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ETHNICITY AND SENTENCING OUTCOMES IN U.S. FEDERAL COURTS: WHO IS PUNISHED MORE HARSHLY?

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Using federal court data collected by the U.S. Sentencing Commission for the years 1993–1996, this study examines racial/ethnic differences—white versus black versus white-Hispanic versus black-Hispanic—in sentencing outcomes and criteria under the federal sentencing guidelines. Regression analyses of incarceration and term-length decisions reveal considerable judicial consistency in the use of sentencing criteria for all defendants; however, important racial/ethnic disparities in sentencing emerge. Consistent with theoretical hypotheses, the authors find that ethnicity has a small to moderate effect on sentencing outcomes that favors white defendants and penalizes Hispanic defendants; black defendants are in an intermediate position. Hispanic drug offenders are most at risk of receiving the harshest penalties, and their harsher treatment is most pronounced in prosecutor-controlled guidelines departure cases. These findings highlight both a classic organizational tension noted by Weber and a fundamental dilemma in policy efforts to structure sentencing processes (formal rationality) while allowing for judicial and prosecutorial discretion (substantive rationality). The findings also broaden our view of the continuing significance of race in American society—as a matter confronting not only blacks but also Hispanics and perhaps other ethnic groups as well.

WHETHER the criminal justice system discriminates on the basis of race is a pressing policy and theoretical issue that adjoins larger political concerns of American society as well as broad-based substantive interests within law, criminology, and the social sciences. Politically, because the symbolism of equality before the law is at the heart of our legal system, racial bias in the enforcement or administration of law threatens the value we place on equity

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in this system (Hagan 1987:426; Sampson and Lauritsen 1997:362). Substantively, because race stratifies and differentiates U.S. society, research on the effects of race on criminal justice processing encompasses larger concerns with inequality and social stratification (Ferreer and Hall 1996). Also, because recently enacted "guidelines" for sentencing criminal offenders include provisions allowing judges to depart from prescribed sentence ranges, studies of race-linked disparities in sentencing outcomes address a tension between Weber's ideal types of formal and substantive rationality in social control—between legislative constraint and discretion (Savelsberg 1992; Ulmer 1997). The departure mechanism may provide a less visible locus for the operation of racial disparity.

The search for racial influences on legal and criminal justice outcomes has been a major enterprise in law and criminology (Hagan 1987; Sampson and Lauritsen 1997;

Sellin 1935). However, these studies focus almost exclusively on black and white defendants, with little or no consideration for whether other racial-ethnic minority groups are affected by sentencing practices. In view of the growing numbers of Hispanics who are changing the ethnic landscape of American society (Portes and Rumbaut 1996; Waldinger 1989), the lack of attention to the treatment of Hispanic or Latino defendants in American courts is a glaring omission. Hispanic Americans now make up almost 10 percent of the U.S. population, and demographers predict that by 2010 Hispanic Americans will represent the largest "minority" group in the United States, outnumbering blacks.¹

These changes in population structure have generated intense interest among urban sociologists and demographers (Lemann 1991; Massey and Denton 1993), particularly with regard to whether these most recent immigrants are subjected to discrimination—the unequal treatment of a person or persons based on group membership (Massey 1993; Melendez, Rodriguez, and Figueroa 1996; Sandefur and Tienda 1988). We examine the impact of ethnicity (i.e., Hispanic-white, Hispanic-black, black-white comparisons) on the sentencing of defendants in U.S. federal courts, 1993–1996.

PRIOR RESEARCH

An abundance of research on criminal sentencing focuses on the effects of defendant's race on sentencing outcomes (Kramer and

Steffensmeier 1993; Spohn 1994). The findings are inconsistent, however. Some studies show, net of other variables, that black offenders receive somewhat harsher sanctions than whites (Petersilia 1985; Spohn, Gruhl, and Welch 1981–1982), whereas others find few racial differences or mixed results (Klein, Petersilia, and Turner 1988; Myers and Talarico 1987; Wilbanks 1987). In contrast, there are few empirical studies of the effects of *ethnicity* on sentencing outcomes. Although the Hispanic population is substantial in some areas of the country (e.g., Southwest), their small numbers historically in most localities have increased the difficulty of studying ethnic differentials (U.S. Bureau of Census 1993). In addition, because Hispanic defendants are often categorized into either the white or the black defendant group, the classification of "Hispanic" has been ambiguous in many jurisdictions. Therefore, comparisons between Hispanics and whites, and between Hispanics and blacks, in sentencing outcomes have proven difficult.

This raises the interesting possibility that because Hispanic defendants are usually counted with the white population, disentangling the effects of "Hispanic" ethnicity may account for the finding in some studies of small or negligible race effects in sentencing (i.e., black to white differences). If Hispanics are sentenced more harshly than whites (and possibly blacks), their inclusion in the white defendant population would dampen black-white differences in sentencing outcomes (i.e., risking model misspecification because of aggregation).

Table 1 lists the few empirical studies that have examined the effects of ethnicity on sentencing decisions.² The results have been mixed, partly perhaps because of various shortcomings. These include (1) failure to control adequately for legally relevant variables, such as seriousness of the offense and prior criminal record; (2) small number of cases; (3) application of inappropriate statistical procedures; and (4) failure to analyze

¹ The meaning and salience of racial and ethnic categories and labels vary over time and space. We follow current usage, using the labels "white," "black," and "Hispanic" or "Latino" (Bobo and Hutchings 1996). Because our analysis focuses on Hispanic defendants, we use the term "ethnic" as well as "racial." These broad categories may conceal important subgroup differences, but most public-use data sets do not distinguish, for example, among the several largest Latino groups (i.e., Mexican, Colombian, Cuban, Nicaraguan, Salvadorean, Puerto Rican). Social interaction and discourse often rely on blanket stereotyping linked to these broad categories and ignore social class cues and other individuating factors (Bobo and Hutchings 1996; Feagin and Sikes 1994).

² Table 1 does not list several older studies (e.g., Lemert and Rosberg 1948) that relied on small samples, lacked controls for prior record and offense conduct, or drew conclusions more on anecdotal than statistical evidence.

Table 1. Summary of Statistical Studies on the Effects of Ethnicity on Criminal Sentencing Outcomes

Study, Location (Data Period)	Total Sample Size, (Hispanics), Sex	Prior Record	Offense Severity	Effects		
				Imprisonment	Sentence Length	Scale
Holmes and Daudistel, 1984; El Paso, TX, Tucson, AZ; (1976–1977)	El Paso: 163 (NA) Tucson: 321 (NA) Male	Number of prior felony convictions, number of prior nonconviction arrests.	Statutory seriousness, number of charges, weapon, (robbery and burglary only).	No effect ^a	NA	NA
Welch, Gruhl, and Spohn, 1984; Los Angeles, CA; (1977–1980)	6,378 (1,632) Male	Weighted prior arrest index.	Offense score (single charge cases only).	No effect	NA	NA
Zatz, 1984; California; (1978)	4,729 (1,083) Male and female	Record and number of prior incarcerations.	Offense type (10 felonies).	NA	No effect ^b	NA
LaFree, 1985; El Paso, TX, Tucson, AZ; (1976–1977)	El Paso: 223 (144) Tucson: 475 (~127) Male	Weighted prior conviction index.	Statutory seriousness, number of counts, type of crime (robbery and burglary only), weapon.	NA	NA	El Paso: Small (–) effect; Tucson: No effect ^c
Welch, Spohn, and Gruhl, 1985; El Paso, TX, Tucson, AZ; (1975–1977)	NA (NA) Male	Juvenile record, number of felony arrests, number of felony convictions.	Most serious charge, number of charges, (robbery and burglary only).	No effect	No effect	NA
Unnever and Hembroff, 1988; Miami, FL; (1971)	313 (34) Male	Prior conviction dummy.	Opium drug dummy, selling drug dummy, number of arrest charges (only drug offenses).	Moderate (+) effect	NA	NA
Klein, Petersilia, and Turner, 1990; California; (1980)	~14,339 (~4,055) Male	Number of juvenile, adult convictions, number of probation, jail, prison terms, number of juvenile incarcerations.	Weapon, injury, number of counts (partitioned by offense type: assault, robbery, burglary, theft, forgery, drug).	Moderate (–) effect for robbery and theft; (+) effect for drugs	No effect	NA
Holmes, Hosch, Daudistel, Perez, and Graves, 1996; Bexar, TX, El Paso, TX; (1987–1989)	Bexar: 267 (NA) El Paso: 502 (NA) Male and female	Number of prior felony convictions, number of prior misdemeanor convictions.	Indictment and conviction charge severity, drug and violent indictment dummy, number of indictments, injury.	NA	NA	Bexar: No effect; El Paso: Large (+) effect
Albonetti, 1997; federal; (1991–1992)	14,189 (4,296) Male and female	Six-category criminal history scale.	Drug possession/trafficking, 43-category offense severity scale number of conviction counts.	Small (+)	Small (+) ^d	NA

Note: (NA) = not available/not able to determine; (+) = Hispanics treated more harshly; (–) = Hispanics treated less harshly. Reference category = white defendants for all effects.

^a Large (+) interaction with jury trial in El Paso; moderate (+) interaction with prior record. ^b Small (–) interaction with prior record, and small (+) interaction with trial in El Paso. ^c Tobit analysis: small (–) interaction with offense severity and prior record; small (+) interaction with drug possession and sentencing departures.

the sentencing decision as two separate outcomes—the decision to incarcerate, and the length of jail/prison term imposed. Also, (5) except for Holmes et al. (1996) and Albonetti (1997), all studies in Table 1 are based on data sets dating back to the 1970s. Notably, Albonetti (1997) finds that Hispanic and black defendants convicted of federal drug crimes receive more severe sentences than do white defendants, net of legal, extralegal, and contextual factors; and that Hispanic and black defendants benefit less from guideline departures than do white defendants. Our analysis extends Albonetti's study to include more comprehensive data (her analysis was for the 1991–1992 period when the guidelines monitoring system covered less than one-half of federal criminal cases), more explicitly targets the role of ethnicity in sentencing outcomes, examines in detail how “departure sentences” contribute to ethnic differences in sentencing outcomes, and considers whether there are ethnic differences in how sentencing criteria are applied.³

Thus, the present study fills a large gap in the sentencing literature and also addresses important issues in organizations, sociology of law, and racial-ethnic stratification. Using data for the years 1993 through 1996 on U.S. citizens convicted in federal courts, we examine ethnic differences—Hispanic to white, Hispanic to black, and black to white—in sentencing outcomes and in sentencing criteria. The data include a sizable and growing number of Hispanic cases; provide detailed sentencing information on prior record, offense severity, and other variables that might affect sentencing decisions; and distinguish two critical stages of sentencing (whether to imprison and length of term). The data also provide information on “departure sentences” that might operate as a locus for existing ethnic disparity: The federal courts

operate under a guideline system in which judges sentence defendants according to prescribed ranges but also may *depart* from the statutory sentencing range in cases in which unusual or atypical circumstances are present (e.g., by testifying against another person committing a crime). The federal sentencing guidelines aim to avoid unwarranted disparities between similarly situated defendants and explicitly state that ethnicity (and other defendant characteristics) is legally irrelevant to sentencing (see U.S. Sentencing Commission 1989). But drawing from writings on prejudice and intergroup hostility suggesting that large population shifts in urban localities may contribute to hostility and discrimination by the dominant group toward a rapidly growing minority group, our guiding hypothesis is that Hispanic defendants will be sentenced more harshly than white defendants, and perhaps even more harshly than black defendants.

THEORETICAL PERSPECTIVE AND RESEARCH HYPOTHESES

We draw on an underlying premise of the relationship between inequality and criminal punishment—that one's position in the social structure has implications for treatment within the legal system—and link that premise to a “focal concerns” perspective on court decision-making (Steffensmeier, Kramer, and Ulmer 1995; Steffensmeier, Ulmer, and Kramer 1998). Sociological research on law and crime suggests that socially disadvantaged and/or minority offenders are prone to more coercive treatment by legal agents because (1) they lack the resources to resist the imposition of negative labels (Turk 1969), (2) their behavior threatens the economic and moral interests of more powerful groups (Lofland 1969; Myers 1987), and (3) because crime is feared more and the sanctions will be harsher when criminals are perceived to be racially or culturally dissimilar and hence more “dangerous” and “unpredictable” (Liska, Logan, and Bellair 1998).

Prior research also suggests that judges are guided by three focal concerns in reaching sentencing decisions (Steffensmeier et al. 1998) and that they typically have limited time and limited information about defen-

³ We wish to correct an error in Albonetti's (1997) interpretation of her results—that prior record and offense seriousness have relatively weak effects on sentencing outcomes and “are unexpected” (p. 807). The coefficients for these variables are apparently interpreted as overall effects rather than as one-unit increases for each level of change in prior criminal record score or offense severity score. Read correctly, these variables in fact have far stronger effects than any other variables in her models.

dants when rendering sentencing decisions. The three focal concerns are (1) the offender's blameworthiness and the degree of harm caused the victim, (2) protection of the community, and (3) practical implications of sentencing decisions.

Blameworthiness is associated with offender's culpability and having the punishment fit the crime. Judges' views of blameworthiness are influenced mainly by offense severity, by offender's biographical factors such as criminal history (which increases perceptions of blameworthiness and risk) or prior victimization at the hands of others (which tends to mitigate perceived blameworthiness), and by the offender's role in the offense (e.g., being a leader or organizer increases blameworthiness).

Protection of the community focuses more on the need to incapacitate the offender or to deter would-be offenders. Judges' assessments of offenders' future behavior (dangerousness, recidivism) are based on attributions predicated on the nature of the offense (e.g., violent, property, drug), case information, the offender's criminal history, and also perhaps, on characteristics of the offender such as education, employment, or community ties.

Organizational constraints and practical consequences include concerns about the offender's "ability to do time," the costs to be borne by the correctional system, and the disruption of ties to children or other family members. Also, judges are likely to be concerned about the impact of offender recidivism on the court's standing in the public's eye and on their own judicial careers.

These focal concerns and their interplay are complex, and judges rarely have complete information about cases or defendants. To reduce uncertainty, judges may rely not only on the defendant's present offense and prior criminal conduct but also on attributions linked to the defendant's gender, race, social class, or other social positions (Steffensmeier, Kramer, and Streifel 1993; Ulmer 1997). On the basis of these attributions, judges may project behavioral expectations about whether the offender (1) is likely to be a good (or bad) risk for rehabilitation; (2) is a potential danger to the community; (3) is more or less blameworthy, and thus more or less deserving of punishment; and (4) pre-

sents special organizational repercussions, such as inability to do time, or reputational concerns, such as would-be recidivism adversely affecting the judges' career advancement.

Traditional research has typically focused on black (male) offenders and the negative labels they evoke. Gibbs (1988:2) lists a variety of labels that are applied to black males: "dropouts," "delinquents," "dope addicts," "street-smart dudes," and "welfare pimps." Tittle and Curran (1988) report that young black males symbolize behavior styles such as aggressiveness and irresponsibility that are threatening and offensive to the middle class. Swigert and Farrell (1976) conclude that whites hold criminal stereotypes of blacks and their lifestyles. Besides these sorts of stereotyping, black offenders are socioeconomically disadvantaged and are presumed to lack the resources to thwart the imposition of legal sanctions (Myers 1987; Tonry 1995). For these reasons, the lack of resources, coupled with attributions that associate black offenders with a stable and enduring predisposition to future criminal activity or dangerousness, are thought to increase sentence severity for black defendants.

Hispanic offenders apparently evoke similar attributions and also lack resources (Anderson 1995; Pennsylvania Crime Commission 1991). Moreover, in view of the historical and current context of Hispanic immigration in the United States, Hispanic defendants may seem even more culturally dissimilar and be even more disadvantaged than their black counterparts.

First, there is a long American tradition of prejudice against Hispanics, including characterizations of them as lazy, irresponsible, low in intelligence, and dangerously criminal (Healey 1995:374). Thus, Hispanic males are identified with crime and fear of crime in popular and political culture (Anderson 1995).

Second, Hispanic groups often resemble and share many problems with urban black Americans: poverty, unemployment, female-headed households, failing educational systems, and crime.

Third, political resources and power are disproportionately unavailable to Hispanic Americans (an exception is Cuban Ameri-

cans). They lack a strong political constituency for raising concerns about unfair treatment, including treatment by the criminal justice system.

Fourth, the considerable Hispanic immigration in recent years has increased anti-Hispanic prejudice and discrimination (Healey 1995). According to Blalock's (1967) threat hypothesis, relatively large increases in subordinate group numbers over a relatively brief period will lead to social and economic conflict with dominant groups and the intensification of efforts to maintain order and the status quo. Liska and Yu (1992: 55) argue that a relatively small dissimilar minority group may not be perceived as much of a threat (i.e., political, economic, criminal), whereas a relatively large and growing group is likely to be perceived as threatening and as posing a substantial social control problem. Issues threatening the interests of more powerful groups include competition for jobs, the primacy of the English language and Anglo-American culture, and whether immigrants are a tax and welfare burden.⁴

Fifth, recent national efforts to mobilize criminal justice resources against drug crime, combined with the larger moral crusade against drugs, are intimately intertwined with the issue of race/ethnicity. As early as the nineteenth century, drug problems and drug addicts were "identified with foreign groups and internal minorities who were already actively feared and the objects of elaborate and massive social and legal constraints" (Musto 1973:122; see also Hebert 1997). Current antidrug efforts and concerns also target minority group members. Drug distribution and sales (especially cocaine) are identified with black-dominated gangs, on the one hand, and with Hispanic traffickers, on the other (Pennsylvania Crime Commission 1991). The particularly heinous stereotype of "drug pusher" or "narcotics trafficker" is most frequently attached to Hispanic males (Musto 1987;

Pennsylvania Crime Commission 1991; Scott and Marshall 1991).

Thus, we expect that the specific social and historical context involving Hispanic Americans, particularly their recent high levels of immigration, exacerbates perceptions of their cultural dissimilarity and the "threat" they pose. These perceptions will contribute to their harsher treatment in the criminal courts—harsher not only in comparison to white defendants but also harsher than black defendants. Moreover, we expect that the specific social context of the current drug "war" will further exacerbate the significance of ethnicity as a predictor of sentencing outcomes in drug cases—black and especially Hispanic defendants convicted of drug offenses will be sentenced particularly harshly. Moreover, we expect that the harsher sentencing of black and especially Hispanic defendants will be most manifest in sentences that depart from guideline ranges.

Our data also allow us to assess whether sentencing outcomes differ for Hispanic defendants who are racially identified as "white" compared with those identified as "black." Hispanic Americans are partly an *ethnic* minority (i.e., identified by cultural characteristics, such as language) and partly a *racial* minority (i.e., identified by their physical appearance) (Healey 1995; Portes 1990). Hispanics bring a variety of racial backgrounds to U.S. society, including white, black, and Native American ancestries. Some Hispanic groups are mostly a mixture of white and Native American ancestry (e.g., Mexicans), while other groups are more a mixture of white and black ancestry (e.g., Puerto Ricans). Racial differences in physical appearance (e.g., gradations of skin color) may overlap with the cultural distinctions to reinforce discriminatory practices and the separation of Hispanic Americans from Anglo-American society (e.g., see Rodriguez 1989; Rodriguez and Cordero-Guzman 1992). In effect, Hispanics who are identified as "black" may be saddled with an auxiliary "outsider" status—victimized not only by the same web of discrimination and disadvantage that characterizes African Americans but also by cultural and linguistic differences associated with an immigrant minority. Thus, we expect that the

⁴ Although Puerto Ricans (the second largest Hispanic group in the United States) are not "immigrants," the move to the mainland involves a change in culture, language, and institutionalized racial/ethnic barriers similar to that experienced by immigrants from Mexico and other Latin or Central American countries (Healey 1995).

harsh sentencing of Hispanic defendants will be exacerbated for "black" Hispanics, who combine elements of both a racial minority and an immigrant ethnic minority.

FEDERAL SENTENCING GUIDELINES

Federal district courts have original jurisdiction and are the trial courts for all violations of the federal criminal law other than those tried by U.S. magistrates (who are empowered to hear some minor offenses and to conduct the preliminary stages of felony cases). There is at least one U.S. district court in each state—and 94 district courts altogether. Federal criminal prosecutions, after remaining fairly constant for several decades, have increased sharply over the past decade, with drug cases representing a large portion of the criminal caseload and accounting for a significant part of the increase in prosecutions (Neubauer 1996). Of the approximately 900,000 felony convictions in state and federal courts in 1994, about 40,000 (5 percent) were in the federal courts (Bureau of Justice Statistics 1997). Drug offenses make up a sizable share of all federal felony convictions (about 40 percent), followed by property offenses (about 27 percent—primarily fraud/forgery, then robbery and theft), weapons offenses (about 8 percent), and violent offenses (about 7 percent); the remaining convictions are classified as "other" offenses (about 18 percent).

Over the past decade or so, at least 20 states and the federal system have established sentencing guidelines (Bureau of Justice Statistics 1996). Although there is some variation in these guidelines from state to state and from states to the federal system, these structured sentencing reforms are designed to reduce disparities in sentencing (for some assessments, see Dixon 1995; Moore and Miethe 1986; Ulmer 1997). Both the disposition decision (prison versus probation or other community sanctions) and duration (length of sentence or time to be served in jail or prison) should become more predictable and equitable.

In 1984, Congress enacted the Sentencing Reform Act and established the U.S. Sentencing Commission to develop and amend guidelines for all U.S. federal courts that

would avoid "unwarranted sentencing disparity among defendants with similar records who had been found guilty of similar criminal conduct" (28 U.S. Cong. Sect. 991 [b] [1] [B] Supp. 1993). Furthermore, Congress explicitly instructed that the Commission draft guidelines "entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders" (28 U.S. Cong. Sect. 994 [d] [e] [B] Supp. 1993); see also Nagel and Swenson 1993:207). The initial set of federal sentencing guidelines became law in November 1987 and were further confirmed by the Supreme Court's *Mistretta* decision of 1989 upholding the constitutionality of the Sentencing Commission and the guidelines (*United States v. Mistretta* [109 Supreme Court 647]). At the same time, Congress enacted a number of mandatory minimum penalty statutes, largely for weapons offenses and for recidivist offenders. Full implementation of the guidelines across the 94 district courts was essentially completed by the end of 1992. Thus, a uniform set of guideline ranges determined by the combined consideration of the offender's criminal history and offense conduct is now applied by the federal court system in sentencing all criminal cases (Katzenelson and Conley 1997; Wilkins and Steer 1993).

However, the federal guidelines restrict, but do not eliminate, judicial (or prosecutorial) discretion.⁵ The sentencing court, once it determines a defendant's final offense level and criminal history, has the discretion to impose a sentence within the applicable range or, in unusual circumstances, to depart above or below the range (Katzenelson and Conley 1997; Wilkins and Steer 1993). First, in most cases, the guidelines provide for a spread of roughly 25 percent between the maximum and minimum statutorily acceptable sentence within the guideline range. Second, defendants who plead guilty may qualify for a two- or three-level reduction in guideline range for "ac-

⁵ Guideline sentencing systems differ in terms of whether they are "loose" or "restrictive" in allowing for sentencing discretion. For example, the federal system and systems in states like Minnesota and Washington are considered more restrictive than those in some other states (e.g., Pennsylvania).

ceptance of responsibility," which may reduce a defendant's sentence by approximately 25 percent. This is treated by the Commission as part of the offense severity scale. Third, the courts may depart outside the applicable range in cases in which unusual or atypical circumstances are present. These possibilities, on the one hand, involve judge-controlled downward departures that allow judges to reward defendants differentially, such as for pleading guilty or accepting personal responsibility for his criminal conduct. On the other hand, they involve prosecutor-controlled downward departures for offenders who "substantially assist" the government in the investigation or prosecution of another person committing a criminal offense (typically a drug offense).⁶

DATA

The data for this study are based on the monitoring system developed by the U.S. Sentencing Commission. The data contain detailed information on federal criminal cases extracted from court orders, presentence reports, and reports on sentencing hearings. The data file includes case-processing variables and a combination of offense-specific and offender-specific factors that may independently affect sentencing outcomes and simultaneously be associated with ethnicity. Our analysis is based on sentencing data for the years 1993 through 1996—1993 is the first year of full implementation of the guidelines across the 94 federal district courts. We limit our analysis to male defendants (because of the small numbers of female offenders appearing in federal courts) and to defendants who are U.S. citizens. Prior record information is inadequate or missing for many noncitizen defendants, and their sanctioning in U.S. courts may also be

affected by actions taken by foreign governments or groups. Thus, we exclude from our analysis foreign nationals or those with immigrant status—those whose permanent residence is abroad, those whose legal permanent residence is in the United States, and those whose permanent residence is illegally in the United States.⁷ We also analyze drug and nondrug offenses separately because our hypothesis predicts a stronger ethnicity effect in drug cases.

We also subdivide Hispanic defendants into "white" Hispanics and "black" Hispanics to test our hypothesis predicting particularly harsh treatment of Hispanic defendants identified as "black." Thus, we examine sentencing differences across four groups: white defendants, black defendants, white-Hispanic defendants, and black-Hispanic defendants. However, because the sample of black-Hispanic defendants is small (about .4 percent of all federal defendants), we distinguish among the four groups in the analysis of main effects but limit the analysis to three groups (i.e., combine white- and black-Hispanics into a single "Hispanic" group) in the analyses of interaction effects and departure outcomes.

Guideline-sentence ranges are established for each combination of offense severity/criminal history in the form of a sentence matrix, or sentencing table. A base offense level, modified by specific offense characteristics and general adjustments, forms one axis of the table used to determine sentencing ranges. The offense axis extends from level 1 (least serious) to level 43 (most serious).⁸ The other axis reflects the defendant's

⁶ Defendants also may be disadvantaged by a government recommendation for an explicit upward departure from the authorized guideline range (e.g., seriousness of past criminality not reflected in the criminal history score; prior conduct or record indicates high risk of future criminal conduct). Upward departures constitute only about 1 percent of all federal cases and are eliminated from our departures analysis. (Initial regression runs including upward departures did not alter the findings reported here.)

⁷ Our preliminary findings from an analysis of the effects of citizenship on sentencing reveal that both citizenship and ethnicity have main effects on sentencing outcomes in federal courts and that the race/ethnicity effects for the noncitizen group are in the same direction as those reported here. First, noncitizen defendants receive harsher sentences than do citizen defendants across all racial/ethnic comparisons. Second, noncitizen Hispanic defendants are sentenced more harshly than are noncitizen black defendants and, especially, noncitizen white defendants; however, the Hispanic-black difference is trivial.

⁸ The offense seriousness scale developed by the Commission is a complex and comprehensive

criminal history as expressed in one of six criminal history categories (category I through category VI). The point at which the offense level and criminal history category intersect on the sentencing table determines an offender's guideline score.⁹

We also include controls for defendant's age and education; mode of conviction (a dummy variable coded 1 if went to trial, 0 if a guilty plea was entered); multiple convictions (a dummy variable coded 1 for multiple conviction charges, 0 for a single conviction charge); and "statutory gun conviction" cases facing mandatory minimum enhancements (minimum is 60 months for each offense count) were coded 1, 0 otherwise. We include the sentencing year to control for trending and also include controls for the percentages of black, Hispanic, and drug-related defendants appearing in each district court, along with the 94 districts and 12 circuits (dummy coded) of the U.S. federal court system. These contextual variables are omitted from the tables to reduce clutter and because they had little bearing on our main findings.¹⁰ Because the standard errors

measure of offense conduct. The scale is based on numeric counts of defendant behavior, the scope of the offense, offense-specific aggravating and mitigating factors, and general culpability adjustment criteria (including the defendant's "acceptance of responsibility" by pleading guilty). For example, in the case of robbery, the overall seriousness is captured numerically by taking into account the type of institution robbed, the amount of loss, the presence and use of a weapon, the degree of injury caused to victims, the defendant's role in the offense, obstruction of justice, acceptance of responsibility, and multiple count enhancements. In some exceptional cases (less than .5 percent of all cases), the score can go higher than 43 because of specific enhancements (e.g., if the offense conduct includes a guideline adjustment for "obstruction of justice").

⁹ The weighted, six-category scale developed by the Commission to measure criminal history reflects the frequency, severity, and recency of the defendant's prior criminal conduct. Pursuant to statute, further adjustments also are made for career offenders, armed career criminals, and criminal livelihood (Katzenelson and Conley 1997).

¹⁰ Information on defendant's income prior to arrest and prosecution also is collected. As expected, Hispanic defendants and especially black

might be biased because of heteroskedasticity produced by clustering within districts, the standard errors are corrected using a robust-variance estimator (White 1982).

METHOD

Sentencing involves (1) a decision about whether to imprison, and (2), if incarceration is selected, a decision about the length of sentence. Thus, we employ two dependent variables: incarceration in prison (versus probation), and length of prison sentence (in months, capped at 470 months). Additionally, we treat departures from guidelines as a discrete sentencing outcome to determine whether it is a mechanism that significantly contributes to ethnic disparities in imprisonment or term-length outcomes. As noted, departures are part of the variation in sentencing that is included in the dependent variable, but the option of "whether or not to depart" from guideline ranges involves a distinct decision by the sentencing judge and can be analyzed as a separate event (Katzenelson and Conley 1997; Kramer and Ulmer 1996).

We used probit regression to analyze the imprisonment decision, and ordinary least squares (OLS) regression to analyze the length decision. A correction term for sample selection was included in the regression equation for length of sentence. We also used tobit analysis as an alternative method for dealing with selection effects and estimating the effects of independent and control variables on the term-length outcome (Stolzenberg and Relles 1997). The two approaches differ in their assumptions about the causal processes underlying the incarceration decision as compared with the sentence-length decision. Tobit analysis assumes that the underlying causal processes are the same

defendants are poorer than white defendants. However, because many defendants either report "not knowing" or deflate their income to lessen prospective financial restitution, the data on defendant's income are not sufficiently reliable for inclusion in our analysis. (We included defendant's income in initial regression runs and found that low-income defendants were sentenced more harshly, but the income variable had little bearing on our findings reported here.)

across both decisions, whereas the sample-selection model assumes the processes are not necessarily the same. The two procedures produce similar results, but we rely on the OLS selection model because other studies typically find that the variables predicting the two outcome decisions differ somewhat (Kramer and Steffensmeier 1993; Peterson and Hagan 1984; Spohn et al. 1981–1982; Steffensmeier et al. 1993; Ulmer 1997).¹¹

Because our data set is not a sample, but rather contains all reported sentences with complete data (i.e., all male U.S. citizens convicted in federal courts over the 1993–1996 period), statistical tests of significance do not apply in the conventional sense of assessing error in making inferences to the universe from which the sample was drawn (Blalock 1981; Raftery 1995). Also, because the number of cases included in our analysis is so large, many small sentencing differences are statistically significant. Therefore, we place more emphasis on the direction and magnitude of the coefficients than on statistical significance levels. Nonetheless, some

cell sizes are very small—particularly among the smaller Hispanic group—and in these cases some attention should be paid to statistical significance levels.

The federal guideline data provide some of the richest information for analyzing sentencing outcomes, and our study makes a significant advance over prior research on the ethnicity-sentencing issue. However, several warnings are in order. First, we examined only the sentences imposed on convicted offenders. Thus, we did not address whether ethnicity bias exists in earlier stages of processing or prosecution (e.g., in pretrial release, in charging).¹² Because it is virtually impossible to account for all the selection processes (both formal and informal) that operate in the criminal justice system, some degree of uncorrected sampling bias is inevitable. Second, some degree of measurement error is likely to be present in our indicators for legal and extralegal variables and may be greater in the legal variables, thus attenuating their effects relative to demographic variables like race/ethnicity. Third, we lack information on the defendant's nativity, a variable that may mediate somewhat the effects of ethnicity on sentencing, especially for Hispanics. For example, some evidence suggests that Cuban Americans are more assimilated and less subject to discriminatory practices than are some other Hispanic subgroups, such as Mexicans or Puerto Ricans (see the review in Healey 1995). Fourth, although we control for important contextual variables, they are far from exhaustive.

¹¹ Although the effects of predictor variables on the imprisonment and term-length decisions generally correspond, there are some important differences. For example, the trial penalty effect on the imprisonment decision is greater for white than it is for black defendants, but its effect on the term-length decision is considerably smaller for white defendants (i.e., the effects are *reversed*). Also, McDonald and Carlson (1993) conclude that tobit analysis is unnecessary and unsuitable (i.e., easily misleading) for analyzing federal sentencing decisions—principally because the decisions are best characterized as a sequential rather than a joint process. They find, for example, that some types of Hispanic fraud offenders usually receive short sentences, but non-Hispanic offenders of similar offense types are less likely to be incarcerated, but if incarcerated receive longer prison terms. A combination of the imprisonment decision and the sentence-length decision might not detect these differences (i.e., the processes underlying the two stages of sentencing are not necessarily the same across groups [McDonald and Carlson 1993:56]). Also, the log-normal distributions of sentence lengths are quite symmetrical and show little evidence of truncation, indicating that the distributions of imposed sentence lengths are consistent with a sequential model of sentencing and thereby render tobit analysis unnecessary (McDonald and Carlson 1993:59).

¹² As is the case with most data sets on sentencing, for example, the federal data do not include information on pretrial release. However, whereas some older studies on the relationship between pretrial release and sentencing tend to show that defendants who are detained prior to trial receive more punitive sanctions than do those who are released (Foote 1954), other studies using more sophisticated controls tend to report small or negligible effects of pretrial release on sentencing outcomes (Eisenstein, Fleming, and Nardulli 1988; Eisenstein and Jacob 1977; Goldkamp 1980). Many of the older studies lacked adequate controls for prior record and offense seriousness—which are robust predictors both of pretrial release and sentencing outcomes (Neubauer 1996; Walker 1993).

Table 2. Descriptive Statistics for Variables Used in the Analysis: Males Sentenced in U.S. Federal Courts, 1993 to 1996

Independent Variables	Total	Nondrug Offense ^a				Drug Offense ^a			
		White	Black	Hispanic		White	Black	Hispanic	
				White	Black			White	Black
<i>Offender Characteristics ^b</i>									
Mean age (in years)	35.6	40.6	32.3	34.4	29.9	36.7	29.6	33.0	31.8
Mean education (in years)	11.7	12.4	11.6	11.0	10.8	11.7	11.2	10.4	10.5
<i>Legal/Case Characteristics</i>									
Prior record scale	2.3	2.1	3.0	2.2	2.1	2.0	2.7	2.0	2.1
Offense severity score	19.3	14.1	16.0	15.1	16.3	22.6	27.8	24.3	26.2
Percentage with multiple convictions	28.7	29.3	29.2	22.5	29.5	25.8	32.9	23.5	26.9
Percentage that went to trial	11.1	9.2	11.2	7.9	6.7	9.1	17.1	10.6	10.8
Percentage with statutory gun conviction	5.7	2.5	9.0	4.3	9.4	4.8	10.7	3.5	4.0
<i>Guidelines Departures (Percentage)</i>									
None	70.2	75.1	81.9	77.9	85.9	56.1	63.6	64.7	67.1
Upward	1.3	1.8	2.3	1.6	3.4	.4	.4	.5	.8
Downward	6.7	9.0	5.4	7.7	4.0	5.4	4.8	6.8	6.0
Substantial assistance (SA)	21.8	14.1	10.4	12.8	6.7	38.0	31.2	28.0	26.1
<i>Dependent Variables</i>									
Percentage imprisoned	80.6	67.1	78.1	73.2	75.2	88.1	96.7	95.7	97.2
Mean sentence length (in months)	74.9	44.0	70.6	53.4	77.2	70.5	122.6	78.2	95.3
Number of cases	89,637	31,761	15,162	3,229	149	15,318	17,268	6,501	249

^a Nondrug offenses comprise 56.1 percent of offenses; drug offenses comprise 43.9 percent.

^b More than half (52.5 percent) of the offenders are white, 36.2 percent are black, 10.9 percent are white-Hispanic, and .4 percent are black-Hispanic.

FINDINGS

Table 2 provides descriptive statistics for key variables in our multivariate models. Whites make up 52.5 percent of the overall sample, compared with 36.2 percent for blacks, 10.9 percent for white-Hispanics, and .4 percent for black-Hispanics.¹³ How-

¹³ The small number of black-Hispanics in the sample makes it difficult (and often impossible) to run black-Hispanic-specific models and models including black-Hispanic defendants. In most cases, the models do not converge or are highly unstable. We make the distinction between white-Hispanics and black-Hispanics in the descriptive statistics and main effects models. For the remainder of the analysis, white-Hispanics and black-Hispanics are combined into one gen-

ever, blacks and Hispanics make up a larger percentage of drug cases—44 percent and 17 percent of all drug cases involve black and Hispanic defendants, respectively, as compared with only 30 percent and 7 percent of nondrug cases. The imprisonment percentages reveal a high likelihood of incarceration following conviction in the federal courts—roughly 80 percent for the sample as a whole. For both nondrug and

eral “Hispanic” category. Because almost all of the Hispanics in the sample are white-Hispanics, combining the two groups is not terribly misleading: The regression coefficients for the combined Hispanic group, in general, would be slightly larger than would exist for white-Hispanics and smaller than would exist for black-Hispanics.

drug cases, white defendants (67 percent nondrug and 88 percent drug cases, respectively) are least likely to be incarcerated, followed by white-Hispanic (73 percent and 96 percent), black-Hispanic (75 percent and 97 percent), and black (78 percent and 97 percent) defendants. The order is the same for length of term—whites on average receive the shortest sentences, followed by white-Hispanics, with black-Hispanics and blacks receiving the longest average sentences. Thus, white defendants are least likely to be incarcerated, and they receive shorter sentences than black or Hispanic defendants, especially in drug cases. This apparent leniency toward white defendants, however, may be a result of other legally relevant variables. For example, blacks and Hispanics have higher offense severity scores on average than whites (especially in drug cases), and blacks also have lengthier prior records. Moreover, other studies have shown that the longer prison terms on average for black defendants in federal drug cases result in part from the exceptionally long prison sentences for crack-cocaine offending that disproportionately involve black defendants (U.S. Sentencing Commission 1995). Last, the demographic profiles of the three groups also differ: Black defendants and Hispanic defendants on average are considerably younger and less educated than white defendants.

MULTIVARIATE ANALYSIS

Do the racial/ethnic disparities in Table 2 persist after statistically controlling for other variables that might be associated with both ethnicity and sentence severity? We conduct separate analyses for nondrug and drug offenses because we predict a larger ethnicity effect for drug cases. We begin by examining the independent, main effects of race/ethnicity on sentencing outcomes. We then partition the data by ethnic group and compare the effects of offender and case characteristics on sentencing outcomes across racial/ethnic groups to assess whether judges use similar criteria in sentencing. Last, we examine whether departure provisions in the federal guidelines are the mechanism by which ethnicity influences sentencing outcomes. Because the sample size is so large

and the sample is a close approximation of the entire sentenced population, statistical tests must be interpreted with caution (see Raftery 1995). We judge the relative importance of the substantive effects of the independent variables according to probability effects in the likelihood of incarceration and differences in months for sentence length, and we use statistical tests only as a general guide¹⁴.

Table 3 shows that for both nondrug and drug offenses, the two legal variables—offense severity and prior record—are associated most strongly with sentencing outcomes and thus are important statistical controls when estimating race/ethnicity effects. Those convicted of more serious offenses and those with more extensive and severe prior convictions are more likely to be incarcerated and to receive a longer prison sentence. The term-length models also show that conviction for use of a firearm in the commission of a crime produces considerably longer prison sentences (about 80 months for nondrug and 50 months for drug cases on average; the statutory minimum is 60 months for each offense count). In addition, the models show that mode of conviction (trial vs. guilty plea) produced large differences in both the imprisonment and length-of-term decisions. Trials increase the probability of incarceration and the sentence length. Third, significant age (centered) and education effects exist for sentence-length decisions in both nondrug and drug cases. Age has an inverted-U relationship with sentence length, with the peak sentence length at about age 30; younger defendants receive slightly shorter sentences and older defendants receive considerably shorter sentences than do “peak age” defendants. Also, defendants with fewer years of education are sentenced, on average, to longer prison terms. These findings on the whole are consistent with those

¹⁴ Because the probit model is nonlinear, it is necessary to select a reference point to evaluate effects. The probability effects displayed in the tables are evaluated at a .50 probability of incarceration. A probit regression estimate, b , is a standard normal variable, z , with cumulative probability, A . The formula for converting probit estimates to probability effects evaluated at a .50 probability ($z = 0$) is $A - .50$.

Table 3. Unstandardized Probit and OLS Regression Coefficients from the Multiple Regression of Imprisonment and Length of Sentence on Race/Ethnicity and Selected Control Variables: Males Sentenced in U.S. Federal Courts, 1993 to 1996

Independent Variable	Nondrug Offense			Drug Offense		
	Imprisoned		Sentence Length	Imprisoned		Sentence Length
	Coef.	Prob.		Coef.	Prob.	
<i>Offender Characteristics</i>						
Race/Ethnicity:						
Black	.113*** (.014)	.045	1.304 (.463)	.28*** (.022)	.110	15.304*** (.690)
White Hispanic	.177*** (.023)	.070	3.724*** (.849)	.403*** (.029)	.157	19.465*** (.896)
Black Hispanic	.156 (.081)	.062	15.989*** (3.417)	.518 (.135)	.198	22.867*** (3.308)
Age (centered) (× 10 ⁻¹)	-.079*** (.005)	—	-.905*** (.190)	-.051*** (.011)	—	-.070 (.335)
Age-squared (× 10 ⁻¹)	-.0007 (.0003)	—	-.093*** (.012)	-.0017 (.0006)	—	-.150*** (.021)
Education	-.006 (.003)	—	-.319*** (.085)	-.048*** (.004)	—	-2.262*** (.125)
<i>Legal/Case Characteristics</i>						
Prior record scale	.511*** (.007)	—	15.775*** (.126)	.301*** (.009)	—	17.224*** (.174)
Offense severity score	.173*** (.003)	—	7.611*** (.033)	.089*** (.003)	—	9.684*** (.051)
Multiple convictions	.239*** (.023)	—	5.68*** (.462)	.254*** (.037)	—	13.193*** (.681)
Went to trial	.615*** (.032)	—	31.622*** (.606)	.689*** (.036)	—	69.259*** (.822)
Statutory gun conviction	NA	—	80.399*** (.868)	NA	—	50.258*** (1.093)
Year	-.007 (.006)	—	-.224 (.169)	-.005 (.008)	—	-.715 (.229)
Correction factor	—		76.977*** (.823)	—		239.467*** (2.922)
-2 Log-likelihood	33,995		—	12,726		—
R ²	—		.780	—		.715
Number of cases	50,301		35,639	39,336		36,652

Note: Numbers in parentheses are standard errors. NA = not applicable; imprisonment was mandatory. Models include controls for percent black, percent Hispanic, percent drug offense, district, and circuit.

*** $p < .001$ (two-tailed tests)

found in most sentencing studies (Steffensmeier et al. 1995).¹⁵

NONDRUG SENTENCING OUTCOMES. Turning to the main focus of our analysis,

¹⁵ We conducted joint tests of significance for race/ethnicity effects (Tables 3 and 5) and age effects (Tables 3, 4a, and 4b). The joint test results confirm the results for the pairwise contrasts. The joint tests are statistically significant

race/ethnicity has small to modest main effects on sentencing outcomes in nondrug cases (net of controls). Compared with white defendants in nondrug cases, blacks are 5 percent more likely, white-Hispanics are 7

($p < .001$) when any of the individual effects are significant. The few joint tests that are not significant occur when none of the individual effects are significant.

percent more likely, and black-Hispanics are 6 percent more likely to be incarcerated. With regard to sentence length—black defendants on average receive sentences 1 month longer than those received by white defendants, white-Hispanic defendants receive sentences about 4 months longer, and black-Hispanic defendants receive sentences about 16 months longer than those received by white defendants. Thus, for both sentencing decisions, white defendants are treated most leniently, Hispanic defendants are treated most harshly, and black defendants fall in the middle. Moreover, the findings on differences in sentence length support our hypothesis predicting especially harsh treatment of black-Hispanic defendants.

DRUG SENTENCING OUTCOMES. Recent media and law enforcement attention on black and Hispanic drug-distribution networks may result in harsher sentencing of black and Hispanic drug offenders. Table 3 displays the results for defendants convicted of drug offenses, net of other variables in the model (again, the omitted category is white offenders). The direction of the results parallels that reported above for the nondrug sample—whites receive the most lenient sentences, blacks place in the middle, and Hispanics receive the harshest sentences. However, the magnitude of ethnic differences in sentencing outcomes is greater for drug offenses than for nondrug offenses. That is, the more lenient treatment of white defendants, and especially the harsher treatment of Hispanic defendants, is greater for drug offenses than for nondrug offenses. Relative to white drug defendants, white-Hispanic drug defendants are 16 percent more likely to be imprisoned, and they receive prison terms about 19 months longer. Black-Hispanic drug defendants are 20 percent more likely to be imprisoned, and they receive prison terms about 23 months longer than those received by white defendants. On the other hand, black drug defendants are 11 percent more likely to be imprisoned, and they receive prison terms about 16 months longer than those received by white defendants. Together, these findings are consistent with our hypotheses predicting that the overall harsher sentencing of black and especially Hispanic defendants will be greater in drug cases than in nondrug cases, and that

black-Hispanic defendants will receive the harshest sentences.¹⁶

DEFENDANT'S ETHNICITY AND SENTENCING CRITERIA

We next examine whether, and to what extent, judges use similar criteria in their sentencing of white, black, and Hispanic defendants in drug and nondrug cases. We partition the data by race/ethnicity and estimate models for each racial/ethnic group separately. We then compare their coefficients across a range of variables.¹⁷ Because of their small numbers, black-Hispanic defendants are combined with white-Hispanics for this and subsequent phases of our analysis.

Tables 4a and 4b present the cross-group differences testing whether different racial/ethnic groups are subjected to different processes of justice (i.e., the analysis of interactions). Chow tests (Chow 1960) were conducted first to see if the equations predicting each sentence outcome are significantly different; *z*-tests of differences between regression coefficients for each group were then conducted to indicate the sources of any significant cross-group differences (see Clogg, Petkova, and Haritou 1995; Paternoster et al. 1998).

The Chow tests reveal significant differences (all at $p < .001$) between racial/ethnic-specific models for both the imprisonment and the term-length decisions in nondrug and drug cases. For both sentencing decisions and across nondrug and drug cases, black and Hispanic models were somewhat more similar to one another than were black-white or Hispanic-white models. However,

¹⁶ We also partitioned for type of drug offense and for several nondrug offenses with sufficient numbers of Hispanic defendants (roughly 66 percent are convicted of drug offenses). We find considerable consistency in the race/ethnicity effect across all types of drug offenses (e.g., cocaine, crack, heroin, marijuana, and methamphetamines) and, to a lesser extent, for nondrug offenses (e.g., firearms, money laundering).

¹⁷ We also explored interaction effects among ethnicity, legally prescribed factors, offender-related factors, and case-processing factors by adding relevant cross-product terms to the models. Results were consistent with those presented here.

Table 4a. Probit Coefficients from the Regression of Imprisonment on Selected Independent Variables: Males Sentenced in U.S. Federal Courts, 1993 to 1996

Independent Variable	Imprisoned					
	Nondrug Offense			Drug Offense		
	White	Black	Hispanic	White	Black	Hispanic
<i>Offender Characteristics</i>						
Age (centered) ($\times 10^{-1}$)	-.072*** (.004)	-.101*** (.012)	-.106*** (.016)	<div>-.044*** (.010)</div>	<div>-.117*** (.020)</div>	-.014 (.025)
Age-squared ($\times 10^{-2}$)	-.012*** (.003)	-.017 (.006)	.010 (.011)	-.014 (.008)	-.013 (.010)	-.037 (.014)
Education	<div>.003 (.003)</div>	<div>-.026*** (.005)</div>	<div>-.040*** (.004)</div>	<div>-.058*** (.005)</div>	<div>-.022*** (.005)</div>	<div>-.052*** (.007)</div>
<i>Legal/Case Characteristics</i>						
Prior record scale	.507*** (.008)	.527*** (.009)	.502*** (.023)	.316*** (.013)	.274*** (.013)	.343*** (.019)
Offense severity score	.172*** (.004)	.181*** (.005)	.158*** (.006)	.093*** (.003)	.080*** (.004)	.088*** (.005)
Multiple convictions	.221*** (.026)	.254*** (.035)	.381*** (.048)	<div>.249*** (.042)</div>	<div>.377*** (.045)</div>	<div>-.050 (.050)</div>
Went to trial	<div>.672*** (.034)</div>	<div>.418*** (.060)</div>	.475*** (.091)	<div>.754*** (.053)</div>	<div>.520*** (.047)</div>	1.147*** (.195)
Statutory gun conviction	NA	NA	NA	NA	NA	NA
Sentencing year	<div>-.015 (.007)</div>	<div>.026 (.009)</div>	<div>-.033 (.015)</div>	-.005 (.010)	-.022 (.014)	.020 (.021)
-2 Log-likelihood	23,926	7,714	2,269	7,601	3,328	1,703
Number of cases	31,761	15,162	3,378	15,318	17,268	6,750

Note: Numbers in parentheses are standard errors. Models include controls for percent black, percent Hispanic, percent drug offense, district, and circuit.

*** $p < .001$ (two-tailed tests)

Indicates comparison significantly different at $p < .001$ (two-tailed z-tests).

because it tests the equality of all regression coefficients simultaneously, the Chow test represents a relatively liberal measure of equality. We focus on substantive cross-group differences in regression coefficients for the important legal variables and rely on z-tests to identify statistical differences.

For the imprisonment decision (Table 4a), the effects of prior record and offense seriousness are large, in the same direction, and comparable in size for all racial/ethnic groups. Each added level of offense severity increases the probability of imprisonment by approximately 6 to 7 percent across each of the ethnic groups for nondrug cases and by about 3 to 4 percent for drug cases. For each

added prior record score, the percentages are 19 to 20 percent across each of the ethnic groups for nondrug cases and about 11 to 13 percent for drug cases. Thus, there is remarkable similarity in the effects of the legal variables on incarceration decisions across white, black, and Hispanic defendants.

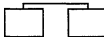
Overall, the other variables in the models also have fairly comparable effects on the incarceration decision across the three ethnic subgroups—the effects are in the same direction and roughly of the same magnitude. For example, the trial penalty effect is large across all three ethnic groups; age and education have small, but similar, effects on

Table 4b. OLS Coefficients from the Regression of Length of Sentence on Selected Independent Variables: Males Sentenced in U.S. Federal Courts, 1993 to 1996

Independent Variable	Sentence Length					
	Nondrug Offense			Drug Offense		
	White	Black	Hispanic	White	Black	Hispanic
<i>Offender Characteristic</i>						
Age (centered)	-.107*** (.018)	.085 (.053)	-.454*** (.092)	.055 (.040)	-.092 (.071)	.061 (.065)
Age-squared ($\times 10^{-1}$)	-.083*** (.012)	-.154*** (.036)	.053 (.058)	-.053 (.027)	-.262*** (.041)	-.192*** (.041)
Education	.019 (.088)	-.531 (.210)	-1.710*** (.303)	-2.681*** (.172)	-1.239*** (.242)	-2.375*** (.213)
<i>Legal/Case Characteristic</i>						
Prior record scale	16.063*** (.139)	15.246*** (.261)	15.541*** (.577)	17.597*** (.265)	17.807*** (.277)	16.181*** (.415)
Offense severity score	7.640*** (.039)	7.576*** (.0608)	7.520*** (.136)	8.785*** (.080)	10.961*** (.0846)	8.559*** (.109)
Multiple convictions	5.252*** (.476)	5.259*** -1.018)	8.862*** -2.215)	14.076*** (.913)	15.420*** -1.151)	8.817 -1.496)
Went to trial	27.293*** (.653)	36.679*** (1.242)	43.655*** (2.976)	58.408*** (1.245)	75.06*** (1.265)	63.733*** (1.900)
Statutory gun conviction	80.170*** (1.137)	80.239*** (1.514)	87.476*** (3.997)	57.577*** (1.705)	48.140*** (1.610)	41.096*** -3.062)
Sentencing year	-.401 (.179)	.200 (.360)	-.687 (.758)	-.665 (.313)	-1.444*** (.389)	-.097 (.476)
Correction factor	73.195*** (.879)	82.546*** (1.837)	85.098*** (3.913)	180.045*** (3.457)	361.114*** (-7.156)	257.052*** (-8.292)
R ²	.791	.766	.747	.677	.713	.691
Number of cases	21,323	11,839	2,477	13,492	16,698	6,462

Note: Numbers in parentheses are standard errors. Models include controls for percent black, percent Hispanic, percent drug offense, district, and circuit.

*** $p < .001$ (two-tailed tests)

 Indicates comparison significantly different at $p < .001$ (two-tailed z-tests).

the likelihood of incarceration across all three groups. Z-tests comparing coefficients between racial/ethnic-specific models reveal few significant differences.

Table 4b displays the results for the term-length decision. Again, the direction and magnitude of the effects of offense seriousness and prior record are comparable across the three groups—white, black, and Hispanic defendants who commit more serious offenses and have more extensive criminal histories receive considerably longer prison sentences. There also is a considerable trial

penalty across all the defendant groups—the penalty is smaller for white defendants across both drug and nondrug cases, while it is largest for blacks in drug cases and largest for Hispanics in nondrug cases. Also, both in direction and magnitude, the effects of age and education are generally comparable across the three groups. Defendants who are older and more educated—whether white, black, or Hispanic—tend to receive shorter prison terms. Many of the z-tests between racial/ethnic models for these variables are statistically significant but ap-

appear trivial substantively and must be interpreted cautiously (e.g., the number of months in prison contributed by defendants' prior record and offense seriousness is virtually identical across the three groups). This situation (of statistical but not substantive significance) reflects in part the large size of the sample as well as the instability of estimates for some variables with skewed distributions like education and age (i.e., small numbers of older and highly educated defendants, especially among blacks and Hispanics).

In sum, the criteria used by judges in deciding sentences for white, black, and Hispanic defendants are more noteworthy for their similarities than for their differences. Offense seriousness, defendant's prior record, and mode of conviction have large effects, while age and education have small to modest effects. Defendants who were convicted of more serious crimes, have more extensive criminal histories, and were adjudicated at trial (vs. guilty plea) receive harsher sentences than their less criminalistic and plea-seeking counterparts. Some differences in magnitude of the effects of some control variables across the three groups emerged, but these tended to be small. Importantly, the magnitude of the effects of the two legal variables—offense seriousness and prior record—are virtually identical across the three ethnic groups for both sentencing decisions.

DEPARTURES AND SUBSTANTIAL GOVERNMENT ASSISTANCE

The federal sentencing statute includes provisions that permit judges to depart downward from the guidelines. These departure provisions (and sentencing guidelines in general) manifest a fundamental dilemma of policy efforts to structure sentencing processes and also bear on a broad sociological issue traceable to Weber—the ways by which organizations and actors balance formal and substantive rationality, and discretion and its constraint (Savelsberg 1992; Ulmer 1997). The dilemma for agents of formal social control concerns the balance between the principle of uniformity (similar offenders should receive similar sentences) and individualized justice (tailoring sanc-

tions to the particular characteristics and situations of individual offenders).

Table 2 shows that departure sentences constitute about 30 percent of all sentences. Substantial assistance (SA) downward departures constitute approximately 75 percent of all departure sentences and 22 percent of all sentences, whereas "regular" downward departures constitute almost 25 percent of all departure cases and only 7 percent of all sentences.¹⁸ Table 2 also shows that SA and regular downward departure sentences are distributed fairly evenly across the three racial/ethnic groups. At issue here, however, is whether this apparent evenness persists when controlling for other relevant variables. According to our theoretical hypothesis, if similar defendants are not receiving similar sentence reductions after taking into account the impact of other factors, this may explain the ethnicity/sentencing relationship we described.

We focus on substantial assistance (SA) departures, which constitute the large majority of departure sentences and also affect nearly one in every four federal defendants.

¹⁸ Substantial assistance (SA) departures stem from the 1986 Anti-Drug Abuse Act directing the Commission to create sentence-reduction incentives for defendants who provide state's evidence. "Regular" departures are an "explicit" part of the judicial decision-making process and reflect sentence reduction procedures (e.g., plea negotiation among defense, prosecution, and judge) that are common in the guideline sentencing systems of most states; whereas, an SA departure (a) indicates that another legally relevant fact has been presented to the judge at the sentencing stage, (b) limits to the prosecution the authority to move for an SA departure, but (c) does not address the factors to be used by the prosecutor to determine whether the cooperation of a given defendant is "substantial." The sentencing judge can refuse or grant the motion, but, in essence, an SA departure constitutes a unilateral prosecutorial decision that is not subject to challenge by the defense and is not reviewable by the court (Maxfield and Kramer 1998). Moreover, the sentence reduction permitted in regular downward departure cases *cannot* fall below a statutory minimum sentence; in an SA departure the reduction *can fall below* a statutory minimum sentence if the prosecutor makes such a motion and the judge approves it. In effect, an SA departure can do more than supplant the guideline range (see Katzenelson and Conley 1997).

SA departures reflect a unique combination of judicial and prosecutorial discretion that is less constrained by the guidelines and largely obscured from the Commission's monitoring of federal sentencing practices. SA departures are intended to reward offenders for cooperating in the investigation or prosecution of other offenders (typically for drug-related crimes). The sentence reduction could include a sentence lower than that established by statute as a minimum sentence. To prompt such a reduction, the prosecutor first must *define* the defendant's actions as substantial assistance behavior and then *file a motion* to the judge for a reduction in the otherwise applicable guideline sentence (only the prosecutor can file such a motion). U.S. attorney offices are required to record the reason for making a substantial assistance motion, but there is no provision that this information be made available for review. In practice, therefore, prosecutorial discretion is prominent in SA departure processes and displays a largely invisible or "hidden side" to federal sentencing practices. It follows, also, that the designations *judge-controlled* and *prosecutor-controlled* are appropriate for distinguishing regular downward departures from substantial assistance departures.

To consider whether departure provisions in the federal guidelines are a mechanism by which race/ethnicity influences sentencing outcomes, we estimated imprisonment and term-length models for nondeparture cases, all downward departure cases, regular downward departures, and SA departures. These analyses were conducted separately for non-drug and drug cases.¹⁹

Table 5 presents the results when the sample is partitioned into departure and

nondeparture cases. Turning first to non-departure cases, we find that the harsher treatment of black and Hispanic defendants found in the full sample (Table 3) is reduced and the ethnicity effects become small. These patterns hold for both imprisonment and sentence-length decisions and across both drug and nondrug cases. Hispanics are still sentenced more harshly than are white defendants, but the differences are small—almost trivial; Hispanics receive sentences that are virtually identical in length to those received by blacks. Thus, on the one hand, white defendants continue to be sentenced more leniently than Hispanic and black defendants in nondeparture cases, but the white advantage is small. On the other hand, there are negligible Hispanic-black differences in sentence length in nondeparture cases. Notably, the harsher treatment of Hispanic defendants in the full sample is due largely to downward departures that reduce sentence severity across all the ethnic groups, but less so for Hispanics than for whites or blacks.

We turn next to the results for all downward departure cases. For both the imprisonment and sentence-length outcomes and for drug and nondrug cases, we again find that white defendants are treated the most leniently, Hispanic defendants are treated the most harshly, and black defendants place in the middle on the sentence-severity continuum. The Hispanic-white difference is greater than that in the nondeparture model and indicates that Hispanics benefit less than white (and black) defendants from departure provisions.²⁰

These overall patterns generally persist when cases are separated into regular departures and substantial assistance departures. For regular departure cases, both the imprisonment and sentence-length differences continue to favor white defendants over Hispanic defendants (.06, four months for non-drug cases; .14, eight months for drug cases)

¹⁹ Chow tests are used to assess whether there are statistically significant differences between departure-specific models. All of the Chow tests are statistically significant at $p < .001$, revealing differences between departure models for imprisonment and term-length decisions in nondrug and drug cases. For both sentencing decisions, the processes in departure and nondeparture models are more similar in nondrug cases than in drug cases. Also, the differences are much greater between the nondeparture and substantial assistance departure models than between the nondeparture and regular downward departure models.

²⁰ Our analysis does not distinguish between the likelihood of receiving a downward departure and the size of that departure when granted. These two elements overlap and developing analytic techniques that differentiate between them to assess their relationship to ethnicity is complex and beyond the scope of this project. However, this should be a priority for future research (see Griswold 1987; Kramer and Ulmer 1996).

Table 5. Unstandardized Probit and OLS Coefficients from the Multiple Regression of Imprisonment and Length of Sentence on Race/Ethnicity, by Sentence Departure Status: Males Sentenced in U.S. Federal Courts, 1993 to 1996

Independent Variable	Nondrug Offense			Drug Offense		
	Imprisoned		Sentence Length	Imprisoned		Sentence Length
	Coef.	Prob.		Coef.	Prob.	
<i>Nondepartures</i>						
Black	.100*** (.017)	.040	.158 (.483)	.194*** (.045)	.077	2.965*** (.794)
Hispanic	.089 (.037)	.036	2.909 (.885)	.144 (.081)	.057	1.115 (1.019)
−2 Log-likelihood	17,362		—	2,654		—
R ²	—		.814	—		.821
Number of cases	38,929		28,360	23,954		22,713
<i>All Downward Departures</i>						
Black	.078*** (.024)	.031	1.430 (.855)	.128*** (.028)	.051	7.928*** (.739)
Hispanic	.171*** (.043)	.068	3.092 (1.412)	.327*** (.031)	.128	12.283*** (.956)
−2 Log-likelihood	9,499		—	7,118		—
R ²	—		.705	—		.612
Number of cases	10,417		6,330	15,210		12,768
<i>Regular Downward Departures</i>						
Black	.099 (.036)	.039	4.901*** (1.325)	.281*** (.071)	.111	6.196 (2.299)
Hispanic	.147 (.0643)	.058	3.952 (2.123)	.367*** (.064)	.143	7.504 (2.633)
−2 Log-likelihood	3,545		—	871		—
R ²	—		.724	—		.727
Number of cases	3,928		2,530	2,116		1,902
<i>Substantial Assistance (SA) Downward Departures</i>						
Black	.065 (.034)	.026	.001 (1.108)	.113*** (.029)	.045	7.619*** (.751)
Hispanic	.225*** (.047)	.089	3.862 (1.859)	.324*** (.033)	.127	11.954*** (.993)
−2 Log-likelihood	5,882		—	6,215		—
R ²	—		.700	—		.591
Number of cases	6,488		3,800	13,094		11,866

Note: Numbers in parentheses are standard errors. Models include controls for percent black, percent Hispanic, percent drug offense, district, and circuit.

*** $p < .001$ (two-tailed tests)

☐ ☐ Indicates comparison significantly different at $p < .001$ (two-tailed z-tests).

and black defendants (.04, five months for nondrug cases; .11, six months for drug cases). Note that the pattern of these differences is similar to that reported in Table 3 for the full sample. For SA departure cases,

Hispanic-white differences in sentencing outcomes persist and are similar to those for regular departures. However, black-white differences become essentially negligible, except that black defendants continue to re-

ceive longer sentences (about eight months) in drug cases. So, too, Hispanic-black differences are exacerbated in SA departure cases except for the sentence-length decision in drug cases where the Hispanic-black difference relative to the full model is unchanged.

Thus, our analysis clearly establishes the significance of downward departure provisions in the federal guidelines as a mechanism contributing to ethnic disparity. A considerable share of the harsher treatment of Hispanic defendants occurs in departure cases—they receive smaller sentence reductions than do white defendants in both types of departure cases, and they receive smaller sentence reductions than do black defendants in SA departure cases. The Hispanic disadvantage is greatest in SA departure cases involving drug defendants. Moreover, the relationship of departure cases to the overall more lenient treatment of white defendants varies whether compared to Hispanic defendants or black defendants. Relative to Hispanic defendants, whites receive larger sentence reductions across both regular departures and SA departures. Whites also receive larger sentence reductions than black defendants, but the size of the difference is larger in regular departure cases than SA cases. Lastly, the overall sentence disparity between Hispanic and black defendants is due essentially to differences in sentence reductions in substantial assistance departure cases—blacks receive larger sentence reductions than Hispanics in SA cases. In contrast, black and Hispanic defendants receive similar sentences in regular departure cases—as they do in nondeparture cases. In sum, the magnitude of black-white differences in sentencing outcomes is essentially consistent across all cases and decision points—drug and nondrug, and departure and nondeparture cases—whereas Hispanic-white differences prevail across all decision points but are considerably larger in departure cases.²¹

²¹ The matter of the partitioned regressions in the departure analysis is a difficult issue. There obviously is a dependency between the departure decision, the imprisonment decision, and the term-length decision, and a “selection effect” of some sort might exist. Disentangling the relationship between departure decisions and sentencing outcomes requires a selectivity model different from traditional procedures used for modeling

SUMMARY AND IMPLICATIONS

We found considerable consistency in the sentencing of federal criminal defendants—judges, on balance, prescribe similar sentences for similar defendants convicted of the same offense. Whether they were white, black, or Hispanic—defendants who committed more serious crimes, had more extensive criminal histories, or were convicted at a trial (as opposed to a guilty plea) were much more likely to be incarcerated and receive longer prison sentences. The magnitude of the effects of prior record and offense seriousness was virtually identical across the ethnic groups.

Nevertheless, some important racial/ethnic disparities emerged, most notably, the overall harsher sentencing of Hispanic defendants. Specifically:

(1) Ethnicity has a small to moderate effect on both the imprisonment and term-length decisions favoring white defendants and penalizing Hispanic defendants, with black defendants placing in the middle of the sentence-severity continuum. Black-Hispanics were sanctioned somewhat more harshly than the other racial/ethnic groups, including white-Hispanic defendants.

(2) The greater leniency accorded white defendants persists no matter which other

sample selection bias (Heckman 1979; Winship and Mare 1992). The difficulty arises because the influence of the departure mechanism on the imprisonment and term-length decisions involves a complex, largely simultaneous decision-making process rather than a simple hierarchical process. Unfortunately, the models necessary for understanding this complex form of selection are not readily available but are currently being developed (personal communication with Mark S. Handcock, a statistician with expertise in selection issues). We also employed several alternative techniques for modeling the departure-sentence outcome relationship. (Details available from the authors.) These modeling procedures produced essentially similar race/ethnicity effects to those reported here. Thus, whichever way we conduct the analysis, the race/ethnicity effects persist. Our partitioned approach follows traditional procedures in part because they are more straightforward and familiar to readers (Ulmer and Kramer 1996). We also plan to develop more sophisticated models addressing selectivity issues in subsequent work.

sentence option or comparison it is paired with (i.e., whites on average are sentenced more leniently than either Hispanics or blacks for the sample as a whole, nondeparture cases, and both types of downward departure cases).

(3) Departure cases explain, in many respects, the higher imprisoning and longer prison terms of Hispanic defendants. Hispanic defendants are sentenced more harshly than white defendants across both departure and nondeparture cases, but the disparity is greater in downward departure cases. However, the harsher treatment of Hispanic defendants relative to black defendants is limited to departure cases, specifically to substantial assistance departures; there are no Hispanic-black differences in sentence severity for nondeparture cases.

(4) Hispanic drug defendants are most at risk of receiving the harshest penalties because they benefit least from departure sentencing options—particularly, substantial assistance downward departures. Hispanic defendants are disproportionately represented among those convicted of drug offenses, and receive smaller sentence reductions in departure cases than either white or black drug offenders.

These findings, which show some racial/ethnic disparities in federal sentencing practices should be interpreted cautiously. The inclusion of additional information about case characteristics or processing in our models could reduce or eliminate the effect of race/ethnicity. It also is possible that more information about judges' sentencing decisions could attribute ethnic disparities to "warranted" discretion. Racial or ethnic disparities in sentencing outcomes are not necessarily "discriminatory" or "wrong." For example, the cultural emphasis on machismo among Hispanic males may discourage actions that contribute to sentence "breaks," such as plea bargaining and providing assistance to law enforcement by informing on criminal associates. Hispanic defendants involved in drug trafficking networks may be discouraged from providing government assistance because of comparatively greater concern about the prospects for retaliatory violence against self and family or kin by Hispanic drug organizations (Pennsylvania Crime Commission 1991). However, nothing

in the federal sentencing data per se implies these alternative reasons, and the data are exceptionally inclusive with regard to controls for case characteristics and other relevant factors that might influence sentencing practices. Moreover, the main findings persist in the face of multivariate analyses using differing sentence options and racial/ethnic comparisons.

Thus, we conclude that the ethnic disparities found in our analysis are real and meaningful—they support our theoretical hypotheses and also raise some concerns about the equal application of law and the wherewithal of the sentencing guidelines in reducing sentencing disparities of any kind. The harsher treatment of black and especially Hispanic defendants is consistent with the focal concerns perspective on judicial decision-making and with subcultural behaviors and stereotyping of minority groups. In particular, the specific social and historical context involving Hispanic Americans may exacerbate perceptions of their cultural dissimilarity and the "threat" they pose in ways that contribute to their harsher treatment in the criminal courts. As socially disadvantaged offenders and recent immigrants, Hispanic defendants may lack the resources (financial, cultural) to resist or soften the imposition of harsh penalties. They also may feel alienated from a system they believe treats them unfairly and hence seem more recalcitrant. Lastly, their offense behavior may be viewed as more threatening. Judges and prosecutors concerned with maintaining order and protecting communities may be influenced, at least subliminally, by widespread attributions connecting Hispanic males to drug-trafficking networks and drug-related violence. On the basis of these attributions, court officials may project behavioral expectations about the defendant's rehabilitative potential or potential danger to the community.

That our findings demonstrate a consistent Hispanic disadvantage in downward departure cases, especially in substantial assistance departures, highlights a fundamental dilemma of policy efforts to structure sentencing processes and raises a general problem noted by Weber: the tension between formal and substantive rationality in organizational control (Savelsberg 1992; Ulmer

1997). The effort to achieve desired goals through centralized control and formal rules invites informal strategies to circumvent those rules, whereas decentralized control and informal rules allow decision makers to adapt to organizational contingencies but risks unintended and undesirable outcomes (Ulmer 1997). In the case of sentencing guidelines, windows of discretion, such as mitigated ranges, "acceptance of responsibility" through plea negotiation, and departure provisions, allow court actors to temper formal rules that attach highly specific sentences to specific charges (formal rationality) and adapt sentences to fit individual defendants or organizational contingencies (substantive rationality).

Substantial assistance departures strongly suggest organizational realities and unintended risks confronting policy efforts to constrain judicial discretion—in particular, the displacement of too much sentencing influence to prosecutors or other court actors. Established by the Commission (pursuant to a directive from Congress) to reward offenders for cooperating in the prosecution of other offenders, SA departures are a product operationally of prosecutorial discretion that is less constrained by the guidelines and largely obscured from the Commission's oversight role of monitoring federal sentencing practices. But shifting the locus of discretion to prosecutorial decisions appears to have exacerbated the disparity risk faced by some defendants (i.e., Hispanics and blacks), while diminishing its visibility.²² According to Ulmer (1997:185; see also Savelsberg 1992), this raises the key question for those interested in pursuing guidelines-based sentencing reform: What set of actors does society choose to trust with the discretion to determine punishments, and how will these actors be held accountable for their use of that discretion? Because substantial assistance provisions now affect nearly one in four federal defendants, "who to trust" and "how to make them accountable" are matters of considerable importance to policymakers

and Commission officials concerned with unwarranted discretion.

Rather than demonstrating widespread and consistent ethnic prejudice in the federal sentencing system, ethnic disparities appear to have developed because seemingly neutral procedures were adopted without systematic attempts to find out whether they might affect various races differently (Petersilia 1985). Consequently, future research and policy should look at the key actors in the SA decision-making process (i.e., U.S. prosecutors), primarily at the kind of information they use, how valid it is, and whether its use affects particular ethnic groups unfairly.

CONCLUSION

Our main finding that Hispanic defendants receive harsher sentences than either white or black defendants provides strong evidence for the continuing significance of race and ethnicity in the larger society in general and in organizational decision-making processes in particular. Racial or ethnic perceptions and attributions may come into play in a wide range of arenas that favor some while disadvantaging others, including organizational decisions such as hiring and promotion. Moreover, it appears that the resources and attributions associated with ethnic status will be especially salient as a "perceptual shorthand" when decision-makers have limited time and information about clients or applicants. This uncertainty management not only characterizes courts and other criminal justice decision-making processes (e.g., arrest, parole), but perhaps some other organizational contexts as well such as real estate and auto sales (see Belluck 1997).

This finding also questions the widespread view that Hispanic Americans are more assimilated and less subject to discriminatory practices than black Americans (Healey 1995; Tonry 1995). The main supporting evidence for assimilation is that rates of intermarriage between Hispanic Americans and whites is higher than for black Americans and whites. However, the intermarriage percentages are very low for both groups. Black/white interracial marriages are about .5 percent of all marriages, whereas the comparable figures for Hispanics is about 2 percent.

²² Research on guidelines in some states also shows departure provisions to be an important locus of race differences in sentencing (Kramer and Steffensmeier 1993; Kramer and Ulmer 1996).

Moreover, some surveys have shown that Hispanic groups like Mexican Americans actually elicit greater social distance from whites than do black Americans (Smith and Dempsey 1983). There obviously is a need for more research on prejudice and discrimination that includes Hispanics, especially since overall levels of prejudice and racism against Hispanics seem to have increased in reaction to the high rate of immigration (Healey 1995:374). Hispanic Americans may be as much or more subject to discriminatory practices than black Americans in some arenas (e.g., sentencing and criminal justice case processing), but not in other spheres.

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