977 and 1979, remained steady until 1983, and then declined. The property crime rate increased until 1983, from 570 in 1977 to 720 per 100,000, and then declined (Georgia Bureau of Investigation, 1986: 56).

ment. To what extent did sentences vary as a function of whether the offender was a drug user, seller/distributor, or trafficker? The obvious expectation was that the object of most legislative activity, the drug trafficker, would bear the brunt of punitive sanctioning. Yet the presence of a general crusade against drug use might well contribute to a "spillover effect" wherein the sentences imposed on less serious offenders would also become more punitive with time. Again, I expected outcomes to be most severe during the height of intense legislative activity (1980–82).

The final question examines the magnitude and direction of differential treatment based on race. An extensive literature addresses this issue (for reviews, see Hagan and Bumiller, 1983; Wilbanks, 1987; Zatz, 1987), but little of it deals specifically with drug offenders. Nevertheless, recent work suggests that an understanding of differential treatment by race requires sensitivity to *both* the temporal context and the type of offense under consideration.⁵ Unnever and Hembroff (1986) suggest that race differences are likely to be most pronounced in ambiguous cases where, because of the constellation of legally relevant factors, the appropriate disposition is unclear. Where aspects of the case are consistent and the appropriate outcome clearer (e.g., where the offense is serious), race may not have the opportunity to intrude.

Peterson and Hagan (1984) make a different prediction. They argue that when the public perceives drug users as victims, race differences in the treatment of less serious drug offenders are likely to be minimal. In contrast, race differences in the treatment of more serious drug offenders (that is, traffickers) are likely to be quite pronounced, because black traffickers are considered doubly villainous: They are exploiting users in general and already disadvantaged minority group members in particular. A war on drug crimes can thus influence the magnitude of race differences by shaping perceptions of drug offenders as either victims or villains.

Changes in legal context complicate this picture, however. The sentencing discretion of judges in Georgia was curtailed during the period studied. As occurred in Minnesota when guidelines were introduced (Miethe and Moore, 1985; Moore and Miethe, 1986), greater uniformity of treatment might be a possible effect of this curtailment. Full compliance with legislative changes implies that the race, even of traffickers, should be irrelevant. Correspondingly, the offense and other legally relevant factors should be the predominant determinants of sentencing outcomes. But if the experience in Minnesota is generalizable (Miethe and Moore, 1987), then any uniformity of treatment might well be short-lived,

⁵ See, for example, the work of Kelly (1976), Gibson (1978), Zalman *et al.* (1979), Kleck (1981), Thomson and Zingraff (1981), Unnever (1982), Clayton (1983), Pruitt and Wilson (1983), Peterson and Hagan (1984), Miethe and Moore (1985; 1987), and Moore and Miethe (1986).

coinciding with the height of legislative activity and diminishing thereafter.

III. THE STUDY

A. *Data Sources*

The data analysis uses a sample of offenders sentenced between January 1977 and May 1985. The sample combines two separate data sets ($N = 23,075$), made available by the state Department of Corrections for a larger examination of sentencing in Georgia (Myers and Talarico, 1987). The first data set consists of all drug offenders sentenced to some form of incarceration; the second consists of all drug offenders sentenced to probation in forty-three of the state's forty-five judicial circuits. Until 1983, the two circuits encompassing the Atlanta area maintained separate probation departments. To obtain information from these circuits, a sample of cases disposed of between 1976 and 1980 was drawn from prosecutor and court records in Fulton and DeKalb counties (*ibid.*). These supplemental cases ($N = 339$) were added to the combined Department of Corrections data set. During data analysis, they were weighted by the reciprocal of their sampling proportions (20 for DeKalb County cases and 100 for Fulton County cases).

The two data sets compiled by the Department of Corrections differ greatly in the amount of information about the offender they contained. The original probation data set lacked prior record and social status information as well as records of drug offenders who had been sentenced to probation in the Atlanta area between 1981 and 1982.⁶ The prisoner sample included more extensive information about the current offense as well as the background of the offender. As a result of this discrepancy, greater confidence can be placed in analyses of prison sentences, while results for the initial decision on whether to imprison offenders are more tentative.

B. *Variables*

The analysis examines four major sentencing outcomes. The first is the initial decision to sentence the offender to some form of incarceration (coded 1) rather than to impose a period of proba-

⁶ The absence of probation data is particularly regrettable for two reasons. Given Atlanta's size, its contribution to the drug offender population is likely to be substantial. Also, data are lacking for 2 years (1981 and 1982) that are crucial because they span the height of the crusade against drugs. It is difficult to estimate the effect these missing data have on the findings. Earlier work, based on a sample of all offenders convicted in Georgia (Myers and Talarico, 1986), indicated that differential treatment by race is likely to be more pronounced in urban than in rural areas. The findings reported here, then, could very well *underestimate* rather than exaggerate actual race differences. The magnitudes reported in the text for 1981 and 1982 should therefore not be taken literally but rather as suggestive of a general trend.

tionary supervision (coded 0). The next two outcomes apply to offenders receiving a split sentence, that is, a term of prison followed by a specified term of probation. They are the length of the prison term and the duration of probationary supervision, both given in years.⁷ The final sentencing outcome—length of prison term in years—applies only to offenders who received a prison sentence without a specified term of probation. Table 1 presents the distribution of sentencing outcomes by offense.

Table 1 also describes two sets of offender information. The first set consists of characteristics whose legal relevance during sentencing is clear. For the sample as a whole they include type of offense, seriousness, and whether the conviction offense involved opiates. Offense type distinguishes use (coded 1), sale or distribution (coded 2), and trafficking (coded 3). Offense seriousness is the mean of the possible range in prison sentence stipulated by law for the most serious conviction charge. For offenders sentenced to prison, additional legally relevant variables include the number of additional drug charges, the number of prior arrests, and previous incarceration in Georgia.

The second set of offender characteristics provides information about social background. For the sample as a whole they include sex, age, and race; for analyses involving prisoners, information about employment status and marital status was also included as controls.

The final set of variables, presented in Table 2, controls for changes in the community and the court that could account for annual variation in sentencing. County-level measures are the unemployment rate, the Index property crime rate, and the drug crime rate. To avoid reciprocal causation between sentencing practices and these attributes, each is lagged by one year and then matched by offender county and year of sentencing. Court information includes annual data on the number of felonies filed per judge in each circuit. Information about judges, obtained from the *Georgia Official and Statistical Register* (1977–78, 1979–80, 1981–82, 1983–84), includes gender, age, background, religion, number of community organization memberships, years in local government (e.g., county commissioner), and years service as county or circuit prosecutor. Since the Department of Corrections data set did not identify the sentencing judge, exact matches were possible only for single-judge circuits and for the supplemental set of drug cases collected in the Atlanta area ($N = 1,784$). The remaining cases used the means and proportions for all judges sentencing in the circuit during the year the offender was convicted.

⁷ Probation and prison sentences could also have been combined into a single measure such as the percent of total split sentence involving incarceration. The variables considered in this paper could not account for a significant proportion of variance in this outcome.

Table 1. Means and Standard Deviations for Variables by Offense Type

Variable	Use (N = 16,339)		Sale/Distribution (N = 6,870)		Trafficking (N = 205)	
	Mean	Standard Deviation	Mean	Standard Deviation	Mean	Standard Deviation
Outcomes						
Probability of imprisonment	.2	(.4)	.4	(.5)	.6	(.5)
Split sentence						
Probation	4.0	(2.6)	4.4	(2.6)	7.7	(5.5)
Prison	2.8	(2.4)	3.0	(2.5)	6.8	(4.6)
Straight prison sentence	5.0	(5.2)	5.3	(5.2)	8.4	(4.6)
Offender information						
Seriousness	6.5	(1.4)	9.6	(5.5)	18.2	(2.3)
Opiate involved	.2	(.4)	.2	(.4)	.0	(.2)
Other drug charges ^a	.2	(.5)	.3	(.6)	.1	(.3)
Prior arrests ^a	3.3	(4.9)	2.8	(4.3)	2.2	(3.5)
Prior incarceration (no = 0; yes = 1) ^a	.2	(.4)	.2	(.4)	.0	(.2)
Sex (female = 0; male = 1)	.8	(.4)	.9	(.3)	.9	(.3)
Age	27.3	(7.2)	26.8	(7.2)	32.5	(8.8)
Race (black = 0; white = 1)	.7	(.4)	.6	(.5)	.7	(.4)
Employment status (unemployed = 0; employed = 1) ^a	.5	(.4)	.5	(.4)	.4	(.4)
Marital status (unmarried = 0; married = 1) ^a	.5	(.4)	.4	(.4)	.6	(.5)

^a Information was available only for offenders receiving split or straight prison sentences.

Table 2. Descriptive Statistics for Control Variables

Variable	Mean	Standard Deviation	Range
County Attributes^a			
Unemployment rate	6.8	(1.7)	3–18
Index property crime rate	4832.5	(2732.5)	0–15,159
Drug crime rate	240.4	(177.2)	0–1,524
Court attributes			
Felony filings/judge	314.1	(119.7)	99–684
Sex composition of bench (female = 0; male = 1)	.9	(.1)	.5–1
Judge's age	54.8	(5.6)	34–85
Judge's background (born in circuit = 1; other = 0)	.4	(.4)	0–1
Judge's religion (Southern Baptist or fundamentalist = 1; other = 0)	.3	(.3)	0–1
Number of community organizations	1.7	(1.3)	0–6
Years of local government experience	2.3	(3.9)	0–34
Years of prosecutorial experience	2.3	(3.4)	0–28

^a County variables were lagged by one year and matched by county and year of sentencing.

C. Analytic Strategy

To determine whether the sentences imposed after 1980 were significantly more punitive than those imposed prior to 1980, I constructed a dummy-coded vector of variables, using the pre-legislative period (1977–79) as the point of comparison. Models were constructed using weighted least squares regression for type of sentence and ordinary least squares regression for outcomes that involved length of sentence.⁸ Each additive model included the dummy-coded vector of variables for year of sentence, the two sets of offender characteristics, and the control variables.

To discover whether punitiveness was selectively directed to-

⁸ Weighted least squares regression compensates for the consequences of heteroskedasticity in the binary dependent variable by giving greater weight to observations whose error terms have smaller variances (Hanushek and Jackson, 1977: 181). The algorithm for the weight is $1/\sqrt{p * (1 - p)}$, where p = the predicted value. Predicted values greater than or equal to 1 were recoded .9999; predicted values less than or equal to 0 were recoded .0001. Preliminary results based on logistic regression did not differ significantly from weighted least squares estimates. The latter have the added advantage of being more easily computed, interpreted, and compared with OLS results. The logistic computational procedure for interactive models was also prohibitively expensive.

Since the sample of prisoners is a selected subset of the population of all convicted drug offenders, I also analyzed sentencing outcomes after correcting for sample selection bias (Berk, 1983). No discernible differences in results occurred.

Table 3. Additive Results for Sentencing Outcomes

Variable	Imprisonment Probability		Probation		Split Sentence		Prison		Prison Sentence	
	<i>b</i> ^a (SE)	β^b	<i>b</i> (SE)	β	<i>b</i> (SE)	β	<i>b</i> (SE)	β	<i>b</i> (SE)	β
Year of sentencing										
1980	.07 (.01)	.05 ^c	.85 (.17)	.10 ^c	.70 (.16)	.09 ^c	1.55 (.43)	.10 ^c	1.55 (.43)	.10 ^c
1981	.04 (.01)	.03 ^c	1.18 (.16)	.15 ^c	.94 (.15)	.13 ^c	2.16 (.40)	.15 ^a	2.16 (.40)	.15 ^a
1982	.03 (.01)	.03 ^c	1.40 (.15)	.20 ^c	1.14 (.14)	.17 ^c	2.20 (.42)	.15 ^c	2.20 (.42)	.15 ^c
1983	-.02 (.01)	-.03 ^c	1.35 (.17)	.18 ^c	.91 (.16)	.13 ^c	2.19 (.47)	.14 ^c	2.19 (.47)	.14 ^c
1984	-.03 (.01)	-.04 ^c	1.57 (.17)	.23 ^c	1.00 (.16)	.15 ^c	1.06 (.47)	.07	1.06 (.47)	.07
1985	-.03 (.01)	-.03 ^c	1.35 (.22)	.12 ^c	.76 (.21)	.07 ^c	.04 (.64)	.00	.04 (.64)	.00
Offender information										
Offense type	.10 (.01)	.10 ^c	.19 (.10)	.04	-.00 (.09)	-.00	-.25 (.27)	-.03	-.25 (.27)	-.03
Seriousness	.03 (.00)	.20 ^c	.09 (.01)	.16 ^c	.10 (.01)	.18 ^c	.25 (.04)	.21 ^c	.25 (.04)	.21 ^c
Opiate involved	.03 (.01)	.03 ^c	.18 (.11)	.03	.57 (.11)	.10 ^c	1.37 (.32)	.12 ^c	1.37 (.32)	.12 ^c
Other drug charges	^d	^d	.35 (.08)	.07 ^c	.39 (.07)	.08 ^c	1.26 (.23)	.12 ^c	1.26 (.23)	.12 ^c

Prior arrests	d	.01 (.01)	.03 (.01)	.05 ^c	.02 (.03)	.02
Prior incarceration	d	-.02 (.14)	.48 (.13)	.07 ^c	1.47 (.35)	.10 ^c
Sex	.07 (.00)	.25 (.13)	.58 (.12)	.07 ^c	.82 (.44)	.04
Age	.00 (.00)	.02 (.00)	.04 (.00)	.12 ^c	.05 (.01)	.13 ^c
Race	-.13 (.01)	.36 (.09)	.04 (.09)	.00	.28 (.26)	.03
Employment status	d	.24 (.11)	.20 (.11)	.03	-.31 (.30)	-.02
Marital status	d	.16 (.09)	.25 (.09)	.04 ^c	.75 (.26)	.06 ^c
Control variables						
Unemployment rate	.01 (.00)	-.13 (.03)	.03 (.03)	.02	-.04 (.10)	-.01
Index property crime rate	-.00 (.00)	-.00 (.00)	-.00 (.00)	-.18 ^c	-.00 (.00)	-.26 ^c
Drug crime rate	.00 (.00)	-.00 (.00)	-.00 (.00)	-.02	.00 (.00)	.01
Felony filings/judge	.00 (.00)	-.00 (.00)	-.00 (.00)	-.09 ^c	.00 (.00)	.05
Sex composition	.12 (.02)	.59 (.62)	-.60 (.58)	-.02	5.67 (2.30)	.06 ^c
Judge's age	.00 (.00)	-.02 (.01)	-.02 (.01)	-.04	.02 (.02)	.02

(continued)

Table 3. (continued)

Variable	Imprisonment Probability		Probation		Split Sentence		Prison		Prison Sentence	
	b^a (SE)	β^b	b (SE)	β	b (SE)	β	b (SE)	β	b (SE)	β
Judge's background	.00 (.01)	.00	-.63 (.15)	-.08 ^c	-.45 (.14)	-.06 ^c	.39 (.44)		.39 (.44)	.02
Judge's religion	.03 (.01)	.03 ^c	-.84 (.17)	-.09 ^c	-.61 (.16)	-.07 ^c	.84 (.48)		.84 (.48)	.04
Judge's community organizations	-.01 (.00)	-.05 ^c	.10 (.04)	.04	-.06 (.04)	-.02	.28 (.14)		.28 (.14)	.05
Local government experience	.00 (.00)	.01	.08 (.01)	.10 ^c	.07 (.01)	.10 ^c	.16 (.04)		.16 (.04)	.10 ^c
Prosecutorial experience	.01 (.00)	.04 ^c	-.06 (.01)	-.07 ^c	.00 (.01)	.00	-.03 (.04)		-.03 (.04)	-.02
Intercept	-.42 ^c (.03)		4.28 ^c (.89)		2.37 ^c (.83)		-8.25 ^c (2.91)		-8.25 ^c (2.91)	
R^2	.230		.165		.185		.191		.191	
(N)	21,228		3,834		3,834		1,804		1,804	

^a b = Metric regression coefficient; SE = standard error.

^b β = Standardized regression coefficient.

^c Significant at $p < .01$.

^d Data not available.

ward traffickers, a set of interaction terms between offense type and the six-vector year of sentencing variable was constructed ($N = 6$). These were added as a set to the original regression equation. A significant increment ($p < .01$) in explained variation provided evidence that sentences depended simultaneously on both the offense and year of sentencing. To estimate the nature of this dependency, annual predicted sentences were computed for each of the three offense types (use, sale/distribution, and trafficking). The annual predicted sentence was the sum of two components. The first component captured the main effect of offense type and year of sentencing as well as their interaction. Computations of this component used the unstandardized regression coefficients from the interactive model for offense type, year of sentencing, and the interaction terms. These regression coefficients were multiplied by the values for the offense type (e.g., 1 if drug use) and year of interest, and then summed. The second component was the base predicted sentencing outcome, which held constant variation in the remaining variables. Using unstandardized regression coefficients from the interactive model, the base predicted sentence was derived by computing predicted values at the mean of each of the remaining variables and summing across all remaining variables and the intercept.

The final question centered on variation in the magnitude and direction of differential treatment based on race. To consider it, a set of first- and second-order interaction terms was constructed and added as a set to the regression model. The first-order product term (race * offense type) tests whether race differences depend on offense. The six second-order interaction terms include the element of time (race * offense type * year of sentencing). When added to the original model, these interactions estimate temporal variation in race differences for each type of drug offense.

IV. RESULTS

A. *The Effects of Time*

Table 3 presents the effect of time on the sentences of drug offenders, after holding constant offender characteristics and changes in the community and court. After 1980, the risk of imprisonment increased until 1982, and then declined slightly. The probation sentences of prisoners who received split sentences after 1980 were also significantly longer than those imposed prior to 1980. The same holds true for the prison component of split sentences, but the increase was less pronounced. Finally, the length of straight prison sentences increased until 1983, and then did not differ significantly from pre-1980 levels.

Several other variables had noteworthy effects. Legally relevant factors were typically the most important predictors of sentences. Judges imposed more severe sanctions on prisoners

convicted of more serious drug offenses, trafficking, and several drug charges. Blacks were more likely than whites to be incarcerated, but they tended to receive shorter probation sentences. Finally, attributes of the court and the county had comparatively weak direct effects. Although prison sentences became more lenient as property crime rates increased, the drug crime rate had no significant effect on the sentencing of drug offenders.

B. Offense Differences over Time

To test whether punitiveness reflected legislative changes and was directed primarily at drug traffickers, the interaction between time and offense type was examined. The increment in explained variance was significant only for risk of imprisonment ($F = 56$, $df = 6/21,198$), where a single interaction term was significant. In general, then, differential treatment based on offense varied little with time. Table 4 presents the annual predicted sentencing outcomes for users, sellers/distributors, and traffickers.

In comparison with pre-1980 sentences, drug users and those convicted of sale or distribution were most likely to be incarcerated in 1980, the year when comprehensive legislation was passed. The risk of imprisonment for both types of drug offenders declined fitfully after 1980, suggesting a short-lived response to legislative and public concern. By 1983, incarceration probabilities were either at or noticeably below pre-1980 levels.

Since trafficking per se was not illegal before 1980, exact comparisons with pre-1980 sentences are impossible for these offenders. In many respects, though, their experiences mirrored those of less serious drug offenders. The risk of imprisonment was the highest between 1980 and 1982, the years which followed the trafficking legislation. Severity declined thereafter until 1985, when traffickers were almost as *unlikely* to be imprisoned as were less serious offenders sentenced prior to 1980.

For outcomes involving incarceration, differences based on offense were both relatively stable over time and modest in magnitude. The one exception involved probation sentences imposed during 1983, which were much longer for users than for serious drug offenders. Regardless of offense, though, split sentences tended to increase until 1983, after which they became slightly shorter. Straight prison sentences also peaked in 1983, but by 1985 had returned to pre-1980 levels.

C. Race Differences over Time

The final regression model included the set of first- and second-order interaction terms discussed above. The increment in explained variation was statistically significant for the initial decision

Table 4. Predicted Sentencing Outcomes by Year and Offense

Sentencing Outcome/Year	Type of Drug Offense		
	Use	Sale/Distribution	Trafficking
Probability of imprisonment			
1977-79	.20	.31	^a
1980	.26	.42	.56
1981	.25	.36	.48
1982	.23	.36	.49
1983	.19	.25	.30 ^b
1984	.18	.31	.45
1985	.17	.23	.29
Split sentence—probation component			
1977-79	3.34	3.46	^a
1980	3.37	3.47	3.45
1981	4.09	4.03	4.04
1982	3.45	3.57	3.55
1983	6.26	4.19	4.53 ^b
1984	4.67	4.31	4.37
1985	4.55	4.39	4.41
Split sentence—prison component			
1977-79	2.30	2.50	^a
1980	2.34	2.54	2.51
1981	3.01	3.30	3.25
1982	2.38	2.56	2.53
1983	4.46	3.58	3.73
1984	3.01	2.64	2.70
1985	2.88	2.73	2.76
Straight prison sentence			
1977-79	4.31	4.80	^a
1980	4.38	4.85	4.77
1981	5.86	6.45	6.35
1982	4.47	4.94	4.86
1983	9.84	8.51	8.73
1984	5.17	5.28	5.26
1985	4.07	4.00	4.01

^a Trafficking was not a criminal offense before 1980.

^b Interaction between offense type and year of sentencing significant at $p < .01$.

to incarcerate.⁹ For the remaining outcomes, however, the increase was statistically insignificant, indicating that differential treatment by race depends neither on the offense nor on the year

⁹ The proportion of variance in imprisonment probability increased by 5.5% ($F = 239$, $df = 7/21,191$, $p < .0001$).

Table 5. Predicted Probability of Imprisonment by Race and Offense

Race of Offender	Type of Drug Offense		
	Use	Sale/Distribution	Trafficking
Black	.283	.422	.560 ^a
White	.158	.236	.314
Disparity	(.125)	(.186)	(.246)

^a Interaction between offense type and race significant at $p < .01$.

of sentencing. Thus, the effects of race on outcomes involving incarceration, reported in Table 3, are invariant across time and offense.

Table 5 presents estimated race effects on the probability of imprisonment for each type of drug offender. Blacks were consistently more likely to be incarcerated than whites, but this difference was particularly pronounced for black drug traffickers, who were 25 percent more likely than their white counterparts to be incarcerated.

The final question addressed here is whether this race difference was consistent throughout the period or whether disparities were greater during the height of legislative activity (1980–82). Table 6 presents annual race differences in imprisonment risk for each type of drug offense. In general, the risk of incarceration was a complex function of offense type, race, and year of sentencing. Black drug offenders, particularly traffickers sentenced between 1980 and 1982, were more likely than their white counterparts to be incarcerated. Race differences were generally less pronounced after 1982, and this was the case for traffickers as well as for less serious offenders.

V. DISCUSSION

Between 1977 and 1985, public policies changed the conditions under which judges in Georgia sentenced drug offenders. Specific legislation targeted persons who trafficked in drugs, required strict penalties for those who violated the law, and limited judicial discretion in applying penalties. The pronouncements of the press and public officials consistently drew attention to the magnitude and locus of the drug problem and continued to do so even in 1985, well after the most comprehensive legislative changes had occurred.

Throughout this crusade judges were continually reminded, through correspondence with the Department of Corrections and appellate court litigation, of the limits within which they could operate when applying the law. Facilities were crowded, and some

Table 6. Annual Predicted Probability of Imprisonment by Race and Offense

Race of Offender	Type of Drug Offense		
	Use	Sale/Distribution	Trafficking
1977-79			
Black	.311	.475	^a
White	.149	.216	
Disparity	(.162)	(.259)	
1980			
Black	.398	.619	.840 ^b
White	.194	.276	.358
Disparity	(.204)	(.343)	(.482)
1981			
Black	.335	.509	.683
White	.187	.278	.369
Disparity	(.148)	(.231)	(.314)
1982			
Black	.299	.483	.667 ^b
White	.182	.314	.446
Disparity	(.117)	(.169)	(.221)
1983			
Black	.210	.233	.256 ^b
White	.149	.176	.203
Disparity	(.061)	(.057)	(.053)
1984			
Black	.216	.342	.468 ^b
White	.139	.253	.367
Disparity	(.077)	(.089)	(.101)
1985			
Black	.229	.295	.361 ^b
White	.115	.132	.149
Disparity	(.114)	(.163)	(.212)

^a Trafficking was not a criminal offense before 1980.

^b Second-order interaction among race, offense type, and year of sentencing significant at $p < .01$.

were under court order to improve conditions. How did Georgia's judges, as elected officials, balance externally generated, if not mandated, directives for punitiveness with the increasingly apparent limits on existing facilities?

On the surface, judicial solutions to this dilemma were not drastic. They used incarceration slightly more frequently, but only for short periods of time. In response to mandatory minimums, judges also lengthened the sentences of those for whom incarceration was considered appropriate. Although sustained over time,

particularly for prisoners who received split sentences, these increases were gradual and seldom averaged more than two years.

It is instructive to compare these results with the sentences imposed on a sample of non-drug offenders ($N = 20,176$) sentenced during the same period. Comparable analysis (available from the author on request) showed a consistent *decline* in the use of incarceration for these offenders between 1980 and 1982. Like drug offenders, non-drug offenders also experienced a drop in imprisonment risk after 1982, but their decline was much sharper. Thus, punitiveness toward drug offenders was accompanied by an increasing reluctance to incarcerate the remaining offenders, who constituted about 80 percent of the court's caseload.

Interestingly, however, increases in punitiveness were not generally limited to traffickers, the primary object of legislative activity and public concern. Whether short-lived (for straight prison sentences) or sustained (for split sentences), punitiveness spilled over into other categories of drug offenders: those convicted of possession, sale, or distribution.

Moreover, punitiveness did not increase consistently for all groups of offenders. The symbolic crusade against traffickers led to punitiveness that was *selectively* directed toward black traffickers convicted at the height of the crusade (i.e., between 1980 and 1982). Thus, while successful symbolically, policies that sought to constrain judicial discretion and mandate severity did not achieve uniform punitiveness consistently over time.

Consistent with Peterson and Hagan's (1984) findings, then, differential treatment by race depended simultaneously on both the offense and the political and social climate during which sentencing occurred.¹⁰ Regardless of offense, differential treatment by race was most pronounced during the height of legislative activity. However, perhaps drug users experienced *less* differential treatment than did traffickers because, regardless of color, they were seen as victims rather than as villains. Judges drew much sharper distinctions between black and white traffickers, reserving the greatest punitiveness for the former, whom they may have perceived as "doubly villainous."

By 1983, however, race differences in treatment declined for all drug offenders. Indeed, they were noticeably smaller than those present before 1980. This decline could reflect both an ero-

¹⁰ To some extent, these differences in treatment could be based on legitimate considerations, most notably race differences in prior record. Data limitations precluded examination of this possibility for the sample as a whole. For the supplemental sample on drug offenders sentenced in the Atlanta area, the relationship between race and prior arrests was modest ($r = -.198$); the correlation between race and prior incarceration, while insignificant ($r = .086$), indicated that whites were *more* likely than blacks to have been previously incarcerated in Georgia. Since we have no reason to expect that race differences in prior record varied with time, they probably do not account for temporal variations in the magnitude of differential treatment by race.

sion in the intensity of the crusade against drugs and a growing judicial awareness of litigation alleging racial discrimination in the imposition of the death penalty in Georgia (see *McClesky v. Zant*, 580 F. Supp. 338 (1984); *McClesky v. Kemp*, 753 F.2d 877 (1985)). Indeed, judges interviewed during this period scrupulously avoided any reference to race. So too did the press.

VI. CONCLUSION

Researchers have grown increasingly aware of the contextual imbeddedness of sentencing (see, e.g., Thomson and Zingraff, 1981; Hagan and Bumiller, 1983; Myers and Talarico, 1987). It has become abundantly clear that an understanding of sentencing requires a consideration of both the community and the court where sentencing occurs. The results presented here stress the need to consider yet another context—time. Indeed, an accurate understanding of differential sentencing requires that we examine the ways in which the meaning attached to *both* legally relevant and legally questionable factors varies with time.

But the results also highlight the limits of incorporating only one context. The majority of variation in each sentencing outcome was unexplained, suggesting that much remains to be discovered about how judges sentence drug offenders. A more complete understanding awaits the incorporation not only of more detailed offender and offense information but also of numerous other social and economic contexts.

Finally, the results show the difficulty of causally linking temporal changes (here, in the legislative context) with shifts in sentencing practices. Although the analysis attempted to control for temporal variation in the community and the court, conclusions about the impact of legislative changes, and of a symbolic crusade more generally, were arrived at through a process of elimination. It is possible that untapped changes—whether in the community, court, or cases—helped contribute to observed shifts in sentencing. Thus, the precise sources of shifts remain to be specified. What remains clear is their presence, which sheds light on the ways in which officials, in a context characterized by resource constraints, translate broad symbolic policy into specific situated outcomes.

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