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# Race and Sentencing Equality in Kentucky

Robert L. Hurley

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RACE AND SENTENCING EQUALITY IN KENTUCKY

A Thesis

Presented to

the Faculty of the Department of Sociology

Western Kentucky University

Bowling Green, Kentucky

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Robert L. Hurley

December 1979

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Recommended 5-5-80

(Date)

John L. Jaine  
Director of Thesis

Louis M. Beck

Edward Bollard

Approved 5-7-80

(Date)

Almer Gray  
Dean of Graduate College



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RACE AND SENTENCING EQUALITY IN KENTUCKY

Robert L. Hurley

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Directed by: John R. Faine, Edward Bohlander, and Louis Beck

Department of Sociology

Western Kentucky University

Disparity in sentencing felons based on racial considerations has long been considered a problem for civil libertarians and scholars alike. Examining data gathered in Kentucky, this thesis addresses this issue through the application of recently developed methodological techniques. Utilizing an index of sentencing equality, this study shows that while differences do exist in black and white offender-offense characteristics, these differences do not account for the variations in sentences rendered in cases of white as opposed to black felons. This exploratory research reviews and critiques previous research and provides evidence which should prove useful in resolving the problem of racial-based sentencing disparity.

## CHAPTER I

### STATEMENT OF THE PROBLEM

In its 1972 decision questioning the constitutionality of the death penalty under the equal protection clause of the 14th amendment, the United States Supreme Court held that the most severe penal sanctions were imposed in an arbitrary and freakish manner. Four years later, in Gregg v Georgia, the court accepted as constitutional the death penalty statutes of several states which provided specific review procedures for the implementation of the death penalty. With the exception of the sentence to death, however, the appellate courts have generally maintained a "hands-off" policy in reviewing the imposition of sentences handed down within the statutory specifications of the states. Thus, the courts, while recognizing a general inequality in the meeting of severe penalties, have deferred from evaluating the equality of sentences imposed for presumably lesser offenses.

Recent historical events have made the American double standard of justice part of the conventional wisdom. It may be safe to assume that almost any person, minimally educated and aware, would recognize that particular statutes work to the advantage of their incumbants, while still others



serve to devalue the efficacy of the principles of equality before the law as it affects the poor, minorities, and similarly dispossessed persons who find themselves confronting the criminal justice system. The general absence of the powerful and the "well placed" from the normal course of criminal prosecutions leaves our courts with what may be construed as an overrepresentation of those least able to deal adequately with the system.

Having, then, the poor and powerless as their principle clientele, the judiciary exercises wide-ranging discretion for differentiating among these persons in the imposition of justice. For most offenses the imposition of justice includes penalties ranging from fines or probation to extended periods of confinement in a controlled, regulated and often violent prison environment.

In a consideration of criminal justice within the United States, perhaps no concept is more difficult to define than the concept of justice. These difficulties are exacerbated when one attempts to measure whether justice is done in fact, and whether the exercise of judicial discretion has any effect on the doing of justice. A growing body of evidence demonstrates that there is much de facto discrimination in the criminal justice system. The poor and minorities seem to be more likely to be sanctioned, to be sanctioned more severely, and to be denied their rights and the full opportunity to defend their interests (Schrag, 1971: 176-80).

One's investments in the American criminal justice process serve in a large part to determine the perspective one has on the nature and dispensation of justice. Persons who are frequently and fully processed within the system fail to perceive that it dispenses justice and regard it as unjust. Recent studies of convicted offenders disclose that they believe that judicial personnel exercise discretion in a fashion which, in effect, constitutes a "betrayal" of the civil rights of offenders through the implementation of a double standard of justice (Casper, 1972; Faine and Bohlander, 1977).

In recent years criminal justice sentencing in particular has received considerable attention. This judicial function has been viewed as symptomatic of the "breakdown" of criminal justice within the United States. Critics are divided in their concerns about the causes of that breakdown. A substantial body, particularly minority group citizens and proponents of civil liberties, believes that the discretionary power of judges must be restricted. However, a growing majority, including citizens' groups, law enforcement officials, attorneys, correctional personnel, as well as judges themselves, appears to demand more punitive standards of justice for offenses they regard as serious and legitimate uses of judicial discretion.

Writing in 1970, Richard Quinney observes that "the boundaries of discretion are not clearly defined." He asserts that "judicial decisions are not made uniformly."

He points out that "decisions are made according to a host of extra-legal factors," and that "the most obvious example of judicial discretion occurs in the handling of persons from minority groups" (Quinney, 1970: 141-42).

This problem, the inequitable enactment of justice through disparity in sentencing, has proven enigmatic to jurisprudential scholars and sociologists alike since Sellin suggested over fifty years ago that the topic should be a research focus within the study of criminal justice (Sellin, 1928). While the fact of sentencing disparity is well established, social scientists have failed to empirically account for those differences in sentencing which appear to be systematic. While critical criminologists have proffered the claim that extra-legal factors such as sex, socioeconomic status, and race account for differences in sentences, sociologists have enjoyed mixed success in isolating these variables which are outside the domain of law and which may account for sentencing disparity.

Given, then, that 1) it is the socially weak who experience the forces of the courts; 2) the spirit of the rehabilitative/reformative ethic prescribes the individualization of sentences; and 3) existing research serves to do little more than focus the issue of race and sentencing, it becomes necessary to specify those factors most closely associated with the varying levels of severity implicit in the sanctions available to and imposed by the sentencing judge. This thesis proports to meet this task. It is the general purpose



of this thesis to review the salient research relating to race and sentencing disparity, to analyze specific data, and to address the following orienting statements:

1. Does inter-racial inequality in the rendering of judicial sentence exist in Kentucky?
2. Are extra-legal factors (other than race) associated with the dispositions of convicted offenders in Kentucky?
3. Are legal factors (offense related variables) associated with legal dispositions?
4. Does inter-racial sentencing disparity exist even after blacks and whites are standardized for other legal and extra-legal group differences?

## CHAPTER II

### STUDIES OF SENTENCING

Sociological studies of sentencing have often emphasized the role of extra-legal attributes of offenders in the determination of sentence. The term extra-legal is used here in reference to offender characteristics that are legally irrelevant to the imposition of sentence. Specifically, the independent variables most often considered include the race, sex, age, and socioeconomic status (SES) of the defendant. Although sociologically oriented studies seem to presume that such variables are legally irrelevant to the imposition of sentence, they have nonetheless attempted to detect their extra-legal influence.

An alternative "legalistic" view of sentencing addresses factors emphasized in official-normative descriptions of the criminal justice system. The legal variables most often considered include the defendant's prior criminal record, the number of indicted offenses, the nature of the present offense(s), and the current legal status of the defendant, among others.

Overby (1970) in his system-wide analysis of abuses in the exercise of discretion argues that most research in

sentencing is limited by its regional sampling specifications. Such studies, in other words, are usually not national in scope, nor do they entertain such considerations as whether counsel for the defense was public or privately retained, the educational level of the defendant, the relationship between the victim and the defendant, and the defendant's potential for rehabilitation. Obviously, some of these variables are difficult to measure and, therefore, many researchers have simply concluded that sentencing disparity is due to the more observable extra-legal variables of sex, age SES, and, most often, race.

#### Studies Focusing on Judicial Attitudes

Some scholars have advanced the argument that phenomenological factors have a large impact on judicial decision making. Of major concern has been the notion that political factors determine judicial decisions. In their study of nine judges in one court, Smith and Blumberg found that each judge had a strong history of political activity in formal political organizations and that none was an outstanding lawyer in private practice. Yet each was found to be "assiduous, loyal, and reliable party workers who made contributions of time, money or both, to their respective political clubs" (Smith and Blumberg, 1967: 98).

Nagel (1963) associated several socioeconomic and demographic attributes of judges with judicial decision making. He found that judges who have conservative

attitudes in private life exhibit those same attributes in fulfilling their professional responsibilities. Thus, Nagel found that personal values seem to influence judicial decision making. "Brilliant or not so brilliant," he suggests, "all judges are human. They thus have values which are shaped by their backgrounds and which are manifested in their decisions" (Nagel, 1963: 43-44). Additionally he observed that most judges are white, Anglo-Saxon protestants who tend to lean to the conservative side moreso than their non-Anglo-Saxon, non-protestant counterparts.

In other research, Nagel (1962) studied state and federal supreme court judges. He found that those judges who most often supported the defense in a criminal case were more frequently Democratic than Republican, not members of the American Bar Association, and Catholic rather than non-Catholic. They were less likely to have conservative values and less likely to have served as prosecutors before they assumed the bench.

The now almost classic Canadian study of Hogarth (1971) concluded that sentencing is not rational or mechanical, but, instead, it is a "human process." It is, he suggests, "subject to all the frailties of the human mind" (Hogarth, 1971: 356). Like Nagel, Hogarth found an association between judges' social, cultural, and economic backgrounds and the sentences which they handed down in criminal cases. He discovered that the greater the length of time a judge had served on the bench, the more systematic his sentencing

policies and philosophy. Similarly, he found that the greater the workload the less variation there was in the exercise of discretion and the greater the reliance on fines in criminal cases. Yet the greater the workload, Hogarth points out, the more likely judges were to engage in "punitive behavior" (Hogarth, 1971: 369). He constructed profiles of judges and divided them into several groups based on particular characteristics. "The most punitive groups . . . were found to be young, well educated urban magistrates. The least punitive group were young, well educated, rural magistrates" (371).

Hogarth concluded that sentencing is a "very human process." It is, he argued, a "dynamic process in which the facts of the cases, the constraints arising out of the law and the social system, and other features of the external world are interpreted, assimilated, and made sense of in ways compatible with the attitudes of the magistrates concerned" (382).

The quasi-phenomenological approaches of Smith and Blumberg, Nagel, Hogarth and others (McGuire and Holtzoff, 1940; Gaudet, 1949; Hood, 1962; and Shoham, 1966), while utilizing attitudinal data derived from studies of the judiciary, represent only a small portion of the research in sentencing disparity. The larger part of this research attempts to systematically explain sentencing variance in terms of observable, quantitative criteria.



Studies Focusing on Offense-Offender Characteristics

Guy B. Johnson was among the first scholars to examine specific demographic characteristics of defendants as they related to the sentence imposed (1941). He hypothesized that the severity of the sentence was first a function of the race of the victim and second a function of the race of the offender. Using homicide data from 1930 to 1940 in North Carolina, Georgia, and Virginia, he concluded that blacks who attacked whites received the most severe prison sentences; followed by white offenders with white victims; black offenders against black victims; and white offenders against black victims. Thus, he argued, for homicide in part of the South, blacks were systematically discriminated against in terms of the sentences imposed during the 1930's.

Johnson's study was expanded upon by Harold Garfinkel (1949) who distinguished two degrees of homicide and included manslaughter in an analysis of North Carolina data for the same years as those studied by Johnson. Garfinkel considered a number of dependent variables in addition to sentence severity as indices of systematic discrimination. These included the percentage of offenders in each of the four victim-offender combinations who were indicted, charged, and convicted, and the percentage for whom the charges were reduced. He also calculated the percentages of each of the four offender types who were sentenced to death or life imprisonment as opposed to less severe penalties for first

degree murder. Garfinkel showed that the sentencing pattern was clear, in that as the order of decreasing severity among the four offender-victim groups was the same as that found by Johnson. While Garfinkel's work confirms Johnson's, it should be noted that neither researcher investigated the existence of legally relevant antecedent or intervening variables that may have accounted for the sentencing variations attributed to racial differences.

Also studying homicides, but in Cleveland between 1947 and 1954, Bensing and Schroeder (1960) showed the weakness of designs which fail to control for important outcome related factors. They, like Garfinkel, discovered a significant difference between the proportion of black offenders with white victims and white offenders with black victims who were charged and convicted of homicide (46 percent and 0 percent respectively). Unlike Garfinkel who had argued that the difference might be a function of discrimination, Bensing and Schroeder attributed the distinction to the impact of a legally intervening variable -- whether the defendant had been charged with felony-murder as opposed to some other form of first degree murder. The legal definition of felony-murder makes it easier to "prove," therefore a defendant charged with felony-murder is more likely to be convicted as charged than is a defendant charged with murder in the first degree.

The significance of this distinction rests with the authors' finding that significantly more black defendants

with white victims than white offenders with black victims were originally charged with felony-murder. Black offenders would be expected to show a greater rate of being convicted as charged than white offenders since they had a greater probability of having been charged with felony-murder. It should be noted that while Bensing and Schroeder were not directly studying the probability of sentencing discrimination, their findings shed light on the deficiencies of sentencing discrimination studies like those of Johnson and Garfinkel which failed to examine the existence of legally relevant intervening factors that may significantly correlate with both race and disposition.

Bullock (1961) in a 1958 study of sentencing for murder, rape, and burglary in Texas, seemed to confirm the findings of Johnson and Garfinkel, but only through a questionable interpretation of his findings. Bullock defines a "short" sentence as imprisonment for 10 years or less and a "long" sentence as imprisonment for more than 10 years. He found that for murder, whites were significantly more likely than blacks to get a long sentence. For burglary, however, he found the opposite -- blacks being more likely than whites to receive a long sentence.

Since Bullock had no specific victim-related data, he was forced to make some assumptions about the nature of the victim-offender relationships for the crimes of murder and burglary. Thus, he was able to "explain" the apparent inconsistencies which he identified. First, Bullock assumed



that murder was basically intra-racial. Given this assumption, white offenders would be expected to receive harsher sentences since, according to the findings of Johnson and Garfinkel, offenders with white victims receive longer sentences than offenders with black victims. Burglary, on the other hand, was assumed to be basically intra-racial for white offenders and inter-racial for black offenders. Again, against Johnson's and Gafinkel's earlier findings -- if the race of the victim were held constant, black offenders would receive longer sentences than white offenders -- Bullock's findings seem to make sense.

It should be noted that Bullock did not actually contradict the findings of Bensing and Schroeder; nor did he verify those of Johnson and Garfinkel. Instead, he accepted and used their conclusions to reconcile what was otherwise an annoying inconsistency in his findings. Bullock seems to go beyond his data since he did not have information about the actual case-by-case victim-offender relationships for the offenses studied.

He did, however, introduce the impact of geography and urbanization as significant dimensions in the analysis of factors relevant to differential sentencing patterns. Holding race and offense constant, he found that in east Texas convicted offenders were sentenced to longer terms than in west Texas and that large-city counties in Texas sentenced defendants to longer terms than did small-city counties.

A unique study by Herbert Jacob and Kenneth Vines (1963) attempted to replicate studies over time. They focused on cases disposed of in 1954, 1958, and 1960, in Orleans Parish Court in Louisiana. The study examined the impact of race on both dismissal rate and the likelihood of being sentenced to prison for a year or more. The 1954 data indicated little difference in the court's treatment of blacks and whites in terms of the two measures used. Dismissal rates for the two groups differed by only 1.6 percent. Similarly, the respective proportions of black and white offenders sentenced to a year or more in prison differed by only 2.8 percent. By 1958, however, the discrepancy in dismissal rates had jumped to 13.8 percent with black offenders having the lowest dismissal rate. By 1960, the difference in the proportion of offenders being sentenced to a year or more in prison had grown to 13.5 percent with blacks being more likely than whites to receive the longer term.

If black offenders were guilty of more serious crimes than whites, the differences in judicial processing might have been expected. However, Jacob and Vines suggest that these patterns held true for most of the offenses studied, but the authors failed to provide measures of significant association. It should be noted, nevertheless, that this study did address the dynamics of sentencing patterns, in an attempt to empirically evaluate the degree to which certain sentencing patterns change over time, and thus represents a unique contribution to the study of sentencing variation.

In the few years since its publication, research by Wolfgang and Riedel (1973) on race and the death penalty in eleven Southern states has become a virtual classic. These researchers found that the inter- or intra-racial nature of rape cases rendered the prediction of life or death sentences for the defendant plausible. Inter-racial rape cases were found to receive disproportionately high rates of death sentences. As significant as the Wolfgang and Riedel study seems to be, it does show certain deficiencies. Even though the authors suggest that controlling for the criminal history of the defendant failed to eliminate the statistically significant association between race and the type of sentence. What they failed to make clear, however, is what effects these controls had on the magnitude of the association, or what effects other controls might have had. As a consequence, Wolfgang and Riedel only partially clarified the question of the impact of race on sentencing.

In an unpublished paper, Chiricos, Waldo and Marston (1972) attempted to account for variations in the length of sentences imposed on offenders incarcerated in 1969 and 1970 in Florida. The study focused on a population composed of 2,583 offenders who had been convicted of either rape, aggravated assault, armed and unarmed robbery, grand larceny, forgery, auto theft, burglary, narcotics, or escape -- the ten crimes accounting for the greatest number of prison admissions during the study period.

In order to examine the relationship between race and sentence length, criminal history, age SES, and urbanization of the court's jurisdiction were each dichotomized and, in turn, held constant. Before introducing these controls, blacks were found to have received longer sentences for violent offenses, while whites were found to have received longer sentences for property crimes and escapes. As controls were introduced, however, these patterns changed. Specifically, when controlling for the number of prior sentences, the authors found that among offenders with one or no prior sentences, blacks received longer sentences than whites for every offense except auto theft. On the other hand, for offenders with two or more prior sentences, whites received longer sentences than blacks for seven of the ten offenses. Blacks with more than one prior conviction received longer sentences than their white counterparts for rape, unarmed robbery, and aggravated assault.

Dichotomizing age, the authors found that for youthful offenders (under 21 years), blacks received longer sentences than whites for six of nine offenses. Youthful white offenders received significantly longer sentences than young blacks when convicted of narcotics violations. In the 21 years or older group, whites received significantly longer sentences for larceny and escape, while blacks received significantly longer sentences for rape.



Among lower SES offenders, blacks convicted for all four violent crimes received significantly longer sentences than whites. Convictions for grand larceny brought whites longer sentences than blacks. However, the correlation between race and sentence all but disappeared for high SES offenders. The only significant differences related to longer sentences in the high SES category were found for whites convicted of forgery or auto theft.

Apparently, the rural/urban setting of the sentencing jurisdiction was found to have been significantly related to sentence. Blacks received longer sentences than whites for assault, armed and unarmed robbery in urban counties. Interestingly, white offenders did not receive a significantly longer mean sentence than black offenders for any offense. Blacks received significantly longer sentences for rape in rural counties, and for auto theft, the inverse was true.

Given the influence on the relationship between race and sentence length of the introduction of even one control, it would follow that the introduction of even more controls would show even more influence. Unfortunately, the authors of this study reported no measures of association. Therefore, while the findings are instructive with respect to whether a genuine relationship exists, they are of little help in suggesting the strength of that relationship.

John Hagan (1974) provides a statistical reconstruction of 20 major research projects on sentencing. His summary of this review treats, among other variables, the impact of race on sentencing. Hagan submits that studies which focus on noncapital cases showed no relationship between race and sentence. Of the five studies on sentencing of capital cases (four of which were conducted in the South), three found that race played a significant role in sentencing. The only study reviewed that was conducted outside of the South found no relationship between race and sentencing at the level of third order partials.

Perhaps the most influential work in the study of the relationship between race and sentencing variation is that of Edward Green (1961; 1964). His study of 333 defendants sentenced in Philadelphia in 1956-57 showed the critical significance of second and third order controls. Like many of the studies reported above, Green found that at the zero-order level of analysis, blacks were significantly more likely than whites to receive a severe sentence. When offense and the number of previous convictions were held constant, however, differences in the treatment of black and white offenders disappeared.

Green's analysis generated a number of hypotheses about the relation of race to several legally relevant sentencing factors. He suggested that the alleged correlation between race and sentence may only be spurious. In this regard, Green asserts that

patterns of criminal behavior constituting a given offense differ intrinsically not only between the races, but within each race according to the race of the victim. Such differences are legally sufficient to account for the apparent racial differentiation in sentencing (1964; 349-50).

In other words, Green is suggesting that robbery involving a black offender with a white victim, for example, involves an entirely different set of behaviors, and, therefore, is a "different" crime for the purpose of sentencing than a robbery in which both the offender and the victim are black. Moreover, those offenses are behaviorally distinct from robberies involving a white offender - black victim or a white offender - white victim. Specifically, his analysis indicated that 61 percent of black robbery offenders whose victims were white used a weapon in the course of the crime (versus 13 percent of black offenders with black victims); that 73 percent of the former (versus 38 percent of the latter) had more than one indictment against them; and that 33 percent versus 18 percent of the two groups, respectively, had a prior conviction for either robbery or some other felony against the person.

The use of a weapon, multiple offense, and prior record, Green argues are all independently related to sentence outcome. Consequently, the discrimination in the sentencing of black robbery defendants on the basis of the race of their victims is not racial at all, but is founded on criteria that are legally compelling.

### Summary

The fact that the preceding review of the salient literature in sentencing disparity focusing on legal and extra-legal variables (specifically race) appears sporadic reflects not the inadequacy of the review process, but, instead, is indicative of the non-cumulative chronology of sentencing research. This review, however, does make a few points particularly clear. Many of the studies cited have made some valuable contributions, yet these contributions have been limited. In other words, the academic understanding of sentencing remains modest and in many ways questionable. Due to factors relating to the scope, design, and methodology of the studies cited, it is difficult to reconcile incompatible findings or to compare the results of incompatible research designs. Most of the early studies were constrained by fundamental conceptual problems. Nearly all studies have focused on a single court, jurisdiction, or region, a single offense or type of offense, single or few independent variables, and a single point in time. Too often they relied on gross dichotomizations of variables and failed to introduce even the most simple of controls. These deficiencies thus indicate that many of these studies ignore the confounding possibilities of statistical interaction and spuriousness. Moreover, the analyses have generally been narrow in terms of the types of variables studied. Most of these studies have focused exclusively



on sentence length and have ignored the equally important determination of whether a defendant will be imprisoned at all. Finally, it should be noted that practically nothing is known about how sentencing practices may change from time to time or vary from region to region.

What is known about sentence variation may be limited to a few possible inferences about the nature of sentencing practices and race with respect to homicide in North Carolina in the 1930's (e.g., Johnson and Garfinkel), or in urban Cleveland around 1950 (e.g., Bensing and Schroeder); with respect to murder, rape, and burglary in Texas in 1958 (e.g., Bullock); most offenses in New Orleans in the late 1950's (e.g., Jacob and Vines); robbery, burglary and theft in Philadelphia in 1956-57 (e.g., Green); or ten major offenses resulting in imprisonment in Florida in 1969 (e.g., Chiricos, et al.). Indeed, since most studies to date have been sufficient only to sustain the most tentative hypotheses about the particular dimension of sentencing which they address, and have been too narrowly focused to address the sentencing decision from a broader perspective, it is not surprising that so little is known about sentencing and race in general.

For example, we know little about what variables serve as major contributors to the determination of sentence. Similarly, we do not know the relative priority of various factors in sentencing; how much variation can be explained by legal as opposed to extra-legal variables; and the variability of sentencing policies over time, or as functions

of jurisdiction, caseload, and other features of judicial process.

Inter-racial variations in sentencing, however, can be examined, quantified and analyzed through various statistical techniques. The remaining chapters of this thesis describe the research methodology and techniques used to examine the problem of race and sentencing patterns in Kentucky and embody the conclusions of such appropriate operations. While not attempting to overcome all of the criticisms herein leveled at existing research, this study does overcome many of the critical deficiencies noted above.

## CHAPTER III

### RESEARCH METHODOLOGY

The purpose of this chapter is to describe the source and nature of the empirical data which are used in this research and to present the important research variables and statistical techniques which are used in the data analysis. In the first section of this chapter, data collection procedures are described in relation to the human subjects used in the research -- a sample of 1603 Kentucky felons who were either probated, shock probated or incarcerated in an adult correctional facility within the State. The next section reviews the sampling procedures used in the data collection and the constraints produced by the data collection method. The third section of this chapter introduces the dependent, independent and control variables as they are used in the analysis. Each variable is operationally defined and control variables are placed into theoretical clusters in order to facilitate interpretation. The final section reviews the statistical procedures used in the analysis. An index of sentencing equality is introduced and the statistical procedure known as test factor standardization is described as it is used in the subsequent analysis.

### Source and Method of Data Collection

The data used in this study were originally collected as part of a research grant from the Kentucky Crime Commission and Western Kentucky University. The original grant, spanning 1975-77 under the Department of Sociology, provided support for a broad ranging investigation of judicial sentencing within the Commonwealth, measurement of the psychological impact of short and medium-term incarceration and the delineation of the efficacy of various sentencing alternatives available to the judiciary of Kentucky. This research is summarized in the final report, Shock Probation: The Kentucky Experience (Faine and Bohlander, 1976).

This research uses information drawn from the files of the central office of the Bureau of Corrections as part of the larger study. Trained coders examined institutional and probation "jackets" for a total of 1603 male and female offenders remanded to the Bureau of Corrections for either probationary supervision or incarceration. Coders examined inmate or probationary files in order to record nearly 140 different variables. Though numerous informational sources were used within offender files, most of the data used in this investigation came from three primary sources (Faine and Bohlander, 1976).

Several of the variables showing personal, demographic or offense related attributes were primarily drawn from the Presentence (Preparole/Preprobation) reports generated by the Bureau. Several derived variables, such as residential



transiency and employment stability, were globally coded by subjectively interpreting the information in these reports. The F.B.I. information "rap" sheets provided the second major informational source. These reports provided arrest, conviction and previous imprisonment records. Additional information was drawn from either the institutional background work-up sheets (Form B) or the Basic Inventory form used in probation. According to the original investigators:

Random validity checks were carried out to assure the reliability of the data collected and coder performance. Occasional discrepancies between sources of data were resolved through analysis of the internal consistency of the documents examined as well as through further investigation of supporting documents in the file. Coders examined each document available for every case sampled in order to develop an understanding of the total dimensions of the record. (Faine and Bohlander, 1976: 48)

#### Sampling and Weighting Methods

The population of offenders considered for inclusion in the sample contained all Kentucky felons sentenced between March 1, 1972, and December 31, 1975. A sample of 1603 offenders was drawn from listings of eligible offenders using a disproportionate stratified sampling procedure. This sampling method was used to guarantee sample composition according to sex and the type of sentence disposition (probation, shock probation, or incarceration) used. Table 1 shows the final sample composition.

Table 1. Sample Composition According to Sex and Sentencing Disposition.

Type of Sentence Disposition	Male		Female	
	Frequency (Unweighted)	Percent	Frequency (Unweighted)	Percent
Prison	450	32%	54	30%
Shock Probation	520	37%	62	35%
Probation	455	31%	62	35%
Total	1425	100%	178	100%

It is necessary to use a weighting procedure in order to correct for the over-sampling of shock probationers and women offenders relative to the sampling fractions used for probationers and incarcerated. Table 2 presents the individual case weights used for each strata of the sampling design. As can be seen in this table, the weighting procedure greatly exaggerates the actual sample size so that the subsequent analysis will outwardly be based on a total of 1704 offenders (the weighted total), though in actuality the true sample size is 1603 (the unweighted total).

While the disproportionate stratified sampling design is ideally suited for statistical comparisons of groups of varying population size, it causes a number of problems when inference is shifted to the target population. Case weighting overcomes the problem of disproportionality and also

Table 2. Sample Weights and Weighted Sample Composition.

Type of Sentencing Disposition	Male		Female	
	Weight	Weighted Frequency	Weight	Weighted Frequency
Prison	7.9556	3580	3.0556	165
Shock Probation	1.0077	524	1.0151	63
Probation	6.7253	3060	6.6452	412
Total		7164		640

the over- and under-representation of particular groups of subjects. Traditional descriptive statistics may be used in the analysis of a weighted sample although case weighting serves to under-estimate sample heterogeneity. Case weighting, however, especially disproportionate weighting, greatly affects the use of inferential statistics or tests of statistical significance (Blalock, 1960: 399-406). Sampling error is greatly under-estimated and the artificial weighted sample, grown to nearly five times the actual sample size, virtually guarantees that the slightest group differences will be significant, though substantively uninteresting. For these reasons, no tests of statistical significance are used in this research.

### Measurement of Variables

This section reviews several methods of defining and operationalizing the dependent variable (type of sentence disposition). Race, the single independent variable, is discussed in the subsequent section. This section also contains a discussion of over twelve additional variables which are utilized either to describe racial differences according to selected variables or in the refinement of racial sentencing equality indices.

#### Dependent Variable: Type of Sentencing Disposition

The dependent variable (type of sentence disposition, outcome, or severity of penal sanction) has been both theoretically and operationally defined in several different ways in past research. Hagan (1974), in his review of 20 studies of judicial discrimination or discretion, points out that sentencing outcome has been defined as the actual sentence in months or years, the type of sentence outcome (jail, probation, fine, imprisonment, etc.), the relative percentage of convictions, the frequency of death sentences, or the relative rate of appellate review. Recent federal publications (Sutton, 1978; Pope, 1975) have attempted to resolve this lack of agreement among researchers by promoting one or both of the following definitions of sentencing disposition: 1) a Sentencing Weight Index (Sutton, 1978: 6) which combines the length of supervision and/or confinement into an ordinal scale with severity weights ranging from 0



to 80; and 2) an ordinal ranking of the appropriate sentencing outcomes in terms of severity of penal sanction (suspended sentence; probation; shock probation; imprisonment).

The first measure, sentence weighting, is problematic in this research for two reasons. First, Kentucky law places strict minimum and maximum penal sanctions according to the felony class in which the offense is located. Class D felonies, such as grand larceny, are punishable by at least one but not more than five years of imprisonment in the State penitentiary or reformatory. Class A felonies, including homicide, are punishable by a sentence of twenty years or more. Thus, offense is definitionally related to the length of confinement and the level of the severity as defined by sentencing weighting. This problem confuses the identification of judicial discrimination and discretion and ignores the real latitude in sentencing -- the decision whether or not to deny the offender his/her freedom by the imposition of a sentence to imprisonment. Similarly, the sentencing weight method is of questionable applicability in the Commonwealth of Kentucky since the penal code provides for jury sentencing. Though over 90 percent of Kentucky felons plead guilty without the benefit of jury trial, jury sentencing also serves to hide judicial latitude.

The second measure of penal sanction, type of sentence disposition, is a more accurate reflection of the behavior of the judiciary. Commonwealth circuit court judges may (1) suspend the imposition of sentence so as to release the

offender into the community under probationary supervision by the Bureau of Corrections; (2) initially sentence the offender to imprisonment only to subsequently release the offender back into the community under probationary supervision as provided in the shock probation enactment:

Subject to the provisions of KRS Chapter 439, any county or circuit court may, upon motion of the defendant made not earlier than thirty days nor later than sixty days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon such terms as the court determines. (Criminal Law of Kentucky, 1975: section 439.265);

or (3) sentence the offender to imprisonment for the length of the sentence subject to the operation of good time and honor time.

This research uses the second measure of sentencing outcome by operationally defining type of sentence disposition as (1) probation if the offender was released into the community without having served one or more days of confinement in a reformatory or penitentiary; (2) shock probation if the offender was released from prison through the use of the shock probation statute; or (3) incarcerated if the offender was sentenced to and confined in prison without the benefit of a suspended sentence or early release exclusively through shock probation. Shock probation offenders, while being both incarcerated and probationers during their period of correctional supervision, were classified and counted only

as shock probation cases. Men released from prison by any other method (expiration, parole, conditional release, commutation, pardon or transfer to another correctional jurisdiction) were always included in the incarcerated sample.

It should be noted that the dependent variable is a trichotomous, ordinaly ranked variable. Regular probationers receive the least punitive sanction; shock probationers receive a minimal period of imprisonment (not to exceed 130 days); incarcerated receive the most punitive penal sanction and the greatest deprivation of liberty.

#### Independent Variable: Race

The race of the offender was usually derived from the presentence reports although institutionalized offenders were also identified by the institutional photograph and jacket. Race naturally fell into a dichotomous classification: white (76 percent of the sample) and black (24 percent of the sample).

#### Control/Specification Variables

A total of 21 additional variables are used in this research either in the description of relevant white-black differences according to numerous legal and extra-legal distinctions or in the specification of finite sentencing distributions for whites and blacks when salient legal considerations are held constant. These 21 additional variables have been organized into eight clusters or groups of variables having similar content or theoretical implication.

The first variable group is actually composed of one variable, Offense Type, a four-part categorization of the criminal offense and offense description contained in the Presentence Report. Each of the four offense categories was operationally defined as follows:

1. Violent This category includes those offenders convicted of a serious crime against the person such as murder, rape, robbery and assault. Property offenders (burglary, theft, forgery, frauds, and the like) were included in this category if, from the offense description originally drawn from the police report, the offense involved either the use of a deadly weapon or culminated in bodily injury to others requiring at least treatment at a hospital. Homicide, even without criminal conviction, would be sufficient to recode a property conviction into a violent crime designation. Similarly, offense descriptions alleging forcible rape automatically reclassified property convictions into the violent crime category. Robbery, the taking of property by force, was coded as a violent crime.
2. Property This category contains all property offenses (larceny, burglary, auto theft, frauds, etc.) not meeting the personal harm or use of weapon criteria necessary for inclusion as a violent offense.
3. Drugs The offense grouping contains all drug related convictions, either for possession or trafficking.
4. Other Any offense conviction not fitting one of the above descriptions was pooled into this residual category. For the most part, this offense grouping contains all crimes against the state and public justice (perjury, escape or aiding to escape, fraudulent use of credit or authority, and the like).

The second variable group, Offense Seriousness Indicators, is composed of the Sellin-Wolfgang (1964) seriousness index as well as three variables which are based on



segments or portions of the Sellin-Wolfgang seriousness index. This index is a unidimensional seriousness scale which combines a set of weights indicating public perceptions of the gravity of criminal acts with the number of times distinct criminal events took place as part of the crime (Sellin and Wolfgang, 1964: 292-318). The scoring procedures outlined by Sellin and Wolfgang were followed explicitly using the Presentence (Preprobation/Preparole) report prepared by the Bureau of Corrections. Though the original Sellin-Wolfgang scale was developed only to indicate a summary measure of the social harm involved in the criminal offense, this scale was also decomposed into three subscales so as to yield a total of four measures:

1. Seriousness (Total) The total seriousness scale or index is composed exactly as the original Sellin-Wolfgang measure. The score value earned is a function of the (a) number of victims of bodily harm; (b) the number of victims of forcible sexual intercourse; (c) presence of victim intimidation; (d) the number of premises forcibly entered; (e) the number of vehicles stolen; and (f) the value of property stolen or destroyed. In all, 17 different aspects of criminality may be present, each with a unique seriousness weight. The total score, or total seriousness measure, is equal to the sum of the number of such events or instances alleged in the crime multiplied by the respective seriousness weight assigned to each event in the crime.
2. Seriousness (Personal Harm) This measure is a subscale or subcomponent of the total seriousness scale. The score value is restricted to that portion of the total scale value earned from alleged personal harm to a victim resulting in treatment without hospitalization, injury with hospitalization, death, and rape, with or without intimidation with a weapon.



3. Seriousness (Use of Weapons) This index indicates that portion of the total seriousness scale score earned through victim intimidation. The "weapon" aspect of the measurement is emphasized because, in nearly all instances, score values were earned through the use of a deadly weapon rather than physical or verbal intimidation.
4. Seriousness (Property) This index is drawn from the section of the Sellin-Wolfgang seriousness index which summarizes, through a sliding weighted scale based on estimated value, the gravity of the crime in terms of property stolen or destroyed, the number of premises forcibly entered and/or the number of motor vehicles stolen.

While each of the preceding measurements can assume a wide range of values, in the following analysis each has been collapsed or recoded into either a dictotomous or trichotomous format. The indexes for personal harm and the use of weapons are presented dichotomously with the low score being equal to a score of zero on the particular index and a high score being equivalent to a score of one or more. The total seriousness index is treated trichotomously. A low score designation (a score of 0 through 2) was most often earned by simple larceny, simple (and single) car theft or breaking and entering, all without the use of a weapon or resulting in personal injury. A medium score (3 through 6) could be earned by harming a victim, though not so seriously as to require hospitalization, the use of a weapon in order to perpetrate a theft, or by multiple motor vehicle theft or property theft or destruction alone in excess of an estimated \$80,000 value. The high score on the total seriousness index (a score of

7 or higher) nearly always results from forcible rape, serious bodily injury or death or numerous counts of breaking and entering, motor vehicle theft or smaller value property theft or destruction.

The third variable group, Previous Felony Record, is composed of three variables summarizing the offender's previous criminal history as reported in the F.B.I. "rap" sheet and both state and local police reports: (1) previous felony arrests, used here as simply a dichotomy of more or one or more; (2) previous felony convictions, as used dichotomously as none and one or more; and (3) previous (felony) imprisonment, also used as a either-or variable. No distinction was made between minimum, medium or maximum security confinements.

The fourth variable group, Personal Characteristics, organizes four personal characteristics as obtained predominantly from the Presentence Report: (1) sex; (2) age, organized into three levels: 15-20 years-of-age; and 27 years-of-age or older; (3) marital status at the time of probation or admission to prison, treated dichotomously as married (including common law designation) or not married (single, divorced, separated or widowed); and (4) the number of dependents (other than the offender himself) the subject had at the time of probation or sentencing.

Two indicators of Social Status compose the next variable grouping. The first, job skill level, is a dichotomous classification derived from a Hollingshead

measurement of occupation. It is used here as indicating either possession of a skilled (or higher) job or a semi-skilled (or lower) status job. The second variable, education, is treated dichotomously; less than high school completion or high school completion or more.

The sixth variable group, Community Integration Indicators, contains three variables: (1) employment status, representing whether or not the offender had a full-time job before arrest or sentencing; (2) alleged peer criminality, treated trichotomously as none, possible or definite; and (3) alleged home criminality, ordinally scaled as being absent (no parent/sibling criminality known or suspected), possible (environment and parental attitude supportive of deviant behavior but no known parent/sibling criminality), or definite (actual encouragement or known parent/sibling criminality).

According to Faine and Bohlander (1976: 94) data coders were instructed to carefully read all of the information contained in the reports submitted by the presence investigating officer and then make a qualitative assessment regarding both peer and home criminality. In other words, the coding was intended to be a reflection of the information made available to the circuit court judge by the investigating officer, rather than an assessment by the coder of the support for such allegations.

Normative Stability, the seventh variable grouping, contains: (1) previous drug abuse, an either-or designation

of whether or not the presentence investigation alleged that the offender had a present or past history of drug abuse (unspecified); and (2) previous alcohol abuse, a present-absent designator as derived from the same report.

The final variable group, Presentence Investigation Recommendations, is composed of two variables indicating whether or not, according to the officer preparing the report, (1) community sentiment favored lenient treatment (probation, shock probation, parole) of the offender, or (2) local law enforcement officials (police officers, sheriff, or jailers) or other community officials recommended the offender for lenient treatment by the court. Both of these variables, official (police) attitude and community attitude, are presented dichotomously as either favoring or not favoring such treatment. This information was usually derived from a section of the report in which the investigating officer summarized such public sentiment. While there is no way of knowing whether or not the officer actually conducted the said survey, nonetheless, both variables do summarize the recommendations made available to the judge prior to sentence disposition.

In addition to these variables, the offender's criminal history was also summarized in a hybrid variable labeled Prior Record. A "low" score on this variable indicated that the offender had neither been previously arrested for a felony, nor had been committed to a juvenile institution as a youth, nor sentenced (and serving) time



in a local jail for a misdemeanor conviction. A "medium" score on this variable indicated either previous felony arrest (with or without conviction), having served one or more days in jail following a misdemeanor conviction, or having served time in a juvenile delinquency institution. A "high" score on the prior record variable could only be achieved by having actually served time in prison for a previous felony conviction.

#### Statistical Procedures

The data analysis contained in the following sections utilizes only bivariate and multivariate percentage tables. As such, these presentations require simply a comparison of the relative white and black percentages within types of sentence disposition for correct interpretation. Each cross-tabulation of sentence and race also contains an equality index (EI) which summarizes, as demonstrated below, the extent to which the sentences given to blacks are identical, percentage wise, to those given whites. Test factor Standardization, a method for standardizing bivariate percentage tables for the non-interactive effects of other variables, is discussed in a later section.

#### Equality Index

In the following analysis, white-black sentencing differences are measured with an equality index (EI) (U.S. Bureau of Census, 1970). The EI, which is also the



complement of the dissimilarity index proposed by Duncan and Duncan (1955), is defined by the formula  $EI = \sum \min(w_i b_i)$  where  $w_i$  and  $b_i$  are the respective percentages of whites and blacks in the  $i$ th sentencing category and the summation from one to three indicates the three sentencing alternatives in Kentucky: prison, shock probation and probation. Thus, to calculate an EI for any sample of white and black offenders, we compare the black and white sentencing distributions, summing the minimum percentages, either white or black across the three sentencing alternatives.

The EI ranges from 0 to 100 and varies directly with the similarity of the white and black sentencing distributions. If complete sentencing equality exists in that the white sentencing percentage distribution is identical to the black percentage distribution, then the EI takes the value of 100. If complete sentencing inequality exists in the sense that white offenders never receive the same disposition as blacks and vice versa, then the EI assumes the value 0. Values of the EI between 0 and 100 indicate the amount of overlap between white and black sentencing (percentage) distributions. Equivalently, the EI indicates the proportion of whites who receive dispositions equal to the same proportion of blacks. Thus, for example, an EI of 75 indicates that 75 percent of whites receive sentence dispositions the same as 75 percent of blacks.

In addition to its straightforward interpretation, the EI has the added advantage of being insensitive to the number of dispositional alternatives available to judges in a given state. That is, equality indices pertaining to a state with only two sentencing alternatives (such as probation and incarceration) can be readily compared with equality indices generated from a state with more than two sentencing alternatives. An EI of a specific magnitude indicates the actual extent to which the white and black sentencing distributions overlap, independent of the number of sentencing alternatives available. A second advantage of the EI is that it is also insensitive to the relative popularity or unpopularity of particular sentencing alternatives. EI generated for a sample in which imprisonment is used extensively are readily comparable to EI generated for a sample which uses imprisonment sparingly.

The EI, however, does have an important disadvantage in that interpretation is obfuscated when either of the following conditions are violated. First, the available sentencing alternatives should be rank ordered. That is, they can be ordered in terms of some dimension such as the "extent of punitiveness" inherent in each alternative. For example, in this investigation, the three sentencing alternatives in Kentucky may be ranked from least to most punitive as follows: probation, shock probation and imprisonment. Second, there should be a definite and consistent tendency for one offender group, such as whites,

to always proportionately receive either a more or less punitive sentencing alternative. Thus, in order to unproblematically interpret an EI of, for example, 75, it is necessary to know a priori that a greater proportion of one group is always found in the more punitive sentencing alternative. This condition was met in this study in all but one instance in which an EI was calculated: a greater proportion of blacks received incarceration than whites. Conversely, in nearly all of sentencing distributions examined in the following analysis, a greater proportion of whites received regular probation than their black counterparts. Interpretation of the EI statistic in terms of the percent of white and black receiving shock probation is aided somewhat in that whites always received the greatest proportional representation in the shock probation category.

As indicated above, all of the data presented in this analysis are weighted to reflect the actual population distribution for the State of Kentucky. For this reason, no tests of statistical significance will be applied to the sample statistics. However, nearly all of the percentages and EI presented below are based upon a sufficiently large number of unweighted cases so as to preclude large sampling error.

#### Test Factor Standardization

The statistical procedure known as "test factor standardization" (cf. Loether and McTavish, 1974: 297-301)



is a method of removing the effects of control variables (test factors) from bivariate percentage tables. The notion of standardization implies that the procedure effectively "removes" the impact of one or more test or control variables from their influence on the independent and dependent variable. In the following analysis, test factor standardization is the method used to remove the impact of offense type and/or prior record from the relationship between sentencing disposition (the dependent variable) and race (the independent variable). The resulting "standardized" relationship between race and sentence is thus free of racial differences in prior record or offense.

Test factor standardization is actually a method for recombining partial percentage tables in which the test factors or control variables are held constant. In this research, for example, partialling the zero order relationship between race and sentencing on prior record (a three-category variable) and offense type (a four category variable) produces a total of twelve bivariate race-sentencing tables. Test factor standardization recombines the partial tables back into the zero order table dimensionality by weighting the cell percentages in each partial table by the proportion of the total cases distributed within each partial table. In so doing, differences in sentencing due to offense type and/or prior record are removed so as not to be contaminated with, and logically

confused with, the effect of race.

The impact of test factor standardization can be to create, inflate or destroy the original bivariate relationship in the unstandardized table. Logically, in this research, standardization of the white-black distributions according to offense type (given black over-representation or relative disproportionality in violent crimes) and prior record (given the obvious relationship between sentence disposition and previous criminal record) serves to remove from the impact of race two important considerations. Generally, one would expect the standardization to favor an argument against racial bias in sentencing by reducing the magnitude of sentencing disparity or inequality between whites and blacks.

Test factor standardization is not an appropriate research procedure when interaction is present or particularly interesting. That is, to the extent that interesting racial differences occur in the sentencings of whites and blacks, perhaps to even reverse the hypothesis of more lenient treatment toward whites, and to the extent that particular combinations of offense and prior record reverse an otherwise consistent pattern of racial sentencing, test factor standardization is inappropriate. However, despite the seeming appeal of such possibilities, the data analyzed herein consistently meet the assumption of no interaction. That is, the percentage difference and, most importantly, direction of the relationship between white



and black sentencing is consistent within combinations of offense and prior record. 44

This method of standardization is representative of the more general research strategy used in this research. A distinction must be made between legal and extra-legal (and potentially discriminatory) factors or considerations used by the court. Judges, by the constraints imposed by the legal code, must sentence within the minimum and maximum penalties established by law. Though the Kentucky penal code did not exclude certain types of offenders from sentencing alternatives during the time period for the data, there is an obvious relationship between the sentence length and perceived social harm and perceived offense seriousness. Offense type, therefore, is a legal consideration--an aspect of the crime which must be reckoned with by the court. Similarly, judges, by law, are supposed to consider prior criminal record during sentencing, obviously making this variable a legal consideration.

According to a 1976 survey of the Commonwealth circuit court judges and Commonwealth attorneys, these two legal considerations are given the most importance of relevant considerations (Faine and Bohlander, 1976: 231). Judges and prosecutors rated the seriousness of the offense as the most important consideration in case dispositions resulting in shock probation; prior criminal record was given the second highest consideration. The third most

highly rated considerations, "potential adjustment to the community," is too vague to imply a specific operational definition.

This research uses offense type, prior record and offense seriousness as control or test factors. In so doing, it starts with an implicit assumption that demonstrable difference in sentencing according to race may in fact be due to any or all of these legal considerations. Race, the independent variable, is obviously an extra-legal consideration, much the same as marital status, sex or age. To the extent that differences in sentencing persist after removing the effects of these test factors, it can be concluded that sentencing is not racially blind.

## CHAPTER IV

### FINDINGS

The previous chapter has presented the research design and data collection procedures used to measure type of sentencing disposition (the dependent variable), race (the independent variable), and a host of control or specification variables used in the analysis. The first section of this chapter introduces each of the control/specification variables as cross-tabulated by race. Each of these bivariate presentations, as summarized into eight collections of relatively homogeneous variable sets, uses weighted cases so as to correct for the unrepresentativeness of the sample as generated by the disproportionate stratified sample method discussed earlier. The examination of these bivariate tables constitutes a preliminary step to delineating the most critical control variables for the subsequent analysis of sentencing equality.

The second section of this chapter presents the actual degree of sentencing similarity between white and black offenders as summarized by the equality index described in Chapter III. The sentencing used for whites and blacks is stratified by the introduction of control variables through

test factor partialling and test factor standardization. These combined methodologies yield multivariate tables of sentencing disposition. Moreover, the final tabular presentations allow for the assessment of sentencing equality between whites and blacks after first removing the effect of correlated legal and extra-legal considerations. The resulting sentencing disparity, as summarized by the EI statistic, is indicative of the influence of race in the disposition of criminal defendants.

#### Legal and Extra-Legal Differences

##### Between Whites and Blacks

As a preliminary step to the calculation of sentencing disposition equality, this section delineates the differences between white and black offenders according to eight sets of legal and extra-legal offense/offender characteristics. Differences according to Offense Type for white and black offenders are presented in Table 3. According to this presentation, blacks are over-represented, relative to white offenders, in violent offenses. Whereas 22.1 percent of the whites were sentenced for violent crimes and/or property crimes which resulted in personal injury the use of a weapon, 40.5 percent of blacks fell into this classification. White males were over-represented in property offenses (64.1 percent versus 48.1 percent for blacks) which did not involve the use of violence.



Table 3. Offense Type By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Offense Type				
Violent <sup>1</sup>	1213	22.1%	678	40.5%
Property	3513	64.1%	805	48.1%
Drugs	466	8.5%	164	9.8%
Other	290	5.3%	27	1.6%
Total	5482	100.0%	1673	100.0%

<sup>1</sup>Violent category contains property offenses which resulted in personal injury, death, forcible rape, or which involved the use of a deadly weapon.



Table 3 supports the contention that the type of criminal offense, a legal consideration, is importantly related to race. Given the generally more punitive response to offenses involving the use of violence or weapons, it is reasonable to assume that this disproportionate concentration of blacks in violent offenses will also produce higher rates of imprisonment as a direct result of this fact, independent of any sentencing bias due to race. In other words, the measurement and quantification of sentencing equality must remove the influence of offense type in the comparison of sentencing patterns for blacks and whites in order to adjust for this apparent maldistribution.

The second variable set, Levels of Offense Seriousness, summarizes the white-black differences according to four indices of the seriousness of the offense for which the offenders were sentenced. According to Table 4, black offenders were more likely to have committed an offense involving the use of weapons (34.3 percent versus 17.2 percent for whites) and an offense resulting in personal harm (27.3 percent versus 17.5 percent for whites). This greater involvement of blacks in more serious criminal offenses is also shown by the total seriousness score in that 41.3 percent of the blacks scored in the "high" category as opposed to only 29.7 percent of the whites. White offenders were somewhat more likely to have been convicted of a property offense which scored in the "high" range (34.5 percent for whites; 27.9 percent for blacks). In sum, the evidence

Table 4. Levels of Offense Seriousness By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Seriousness (Total) <sup>2</sup>				
Low (0-2)	1478	29.6%	390	25.8%
Medium (3-6)	2035	40.7%	496	32.8%
High (7 or more)	1483	29.7%	623	41.3%
Total	<u>4996</u>	<u>100.0%</u>	<u>1509</u>	<u>99.9%</u> <sup>1</sup>
Seriousness (Personal Harm) <sup>2</sup>				
Low (0)	4120	82.5%	1097	72.7%
High (1 or more)	875	17.5%	411	27.3%
Total	<u>4996</u>	<u>100.0%</u>	<u>1509</u>	<u>100.0%</u>
Seriousness (Use of Weapons) <sup>2</sup>				
Low (0)	4135	82.8%	991	65.7%
High (1 or more)	861	17.2%	518	34.3%
Total	<u>4996</u>	<u>100.0%</u>	<u>1509</u>	<u>100.0%</u>
Seriousness (Theft) <sup>2</sup>				
Low (0,1)	1474	29.5%	524	34.7%
Medium (2,3)	1800	36.0%	565	37.4%
High (4 or more)	1722	34.5%	420	27.9%
Total	<u>4996</u>	<u>100.0%</u>	<u>1509</u>	<u>100.0%</u>

<sup>1</sup>Percentages do not total to 100.0% because of rounding error.

<sup>2</sup>Drug offenders are excluded because of the inapplicability of the Sellin-Wolfgang Index.

presented in Table 4 suggests a second legalistic argument to explain the greater concentration of blacks in more punitive sentencing alternatives.

Table 5 presents racial differences according to the percent of offenders with one or more previous arrests, convictions, or imprisonments. According to this table, black offenders do appear before the court with more serious previous felony histories in that a greater percentage had been previously arrested and convicted than their white counterparts. However, the differences according to previous imprisonment are negligible since roughly the same percentage of whites and blacks had been previously imprisoned. The evidence contained in this table suggests that a third legal consideration -- either previous felony arrest or conviction -- may influence the apparent sentencing disparity between whites and blacks.

Distributional differences in the sex, age, marital status and number of dependents for whites and blacks are summarized in Table 6. Women constitute only a small minority of the total sample and therefore have been eliminated from the subsequent data analysis in order to homogenize the sample and to avoid the potentially specifying effect of gender. Age differences between whites and blacks are small, with blacks having a slightly greater likelihood of falling into the youngest age categories. Differences according to marital status and the number of dependents are marked: nearly 40 percent of white males

Table 5. Previous Felony Record By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
<b>Previous Felony Arrests</b>				
None	2784	50.8%	692	41.4%
One or more	2698	49.2%	981	58.6%
Total	<u>5482</u>	<u>100.0%</u>	<u>1673</u>	<u>100.0%</u>
<b>Previous Felony Convictions</b>				
None	3660	66.8%	1021	61.1%
One or more	1822	33.2%	651	38.9%
Total	<u>5482</u>	<u>100.0%</u>	<u>1673</u>	<u>100.0%</u>
<b>Previous Imprisonment</b>				
None	4425	80.7%	1312	79.1%
One or more	1056	19.3%	347	20.9%
Total	<u>5481</u>	<u>100.0%</u>	<u>1658</u>	<u>100.0%</u>



Table 6. Personal Characteristics By Race.

	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Sex				
Male	5482	92.7%	1673	88.9%
Female	431	7.3%	209	11.1%
Total	<u>5913</u>	<u>100.0%</u>	<u>1882</u>	<u>100.0%</u>
Age (Males Only)				
15-20	1453	26.6%	488	29.2%
21-26	2290	41.9%	714	42.7%
27 or older	1722	31.5%	470	28.1%
Total	<u>5465</u>	<u>100.0%</u>	<u>1672</u>	<u>100.0%</u>
Marital Status (Males Only)				
Married, Common Law	2158	39.6%	415	25.1%
Single, Divorced, Separated, Widowed	3296	60.4%	1241	74.9%
Total	<u>5454</u>	<u>100.0%</u>	<u>1656</u>	<u>100.0%</u>
Number of Dependents				
None	2787	51.3%	1091	65.2%
One or more	2643	48.7%	581	34.8%
Total	<u>5431</u>	<u>100.0%</u>	<u>1672</u>	<u>100.0%</u>

were married at the time of the presentence investigation as opposed to only 25 percent of black males. Similarly, whites were more likely to have one or more dependents at the time of sentencing (48.7 percent versus 34.8 percent for blacks).

Marital status and dependency differences can also surface in sentencing differences if it can be argued that judges are more likely to be lenient toward those who are married, especially with extended dependency. Although these differences clearly represent extra-legal considerations in sentencing, nonetheless, it will be necessary to control for marital status in the assessment of racial sentencing equality so that the observed level of equality can be measured independent of sentencing disparity attributable to either marital status or dependency.

The relationship between race and two social status indicators -- job skill level and educational attainment -- is shown in Table 7. The overwhelming majority of offenders failed to complete high school or to attain regular employment rated as skilled or higher. Differences in job skill levels between whites and blacks are small with less than a 4 percent difference. Blacks and whites differed more according to educational attainment, with 29.5 percent of whites completing high school and only 22.9 percent of blacks. However, the low predictive power of the status indicators suggests that they are not important considerations in standardizing the white and black samples.

Table 7. Social Status Indicators By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Job Skill Level				
Skilled or higher	694	14.0%	141	10.2%
Semi-skilled or lower	4267	86.0%	1241	89.8%
Total	<u>4961</u>	<u>100.0%</u>	<u>1382</u>	<u>100.0%</u>
Education				
High School or more	1232	22.9%	474	29.5%
Less than High School	4139	77.1%	1131	70.5%
Total	<u>5371</u>	<u>100.0%</u>	<u>1605</u>	<u>100.0%</u>

Table 8 contains a comparison of racial differences according to three "community integration" indicators: employment status; alleged peer criminality; and alleged home criminality. The last two variables summarize the presentence investigator's implicit or explicit portrayal of the offender's involvement in either the criminality of peers or the level of other criminality present in the home. Employment differences are extremely small; whites and blacks were equally likely to be regularly employed prior to arrest. Blacks were somewhat more likely than whites to rate high on the peer and home criminality assessments: nearly 2 percent more of whites had no alleged peer criminality; over 5 percent more of whites were coded as having no home criminality. Taken as a whole, however, the community integration indicators are not strongly correlated with race. Therefore, the subsequent analysis ignores each of these variables as an important control factor in standardizing the two racial groups.

Previous drug and alcohol involvement is shown according to race in Table 9. Black males were considerably more likely to have a history of drug abuse (41.4 percent versus 24.9 percent for whites). White males, however, were a little more likely to have a history of alcohol abuse (63.6 percent as compared with 60.6 percent for blacks). Despite the relatively strong differences in previous drug use between whites and blacks, this variable is of secondary importance in comparison with previously



Table 8. Community Integration Indicators By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
<b>Employment Status</b>				
Regular	2652	50.2%	836	50.7%
Irregular, Unemployed	2636	49.8%	814	49.3%
Total	5288	100.0%	1650	100.0%
<b>Alleged Peer Criminality</b>				
None	1390	27.7%	392	25.5%
Possible	2055	41.0%	578	37.6%
Definite, Severe	1569	31.3%	567	36.9%
Total	5014	100.0%	1536	100.0%
<b>Alleged Home Criminality</b>				
None	2896	59.3%	744	54.5%
Possible	957	19.6%	312	22.9%
Definite, Severe	1034	21.2%	309	22.7%
Total	4886	100.1% <sup>1</sup>	1364	100.1% <sup>1</sup>

<sup>1</sup>Percentages do not total to 100.0% because of rounding error.

Table 9. Normative Stability By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Previous Drug Use				
Absent	4116	75.1%	981	58.6%
Present	1365	24.9%	692	41.4%
Total	5481	100.0%	1673	100.0%
Previous Alcohol Abuse				
Absent	1994	36.4%	659	39.4%
Present	3487	63.6%	1014	60.6%
Total	5481	100.0%	1673	100.0%

cited variables. First, the greater proportional representation of blacks among drug users is in part already measured by the variable offense type. According to this earlier presentation, blacks were disproportionately found among drug offenders. Second, prior drug use is not an obvious judicial consideration, especially in comparison with those variables shown above to strongly correlate with race. Offense type, prior criminal record, offense seriousness, sex, age, and even marital status are either obvious sentencing factors or immediately evident to the sentencing judge. Prior drug use, on the other hand, is a secondary consideration and quite likely not generally recognized by the sentencing judge. For these reasons, and in anticipation of the limitations of the following multivariate model to accommodate further specification, prior drug use will not be included as a control variable.

The final variable set, Presentence Investigation Recommendation, summarizes the explicit community or law enforcement attitudes related in the investigatory reports. Blacks received proportionately fewer favorable recommendations from both the police and the community. However, the differences according to race are not particularly strong: 7 percent more of the white offenders received a favorable police recommendation and 5 percent more received a favorable community recommendation. Moreover, these recommendations were often missing as shown by the diminished sample size. For these reasons, these variables will be devalued

Table 10. Presentence Investigation Recommendations By Race (Males Only).

Variable	Whites		Blacks	
	Frequency (Weighted)	Percent	Frequency (Weighted)	Percent
Official (Police) Attitude				
Favorable Toward Leniency	1588	35.9%	347	28.3%
Unfavorable Toward Leniency	2836	64.1%	879	71.7%
Total	4424	100.0%	1226	100.0%
Community Attitude				
Favorable Toward Leniency	1862	48.7%	479	43.9%
Unfavorable Toward Leniency	1963	51.3%	611	56.1%
Total	3824	100.0%	1090	100.0%



in the subsequent analysis.

#### Summary of Racial Correlates

The preceding bivariate tables show varying levels of support for the retention of legal and extra-legal variables as important covariates of racial sentencing equality. The type of offense, the seriousness of the offense and prior criminal history of the offender are all both legal factors in sentencing and important correlates of race. These correlates, left uncontrolled, obfuscate the relationship between race and sentencing due to their disproportionate presence among black offenders. Sex and marital status also correlate with both race and sentencing disposition. Other extra-legal considerations -- education, skill level, age, alleged home and peer criminality, presentence recommendations, alcohol and drug abuse and employment status -- are either of no or diminished importance.

The following analysis of sentencing equality will pertain only to male offenders. Prior felony arrest, conviction or imprisonment will be summarized into a conglomerate variable, "prior record," indicating the presence or absence of several aspects of criminal history: 1) no prior confinement in jail following a misdemeanor conviction; no prior felony arrest or conviction; no prior confinement as a juvenile delinquent; 2) prior felony arrest without imprisonment; prior jail confinement following a misdemeanor conviction; detention in a juvenile

institution as a delinquent; and 3) prior prison commitment.

#### White-Black Sentencing Equality

Table 11 presents the percent of white and black offenders receiving each of the sentencing options by sex. Black men were sent to prison a greater proportion of sentencings than white males (58.5 percent for blacks, and 47.3 percent for whites). Similarly, a disproportionate number of white males receive the less serious penal sanctions of shock probation and probation. As summarized by the equality index presented in Table 11, there is an 88.8 percent "similarity" or level of equality between white and black male offenders. This percentage, it should be noted, is derived by summing the lowest percent figure across each of the three sentencing alternatives. The EI may also be interpreted to show that 88.8 percent of the white and black males receive equal treatment. A third interpretation of this statistic is that there is a  $100 - 88.8$  or 11.2 percent inequality in the sentencing of males.

Females are obviously treated less punitively by the courts according to the evidence contained in Table 11. White women were actually imprisoned in only 17 percent of the felony convictions, whereas black women were imprisoned 43.9 percent of the time, nearly as often as white men and more comparable in value to the treatment of black men than other women. In fact, the discrepant treatment of

Table 11. Sentencing Disposition By Race and Sex.

Sentence	Total		Male		Female	
	White	Black	White	Black	White	Black
Prison	45.1%	56.9%	47.3%	58.5%	17.0%	43.9%
Shock Probation	8.3%	4.9%	8.2%	4.5%	10.6%	8.3%
Probation	46.6%	38.2%	44.5%	37.0%	72.4%	47.8%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Weighted N	(5913)	(1881)	(5482)	(1673)	(431)	(209)
White-Black Equality Index	88.2%		88.8%		73.1%	

black women in comparison with their white counterparts is summarized by the EI of 73.1 percent. Because of this strong inequality in sentencing disposition and the dissimilarity of treatment given white women vis-a-vis other offenders, the subsequent analysis utilizes only male offenders.

It should be recognized that the 88.8 percent equality in the sentencing of male offenders is a statewide average based on the entire sample without white or black standardization on other variables. Table 12, however, shows that sentencing policies differ considerably depending on whether or not the court resides in an urban or rural county. Perusal of this table shows that rural courts are considerably more punitive than urban courts: both white and black offenders are more likely to be imprisoned in a rural area. Similarly, rural areas use the least punitive action, probation, less often than urban courts.

Partialling on the urban-rural placement of the court reduces the overall level of sentencing equality. Whites and blacks are treated least similarly in urban area (EI = 83.9 percent). Slightly higher sentencing equality can be seen for rural courts, which sentence 87.5 percent of whites and blacks to the same dispositional outcomes. Thus, the urban-rural nature of the court clearly specifies the typical sentencing outcome and inflates the overall State sentencing equality by averaging the rates of rural and urban courts. The statewide statistic is artificially



Table 12. Sentencing Disposition By Race in Urban and Rural Courts (Males Only).

Sentence	Urban Areas		Rural Areas	
	White	Black	White	Black
Prison	41.1%	57.2%	52.5%	64.9%
Shock Probation	8.1%	4.1%	8.2%	6.4%
Probation	50.9%	38.7%	39.2%	28.6%
Total	<u>100.1%</u> <sup>1</sup>	<u>100.0%</u>	<u>99.9%</u> <sup>1</sup>	<u>99.9%</u> <sup>1</sup>
Weighted N	(2499)	(1391)	(2983)	(282)
White-Black Equality Index	83.9%		87.5%	

<sup>1</sup>Percentages do not round to 100.0% because of rounding error.

high due to the greater proportional concentration of blacks in urban areas, where greater leniency is shown, and the over-representation of whites in rural areas where sentencing is more punitive. These divergent sentencing patterns serve to somewhat mitigate each other, producing the higher overall equality index. The data presented in Table 12 demonstrates that the sample must be further stratified or refined in order to remove the effect of court location.

Table 13 presents the sentencing dispositions of white and black male offenders after the two groups have been "standardized" or made artificially equal in terms of their proportionate distributions on offense type, prior record, and both offense type and prior record. Standardizing the two groups on offense type serves to increase the overall sentencing equality from 88.8 percent to 93.2 percent. This improvement means that at least part of the inequality is more properly attributable to the greater representation of blacks in violent offenses than it is to racial discrimination. Similarly, standardization for prior record improves the equality calculation from 88.8 to 92.3 percent. The greatest statewide sentencing equality is achieved when the races are made equal on both offense type and prior record simultaneously: EI = 96.7 percent.

The impact of test factor standardization from these two legal considerations is to diminish sentencing disparity.

Table 13. Sentencing Disposition By Race (Males Only), Standardized By Offense Type, Prior Record and both Offense Type and Prior Record.

	Standardized By Offense Type		Standardized By Prior Record		Standardized By Offense Type and Prior Record	
	White	Black	White	Black	White	Black
Prison	48.0%	54.8%	48.1%	55.6%	48.5%	50.6%
Shock Probation	8.1%	4.9%	8.2%	4.4%	8.1%	4.8%
Probation	43.9%	40.3%	43.8%	40.0%	43.4%	44.6%
Total	100.0%	100.0%	100.1% <sup>1</sup>	100.0%	100.0%	100.0%
Weighted N	(5482)	(1673)	(5482)	(1673)	(5482)	(1673)
White-Black Equality Index	93.2%		92.3%		96.7% <sup>2</sup>	

<sup>1</sup>Percentages do not total to 100.0% because of rounding error.

<sup>2</sup>This equality index violates the assumption that blacks receive more punitive sentences because of the higher percentage of blacks receiving probation. An equality index computed the same as the other indexes would equal 98.0% for this distribution.

However, it should be kept in mind that the figures shown in Table 13 reflect statewide sentencing patterns, without delineation of the urban-rural differences.

Urban sentencing equality, after standardization for prior record and type of offense, is tabulated in Table 14. Before taking prior record and offense into consideration, white offenders in the urban courts were treated considerably better than blacks in terms of the relative percentages receiving probation or shock probation. The equality index of 83.9 percent shows that nearly 1 of every 5 black males received a more punitive sentence disposition than his white counterpart. This sentencing disparity is diminished when the urban whites and blacks are standardized for the offense classification and prior criminal record. Still, however, the equality index of 90.5 percent may be substantively interpreted as showing the black urban male offender is not treated equally before the courts. Moreover, the discretionary judicial treatment is not simply a function of the greater criminal histories of blacks or their greater concentration in crimes of violence.

A third legal consideration, offense seriousness, is introduced in Table 15. It should be noted that the data presented in this table applies only to urban males and that the equality indices reflect standardization for prior record, offense and offense seriousness. Partialling for offense seriousness does not uniformly improve sentencing equality. The equal treatment of white and black



Table 14. Sentencing Disposition in Urban Areas By Race (males Only), Unstandardized and Standardized By Offense Type and Prior Record.

Sentence	Unstandardized		Standardized	
	White	Black	White	Black
Prison	41.1%	57.2%	41.9%	51.4%
Shock Probation	8.1%	4.1%	8.8%	3.9%
Probation	50.9%	38.7%	49.3%	44.7%
Total	<u>100.1%</u> <sup>1</sup>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>
Weighted N	(2499)	(1391)	(2475) <sup>2</sup>	(1391)
White-Black Equality Index	83.9%		90.5%	

<sup>1</sup>Percentages do not total to 100.0% because of rounding error.

<sup>2</sup>Standardized percentages are based on fewer cases because of missing values introduced through standardization on offense type and prior record.

Table 15. Sentencing Disposition in Urban Areas By Race and Offense Seriousness (Males Only), Standardized By Offense Type and Prior Record.

Sentence	Offense Seriousness <sup>2</sup>					
	Low		Medium		High	
	White	Black	White	Black	White	Black
Prison	36.2%	42.6%	39.3%	47.3%	53.0%	70.1%
Shock Probation	9.9%	4.2%	7.8%	3.4%	7.9%	5.2%
Probation	53.9%	53.2%	52.9%	49.3%	39.2%	24.7%
Total	100.0%	100.0%	100.0%	100.0%	100.1% <sup>1</sup>	100.0%
Weighted N	(931)	(509)	(1095)	(553)	(658)	(481)
White-Black Equality Index	93.6%		92.0%		82.9%	

<sup>1</sup>Percentages do not total to 100.0% because of rounding error.

<sup>2</sup>All figures derived after standardization by both offense type and prior record.

offenders is highest among those offenders who scored low on the total Sellin-Wolfgang seriousness index (EI = 93.6 percent). Offense seriousness control also improves the overall "standardized" urban figure from 90.5 to 92.0 percent. However, sentencing equality sharply decreases among those offenders who were sentenced for a crime which rated as "high" in seriousness. Urban white and black males, equal in offense type, prior record and offense seriousness -- the three most important legal considerations at the time of sentencing -- are sentenced equally only 82.9 percent of the time. In fact, Table 15 suggests that race is an important sentencing consideration or component since the disparity demonstrated exists independent of the influence of the three legal considerations controlled in the analysis.

Recalling the greater concentration of white offenders in the married category of the variable marital status, Table 16 controls the influence of this variable on sentencing by stratifying the urban male comparisons accordingly. The equality of sentencing remains in the low 90's for both married and unmarried white and black offenders, with standardization for prior record and offense. This evidence suggests that marital status is not producing the sentencing disparity identified herein. In other words, at least among urban males, control for marital status, prior record and offense differences between whites and blacks is not sufficient to eliminate most of the sentencing disparity found.

Table 16. Sentencing Disposition in Urban Areas By Race and Marital Status (Males Only), Standardized By Offense Type and Prior Record.

Sentence	Marital Status			
	Married, CL <sup>1</sup>		Unmarried <sup>1</sup>	
	White	Black	White	Black
Prison	40.5%	50.0%	44.1%	52.7%
Shock Probation	10.1%	3.5%	7.6%	4.1%
Probation	49.4%	46.5%	48.3%	43.3%
Total	100.0%	100.0%	100.0%	100.1% <sup>2</sup>
Weighted N	(924)	(329)	(1478)	(1047)
White-Black Equality Index	90.5%		91.5%	

<sup>1</sup>Married designation includes married and common law (CL); unmarried includes single, divorced, widowed, and separated.

<sup>2</sup>Percentages do not total to 100.0% because of rounding error.



### Summary of Empirical Findings

This chapter has presented the empirical results derived from the statistical analysis of sentencing dispositions according to race. Sentencing "equality" was measured by an equality index (EI) which summarized the extent to which the white and black sentencing distributions were comparable. Eight clusters or sets of variables were first cross-tabulated by race in order to identify important covariates of race. Sentencing disparity was then analyzed in a multivariate model which allowed salient legal factors or variables to account for as much of the sentencing disparity as possible. Residual sentencing disparity was equated with racial discrimination to the extent that standardization for legal sentencing considerations failed remove the initial favorable treatment afforded whites. The following general conclusions were reached:

1. Strong differences can be found between white and black male offenders according to the type of offense committed, the seriousness of the offense, and the prior criminal history of the offender. In each of these comparisons, blacks were disproportionately concentrated in categories which result in more severe penal sanctions.

2. White and black male offenders also differ according to several personal and demographic variable. Blacks are under-represented in rural areas of the State. They are also more likely to appear before the court as: unmarried, younger, poorly educated, poorly recommended by the officer

conducting the investigation and allegedly more involved in criminal behavior and drug abuse. However, with the exception of the urban-rural and marital differences, personal and demographic differences between whites and blacks were smaller than those identified for legal considerations.

3. Sentencing equality varies from a low of 73.1 percent between white and black women to 96.7 percent as the statewide male figure after standardization for offense and prior record. However, the urban-rural placement of the court strongly interacts with sentencing such that the magnitude of inequality is underestimated in the statewide figure. Sentencing equality among urban males was calculated to be 83.9 percent; among rural males, sentencing equality was 87.5 percent.

4. Further refinement of the comparison groups reduced the level of sentencing disparity but did not eliminate it. Standardization of the groups for offense and prior criminal history differences reduced the magnitude of sentencing inequality. Nonetheless, considerable sentencing disparity continued to exist even when the comparison was limited to urban males who were made comparable on offense, prior record, offense seriousness and marital status. This multivariate analysis strongly suggests that differences in the judicial treatment of black offenders may be attributed to race or other extra-legal considerations.

## CHAPTER V

### SUMMARY AND CONCLUSIONS

Despite the obvious magnitude of sentences rendered by the criminal justice process each year -- totaling literally in the hundreds of thousands -- the social sciences have failed to generate data adequate to support certain fundamental tenants of American criminal law. This thesis has addressed only one of these principles -- that all citizens are to be considered "equal" when charged with a criminal offense regardless of their ethnicity, religious preference, or race. Specifically, we have addressed the proposition that the judicial sentencing of convicted felons is not racially biased against black offenders.

The allegation of racial discrimination within the criminal justice process is by no means a new contention. The police, for example, have received considerable criticism for their alleged discriminatory treatment of blacks and other minorities even though social scientists have yet to produce quality empirical data to support this contention. The correctional treatment of black persons, either in confinement or on probation or parole, has also received considerable lay attention though researchers characteristically

disregard these areas. Indeed, even the review of literature addressing racial discrimination at the point of sentencing has done little more than outline the sources of diversity found and the problems of defining and measuring the elusive topic. Those studies focusing on the impact of the attitudes of judges (Smith and Blumberg, 1967; Nagel, 1962, 1963; Hogarth, 1971) ultimately lead one to believe that the problem of racially-based discretionary sentencing is non-systematic. That is, judges may themselves be drawn from particular groups within society which are unsympathetic toward blacks, or as a group judges may be too political, poorly trained, or unknowledgeable. Yet, since the problem concerns simply aggregated individuals, proper selection and training of judges may resolve the problem. Ultimately, however, the problem is systemic in that, according to the data presented above, it is more likely than not to be a problem characteristic of the entire criminal justice process itself. At the very least, the proof cannot be found in the attitudes or predispositions of judges, but instead must be demonstrated by the actual behavior of the judge at the time of sentencing.

Of the sentencing studies reviewed, several were early, rather unsophisticated investigations of the role of race in sentences for homicide or rape (Johnson, 1941; Garfinkel, 1949; Bensing and Schroeder, 1960; Wolfgang and Reidel, 1973). Others fail to provide compelling evidence because of the investigators' inability to control for salient



characteristics known to influence sentencing (Bullock, 1961; Jacob and Vines, 1963).

However, two previous studies were shown to have employed what might be called "strong" research evidence. Green's 1964 study is clearly one of the most cited investigations of sentencing disparity. This is in no small part because he found that, after introducing offense and the number of previous convictions as control variables, the initial sentencing disparity between blacks and whites disappeared or, in statistical terms, was "explained away" by the introduction of the controls. Moreover, his study did little to encourage further research since he argued that the behavioral acts, not the offenses, were so different between blacks and whites that the judicial treatments were rendered uncomparable. In other words, the control of legal considerations aside, researchers should assume that measuring the crime, as perceived by the court, was not simply an additive total of offense-offender characteristics.

The study by Chiricos (1972) is also germane to the present investigation. Using length of sentence as their criterion variable, the study by Chiricos et al. produced several interesting findings as previously summarized in Chapter II. First, sentence disparity was offense specific with a few reversals in the generally more lenient treatment of whites. Second, certain white-black differences failed to disappear even with a limited introduction of certain legal controls.

The present investigation has rejected the use of sentence length as the critical measuring rod of racial disparity in favor of sentencing disposition -- whether the offender was probated, shock probated or incarcerated -- as the real index of penal sanction. Part of the choice stemmed from the statutorily prescribed lengths of sentence permitted by law. At a different level, it was also argued that, given the independent operations of parole, good time and honor time, sentence length hardly reflects the real magnitude of the penal sanction. Sentence disposition, however, is not only controlled, with few exceptions, by the sentencing judge, but also determines critical issue -- whether or not to deprive the offender of his freedom through prescribed confinement.

Both previous and contemporary sentencing studies have a misplaced concern with assessing the problem according to the magnitude of the association found between race and sentence. No one really contends that race must be strongly correlated with sentence in order for the criminal justice system to show concern. Rather, despite the low association typically reported, the distributional differences which produce the association are of importance, whether they be a 5 percent or 50 percent difference in treatment. Correlation, it can be argued, is most suitably employed where the demonstration of a strong correlation is the only research concern. Sentencing disparity, on the other hand, is a topic where any difference attributable to race,

regardless of how small, is of major concern. This is especially true when such racially based sentencing differences remain after the consideration and control of legally relevant variables.

This study has used an equality index (EI) as a measure of sentencing equality. This measure, which summarizes the percent of distributional similarity between the sentencing outcomes of blacks and whites, ranges from 0 to 100. As many as five control variables were introduced through a combination of test factor standardization and partialling of the zero order race-sentence disposition tables.

As a preliminary step to the analysis of sentencing inequality, race was crosstabulated by a number of legal and extra-legal offender-offense attributes. Not surprisingly, black and white offenders appear before the court with different characteristics:

1. Black offenders are disproportionately represented in violent and drug offenses.
2. Black offenders who appear before the court are more likely to have committed an offense rated as serious due to the use of force or a deadly weapon.
3. Blacks are disproportionately found in urban courts where sentencing is generally more lenient, thus confusing the issue of comparable treatment.
4. Blacks are more likely to have a previous criminal record in terms of the number of previous felony arrests and convictions.
5. White and black offenders differ according to several personal or demographic considerations: whites are more likely to be married, older, somewhat more employable and more likely to receive favorable community support.

As presented in Chapter V, the computed levels of sentencing equality may be summarized as follows:

1. The statewide white-black index for males was 38.8 percent and 73.1 percent for women.
2. The introduction of standardization for offense and prior record greatly increased the level of sentencing equality (EI = 92.3 - 96.7 percent).
3. However, statewide comparisons were found to greatly underestimate actual sentencing disparity due to the overrepresentation of blacks in urban areas.
4. Control for the urban-rural location of the court dropped the standardized equality indices to 83.9 percent in urban areas and 87.5 percent in rural areas.
5. Standardizing the black and white distribution for offense type and prior record increased the index to 90.5 percent in urban areas.
6. The introduction of offense seriousness further reduced the standardized level of disparity (EI = 82.9 - 93.6 percent) depending on the level of seriousness. However, even with sex, court location, offense, prior record and offender seriousness controlled, white offenders continued to receive nearly half of their original level of preferential treatment.
7. Control for marital status with offense and prior record standardized also failed to produce sentencing equality above 91.5 percent.

At the very least, the present study demonstrates the resiliency of sentencing disparity to the logical analysis dictated by a legalistic approach. Despite the consideration and control of offense type, prior record, offense seriousness and the court location, male sentencing inequality failed to disappear. Although the specific level of disparity is tied to certain specifying characteristics (such as offense seriousness and marital status), the over-riding



tendency within the circuit courts of Kentucky is for black offenders to be slightly over 90 percent equal in terms of receiving judicial leniency.

The results of this investigation will not be a panacea or definitive answer to the question of racially-based sentencing inequality. Although the unweighted sample size exceeded 1600, it is clear that a tremendously large and sophisticated data set is required to permit the depth of detailed standardizations and partiallings necessary to eliminate pre-existing white and black differences. The present investigation, it is hoped, will contribute toward the eventual resolution of this issue.

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