

Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process

by Cassia C. Spohn

As we approach the 21st century, the issue of racial discrimination in sentencing continues to evoke controversy and spark debate. Some researchers contend that crimes by racial minorities are punished more harshly than similar crimes by equally culpable whites; others argue that racial disparities in sentence severity reflect differences in crime seriousness, prior criminal record, and other legally relevant factors that judges consider in determining the appropriate sentence. Some scholars suggest that racial and ethnic disparities in sentencing have been reduced by the sentencing reforms promulgated during the past three decades; others insist that these disparities have been exacerbated by the policies pursued during the war on drugs. The purpose of this essay is to inform the debate on race, crime, and justice by critically evaluating recent empirical research examining the effect of race/ethnicity on sentence severity and by searching for clues to the contexts or circumstances in which race/ethnicity makes a difference. Forty recent and methodologically sophisticated studies investigating the linkages between race/ethnicity and sentence severity are reviewed; included are 32 studies of sentencing decisions in State courts and eight studies of sentence outcomes at the Federal level.

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Cassia C. Spohn is Kayser Chair of Criminal Justice with the Department of Criminal Justice at the University of Nebraska at Omaha.



The findings of these studies suggest that race and ethnicity do play an important role in contemporary sentencing decisions. Black and Hispanic offenders—and particularly those who are young, male, or unemployed—are more likely than their white counterparts to be sentenced to prison; in some jurisdictions, they also receive longer sentences or differential benefits from guideline departures than do similarly situated white offenders. There is evidence that other categories of racial minorities—those convicted of drug offenses, those who accumulate more serious prior criminal records, those who victimize whites, or those who refuse to plead guilty or are unable to secure pretrial release—also are singled out for harsher treatment. The results of this review suggest that the “discrimination thesis” cannot be laid to rest.

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Nearly half a century after *Brown v. Board of Education*, the historic Supreme Court decision that outlawed racially segregated public schools, the issue of race relations in the United States continues to evoke controversy and spark debate. On no issue is the debate more spirited or are opinions more polarized than the relationship between race, crime, and justice. Politicians and scholars offer competing explanations for the disproportionate number of blacks arrested, imprisoned, and on death row. Those on one side contend that the war on crime—and particularly the war on drugs—has “caused the ever harsher treatment of blacks by the criminal justice system” (Tonry 1995, 52) and charge that the overrepresentation of blacks in arrest and imprisonment statistics reflects systematic racial discrimination (Mann 1993). Those on the other side assert that these results can be attributed primarily to the disproportionate involvement of blacks in serious criminal activity (Blumstein 1982, 1993) and argue that the idea of systematic discrimination within the criminal justice system is a “myth” (Wilbanks 1987).

Although charges of racial discrimination have been leveled at all stages of the criminal justice process, much of the harshest criticism has focused on judges’ sentencing decisions. Critics of the sentencing process contend that crimes by racial minorities are punished more harshly than similar crimes by equally culpable whites. Other scholars challenge this assertion. They contend that the harsher sentences imposed on racial minorities reflect the seriousness of their crimes and prior criminal records as well as other legally relevant factors that judges consider in determining the appropriate sentence.

The findings of more than 40 years of research examining the effect of race on sentencing have not resolved this debate. Some studies have shown that racial/ethnic minorities are sentenced more harshly than whites (Holmes et al. 1996; Kramer and Ulmer 1996; Petersilia 1983; Spohn, Gruhl, and Welch 1981–82; Zatz 1984), even after crime seriousness, prior criminal record, and other legal variables are taken into account. Other studies have found either no significant racial differences (Klein, Petersilia, and Turner 1990) or that blacks are treated more leniently than whites (Bernstein, Kelly, and Doyle 1977; Gibson 1978; Levin 1972). Still other research has concluded that race influences sentence severity *indirectly* through its effect on variables such as bail status (LaFree 1985b; Lizotte 1978), type of attorney (Spohn, Gruhl, and Welch 1981–82), or type of disposition (LaFree 1985a; Spohn 1992; Uhlman and Walker 1980), or that race *interacts* with other variables and affects sentence severity only in some types of cases (Barnett 1985; Spohn and Cederblom 1991), in some types of settings (Chiricos and Crawford 1995; Hawkins 1987; Kleck 1981; Myers and Talarico 1986), or for some types of defendants (Chiricos and Bales 1991; LaFree 1989; Nobiling, Spohn, and DeLone 1998; Peterson and Hagan 1984; Spohn 1994; Walsh 1987).

Between 1986 and 1991, the proportions of blacks and whites in State and Federal prisons reversed, from 53 percent white and 46 percent black to 53 percent black and 46 percent white.

It thus seems clear that, as we enter the 21st century, definitive answers to questions concerning differential sentencing of racial minorities and whites remain elusive. The issue is complicated by the fact that the past three decades have witnessed a virtual revolution in sentencing policies and practices (Tonry 1996). At both the State and Federal levels, legislators abandoned indeterminate sentencing, replacing it with determinate sentencing, voluntary or presumptive sentencing guidelines, mandatory minimum penalties, and three-strikes laws. Although the goals of those who championed these reforms varied, with liberals arguing that structured sentencing practices would enhance fairness and hold judges accountable for their decisions and conservatives asserting that the reforms would lead to harsher penalties that even-

tually would deter criminal behavior, reformers on both sides of the political spectrum agreed that the changes were designed to curb discretion and reduce unwarranted disparity. As Tonry (1995, 164) notes, "Amelioration of racial disparities and discrimination was a major objective of proponents of constraints on judicial discretion."

That the reforms were designed to reduce racial disparity and discrimination is clear. What is not clear is whether the reforms have achieved that objective. The U.S. Sentencing Commission's evaluation of the first 4 years' experience with the Federal sentencing guidelines concluded that there had been a substantial reduction in racial disparity (U.S. Sentencing Commission 1991a), but other studies challenged that conclusion (Albonetti 1997; Rhodes 1992; U.S. General Accounting Office 1992; Weisburd 1992). Studies at the State level, most of which focus on the change from indeterminate to determinate sentencing (Petersilia 1983) or on the implementation of guidelines in Minnesota (Dixon 1995; Miethe and Moore 1985; Moore and Miethe 1986; Stolzenberg and D'Alessio 1994) and Pennsylvania (Kramer and Steffensmeier 1993; Kramer and Ulmer 1996; Ulmer and Kramer 1996), have yielded similarly mixed results. These inconsistencies led Tonry (1996, 42) to suggest that "the best conclusion at present is that we do not know whether disparities have increased or decreased."

The task of assessing the effect of race on sentencing is further complicated by the war on drugs, which a number of commentators contend has been fought primarily in minority communities. Tonry (1995, 105), for example, argues that "Urban black Americans have borne the brunt of the War on Drugs." Miller (1996, 80) similarly asserts that "from the first shot fired in the drug war

African-Americans were targeted, arrested, and imprisoned in wildly disproportionate numbers.” These allegations suggest not only that racial minorities have been arrested for drug offenses at a disproportionately high rate, but also that black and Hispanic drug offenders have been sentenced more harshly than white drug offenders.

There is ample evidence to support the argument that the war on drugs has been fought primarily in minority communities. Since 1976, the number of persons arrested for drug offenses has more than doubled; the number of whites arrested for drug offenses increased by 85 percent, while the number of blacks arrested for these offenses increased fourfold (Tonry 1995). The proportion of all drug arrestees who are black also increased, from 22 percent in 1976 to 39 percent in 1994. These racial differentials in arrest rates are reflected in prison populations, where the trend has been one of decreasing white and increasing black percentages. Between 1986 and 1991, the proportions of blacks and whites in State and Federal prisons reversed, from 53 percent white and 46 percent black to 53 percent black and 46 percent white. Tonry (1995, 113) attributes this reversal to the war on drugs, noting: “At every level of the criminal justice system, empirical analyses demonstrate that an increasing black proportion has resulted from the War on Drugs—in jail, state and federal prisons, and juvenile institutions.”

Issues Addressed in This Essay

The findings of contemporary research exploring the effect of race on sentencing are inconsistent. Coupled with competing assertions that racial disparities in sentencing have been reduced by the sentencing reforms promulgated during the past three decades but exacerbated by the policies pursued during the war on drugs, the findings suggest that it is time to reexamine this important but unsettled question (Spohn, Gruhl, and Welch 1981–82). Although a number of comprehensive reviews of the literature on race and sentencing exist (cf. Chiricos and Crawford 1995; Hagan 1974; Hagan and Bumiller 1983; Kleck 1981; Zatz 1987), none of them focuses explicitly on sentencing in the post-reform era dominated by the war on drugs. The most current review, Chiricos and Crawford’s 1995 examination of 38 studies published since 1975, does not include any study using sentencing data from the past 15 years. The authors themselves conclude that “there is much yet to be learned about the issue of race and imprisonment” (Chiricos and Crawford 1995, 301).

The purpose of this essay is not simply to add another voice to the debate over whether racial discrimination exists within the criminal justice system. Although I attempt to determine whether recent research provides evidence of

With respect to sentencing, discrimination “exists when some case attribute that is objectionable (typically on moral or legal grounds) can be shown to be associated with sentence outcomes after all other relevant variables are adequately controlled.”

direct racial discrimination in sentencing, I believe that this is a theoretically unsophisticated and incomplete approach to a complex phenomenon. Like Hawkins (1987) and Zatz (1987), I believe that it is overly simplistic to assume that racial minorities will receive harsher sentences than whites regardless of the nature of the crime, the seriousness of the offense, or the culpability of the defendant. Like Wonders (1996, 617), I believe that the more interesting question is, “When does the particular social characteristic matter—under what circumstances, for whom, and in interaction with what other factors?”

The underlying purpose of this essay is to inform the debate on race, crime, and justice by critically evaluating recent empirical research investigating the linkages between race and sentence severity and by searching for “clues to the contextual character of possible race effects” (Chiricos and Crawford 1995,

284). As we begin the year 2000, we find increasingly large proportions of young black and Hispanic men in our Nation’s jails and prisons. It is critically important to determine whether, and to what extent, this disparity has resulted from “failed policies and cynical politics” (Tonry 1995, 180) rather than from legitimate and racially neutral efforts to control crime and protect society.

Before turning to an analysis of research on race and sentencing, I define the concepts of disparity and discrimination. I also present a brief overview of the sentencing process and summarize the reforms implemented during the past 30 years.

Disparity and Discrimination

Critics of the sentencing process contend that unrestrained discretion results in sentence disparities and discrimination. These concepts, while sometimes used interchangeably, are significantly different. *Disparity* refers to a difference in treatment or outcome, but one that does not necessarily involve discrimination. As the Panel on Sentencing Research noted, “*Disparity* exists when ‘like cases’ with respect to case attributes—regardless of their legitimacy—are sentenced differently” (Blumstein et al. 1983, 72). *Discrimination*, on the other hand, is a difference that results from differential treatment based on illegitimate criteria, such as race, gender, social class, or sexual orientation. With respect to sentencing, discrimination “exists when some case attribute that is objectionable (typically on moral or legal grounds) can be shown to be

associated with sentence outcomes after all other relevant variables are adequately controlled” (Blumstein et al. 1983, 72).

There is clear and convincing evidence of racial disparity in sentencing. At the Federal level, for example, 74.3 percent of the white offenders convicted in U.S. district courts during fiscal year 1996 were sentenced to prison. The comparable figures for black offenders and Hispanic offenders were 80.2 percent and 84.9 percent, respectively. The mean prison sentence for black offenders (91.1 months) also was substantially higher than the mean sentences for whites (48.9 months) or Hispanics (48.9 months) (U.S. Department of Justice [DOJ] 1998a). Similar disparities are found at the State level. For example, a study of sentences imposed in State courts nationwide in 1994 found that 55 percent of the blacks and 42 percent of the whites were sentenced to prison; the average prison sentence for blacks also was longer than the average sentence for whites (U.S. DOJ 1998b).

Although these statistics indicate that blacks and Hispanics receive sentences that are more punitive than whites receive, they do not tell us why this occurs. I suggest that there are at least four possible explanations, only three of which reflect racial discrimination. First, the differences in sentence severity could be due to the fact that blacks and Hispanics commit more serious crimes and have more serious prior criminal records than whites. Studies of sentencing decisions consistently have demonstrated the importance of these two legally relevant factors. Offenders who are convicted of more serious offenses, who use a weapon to commit the crime, or who seriously injure the victim receive harsher sentences, as do offenders who have prior felony convictions. The more severe sentences imposed on black and Hispanic offenders, then, might reflect the influence of these legally prescribed factors rather than the effect of racial prejudice on the part of judges.

The differences also could result from economic discrimination. Poor defendants are not as likely as middle- or upper-class defendants to have a private attorney or to be released prior to trial. They also are more likely to be unemployed. All of these factors may be related to sentence severity. Defendants represented by private attorneys or released prior to trial may receive more lenient sentences than those represented by public defenders or in custody prior to trial. Defendants who are unemployed may be sentenced more harshly than those who are employed. Since black and Hispanic defendants are more likely than white defendants to be poor, economic discrimination amounts to *indirect* racial discrimination.

Third, the differences could be due to *direct* racial discrimination on the part of judges. They could be a result of judges taking the race/ethnicity of the offender

An indirect effect occurs when an independent variable influences a dependent variable through some other factor, rather than directly. If, for example, pretrial detention significantly increases the odds of incarceration, and if black offenders are more likely than white offenders to be detained prior to trial, then one could conclude that race indirectly affects sentence severity through its effect on pretrial detention.

into account in determining the sentence. This implies that judges who are confronted with black, Hispanic, and white offenders convicted of similar crimes and with similar prior criminal records impose harsher sentences on racial minorities than on whites. It implies that judges, the majority of whom are white, stereotype black and Hispanic offenders as more violent, more dangerous, and less amenable to rehabilitation than white offenders (see Steffensmeier, Ulmer, and Kramer 1998).

Finally, the sentencing disparities could reflect both equal treatment and discrimination, depending on the nature of the crime, the races of the victim and the offender, the type of jurisdiction, the age and gender of the offender, and so on. It is possible, in other words, that racial minorities who commit certain types of crimes (e.g., forgery) are treated no differently than whites who commit these crimes, while those who commit other types of crimes (e.g., sexual assault) are sentenced more harshly than their white counterparts. Similarly, it is possible that racial discrimination in the application of the death penalty is confined to the South or to cases involving black offenders and white victims. This type of discrimination is what Walker, Spohn, and DeLone (1999, 17) refer to as “contextual discrimination.” It is discrimination that is found in particular contexts or circumstances.

In summary, there is a significant difference between disparity and discrimination, and discrimination can take different forms. In reviewing the research on race and sentencing, I use the term “direct discrimination” to characterize what researchers refer to as a “main effect.”¹ That is, race/ethnicity significantly affects sentence severity after all legally relevant case and offender characteristics are taken into consideration; stated another way, blacks and Hispanics are sentenced more harshly than whites, and these differences cannot be attributed to differences in crime seriousness, prior criminal record, or other legally relevant factors.

Consistent with Zatz (1987, 70), I use the term “subtle discrimination” to characterize what researchers refer to as “indirect” or “interaction” effects. An indirect effect occurs when an independent variable influences a dependent variable

through some other factor, rather than directly. If, for example, pretrial detention significantly increases the odds of incarceration, and if black offenders are more likely than white offenders to be detained prior to trial, then one could conclude that race indirectly affects sentence severity through its effect on pretrial detention. An interaction effect occurs when either the effect of race varies depending on some other factor or the effects of other variables are conditioned by offender race. If the effect of race is confined to certain types of cases (e.g., less serious crimes where judges have greater discretion at sentencing) or to certain types of offenders (e.g., young males), we would conclude that race interacts with crime seriousness and offender age/gender to affect sentence outcomes. We would reach a similar conclusion if we found that going to trial rather than pleading guilty increased sentence severity for blacks but not for whites. As Zatz notes (1987, 70), both indirect and interaction effects “reflect more subtle institutionalized biases, but still fall within the purview of discrimination if they systematically favor one group over another.” These types of effects are what Walker, Spohn, and DeLone (1999, 17) refer to as “contextual discrimination.”

The Sentencing Process and Sentencing Reform

Concerns about disparity and discrimination in sentencing led to a “remarkable burst of reform” (Walker 1993, 112) that began in the mid-1970s and continues today. The focus of reform efforts was the indeterminate sentence, in which an offender received a minimum and maximum sentence and the parole board determined the date of release. The parole board’s determination of when the offender should be released rested on its judgment of whether the offender had been rehabilitated or had served enough time for the particular crime. Under indeterminate sentencing, in other words, discretion was distributed not only to the criminal justice officials who determined the sentence but also to correctional officials and the parole board. The result of this process was “a system of sentencing in which there was little understanding or predictability as to who would be imprisoned and for how long” (U.S. DOJ 1996, 6).

Both liberal and conservative reformers challenged the principles underlying the indeterminate sentence and called for changes designed to curb discretion and reduce disparity and discrimination. Liberals and civil rights activists, in particular, were apprehensive about the potential for racial bias under indeterminate sentencing schemes. They asserted that “racial discrimination in the criminal justice system was epidemic, that judges, parole boards, and corrections officials could not be trusted, and that tight controls on officials’ discretion offered the only way to limit racial disparities” (Tonry 1995, 164). Political

conservatives, on the other hand, argued that sentences imposed under indeterminate sentencing schemes were too lenient and championed sentencing reforms designed to establish and enforce more punitive sentencing standards (e.g., Wilson 1983). Their arguments were bolstered by the findings of research demonstrating that most correctional programs designed to rehabilitate offenders and reduce recidivism were ineffective (Martinson 1974).

After a few initial “missteps,” in which jurisdictions attempted to eliminate discretion altogether through flat-time sentencing (Walker 1993, 123), States and the Federal Government adopted determinate sentencing proposals designed to *control* the discretion of sentencing judges. Many jurisdictions adopted presumptive sentencing structures that offered judges a limited number of sentencing options and included enhancements for use of a weapon, presence of a prior criminal record, or infliction of serious injury. Other States and the Federal Government adopted sentencing guidelines that incorporated crime seriousness and prior criminal record into a sentencing “grid” that judges were to use in determining the appropriate sentence. Under both systems, judges could use aggravating and mitigating circumstances to depart from the presumptive sentence. As Zatz (1987, 79) notes, these reforms

severely constrained the discretion of judges and parole boards, though judges were still relatively free to decide when to grant or withhold probation, hand out concurrent or consecutive sentences, and use the aggravating and mitigating circumstances loophole to alter the presumptive sentence.

Other reforms at both the Federal and State levels included mandatory minimum penalties for certain types of offenses (especially drug and weapons offenses), habitual offender and three-strikes laws, and truth-in-sentencing statutes. According to Tonry (1996, 3), these latter reforms were “based on the premises that harsher penalties will reduce crime rates and that judges cannot otherwise be trusted to impose them.”

The attack on indeterminate sentencing and the proposals for reform reflect conflicting views of the goals and purposes of punishment as well as questions regarding the exercise of discretion at sentencing. The National Research Council’s Panel on Sentencing Research characterized the sentencing decision as “the symbolic keystone of the criminal justice system,” adding: “It is here that conflicts between the goals of equal justice under the law and individualized justice with punishment tailored to the offender are played out” (Blumstein et al. 1983, 39). Proponents of the retributive or just deserts theories of punishment, such as Andrew von Hirsch (1976), argued that sentence severity should be closely linked to the seriousness of the crime and the culpability of the offender; thus, those who commit comparable offenses should receive similar punishments, and

those who commit more serious crimes should be punished more harshly than those who commit less serious crimes. Like cases, in other words, should be treated alike. Proponents of utilitarian rationales of punishment, including deterrence, incapacitation, and rehabilitation, on the other hand, argued that the ultimate goal of punishment is to prevent future crime and that the severity of the sanction imposed on an offender should serve this purpose; thus, the amount of punishment need not be closely proportional to crime seriousness or offender culpability but can instead be tailored to reflect individual circumstances related to rehabilitative needs or to deterrent and incapacitative considerations.

These conflicting views of the goals of punishment incorporate differing notions of the amount of discretion that judges and juries should be afforded at sentencing. A sentencing scheme based on utilitarian rationales would allow the judge or jury discretion to shape sentences to fit individuals and their crimes. The judge or jury would be free to consider all relevant circumstances, including “the importance of the behavioral norms that were violated, the effects of the crime on the victim, and the amalgam of aggravating and mitigating circumstances that make a defendant more or less culpable and make one sentence more appropriate than another” (Tonry 1996, 3). A retributive or just deserts sentencing scheme, on the other hand, would constrain discretion more severely. The judge or jury would determine the appropriate sentence using only legally relevant considerations (essentially crime seriousness and, to a lesser extent, prior criminal record) and would be precluded from considering individual characteristics or circumstances.

The reforms enacted during the sentencing reform movement reflect both retributive and utilitarian principles. Sentencing guidelines, for example, generally are based explicitly on notions of just deserts: Punishments are scaled along a two-dimensional grid measuring the seriousness of the crime and the offender’s prior criminal record. The enabling legislation for the Minnesota Sentencing Commission states: “Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons” (U.S. DOJ 1996, 42). The Minnesota Sentencing Commission used this mandate to adopt a “modified just-desert model of sentencing” (U.S. DOJ 1996). Other sentencing commissions are mandated to accomplish utilitarian as well as retributive goals. For example, legislation adopted in Arkansas states that the goals of the sentencing guidelines include retribution, rehabilitation, deterrence, and incapacitation. Because these goals may conflict with one another and because legislatures rarely prioritized them, sentencing commissions generally “developed guidelines using measures of offense seriousness

and criminal history, leaving to the courts the discretion to aggravate and mitigate the sentence as a means of considering rehabilitation and other sentencing purposes” (U.S. DOJ 1996, 42).

Although the sentencing reforms promulgated during the past three decades were based on diverse and sometimes contradictory principles, the overriding goal of reformers was to reduce disparity and discrimination, including racial discrimination, in sentencing. The Minnesota sentencing guidelines, for example, explicitly state that sentences should be neutral with respect to the gender, race, and socioeconomic status of the offender. Reformers hoped that the new laws, by structuring discretion, would make it more difficult for judges to take factors such as race into account when determining the appropriate sentence. The degree to which the reforms have achieved this purpose is the subject of this paper.

In the sections that follow, I review empirical research on race and sentencing. I begin by summarizing previous reviews of this body of research. I then review and assess the findings of 40 recent studies examining the relationship between race and sentencing. I attempt to determine whether these studies provide evidence of either direct or subtle racial discrimination in sentencing.

Previous reviews of research on race and sentencing

Social scientists have conducted dozens of studies designed to untangle the complex relationship between race and sentence severity. In fact, as Zatz (1987, 69) notes, this issue “may well have been the major research inquiry for studies of sentencing in the 1970s and early 1980s.” The studies conducted during this early period vary enormously in theoretical and methodological sophistication. They range from simple bivariate comparisons of incarceration rates for whites and racial minorities, to methodologically more rigorous multivariate analyses designed to identify direct race effects, to more sophisticated designs incorporating tests for indirect race effects and for interaction between race and other legal and extralegal predictors of sentence severity. The findings generated by these early studies and the conclusions drawn by their authors also vary.

Studies conducted from the 1930s through the 1960s often concluded that racial disparities in sentencing reflected racial discrimination. For example, the author of one of the earliest sentencing studies claimed that “equality before the law is a social fiction” (Sellin 1935, 217). But in his review of 20 studies published between 1928 and 1973, Hagan (1974) found that most of them were methodologically unsound. Many of them employed inadequate or no controls for crime seriousness and prior criminal record, and most of them failed to calculate measures of association, relying instead on tests of significance. When

Hagan reanalyzed the data from 17 of the 20 studies, he found that the relationship between race and sentence severity, while often *statistically* significant, generally was not *substantively* significant. In both capital and noncapital cases, knowing the race of the offender typically increased the accuracy of sentence predictions by less than 2 percent. Hagan concluded that the evidence presented in these studies suggested that racially discriminatory sentencing, if it existed at all, was confined to interracial capital cases in the South.

Kleck (1981) advanced a similar conclusion. His evaluation of 57 sentencing studies published through 1979 revealed that only 8 of the 40 studies of noncapital sentencing consistently supported the racial discrimination hypothesis, another 12 produced mixed results, and the remaining 20 found no evidence of discrimination. Kleck added that evidence in support of the discrimination hypothesis was even weaker than it appeared, since most of the studies that produced findings consistent with the hypothesis either did not control for prior criminal record or used a crude measure that simply distinguished between defendants with some type of record and those with no record. According to Kleck (1981, 792), “the more adequate the control for prior record, the less likely it is that a study will produce findings supporting a discrimination hypothesis.”

Kleck’s analysis of 17 studies of the capital sentencing process revealed that only 1 study included a control for prior record, that most did not differentiate between felony and nonfelony murder, and that none controlled for the defendant’s social class. He also noted that “every single study consistently indicating discrimination towards blacks was based on older data from Southern states” (p. 788). Although Kleck acknowledged that studies of the use of capital punishment for rape revealed strong evidence of direct discrimination against black offenders (and particularly those who assaulted whites), he concluded that “[T]he evidence considered as a whole indicates no racial discrimination in the use of the death penalty for murder outside the South, and even for the South empirical support for the discrimination hypothesis is weak” (p. 788).

The conclusions proffered by Hagan (1974) and Kleck (1981), coupled with the findings of its own review of sentencing research (Hagan and Bumiller 1983), led the National Research Council’s Panel on Sentencing Research to claim that the sentencing process, while not racially neutral, is not characterized by “a widespread systematic pattern of discrimination” (Blumstein et al. 1983, 93). Rather, “some pockets of discrimination are found for particular judges, particular crime types, and in particular settings.” The Panel echoed the concerns voiced by Hagan (1974) and Kleck (1981) regarding the absence of controls for prior criminal record in many of the early studies. They also noted that even more recent and methodologically rigorous studies (i.e., those published

in the late 1970s and early 1980s) suffered from measurement error and sample selection problems that raised “the threat of serious biases in the estimates of discrimination effects” (Blumstein et al. 1983, 109). The panel concluded that their “overall assessment of the available research suggests that factors other than racial discrimination in the sentencing process account for most of the disproportionate representation of black males in U.S. prisons” (Blumstein et al. 1983, 92).

Zatz (1987) reached a somewhat different conclusion. While acknowledging that “it would be misleading to suggest that race/ethnicity is *the* major determinant of sanctioning,” Zatz (p. 87) nonetheless asserted that “race/ethnicity is a determinant of sanctioning, and a potent one at that.” Zatz based her conclusion on a review and evaluation of four waves of research on race and sentencing. As noted earlier, the studies published during the first wave (1930s through the mid-1960s), which generally found substantial evidence of racial bias, were methodologically flawed. The second wave of research, which began during the late 1960s and continued throughout the 1970s, was characterized by more methodologically sophisticated studies that typically uncovered little, if any, direct racial discrimination in sentencing. Researchers argued either that the racially discriminatory practices of earlier years had been eliminated in the wake of the civil rights movement or that the race effect found in the early studies disappeared once crime seriousness and prior criminal record were controlled for adequately. Findings such as these led many scholars to embrace the so-called no discrimination thesis and to assert that the idea of systematic racial discrimination in sentencing was a “myth” (Wilbanks 1987).

Zatz’s (1987) review of third-wave studies suggests that these conclusions may have been premature. Social scientists conducting research in the 1970s and 1980s contested the no discrimination thesis. These researchers suggested that discrimination had not declined or disappeared but had simply become more subtle and difficult to detect. They contended that testing only for significant *direct* race effects was insufficient and asserted that disentangling the effects of race and other predictors of sentence severity required tests for *indirect* race effects and the use of *interactive*, as well as additive, models. They also emphasized the possibility of “cumulative disadvantage”—that is, the possibility that race “might have a cumulative effect by operating *indirectly* through other variables to the disadvantage of minority group members” (Zatz 1987, 75).

Methodological refinements and the availability of more complete data enabled third-wave researchers to test hypotheses concerning indirect and interaction effects. As Zatz (1987) notes, although some researchers uncovered evidence of direct racial bias (cf. Albonetti 1985; Spohn, Gruhl, and Welch 1981–82), most found more subtle effects. Their research showed that race affected sentence

severity indirectly through its effect on variables such as pretrial status or type of attorney, or that race interacted with other variables to produce harsher sentences for racial minorities for some types of crimes (e.g., less serious crimes), in some types of settings (e.g., the South), or for some types of defendants (e.g., the unemployed). Research conducted during the third wave also revealed a consistent pattern of devaluation of black victims: Blacks who victimized whites were sentenced much more harshly than either blacks who victimized other blacks or whites who victimized blacks.

It is important to note that the diverse findings of the third-wave studies led to different overall conclusions regarding the effect of race on sentencing. Zatz (1987, 70) states: “These studies . . . indicate that overt and more subtle forms of bias against minority defendants *did* occur, at least in some social contexts” (emphasis in the original). Sampson and Lauritsen (1997, 348) put a somewhat different spin on the findings. They conclude that, although the presence of indirect or interaction effects challenges the no discrimination thesis, “the damage is not fatal to the basic argument that race discrimination is not pervasive (or systemic) in criminal justice processing.” While admitting that these differences in interpretation are at least partly semantic, Sampson and Lauritsen (p. 351) nonetheless contend that one cannot conclude that the criminal justice *system* is racially biased based solely on race effects that are “so contingent, interactive, and indirect” that they are not replicable.

What Zatz (1987) refers to as the fourth wave of studies is still in progress. During this time period, researchers began to investigate the effect of race on sentence severity using data from jurisdictions that enacted determinate sentencing or sentence guidelines. These studies, which are the focus of this paper, are reviewed in detail in the section that follows. Very few of them had been published when Zatz wrote her evaluation in 1987. Admitting that it was “difficult to critique research during this fourth wave midstream,” Zatz noted that the studies that did exist found indirect, rather than direct, race effects. Nonetheless, she cautioned against premature conclusions that the reforms had produced a racially neutral sentencing process. As she stated (p. 81), “[D]iscrimination has not gone away. It has simply changed its form to become more acceptable.”

The most recent review of research on race and sentencing confirms Zatz’s conclusion. Chiricos and Crawford (1995) reviewed 38 empirical studies published between 1979 and 1991 that included a test for the direct effect of race on sentencing decisions in noncapital cases. Unlike previous reviews, they distinguished results involving the decision to incarcerate or not from those involving the length of sentence decision. Following the approach taken by Hagan and Bumiller (1983), Chiricos and Crawford also considered

whether the effect of race varied depending on structural or contextual conditions. They asked whether the impact of race would be stronger “in southern jurisdictions, in places where there is a higher percentage of Blacks in the population or a higher concentration of Blacks in urban areas, and in places with a higher rate of unemployment” (p. 282). Noting that two-thirds of the studies examined had been published subsequent to Kleck’s (1981) review, Chiricos and Crawford state that their assessment “provides a fresh look at an issue that some may have considered all but closed” (p. 300).

The authors’ assessment of the findings of these 38 studies revealed “significant evidence of a *direct* impact of race on imprisonment” (Chiricos and Crawford 1995, 300). This effect, which persisted even after the effects of crime seriousness and prior criminal record were controlled, was found only for the decision to incarcerate or not; it was not found for the length of sentence decision. The authors also identified a number of structural contexts that conditioned the race/imprisonment relationship. Black offenders faced significantly greater odds of incarceration than white offenders in the South, in places where blacks comprised a larger percentage of the population, and in places where the unemployment rate was high.

The results of Chiricos and Crawford’s (1995) review, which included very few studies that suffered from the methodological limitations identified in previous evaluations, call into question earlier conclusions that the sentencing process is not racially biased. Their results suggest that race matters at certain points in the process—notably the decision to incarcerate or not—and in certain contexts. As the authors note, “We are past the point of simply asking whether race makes a difference. The contexts in which race may be important for incarceration are only beginning to be understood” (p. 301).

Recent research on race and sentencing

The previous reviews of research examining the relationship between race and sentencing typically concluded that race exerted a very modest effect on sentence severity once controls for crime seriousness, prior criminal record, and other legally relevant factors were taken into consideration. Most of the studies included in these reviews, however, used data from the 1970s and earlier. Even the most current of the extant reviews, which examined 38 studies published between 1979 and 1991, included only 6 studies that used post-1980 data (Chiricos and Crawford 1995). This is problematic, given that the past 20 years have witnessed dramatic and widespread changes in sentencing policies and procedures at both the State and Federal levels. The conclusions of these earlier reviews obviously cannot be generalized to the sentencing process in the postreform era.

What follows is a comprehensive and systematic review of recent research examining the effect of race on sentencing. All published research using individual data from the 1980s and 1990s that reports a measure of association between race and sentence outcomes is included. Because previous research has shown that offender race may differentially affect the decision to incarcerate and the decision concerning the length of sentence, I review and assess the findings of research regarding each of these measures of sentence severity. I also include studies that examine alternative indicators of sentence severity: departures from sentencing guidelines; the decision to apply habitual offender provisions; the decision to withhold adjudication; and whether the mandatory minimum sentence was imposed.

As noted earlier, the purpose of this review is not simply to add another voice to the debate concerning the effect of race on sentencing. Rather, the purpose is to highlight the ways in which researchers have responded to calls for theoretical and methodological improvements in sentencing research and to document the extent to which recent research finds evidence of direct *and* subtle racial discrimination in sentencing. I attempt not only to determine whether blacks and Hispanics are sentenced more harshly than whites but also to identify the “structural and contextual conditions that are most likely to result in racial discrimination” (Hagan and Bumiller 1983, 21). In other words, the focus is on determining whether research reveals consistent patterns indicating that offender race/ethnicity operates indirectly through other factors, such as pretrial status or type of disposition, or interacts with other variables (e.g., prior record, type of crime) that are themselves related to sentence severity. I also attempt to determine whether the effect of race/ethnicity varies depending on the formal sentencing structure in the jurisdiction being studied and whether the sentencing reforms enacted during the past three decades have achieved their goal of reducing racial disparity.

Race and sentencing: Evaluating the evidence

Forty studies examining the relationship between race and sentencing are reviewed here: 32 studies of sentencing decisions in State courts and 8 studies of sentence outcomes at the Federal level. The studies included in the review are listed in exhibit 1. Studies using State-level data are presented first, followed by studies based on Federal data. The studies are presented in chronological order, with those published most recently listed first; however, State-level research using data from the same jurisdiction is grouped together. Exhibit 1 also includes the time period during which the data were collected, the jurisdiction(s) included in the study, the number and types of offenders included in the sample, and whether the sentences imposed on whites were compared to those imposed on

Exhibit 1. Studies of race and sentencing (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Spohn and DeLone in press	1993	Chicago	2,983 felonies	yes	yes	determinate guidelines	Blacks + Hispanics +	Blacks NS Hispanics NS	yes
	1993	Miami	2,720 felonies	yes	yes	determinate	NS +	NS NS	yes
	1993	Kansas City	1,576 felonies	yes	no	determinate	NS NA	NS NA	yes
Spohn and Holleran 2000	1993	Chicago	2,510 felonies	yes	yes	determinate guidelines	see Spohn and DeLone in press	see Spohn and DeLone in press	yes
	1993	Miami	2,703 felonies	yes	yes	determinate			yes
	1993	Kansas City	1,425 felonies	yes	no	determinate			yes
Spohn and Spears 2000	1993	Chicago	1,554 drug cases	yes	yes	determinate guidelines	Blacks NS Hispanics NS	Blacks NS Hispanics NS	yes
	1993	Miami	1,184 drug cases	yes	yes	determinate	NS +	NS NS	yes
	1993	Kansas City	426 drug cases	yes	no	determinate	NS NA	+ NA	no
Nobling, Spohn, and DeLone 1998	1993	Chicago	2,533 felonies	yes	yes	determinate	see Spohn and DeLone in press	see Spohn and DeLone in press	yes
	1993	Kansas City	1,458 felonies	yes	no	determinate	DeLone in press	DeLone in press	yes
Spohn, DeLone, and Spears 1998	1993	Miami	4,148 felonies	yes	yes	guidelines	adjudication withheld? Blacks NS Hispanics NS	NA	yes
Woodrudge 1998	1983–88	Dona Ana County, New Mexico	1,180 felonies and misdemeanors	no	yes	determinate	Hispanics NS	Hispanics NS	yes

Exhibit 1 (continued) (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Crawford, Chiricos, and Kleck 1998	1992–93	Florida	9,600 males eligible to be sentenced as habitual offenders	yes	no	guidelines + habitual offender statute	Blacks NS	NS	yes
Steffensmeier, Ulmer, and Kramer 1998	1989–92	Pennsylvania: statewide data	138,916 felonies and misdemeanors	yes	no	guidelines	Blacks +	Blacks +	yes
Ulmer 1997	1985–91	Pennsylvania: statewide Metro County Rich County Southwest County	166,247 26,077 12,064 1,335	yes yes yes yes	no no no no	guidelines	Blacks + + + NA	Blacks + + + NA	yes
		statewide Metro County Rich County Southwest County				dispositional departure	dispositional departure Blacks + + + NS	durational departure below Blacks + NS	

continued

Exhibit 1 (continued) (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Ulmer and Kramer 1996	1985–91	3 Pennsylvania counties	39,476 felonies and misdemeanors	yes	no	guidelines	probation vs. jail/prison Blacks + probation/jail vs. prison Blacks +	Blacks +	yes
Kramer and Ulmer 1996	1985–87 and 1989–91	67 Pennsylvania counties	approximately 41,000 felonies and misdemeanors	yes	yes	guidelines	dispositional departure Blacks + Hispanics +	durational departure below Blacks + Hispanics +	no
Kramer and Steffensmeier 1993	1985–87	67 Pennsylvania counties	61,294 felonies and misdemeanors	yes	no	guidelines	jail/prison vs. probation Blacks + prison vs. jail/probation Blacks + prison vs. jail Blacks +	Blacks + (for 6 of 20 offenses)	yes
Simon 1996	UNK	Arizona	273 incarcerated violent offenders	yes	no	UNK	NA	Blacks NS	no

Exhibit 1 (continued) (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Spohn and Spears 1996	1970–84	Detroit	1,152 sexual assault cases	yes	no	determinate	black on white vs. black on black + white on white +	black on white vs. black on black + white on white +	yes
Holmes et al. 1996	1987–89	Texas: Bexar County El Paso County	362 felonies 614 felonies	yes	yes	UNK	NA	overall severity Blacks NS NS +	yes
Nelson 1994	1985–86	New York	105,000 misdemeanors	black + Hispanic vs. white	black + Hispanic vs. white	determinate	Blacks + Hispanics +	NA	yes
Nelson 1995	1990–92	New York	approximately 300,000 felony arrests	black + Hispanic vs. white	black + Hispanic vs. white	determinate	prison vs. no prison Blacks + Hispanics + jail vs. probation Blacks + Hispanics +	prison sentence Blacks + Hispanics + jail sentence Blacks + Hispanics +	no
Walsh 1991	1978–85	Metropolitan County in Ohio	666 male felony offenders	yes	no	guidelines	Blacks –	Blacks NS	no
Walsh 1987	1978–83	Metropolitan County in Ohio	417 sexual assault cases	yes	no	guidelines	Blacks –	Blacks NS	yes

continued

Exhibit 1 (continued) (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Chiricos and Bales 1991	1982	two Florida counties	1,480 felonies 490 misdemeanors	yes	no	determinate	Blacks NS males + young males +	Blacks NS	yes
Crew 1991	1980	Kentucky	228 male prisoners	yes	no	determinate	NA	Blacks NS	yes
Dixon 1995	1983	Minnesota	1,532 felonies	White vs. non-white	no	guidelines	Nonwhites NS	Nonwhites NS	no
Moore and Miethe 1986	1981–82	Minnesota	1,523 felonies and misdemeanors	yes	no	guidelines	regulated Blacks NS unregulated Blacks NS mitigated dispositional departure Blacks +	regulated Blacks NS unregulated Blacks NS	no

Exhibit 1 (continued) (State-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Miethe and Moore 1985	1978, 1980–82	8 Minnesota counties	1,226 preguideline cases 1,280 postguideline cases	yes	no	preguidelines and postguidelines	Blacks + NS	Blacks NS NS NS	no
Klein, Petersilia, and Turner 1990	1980	12 California counties	1,128 assaults 2,580 robberies 5,066 burglaries 3,724 thefts 504 forgeries 1,337 drug offenses	yes	yes	determinate	Blacks + NS NS NS NS NS NS NS NS NS +	Blacks NS Hispanics NS NS NS NS NS NS NS NS NS	yes
Zatz 1984	1978	California	4,729 felonies	yes	yes	determinate	NA	Blacks NS Hispanics NS	yes
Petersilia 1983	1980	California: Los Angeles County	106,000 felonies 2,193 robberies	yes	yes	determinate	Blacks + +	Blacks NA Hispanics + NS	no
Myers 1989	1977–85	Georgia	23,075 drug offenders	yes	no	determinate	Blacks +	Blacks NS	yes

continued

(State-level studies)

Exhibit 1 (continued)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Myers 1987	1976–82	Georgia	15,270 felonies 3,792 inmates	yes	no	determinate	Blacks +	Blacks –	yes
Myers and Talarico 1987	1976–85	Georgia	27,720 felonies	yes	no	determinate	Blacks +	Blacks NS	yes
Myers and Talarico 1986	1982	Georgia	16,798 felonies	yes	no	determinate	NA	Blacks –	yes
Zimmerman and Frederick 1984	1980	New York	6,078 New York City 3,285 upstate 1,735 suburban	yes	no	NA	Blacks NS + +	NA	no

(Federal-level studies)

Exhibit 1 (continued)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
Everett and Nienstedt 1999	1990–91	U.S.	3,534 offenders	yes	yes	Federal guidelines	reduction for acceptance of responsibility? Blacks Hispanics +	NA	no
Maxfield and Kramer 1998	1994	U.S.	264 drug conspiracies	yes	yes	Federal guidelines	substantial assistance departure? Blacks Hispanics +	magnitude of departure Blacks Hispanics +	no
Albonetti 1997	1991–92	U.S.	14,189 drug offenders	yes	yes	Federal guidelines	Blacks Hispanics +	Blacks Hispanics +	yes
Langan 1996	1994	U.S.	14,407 drug trafficking cases	yes	yes	Federal guidelines	substantial assistance departure? Blacks Hispanics + NS	NA	yes
Smith and Damphousse 1996	1982–89	U.S.	95 terrorists and 403 nonterrorists	Whites versus nonwhites	no	guideline and nonguideline cases	NA	Nonwhites +	no

continued

Exhibit 1 (continued) (Federal-level studies)

Study	Data year	Place	Sample	Whites compared with		Type of sentencing system	Significant main effect in/out	Significant main effect sentence length	Interaction with race?
				Blacks	Hispanics				
U.S. Sentencing Commission 1995	1994	U.S.	14,157 drug trafficking cases	yes	yes	Federal guidelines	substantial assistance departure? Blacks Hispanics +	NA	no
McDonald and Carlson 1993	1989–90	U.S.	powder cocaine crack cocaine bank robbery weapons fraud larceny embezzlement	yes	yes	Federal guidelines	Blacks Hispanics NS NS NS NS + + NS NS + NS not analyzed	Blacks Hispanics + + NS + NS + NS NS NS NS NS	yes
U.S. Sentencing Commission 1991b	1990	U.S.	907 offenders eligible for mandatory minimum sentence	yes	yes	Federal guidelines and mandatory minimums	mandatory minimum sentence imposed? Blacks Hispanics +	NA	yes

Note: A “+” indicates that blacks or Hispanics are *disadvantaged* relative to whites. Thus, the signs of some of the coefficients in this exhibit differ from those reported in the original research. Only statistically significant relationships ($p \leq .05$) are displayed.

B=blacks, D=drug cases, F=felonies, H=Hispanics, M=misdemeanors, NA=not applicable, NS=relationship is not significant, UNK=unknown, W=white.

blacks and/or Hispanics. The eighth and ninth columns summarize the results of the multivariate analysis, and the last column indicates whether or not the study found significant interactions between race/ethnicity and other legal or extralegal variables. Both the direction of the relationship between race and sentencing (with a “+” indicating harsher sentences for racial minorities) and whether the relationship was statistically significant ($p < 0.05$) are indicated. The results included in this exhibit are main effects only—either the effect of race/ethnicity on sentence outcomes for all of the cases included in the analysis, the effect of race/ethnicity on sentence outcomes in individual jurisdictions (Holmes et al. 1996; Petersilia 1983; Spohn and Spears 2000; Ulmer 1997), or the effect of race/ethnicity on sentence outcomes for individual offenses (Klein, Petersilia, and Turner 1990; McDonald and Carlson 1993). The results of tests for indirect and interaction effects are summarized in exhibit 3.

All published studies² that met each of the following criteria are included in the review:

- The findings are based on data on sentences imposed for noncapital offenses³ during the 1980s and/or 1990s.⁴
- The study reported a measure of association between race and/or ethnicity and an indicator of sentence severity.
- The study used appropriate statistical techniques—generally, either logistical regression analysis or probit analysis (in the case of dichotomous dependent variables) or ordinary least squares regression analysis (in the case of interval dependent variables).⁵
- The study included controls for crime seriousness and prior criminal record.⁶

The studies included in this review vary in terms of their “analytical rigor” (Wooldredge 1998), but none of them suffers from the serious methodological deficiencies highlighted by earlier reviews. Although a few studies combined the in/out and length of sentence decisions into a single measure of sentence severity or analyzed only one of the two decisions, most analyzed each decision separately. All of the studies use multivariate statistical techniques and control for relevant legal and extralegal variables, most of them include a wide variety of offenses rather than only one or two types of offenses, and many of them test interactive as well as additive models.

One limitation of the research reviewed here is that most compared the sentences imposed on only black and white defendants. This is particularly true of the State-level research; only 10 of the 32 studies included Hispanics in the

Among defendants sentenced in State courts, both blacks and Hispanics are much more likely to be disadvantaged at the initial decision to incarcerate or not than at the subsequent decision concerning length of the sentence.

analysis, and 5 of these were based on the same or very similar data. In contrast, seven of the eight studies of Federal sentencing decisions included Hispanic offenders as well as black offenders. The remaining studies either excluded other racial minorities from the analysis or compared the sentences imposed on whites and nonwhites, with all nonwhites lumped together. Both of these approaches are questionable, since a number of studies, including several of the studies incorporated in this review, reveal that sentencing outcomes differ for blacks and Hispanics.

A second limitation of the research embodied in this review is the relatively small number of jurisdictions represented. The 32 State-level studies are based on data from only 13 States. Moreover, a number of the studies use the same or very similar data. A case in point is the series of articles published by John

Kramer, Darrell Steffensmeier, and Jeffery Ulmer; although the time periods during which the data were collected and the jurisdictions included vary somewhat, the five studies all use data on sentence outcomes in Pennsylvania compiled by the Pennsylvania Commission on Sentencing. Similarly, five of the studies (Nobiling, Spohn, and DeLone 1998; Spohn and DeLone in press; Spohn and Holleran 2000; Spohn and Spears 2000; Spohn, DeLone, and Spears 1998) include some or all of the data collected by Spohn and DeLone for their study of sentence outcomes in Chicago, Miami, and Kansas City. In addition, four studies are based on data collected in Georgia during the 1970s and 1980s (Myers 1987, 1989; Myers and Talarico 1986, 1987); three studies use Minnesota data from the early 1980s (Dixon 1995; Miethe and Moore 1985; Moore and Miethe 1986); and two studies use California data from 1980 (Klein, Petersilia, and Turner 1990; Petersilia 1983).

Because this review is intended to be a comprehensive analysis of all recent research testing for both direct and subtle race effects, and because most of the studies conducted in the same jurisdictions either use data from slightly different time periods or use the same data to test for different indirect and/or interaction effects, exhibit 1 includes all of the studies in the preceding discussion. I report the main effects of race/ethnicity on sentence severity for all studies conducted in the same jurisdiction that either (1) use data from different time periods, (2) use data for different subsets of cases, or (3) use different measures of sentence severity.

To illustrate, the main effects of race on sentence outcomes in Pennsylvania are reported for all five studies conducted by Kramer, Steffensmeier, and Ulmer because none of them is based on exactly the same data. Rather, one includes statewide data from 1989 to 1992, one includes statewide data and data from three counties (analyzed separately) for 1985 to 1991, one includes data from three counties (analyzed together) for 1985 to 1991, one includes statewide data from 1985 to 1987, and one uses statewide data to examine the effect of race on departures from the guidelines. In contrast, the main effects of race on sentence outcomes are reported for only three of the five studies using the Spohn and DeLone data; the main effects for two of the studies (Nobiling, Spohn, and DeLone 1998; Spohn and Holleran 2000) are not reported because they are based on the same data analyzed in a previous study (Spohn and DeLone in press). These two studies are included in the review because of their unique focus on contextual effects (see exhibit 3).

Race and sentence outcomes: A summary of main effects

As shown in exhibit 2, the 32 studies using State-level data produced 95 estimates of the effect of race on sentence severity⁷ and 29 estimates of the effect of ethnicity on sentence severity. Forty-one of the 95 black versus white estimates (43.2 percent) are both positive (i.e., indicative of harsher sentences for blacks) and statistically significant, and 8 of the 29 Hispanic versus white estimates (27.6 percent) are positive (i.e., indicative of harsher sentences for Hispanics) and statistically significant. In contrast, only 6 of the estimates indicate more lenient sentencing for racial minorities (4 of 95 for blacks and 2 of 29 for Hispanics).⁸

Exhibit 2 also summarizes the results of the eight studies based on Federal-level data. These studies produced 22 estimates of the effect of race on sentence severity; more than two-thirds (15 of 22) of the estimates reveal that blacks were sentenced more harshly than whites. The Federal-level studies generated 21 estimates of the relationship between ethnicity and sentence severity; nearly half (10 of 21) of the estimates indicate that Hispanics were sentenced more harshly than whites.

The results summarized in exhibit 2 also reveal that the relationship between race/ethnicity and sentence severity varies by the type of sentence outcome being analyzed. Among defendants sentenced in State courts, both blacks and Hispanics are much more likely to be disadvantaged at the initial decision to incarcerate or not than at the subsequent decision concerning length of the sentence. About half (55.5 percent for blacks and 41.7 percent for Hispanics) of the estimates of the effect of race/ethnicity on the in/out decision are positive

Exhibit 2. The effect of race on sentencing: A summary of main effects found in 40 studies

Measure of sentence severity	Black vs. white offenders positive and significant		Hispanic vs. white offenders positive and significant	
	N	%	N	%
State-level studies (N=31)				
Traditional measures of sentence severity	41/95	43.2	8/29	27.6
In/out	25/45	55.5	5/12	41.7
Length of sentence	9/39	23.1	1/14	7.1
Alternative measures of sentence severity				
Dispositional departure	5/6		1/1	
Durational departure	2/3		1/1	
Adjudication withheld	0/1		0/1	
Sentenced as habitual	1/1			
Federal-level studies (N=8)	15/22	68.2	10/21	47.6
Traditional measures of sentence severity				
In/out	3/7		3/7	
Length of sentence	6/9		2/8	
Alternative measures of sentence severity				
Substantial assistance departure	3/3		2/3	
Magnitude of departure	1/1		1/1	
Mandatory minimum sentence imposed	1/1		1/1	
Reduction for acceptance of responsibility	1/1		1/1	

and statistically significant. In contrast, just under one-fourth (23.1 percent) of the sentence length estimates indicate longer sentences for blacks and only 1 of the 14 estimates reveals longer sentences for Hispanics. The pattern of results generated by the studies that used Federal sentencing data is somewhat different, especially for blacks. Three of the seven in/out estimates (blacks versus whites) are positive and statistically significant compared with six of the nine sentence length estimates. The results for Hispanics are more similar to those generated by the State-level studies: Three of the seven in/out estimates but only two of the eight sentence length estimates, are positive and significant.

These results, and particularly the results of the State-level studies, are very similar to the findings of Chiricos and Crawford (1995). As previously mentioned,

Chiricos and Crawford reviewed 38 studies published between 1975 and 1991. Considering only those studies that controlled for crime seriousness and prior criminal record, they found that 41 percent of the estimates of the effect of race on the decision to incarcerate or not were positive and significant compared with only 15 percent of the estimates of the effect of race on the length of sentence. The exclusion of the 9 State-level studies included in both Chiricos and Crawford's review and this review yields similar percentages for the remaining 23 studies: 16 of the 31 (51.6 percent) in/out estimates for blacks were positive and significant compared with only 7 of the 31 (22.6 percent) sentence length estimates.

It thus appears that the pattern of results documented by Chiricos and Crawford is found among more recent studies as well as older studies and is applicable to Hispanics as well as blacks. At least at the State level, race and ethnicity have stronger and more consistent direct effects on the decision to incarcerate or not than on the sentence length decision. At the Federal level, race, and to a lesser extent, ethnicity affect both types of sentence outcomes.

In addition to exploring the effect of race/ethnicity on the two traditional measures of sentence severity, a number of the studies included in this review analyzed the relationship between race/ethnicity and other indicators of sentence severity. Several studies examined the likelihood of dispositional or durational departures from sentence guidelines (Kramer and Ulmer 1996; Langan 1996; Moore and Miethe 1986; Maxfield and Kramer 1998; Ulmer 1997; U.S. Sentencing Commission 1995) or the magnitude of durational departures (Maxfield and Kramer 1998). One State-level study examined the decision to withhold adjudication (Spohn, DeLone, and Spears 1998), and another focused on the likelihood of being sentenced as a habitual criminal (Crawford, Chiricos, and Kleck 1998). One study of sentencing under the Federal sentencing guidelines examined the decision to impose the applicable mandatory minimum sentence (U.S. Sentencing Commission 1991b).

The effect of race/ethnicity on these alternative measures of sentence severity is reported in exhibit 2. Although the small number of studies using these measures

Considered together, the studies reviewed here suggest that race and ethnicity do play an important role in contemporary sentencing decisions. Black and Hispanic offenders sentenced in State and Federal courts face significantly greater odds of incarceration than similarly situated white offenders. In some jurisdictions, they also may receive longer sentences or differential benefits from guideline departures than their white counterparts.

suggests that one should exercise caution in drawing conclusions, it does appear that State and Federal judges take race/ethnicity into account in deciding whether to depart from the guidelines. Studies conducted in Pennsylvania and Minnesota reveal that racial minorities are less likely than whites to receive mitigated dispositional or durational departures. Studies of Federal sentence outcomes similarly reveal that blacks and Hispanics are less likely than whites to benefit from departures for substantial assistance or acceptance of responsibility but are more likely than whites to be sentenced at or above the minimum sentence indicated by applicable mandatory minimum sentencing provisions. There also is evidence that blacks face higher odds than whites of being sentenced as habitual offenders in Florida.

Considered together, the studies reviewed here suggest that race and ethnicity do play an important role in contemporary sentencing decisions. Black and Hispanic offenders sentenced in State and Federal courts face significantly greater odds of incarceration than similarly situated white offenders. In some jurisdictions, they also may receive longer sentences or differential benefits from guideline departures than their white counterparts. The implications of these findings of direct race effects are discussed below.

Sentence outcomes: When does race/ethnicity matter?

The findings discussed thus far suggest that race does matter in sentencing. Evidence concerning direct racial effects, however, provides few clues to the circumstances under which race matters. Although this evidence reveals that race/ethnicity is a stronger predictor of the decision to incarcerate or not than the decision concerning sentence length, it does not address the possibility of more subtle racial effects. As earlier reviews (Hagan 1974; Zatz 1987) suggested, even the complete absence of direct race effects would not necessarily signal a racially neutral sentencing process.

A number of scholars have argued that the inconsistent findings of pre-1990s research on race and sentencing reflected both specification error and an overly simplistic view of conflict theory. These scholars called for research designed to delineate more precisely the conditions under which defendant race influences judges' sentencing decisions. Zatz (1987, 83), for example, contends that models of the relationship between race and sentencing that exclude indirect or interaction effects are misspecified. She asserts that:

[R]esearch that tests only for main effects (i.e., overt bias) and does not investigate all of the possible manifestations of discrimination may erroneously conclude that discrimination does not exist when, in fact, it does.

Miethe and Moore (1986) also argue that an interactive model is more appropriate than an additive model in assessing racial discrimination in criminal justice decisionmaking. They suggest that use of an additive model, which “presumes that no systematic variation exists within racial groups *and* that between-race differences are constant across levels of other social, case, and legal attributes” (p. 230), minimizes racial differences in case processing, while use of an interactive (or race-specific) model allows the researcher to discern differential treatment within and between racial groups.

Hawkins (1987) makes an analogous, although somewhat different, argument. He proposes that the absence of consensus concerning the effect of race on sentencing “stems as much from a lack of theoretical clarity as it does from the methodological problems noted in earlier reviews of the literature” (Hawkins 1987, 720). More to the point, he suggests that this lack of consensus results from an oversimplification of conflict theory, the principal theoretical model used in studies of race and criminal punishment. Most researchers, according to Hawkins, simply test the hypothesis that racial minorities will be sentenced more harshly than whites. They assume, either explicitly or implicitly, that racial minorities will receive more severe sentences than whites regardless of the nature of the crime, the race of the victim, or the relationship between the victim and the offender. Conflict theory, however, “does not support a simplistic expectation of greater punishment for blacks than whites under all circumstances” (Hawkins 1987, 724). Rather, conflict theorists argue that “the probability that criminal sanctions will be applied varies according to the extent to which the behaviors of the powerless conflict with the interests of the power segments” (Quinney 1970, 18). Thus, Hawkins proposes a revision of the conflict perspective on race and sentencing to account for the possibility of interaction between defendant race and other predictors of sentence severity, and especially between defendant race, victim race, and the type of crime committed by the offender.

Recent research examining the effect of race/ethnicity on sentence severity has responded to these suggestions. A majority of the studies reviewed in this essay attempt not only to determine *whether* race makes a difference but also to identify the contexts in which race matters. In attempting to do so, researchers either include interaction terms in multivariate models, test for race/ethnicity effects among subgroups of the offender population, or estimate separate models for each racial group. For example, Steffensmeier, Ulmer, and Kramer (1998) examined the intersections among the effects of race, gender, and age by creating a set of variables combining these three characteristics (black males 18–29, black females 18–29, white males 18–29, black males 30–39, etc.) and then including these variables in their analyses of the in/out and sentence length decisions.

Spohn and DeLone (in press) examined the effect of race/ethnicity on sentence outcomes for different subgroups of offenders: offenders with and without serious prior record; employed and unemployed offenders; and offenders convicted of violent, property, and drug offenses. Albonetti (1997) used the third approach. She estimated separate models for white, black, and Hispanic drug offenders and then used a Z test to determine if the regression coefficients for each independent variable were invariant.

The indirect and interaction effects uncovered in the 40 studies included in this review are summarized in exhibit 3; a more detailed description of these effects is presented in the appendix. I first summarize the overall patterns revealed by the data and then discuss these patterns in more detail.

The results reported in exhibit 3 highlight the importance of testing interactive as well as additive models. A number of the studies found no direct race effects but significant indirect or interaction effects. For example, when Spohn and DeLone (in press) tested an additive model they found that neither blacks nor Hispanics received longer sentences than whites in any of the three jurisdictions included in their study. Further analysis revealed that unemployed blacks and Hispanics received longer sentences than unemployed whites in Chicago; in Kansas City, blacks convicted of property crimes or drug offenses received longer sentences than whites convicted of these crimes. Holmes et al.'s (1996) analysis of sentence severity in Bexar County, Texas, revealed that race/ethnicity did not have a direct effect but did affect sentence severity through its effect on what they referred to as "legal resources": Whites were more likely than blacks or Hispanics to have a private attorney, and defendants represented by private attorneys received less severe sentences. In fact, with only two exceptions (Dixon 1995; Simon 1996), each of the State-level studies that found no direct race effects found significant indirect or interaction effects.⁹

Although some of the evidence presented in exhibit 3 and the appendix is contradictory (e.g., some studies reveal that racial disparities are confined to offenders with less serious prior records, while others report such disparities only among offenders with more serious criminal histories), the results of these studies reveal four "themes" or "patterns" of contextual effects. First, the combination of race/ethnicity and other legally irrelevant offender characteristics produces greater sentence disparity than race/ethnicity alone: *gender* (Albonetti 1997; Chiricos and Bales 1991; Nobiling, Spohn, and DeLone 1998; Spohn, DeLone, and Spears 1998; Spohn and Holleran 2000; Steffensmeier, Ulmer, and Kramer 1998; Wooldredge 1998), *age* (Chiricos and Bales 1991; Spohn and Holleran 2000; Steffensmeier, Ulmer, and Kramer 1998), *employment status* (Chiricos and Bales 1991; Nobiling, Spohn, and DeLone 1998; Spohn and DeLone in press; Spohn and Holleran 2000; Spohn and Spears 2000), *income*

(Wooldredge 1998), and *education* (Albonetti 1997) all interact with race and ethnicity to produce harsher sentences for more “problematic” black and Hispanic offenders.

Second, a number of process-related factors condition the effect of race/ethnicity on sentence severity. Whereas whites receive a greater sentence discount for providing “substantial assistance” in the prosecution of other Federal offenders (Albonetti 1997) or for hiring a private attorney (Holmes et al. 1996), racial minorities pay a higher penalty for pretrial detention (Chiricos and Bales 1991; Crew 1991) and going to trial rather than pleading guilty (Crew 1991; Ulmer 1997; Ulmer and Kramer 1996; Zatz 1984). There also is evidence that racial minorities are penalized more harshly than whites for having a serious prior criminal record (McDonald and Carlson 1993; Nelson 1994; Spohn and DeLone in press; Spohn, DeLone, and Spears 1998; Spohn and Spears 2000; Wooldredge 1998; Ulmer 1997; Ulmer and Kramer 1996; Zatz 1984).

A third pattern concerns the interaction between the race of the offender and the race of the victim; two studies reveal that substantially harsher sentences are imposed on blacks who sexually assault whites than on blacks who sexually assault other blacks (Spohn and Spears 1996; Walsh 1987). Finally, although the pattern is less obvious, some evidence suggests that racial discrimination is confined to less serious crimes (Crawford, Chiricos, and Kleck 1998; Spohn and DeLone in press). Other evidence points to harsher treatment of racial minorities who are convicted of either drug offenses or more serious drug offenses (Albonetti 1997; Crawford, Chiricos, and Kleck 1998; Klein, Petersilia, and Turner 1990; Myers 1989; Spohn and DeLone in press; Spohn and Spears 2000).¹⁰

Race/ethnicity and other offender characteristics. The most important conclusion derived from the findings reported in exhibit 3 concerns the interrelationships among race/ethnicity, gender, age, and employment status. A number of studies convincingly demonstrate that *certain types* of racial minorities—males, the young, the unemployed, the less educated—are singled out for harsher treatment at sentencing. Some studies find that each of these offender characteristics, including race/ethnicity, has a direct effect on sentence severity, but that the combination of race/ethnicity and one or more of the other characteristics is a more powerful predictor of sentence severity than any variable individually. Other studies find that the effect of race is confined to racial minorities who are male, young, and/or unemployed; these studies, in other words, find race effects that were masked in the additive analysis.

The findings of sentencing studies conducted by Darrell Steffensmeier and his colleagues at Penn State University illustrate these patterns. Research published by this team of researchers during the early 1990s concluded that race

Exhibit 3. A summary of indirect and interaction effects found in studies of race and sentencing

Interaction between race/ethnicity and other legally irrelevant offender characteristics

Racial minorities are sentenced more harshly than whites if they:

- (1) are young and male
 - Spohn and Holleran (2000)
 - Nobiling, Spohn, and DeLone (1998)
 - Steffensmeier, Ulmer, and Kramer (1998)
 - Chiricos and Bales (1991)
- (2) are unemployed
 - Spohn and DeLone (in press)
 - Nobiling, Spohn, and DeLone (1998)
 - Chiricos and Bales (1991)
- (3) are male and unemployed
 - Spohn and Holleran (2000)
 - Chiricos and Bales (1991)
- (4) are young, male, and unemployed
 - Spohn and Holleran (2000)
 - Nobiling, Spohn, and DeLone (1998)
 - Chiricos and Bales (1991)
- (5) have lower incomes
 - Wooldredge (1998)
- (6) have less education
 - Albonetti (1997)

Interaction between offender race and process-related factors

Racial minorities are sentenced more harshly than whites if they:

- (1) are detained in jail prior to trial
 - Chiricos and Bales (1991)
 - Crew (1991)
- (2) are represented by a public defender rather than a private attorney
 - Holmes et al. (1996)
- (3) are convicted at trial rather than by plea
 - Ulmer (1997)
 - Crew (1991)
 - Ulmer and Kramer (1996)
 - Zatz (1984)

Exhibit 3 (continued)

- (4) have more serious prior criminal records
 - Spohn and DeLone (in press) [Miami only]
 - Spohn and Spears (2000)
 - Spohn, DeLone, and Spears (1998)
 - Wooldredge (1998)
 - Ulmer (1997) [Metro County only]
 - Ulmer and Kramer (1996) [Metro County only]
 - Nelson (1994)
 - McDonald and Carlson (1993)
 - Zatz (1984)

Interaction between offender race and victim race

Racial minorities who victimize whites are sentenced more harshly than other race of offender/race of victim combinations

- Spohn and Spears 1996
- Walsh 1987

Interaction between offender race and type of crime

Racial minorities are sentenced more harshly than whites if they are:

- (1) convicted of less serious crimes
 - Spohn and DeLone (in press)
 - Wooldredge (1998)
 - Crawford, Chiricos, and Kleck (1998)
- (2) convicted of drug offenses or more serious drug offenses
 - Spohn and DeLone (in press)
 - Spohn and Spears (2000)
 - Crawford, Chiricos, and Kleck (1998)
 - Albonetti (1997)
 - Kramer and Steffensmeier (1993)
 - Klein, Petersilia, and Turner (1990)
 - Myers (1989)

(Kramer and Steffensmeier 1993), gender (Steffensmeier, Kramer, and Streifel 1993), and age (Steffensmeier, Kramer, and Ulmer 1995) each played a role in the sentencing process in Pennsylvania. However, it is interesting to note, especially in light of their later research findings (Steffensmeier, Ulmer, and Kramer 1998), that the team’s initial study of the effect of race on sentencing concluded that race contributed “very little” to judges’ sentencing decisions (Kramer and Steffensmeier 1993, 370). Although the incarceration (jail or

prison) rate for blacks was 8 percentage points higher than the rate for whites, there was a difference of only 2 percentage points in the likelihood of imprisonment for blacks and whites. Race also played “a very small role in decisions about sentence length” (p. 368). The average sentence for black defendants was only 21 days longer than the average sentence for white defendants. These findings led Kramer and Steffensmeier (p. 373) to conclude that “if defendants’ race affects judges’ decisions in sentencing . . . it does so very weakly or intermittently, if at all.”

This conclusion is called into question by Steffensmeier, Ulmer, and Kramer’s (1998) more recent research. In this study, the authors shift their focus from the additive effect of race on sentence outcomes to explore the complex interrelationships among race, gender, age, and sentence severity. The results of their analysis reveal that each of the three offender characteristics had a significant direct effect on both the likelihood of incarceration and the length of the sentence: Blacks were sentenced more harshly than whites, younger offenders were sentenced more harshly than older offenders, and males were sentenced more harshly than females. More important, they found that the three factors interacted to produce substantially harsher sentences for one category of offenders—young, black males—than for any other age-race-gender combination. According to the authors, their results illustrate the “high cost of being black, young, and male” (Steffensmeier, Ulmer, and Kramer 1998, 789).

Although the research conducted by Steffensmeier and colleagues provides important insights into the judicial decisionmaking process, their findings also suggest the possibility that factors other than race, gender, and age may interact to affect sentence severity. If, as the authors suggest, judges impose harsher sentences on offenders perceived to be more deviant, more dangerous, and more likely to recidivate, and if these perceptions rest, either explicitly or implicitly, on “stereotypes associated with membership in various social categories” (Steffensmeier, Ulmer, and Kramer 1998, 768), then offenders with constellations of characteristics other than “young, black, and male” also may be singled out for harsher treatment.

The validity of this assertion is confirmed by Spohn and Holleran’s (2000) replication and extension of Steffensmeier and colleagues’ 1998 study of sentencing decisions in Pennsylvania. This study revealed that none of the three offender characteristics—race/ethnicity, age, or gender—had a significant effect on the length of the sentence in any of the three jurisdictions (Chicago, Miami, and Kansas City) examined, but that each of the characteristics had a significant effect on the decision to incarcerate or not in at least one of the jurisdictions. More important, this study revealed that young black and Hispanic males

were consistently more likely than middle-aged white males to be sentenced to prison. These offenders, however, were not the only ones singled out for harsher treatment. In Chicago, young black and Hispanic males and middle-aged black males faced higher odds of incarceration than middle-aged white males. In Miami, young black and Hispanic males and older Hispanic males were incarcerated more often than middle-aged white males. And in Kansas City, both young black males and young white males faced higher odds of incarceration than middle-aged whites. These results led Spohn and Holleran to conclude that “in Chicago and Miami the combination of race/ethnicity and age is a more powerful predictor of sentence severity than either variable individually, while in Kansas City age matters more than race.”

Further evidence that the effect of race is conditioned by other offender characteristics is found in research exploring the interrelationships among race/ethnicity, gender, age, employment status, and sentence severity. Although some scholars argue that judges will see the unemployed as a threat and that this “belief alone is sufficient to propel them towards stiffening their sentencing practices” (Box and Hale 1985, 209–210), others contend that *certain types* of unemployed offenders will be viewed as particularly threatening and, thus, will be singled out for harsher treatment.

A number of the studies included in this review address this possibility. Chiricos and Bales (1991), for example, found that unemployment had a direct effect on the likelihood of imprisonment; they also found that the effect was strongest if the offender was a young black male. Nobiling and her colleagues (1998), who analyzed data on offenders convicted of felonies in Chicago and Kansas City, similarly hypothesized that unemployment would primarily affect sentence outcomes for young black and Hispanic males. They found that in Chicago unemployment increased the odds of a prison sentence among young males and young Hispanic males. In this jurisdiction, unemployment also led to a longer prison sentence for males, young males, and black males. In Kansas City, unemployment led to a greater likelihood of incarceration among males and black males but had no effect on sentence length for any of the race/gender/age subgroups examined.

Considered together, these studies provide evidence in support of the notion that certain categories of black and Hispanic offenders are regarded as more problematic than others. They confirm that dangerous or problematic populations are defined “by a mix of economic *and* racial . . . references” (Melossi 1989, 317, emphasis in the original). Black and Hispanic offenders who are also male, young, and unemployed may pay a higher punishment penalty than either white offenders or other types of black and Hispanic offenders.

Race/ethnicity and process-related factors. A second pattern revealed by the data reported in exhibit 3 is that a number of “process-related factors” have differential effects on sentence severity for racial minorities and whites. Some studies reveal that pleading guilty (Ulmer 1997; Ulmer and Kramer 1996) or providing substantial assistance to Federal prosecutors (Albonetti 1997) results in greater sentence discounts for white offenders than for black or Hispanic offenders. Other studies find that race/ethnicity affects sentence severity indirectly through its effect on pretrial status (Chiricos and Bales 1991; Crew 1991), type of attorney (Holmes et al. 1996), or type of disposition (Crew 1991).

Albonetti’s (1997) analysis of sentences imposed on drug offenders sentenced under the Federal sentencing guidelines revealed that race/ethnicity had a direct effect on sentence severity: Judges imposed significantly harsher sentences on black and Hispanic offenders than on white offenders. She also found that when a judge departed from a guideline in return for an offender giving substantial assistance in the prosecution of another offender, the three groups varied: Whites received significantly greater benefit than either blacks or Hispanics. Among white defendants, a guideline departure produced a 23-percent reduction in the probability of incarceration. The comparable figures for blacks and Hispanics were 13 percent and 14 percent, respectively. As Albonetti (1997, 818) concluded, “These findings strongly suggest that the mechanism by which the federal guidelines permit the exercise of discretion operates to the disadvantage of minority defendants.”

Similar results were reported by Ulmer (1997), who analyzed sentences imposed under the Pennsylvania sentencing guidelines. The results of his additive analysis of sentence outcomes revealed that blacks were sentenced more harshly than whites and that those who pled guilty were sentenced more leniently than those who were tried; black offenders and trial defendants had higher odds of incarceration and lower odds of receiving a dispositional departure than white offenders and defendants who pled guilty. Further analysis revealed that race interacted with mode of disposition. Conviction at trial increased the odds of incarceration and reduced the likelihood of a dispositional departure substantially more for blacks than for whites. Put another way, blacks paid a higher “trial penalty” than whites.¹¹

The studies included in this review also provide evidence of indirect race effects. Three studies found that race did not affect sentence severity directly (i.e., no main effect) but did influence sentence outcomes indirectly through its effect on pretrial detention, mode of disposition, or type of attorney. Chiricos and Bales (1991), for example, found that black defendants were significantly more likely than white defendants to be jailed prior to trial and that pretrial detention increased the odds of incarceration following conviction. Crew

(1991) found a more complex relationship: Blacks were more likely than whites to be detained prior to trial; as a result of being detained prior to trial, they were convicted of more serious offenses (than those who were released prior to trial); and as a result of being convicted of more serious offenses, they received longer sentences. Crew also found that blacks were more likely to be tried and that conviction at trial was associated with a longer sentence. And Holmes and his colleagues (1996) found that Hispanics and blacks were significantly less likely than whites to retain private attorneys and that retention of a private attorney led to a more lenient sentence.

Several studies also found that race/ethnicity interacted with prior criminal record. In Miami, for example, Hispanics with a prior prison term were more likely than whites with a prior prison term to be sentenced to prison, but ethnicity did not affect the likelihood of incarceration among offenders who had not previously been sentenced to prison (Spohn and DeLone in press). Also in Miami, black drug offenders with a prior felony conviction faced higher odds of incarceration than white drug offenders with a prior felony conviction, but race did not influence the odds of incarceration among offenders without a prior felony conviction (Spohn and Spears 2000). Similarly, in Metro County, Pennsylvania, race had a more pronounced effect on the decision to incarcerate or not among offenders with a more serious prior criminal record (Ulmer 1997; Ulmer and Kramer 1996), and in California a more serious prior record resulted in longer sentences for Hispanics than for whites (Zatz 1984). In other words, in each of these jurisdictions, having a serious criminal history led to more severe sentences for blacks and Hispanics than for whites.

The findings of these studies, then, attest to the importance of using a “process-oriented model” (Holmes et al. 1996, 12) that incorporates tests for indirect and/or interaction effects as well as main effects. They suggest that race and ethnicity influence sentence outcomes through their relationships with earlier decisions regarding pretrial detention, pleading guilty, and retention of private counsel. The findings concerning the interaction between race/ethnicity and prior record further suggest that “the major variables affecting justice processing do not operate in the same way for black [and Hispanic] and white offenders” (Crew 1991, 116).

Race of the offender and victim. Two of the studies in exhibit 3 provide support for Hawkins’ (1987) assertion that theoretical perspectives on race and sentencing must account for the role played by the race of the victim as well as the race of the offender (Spohn and Spears 1996; Walsh 1987). Hawkins (1987) questions social scientists’ characterization of findings of leniency toward black offenders as “anomalies.” He argues, “These patterns are anomalous only if

one adopts an oversimplified version of the conflict perspective as it has been developed within criminology” (p. 740). More to the point, he suggests (p. 724–725) that “the race of the victim must be seen as a factor that mediates the level of punishment.” Thus, blacks who victimize whites will be punished more harshly than blacks who victimize members of their own race.

The results of Walsh’s (1987) analysis of the sentences imposed on offenders convicted of sexual assault in a metropolitan Ohio county illustrate Hawkins’ points. The additive analysis seemed to reveal that neither the offender’s race nor the victim’s race influenced the length of the sentence. Moreover, the incarceration rate for white offenders was *higher* than the rate for black offenders.

Further analysis, however, revealed that blacks convicted of assaulting whites received more severe sentences than those convicted of assaulting members of their own race. This was true for those who assaulted acquaintances as well as those who assaulted strangers. As Walsh (1987, 167) noted, “The leniency extended to blacks who sexually assault blacks provides a rather strong indication of disregard for minority victims of sexual assault.”

Somewhat different results were reported by Spohn and Spears (1996), who analyzed a sample of sexual assaults bound over for trial in Detroit Recorder’s Court. Unlike previous research, which controlled only for offender-victim race and other offender and case characteristics, the authors of this study also controlled for a number of victim characteristics. They controlled for the age of the victim, the relationship between the victim and the offender, evidence of risk-taking behavior on the part of the victim, and the victim’s behavior at the time of the incident. Like Walsh, they compared the incarceration rates and the maximum sentences imposed on three combinations of offender-victim race: black-black, black-white, and white-white.

In contrast to the results reported by Walsh, Spohn and Spears found that the race of the offender/victim pair did not affect the likelihood of incarceration. The sentences imposed on blacks who assaulted whites, on the other hand, were significantly longer than the sentences imposed on whites who assaulted whites or blacks who assaulted other blacks. The average sentence for black-on-white crimes was more than 4 years longer than the average sentence for white-on-white crimes and more than 3 years longer than the average sentence for black-on-black crimes. These results, say the authors, reflected discrimination based on both the offender’s race and the victim’s race.

Spohn and Spears also tested a number of hypotheses about the interrelationships among offender race, victim race, and the relationship between the victim and the offender. Noting that previous research had suggested that crimes

between intimates are perceived as less serious than crimes between strangers, they hypothesized that sexual assaults involving strangers would be treated more harshly than assaults involving intimates or acquaintances regardless of the offender's race or the victim's race. Contrary to their hypothesis, they found that the offender-victim relationship came into play only when both the offender and the victim were black. Black men convicted of sexually assaulting black women who were strangers to them received harsher sentences than black men convicted of assaulting black women with whom they were intimate or acquainted, they were more likely to be incarcerated, and those who were incarcerated received longer sentences.

Consistent with the results discussed earlier, Spohn and Spears' research revealed that certain types of black offenders received substantially longer sentences than other categories of offenders. The harshest sentences were imposed on blacks who victimized whites (strangers or nonstrangers) and on blacks who victimized black strangers. More lenient sentences were imposed on blacks who assaulted black nonstrangers and on whites who assaulted whites (strangers or nonstrangers).

The results of these two studies, then, provide compelling evidence of the inadequacy of additive models and overly simplistic theoretical perspectives. Both studies illustrate that criminal punishment is contingent on the race of the victim as well as the race of the offender.¹² They demonstrate that "the meaning of race varies, and that, despite simplistic interpretations of conflict theory, both differential severity and leniency are possible" (Peterson and Hagan 1984, 67). The harshest penalties will be imposed on blacks who victimize whites, the most lenient penalties on blacks who victimize other blacks.

Race/ethnicity and crime seriousness. The importance of "rethinking the conflict perspective on race and criminal punishment" (Chiricos and Bales 1991, 719) is also demonstrated by studies examining the effect of race on sentence severity for various types of crimes. Some researchers, building on Kalven and Zeisel's (1966) "liberation hypothesis," assert that blacks will be sentenced more harshly than whites only for less serious crimes. These researchers (cf. Spohn and Cederblom 1991) contend that when the crime is serious, the appropriate sentence (i.e., incarceration) is obvious. In these types of cases, judges have relatively little discretion and thus few opportunities to consider legally irrelevant factors such as race. In less serious cases, on the other hand, the appropriate sentence is not as clearly indicated by the features of the crime, which may leave judges more disposed to bring extralegal factors, such as race/ethnicity, to bear on the sentencing decision.

Although the findings are somewhat inconsistent, the studies included in this review provide some support of the liberation hypothesis. The strongest evidence is in Crawford, Chiricos, and Kleck's (1998) exploration of the effect of race on the decision to apply habitual offender provisions. The authors used data on 9,690 male offenders who were sentenced to prison in Florida and eligible to be sentenced as habitual offenders. They found that eligible blacks were significantly more likely than eligible whites to be sentenced as habitual offenders; in fact, they concluded that "the strongest odds of being sentenced as a habitual offender are those associated with being black" (p. 496).

Further analysis revealed that the effect of race varied by type of crime; consistent with the liberation hypothesis, the racial differences were larger among less serious crimes. For example, the authors found substantially larger racial differences for property crimes and drug offenses than for violent crimes or weapon-related offenses. Separate analyses of 16 different types of crimes revealed a similar pattern. There were no race effects for the more serious crimes such as robbery and possession of a weapon by a felon, but there were substantial race effects for less serious property crimes (especially burglary and larceny) and for drug offenses. The racial differences in the likelihood of habitualization (that is, being sentenced as a habitual offender) were particularly pronounced for drug offenses: Blacks charged with drug offenses were 3.6 times more likely than whites charged with these offenses to be sentenced as habitual offenders. As Crawford and colleagues note (1998, 507), "It is clear that for habitual offender sentencing in Florida, race matters, especially for property and drug crimes."

Spohn and DeLone (in press) found similar results in Miami and Kansas City. In Miami, there were no differences in the odds of incarceration for Hispanic offenders and white offenders for violent crimes, but Hispanics convicted of drug offenses were more likely than their white counterparts to be sentenced to prison. In Kansas City, there were no racial differences in the length of sentences imposed for violent crimes, but black offenders received significantly longer sentences than white offenders for property crimes and drug offenses. The difference was 14.09 months for drug offenses and 6.57 months for property crimes. Spohn and DeLone's analysis of sentence outcomes in Chicago, on the other hand, revealed a different pattern. In this jurisdiction there were no race effects for property or drug offenses, but Hispanics convicted of violent crimes were more likely than whites convicted of violent crimes to be sentenced to prison.

Race/ethnicity and the war on drugs. As noted in the introduction to this essay, the task of assessing the effect of race on sentence outcomes is complicated by the war on drugs. Social scientists and legal scholars have suggested

not only that the war on drugs has been fought primarily in minority communities but also that “the recent blackening of America’s prison population is the product of malign neglect of the war’s effects on black Americans” (Tonry 1995, 155). Miller (1996, 83), for example, contends: “The racial discrimination endemic to the drug war wound its way through every stage of the processing—arrest, jailing, conviction, and sentencing.”

Comments such as these suggest that racial minorities will receive more punitive sentences than whites for drug offenses. This expectation is based in part on recent theoretical discussion of the “moral panic” surrounding drug use and the war on drugs (Chambliss 1995; Tonry 1995). Moral panic theorists (Jenkins 1994) argue that society is characterized by a variety of commonsense perceptions about crime and drugs that result in community intolerance for such behaviors and increased pressure for punitive action. Many theorists (see Chiricos and DeLone 1992 for a review) argue that this moral panic can become ingrained in the judicial ideology of sentencing judges, resulting in more severe sentences for those—that is, blacks and Hispanics—believed to be responsible for drug use, drug distribution, and drug-related crime.

Three of the studies included in this review (Albonetti 1997; Myers 1989; Spohn and Spears 2000) focused explicitly on racial disparities in the sentencing of drug offenders. Myers examined the effect of race on sentences imposed on offenders convicted of three types of drug offenses—use, sales/distribution, and trafficking—in Georgia from 1977 to 1985. In 1980, Georgia criminalized drug trafficking and increased the penalties for repeat drug offenders. The new drug trafficking statutes also restricted judicial discretion, which, according to the author, should have minimized sentencing disparities between blacks and whites. Myers argued that this uniformity in sentencing would be most prevalent during the height of legislative activity (1980–82) but would decrease thereafter as judges reverted to previous sentencing practices.

Myers’ analysis revealed that black offenders were more likely than white offenders to be incarcerated, particularly for the more serious drug offenses. There was a difference of 25 percentage points in the probabilities of incarceration between black offenders and white offenders for drug trafficking compared with a difference of 19 percentage points for drug distribution and 12 percentage points for drug use. Contrary to her hypothesis that reducing judicial discretion would produce racially neutral sentence outcomes, Myers found that the racial differential was consistent and significant throughout the time period examined and was actually most pronounced in the midst of the reform effort (1980–82). As she concluded, “The symbolic crusade against traffickers led to punitiveness that was *selectively* directed toward black traffickers convicted at the height of the crusade” (p. 312).

A different pattern of results was found by Spohn and Spears (2000), who examined the sentences imposed on drug offenders in Chicago, Kansas City, and Miami during 1993. The authors of this study found that Hispanics, but not blacks, faced greater odds of incarceration than whites in Miami, but that racial minorities and whites were sentenced to prison at about the same rate in Chicago and Kansas City. They also found that black drug offenders received longer sentences than white drug offenders in Kansas City, but the sentences imposed on racial minorities and whites were very similar in Chicago and Miami.

Further analysis led Spohn and Spears (2000) to conclude that race/ethnicity affected sentencing for drug offenses in an unexpected manner. In both Chicago and Miami, the sentences imposed on Hispanic drug offenders were significantly longer than the sentences imposed on black drug offenders. In these two jurisdictions, judges apparently did not differentiate between racial minorities and whites but, rather, between blacks and Hispanics. Tests for interaction effects in Chicago revealed that only certain types of Hispanic offenders—those convicted of the most serious drug offenses, those with a prior felony conviction, and those who were unemployed at the time of arrest—received longer sentences than black offenders.

Albonetti (1997) used 1991–92 data on drug offenders sentenced in Federal district courts to test a number of hypotheses concerning the relationship between the offenders' race/ethnicity, the prosecutors' charging and plea bargaining decisions, and sentence severity. She found that both black and Hispanic drug offenders received more severe sentences than white drug offenders. Albonetti also found that, whereas pleading guilty produced a similar reduction in sentence severity for all three groups of offenders, whites received a significantly greater benefit than either blacks or Hispanics when the judge departed from guidelines in exchange for substantial assistance in prosecuting another offender. In addition, white offenders received a larger sentence reduction than racial minorities as a result of being convicted for possession of drugs rather than drug trafficking. Albonetti (1997, 818–819) concluded that the pattern of results found in her study suggests that “the federal sentencing guidelines have not eliminated sentence disparity linked to defendant characteristics for defendants convicted of drug offenses in 1991–92.”

Two additional studies, while not focusing exclusively on sentencing of drug offenders, did examine race and sentencing of these offenders as one part of a larger study. Chiricos and Bales (1991) explored the relationship between race, unemployment, and punishment in two Florida counties in 1982. When they estimated separate models for several different types of crimes, they found that race did not directly affect the likelihood of incarceration for drug offenses.

Race did, however, interact with the offender's employment status in an unexpected way. *Unemployed* black drug offenders were 3.7 times more likely to be held in jail prior to trial than employed white drug offenders, while *employed* black drug offenders were 5.9 times more likely to be incarcerated than employed whites. Chiricos and Bales (p. 718–719) suggest that a possible explanation for this “surprising outcome” is that “employed blacks who are involved with drugs are seen by judges as violating a more fragile trust with employers, who are generally more inclined to hire whites than blacks.”

Crawford and colleagues' (1998) examination of the effect of offender race on the likelihood of being sentenced as a habitual offender also included a separate analysis of drug offenders. The authors of this study, who suggest that the more punitive sentences imposed on racial minorities may be linked to mainstream America's notions of racial threat, ask whether blacks are more likely to be habitualized for crimes, such as drugs and violence, “often described as central to the criminal threat posed by black males” (p. 484). The results of their analysis revealed that, although defendants charged with a drug offense were less likely than defendants charged with other offenses to be habitualized, *blacks* charged with drug offenses were 3.6 times more likely than whites charged with drug offenses to be sentenced as habitual offenders; in fact, 94 percent of the 448 drug offenders habitualized in Florida during fiscal year 1992–93 were black. As the authors note, “the combination of being black and being charged with a drug offense substantially increases the odds of being sentenced as a habitual” (p. 496).

Considered together, these studies provide evidence in support of assertions that “Urban black Americans have borne the brunt of the War on Drugs” (Tonry 1995, 105). Black and Hispanic drug offenders, and particularly those who engage in drug trafficking, face greater odds of incarceration and longer sentences than their white counterparts.

Discussion

The inconsistent findings of recent studies investigating the relationship between race and sentencing, coupled with competing assertions that racial disparities in sentencing had been reduced by the sentencing reforms of the past three decades but exacerbated by the policies pursued during the war on drugs, suggested that it was time to revisit this important issue. In this essay, I reviewed and critically evaluated 40 studies examining the linkages between race and sentence severity. My purpose was not simply to determine whether recent research provides evidence of direct racial discrimination in sentencing but also to search for clues to the contexts in which blacks and Hispanics are sentenced more harshly than

whites. In the following sections, I summarize the major findings of this review and discuss the implications of these findings.

Direct race effects

Many of the studies included in this review found evidence of *direct discrimination* against racial minorities. At the State level, 41 of the 95 black versus white estimates and 8 of the 29 Hispanic versus white estimates were indicative of significantly more severe sentences for racial minorities; at the Federal level, two-thirds of the black versus white estimates and one-half of the Hispanic versus white estimates revealed more punitive sentences for racial minorities. Evidence that racial minorities were sentenced more harshly than whites was found primarily, but not exclusively, with respect to the initial decision to incarcerate rather than the subsequent decision regarding sentence length. This pattern was especially obvious at the State level, where about half of the in/out estimates, but fewer than one-fourth of the sentence length estimates, revealed harsher sentences for racial minorities.

Although these findings suggest that race and ethnicity do play a role—a direct role—in contemporary sentencing decisions, it would be misleading to conclude that there is a consistent and widespread pattern of direct discrimination against black and Hispanic offenders in sentencing decisions.

These findings call into question earlier conclusions that the evidence concerning the effect of race on sentencing “largely contradicts a hypothesis of overt discrimination against black defendants” (Kleck 1981, 783), or that findings of racial discrimination in sentencing reflect the failure to control for crime seriousness or prior criminal record (Hagan 1974) or are confined primarily to the South. The effects

summarized above are all main effects; as such, they provide support for “a hypothesis of overt discrimination.” Moreover, although the studies included in this review vary somewhat in quality, they do not suffer from the methodological limitations of the research incorporated in earlier reviews. All of them use appropriate multivariate statistical techniques and control for relevant legal variables, including the offender’s prior criminal record (which was the most commonly omitted variable in earlier research). Finally, significant effects are found in non-Southern (California, Illinois, Minnesota, New York, Ohio, and Pennsylvania) as well as Southern (Florida and Georgia) jurisdictions.

Although these findings suggest that race and ethnicity do play a role—a direct role—in contemporary sentencing decisions, it would be misleading to conclude

that there is a *consistent* and *widespread* pattern of direct discrimination against black and Hispanic offenders in sentencing decisions. Caution is warranted for at least three reasons. First, although each of the 8 studies of Federal sentence outcomes reported significant main effects for race/ethnicity, 6 of the 32 State-level studies found no significant main effects for any measure of sentence severity for blacks and/or Hispanics (Crew 1991; Dixon 1995; Simon 1996; Spohn, DeLone, and Spears 1998; Wooldredge 1998; Zatz 1984). Second, 9 of the 25 significant effects for the in/out decision and 6 of the 11 significant effects for sentence length for black offenders are reported in the series of studies conducted in Pennsylvania. This obviously limits the generalizability of findings regarding direct race effects.

A third reason for exercising caution in drawing conclusions is that the effects revealed by many of the studies, while statistically significant, are rather modest. Spohn and DeLone (in press), for example, used the results of their logistic regression analysis to calculate estimated probabilities of incarceration for typical white, black, and Hispanic offenders in each of the three jurisdictions included in their study. They found a difference of 4 percentage points in the likelihood of incarceration between white offenders and black offenders and between white offenders and Hispanic offenders in Chicago; in Miami, there was a difference of 8 percentage points between white offenders and Hispanic offenders. Kramer and Steffensmeier (1993, 367), who noted that tests of statistical significance were not very meaningful given the large number of cases (about 34,000) included in their analysis, reported that “race contributes less than one-half of one percent to explained variation in each of the three in/out classifications.” Similarly, Langan’s (1996) analysis of substantial assistance departures under the Federal sentencing guidelines revealed that “race . . . improved the correct prediction rate by less than one-fourth of one percentage point.”

These caveats notwithstanding, it is clear that the studies conducted during the fourth wave of research challenge earlier conclusions of racial neutrality in sentencing. These methodologically sophisticated studies demonstrate that while race/ethnicity is not *the* major determinant of sentence severity, it “is a determinant of sanctioning, and a potent one at that” (Zatz 1987, 87). This clearly is an important finding. As the Panel on Sentencing Research concluded in 1983, “[E]ven a small amount of racial discrimination is a very serious matter, both on general normative grounds and because small effects in aggregate can imply unacceptable deprivations for large numbers of people” (Blumstein et al. 1983, 13). The fact that a majority of the studies reviewed here found that blacks and Hispanics were more likely than whites to be sentenced to prison, even after taking crime seriousness and prior criminal record into account, suggests that racial discrimination in sentencing is not a thing of the past.

Indirect and interaction effects

Nearly 30 years ago, Richard Quinney (1970, 142) asserted that “judicial decisions are not made uniformly. Decisions are made according to a host of extralegal factors, including the age of the offender, his race, and social class.” The validity of this assertion is confirmed by the studies in this review. There is compelling evidence that offender race and ethnicity affect sentence severity indirectly or in interaction with other legal and extralegal variables. These more subtle effects surfaced in studies that found no direct race effects as well as those that did. In fact, with only two exceptions, each of the State-level studies that found no direct race effects found significant contextual effects.

The most intriguing and important pattern of results revealed by the research reviewed here concerns the interaction between offender race/ethnicity and other legally irrelevant offender characteristics. This research convincingly demonstrates that certain types of racial minorities—males, the young, the unemployed, the less educated—are singled out for harsher treatment at sentencing. Some studies find that black and Hispanic offenders generally receive more punitive sentences than white offenders, but that the combination of race/ethnicity and gender, age, and/or employment status results in even larger racial disparities. Other studies find that the effect of race/ethnicity is confined to blacks and Hispanics who are also young, male, and/or unemployed. Both types of studies reveal that young unemployed black and Hispanic males may pay a higher punishment penalty than other categories of offenders.

The question, of course, is *why* these types of offenders are punished more severely. The question is why “today’s prevailing criminal predator has become a euphemism for young, black males” (Barak 1994, 137). A number of scholars suggest that certain categories of offenders are regarded as more dangerous and more problematic than others and thus as more in need of formal social control. Spitzer (1975, 645) uses the term “social dynamite” to characterize that segment of the deviant population that is viewed as particularly threatening and dangerous; he asserts that social dynamite “tends to be more youthful, alienated and politically volatile” and contends that those who fall into this category are more likely than other offenders to be processed through the criminal justice system (Spitzer 1975, 646). Building on this point, Box and Hale (1985) argue that unemployed offenders who are also young, male, and members of a racial minority will be perceived as particularly threatening to the social order and thus will be singled out for harsher treatment. Judges, in other words, regard these types of “threatening” offenders as likely candidates for imprisonment “in the belief that such a response will deter and incapacitate and thus defuse this threat” (Box and Hale 1985, 217).

Steffensmeier and his colleagues (1998, 789) advance a similar explanation for their finding “that young black men (as opposed to black men as a whole) are the defendant subgroup most at risk to receive the harshest penalty.” They interpret their results using a “focal concerns” theory of sentencing. According to this perspective, judges’ sentencing decisions reflect their assessment of the blameworthiness or culpability of the offender, their desire to protect the community by incapacitating dangerous offenders or deterring potential offenders, and their concerns about the practical consequences, or social costs, of sentencing decisions. Because judges rarely have enough information to determine an offender’s culpability or dangerousness accurately, they develop a “perceptual shorthand” based on stereotypes and attributions that are themselves linked to offender characteristics such as race, gender, and age. Thus, “race, age, and gender will interact to influence sentencing because of images or attributions relating these statuses to membership in social groups thought to be dangerous and crime prone” (Steffensmeier, Ulmer, and Kramer 1998, 768).

The studies reviewed here suggest that judges’ assessments of dangerousness and culpability, and thus their views of the appropriate punishment, may also rest on other combinations of offender and offense attributes. There is evidence, for example, that the treatment of black men charged with sexual assault depends on the race of the victim: Blacks who victimize whites are punished more harshly than blacks who victimize other blacks. (Studies of the imposition of the death penalty, which are not included in this review, report similar findings.) Although it is not clear whether this reflects the view that black men who cross racial lines to commit sexual assault are more threatening and dangerous than other types of offenders and/or the view that those who sexually assault white women (regardless of their race) deserve harsher punishment than those who assault black women, what is clear is that simply comparing the sentences imposed on black men to those imposed on white men will produce misleading results.

The findings of this review also lend credence to Crawford, Chiricos, and Kleck’s (1998, 506) assertion that judges’ “punitive impulses” are linked to their perceptions of “racial threat,” which are themselves linked to “urban underclass blacks and drugs.” A number of the studies reviewed here conclude that black and Hispanic drug offenders are sentenced more harshly than white drug offenders. Similar to the pattern of results discussed earlier regarding interaction between offender race/ethnicity and other offender characteristics, some studies find that the effect of race/ethnicity is confined to drug offenders, while others find that race/ethnicity has a substantially greater effect on sentencing for drug offenses than for other types of offenses. Still other studies reveal that blacks and Hispanics who engage in the more serious distribution

and trafficking offenses face significantly more punitive punishment than other types of drug offenders.

These results suggest that the moral panic surrounding drug use and drug-related crime, coupled with stereotypes linking racial minorities to a drug-involved lifestyle, has resulted in more severe sentences for black and Hispanic drug offenders, and particularly for those convicted of the more serious offenses. It thus appears that judges use race/ethnicity and offense seriousness to define what might be called a “dangerous class” (Adler 1994) of drug offenders. The black or Hispanic drug offender who manufactures or sells large quantities of drugs may be perceived as particularly dangerous or particularly villainous (Peterson and Hagan 1984); as a consequence, he may be sentenced especially harshly.

The indirect and interaction effects revealed by the research included in this review attest to the theoretical and methodological evolutions in research on race and sentencing. Contemporary researchers have moved beyond simply asking whether race makes a difference to attempting to identify the conditions under which and the contexts in which race makes a difference. The studies reviewed here make important contributions to our understanding of the complex interconnections among race/ethnicity, offender and case characteristics, and sentence severity. They provide compelling evidence that black and Hispanic offenders *will not* “receive more severe punishment than whites for all crimes, under all conditions, and at similar levels of disproportion over time” (Hawkins 1987, 724). Rather, certain types of racial minorities—males, the young, the unemployed, those who commit serious drug offenses, those who victimize whites, those who refuse to plead guilty or who are unable to obtain pretrial release—may be perceived as more threatening, more dangerous, and more culpable; as a consequence, they may be punished more harshly than similarly situated whites.

Race/ethnicity in the reform era

The findings of this review suggest that the sentencing reforms implemented during the past 25 years have not achieved their goal of “amelioration of racial disparities and discrimination” (Tonry 1995, 164). In fact, studies of sentences imposed at the Federal level reveal a consistent pattern of disadvantage for black and Hispanic offenders. This pattern is particularly pronounced for the various alternative measures of sentence severity. Although the Federal sentencing guidelines severely constrain judges’ discretion in deciding between prison and probation and in determining the length of the sentence, they place only minimal restrictions on the ability of judges (and prosecutors) to reduce sentences for substantial assistance or acceptance of responsibility. Mandatory

minimum sentences also can be avoided through charge manipulation. As Albonetti (1997, 790) notes, “these process-related decisions offer potential avenues through which prosecutors [and judges] can circumvent guideline-defined sentence outcomes.” The validity of this assertion is confirmed by the fact that each of the six Federal-level studies that examined an alternative measure of sentence severity found evidence of direct discrimination against both blacks and Hispanics.

A similar pattern is found for studies of sentence outcomes in two States—Florida¹³ and Pennsylvania¹⁴—with sentencing guidelines. Although the guidelines in both States are “looser” than those at the Federal level, they do restrict judicial discretion. Studies of sentences imposed on felony offenders (Spohn and DeLone in press) and drug offenders (Spohn and Spears 2000) in Miami found that Hispanics (but not blacks) were significantly more likely than whites to be sentenced to prison; a third Florida study (Crawford, Chiricos, and Kleck 1998) found that blacks were substantially more likely than whites to be sentenced as habitual offenders. The series of Pennsylvania studies conducted by Kramer, Steffensmeier, and Ulmer revealed that blacks were sentenced more harshly than whites: They were more likely than whites to be incarcerated, they received longer sentences than whites, and they were less likely than whites to receive either dispositional or durational departures.

The lack of longitudinal research comparing the effect of race/ethnicity on sentence outcomes before and after the implementation of guidelines makes it difficult to assess the degree to which the guidelines have *reduced* racial disparities in sentencing. Nonetheless, the fact that studies of sentences imposed in jurisdictions operating under sentencing guidelines uncovered both direct and subtle race effects suggests that attempts to constrain judicial discretion have not *eliminated* racial disparities in sentencing. The guidelines notwithstanding, judges mete out harsher sentences to black and Hispanic offenders than to similarly situated white offenders. This conclusion, which applies to sentences imposed under the more restrictive Federal sentencing guidelines as well as the looser guidelines at the State level, implies that judges and prosecutors are reluctant to place offenders into cells of a sentencing grid defined only by crime seriousness and prior criminal record. It indicates that statutorily irrelevant factors such as race, gender, age, employment status, and social class may be factually relevant to criminal justice officials’ assessments of dangerousness, threat, and culpability. It also attests to the validity of Tonry’s (1996, 180) assertion that “There is, unfortunately, no way around the dilemma that sentencing is inherently discretionary and that discretion leads to disparities.”

Legislators at the State and Federal levels abandoned indeterminate sentencing and embraced determinate sentencing, sentence guidelines, mandatory minimum sentences, and other reforms designed to constrain judicial discretion. The fact that racial discrimination persists despite these policy changes suggests that reformers may have had unrealistic expectations about the ability of the reforms to alter the sentencing process and/or that the reforms themselves have not been implemented as intended.

Research and policy implications

As we enter the 21st century, researchers should continue to investigate the complex interconnections among offender race/ethnicity, other legally irrelevant offender characteristics, case characteristics, and sentence outcomes. They should continue to ask not “does race make a difference?” but, rather, “*when* does race make a difference—under what conditions, for what types of offenders, and in interaction with what other factors?”

Researchers should build on the foundation established by the methodologically sophisticated and theoretically informed studies conducted during the past 20 years. They should continue to test the hypothesis that *certain types of black and Hispanic offenders* are singled out for harsher treatment. In fact, the focus of research should be broadened to include other racial and ethnic groups. As Sampson and Lauritsen (1997, 364) correctly note, “there is little empirical basis from which to draw firm conclusions for Hispanic, Asian, and Native Americans.” This obviously limits our ability to understand whether and how judges and other criminal justice officials take race and ethnicity into account when determining the appropriate sentence.

In addition, researchers should focus not only on the presence or absence of racially discriminatory sentence outcomes but also on possible explanations for these outcomes. Although quantitative studies can provide evidence concerning the existence of racial discrimination in sentencing, they cannot tell us, at least not with any degree of precision, why such discrimination occurs. To understand the factors that motivate judges to impose harsher sentences on racial

minorities than on whites, researchers should incorporate qualitative techniques into their research designs. By interviewing judges and other criminal justice officials, observing court proceedings, and reading transcripts of sentence hearings, researchers will gain a greater appreciation for the complexity of the decisionmaking process and for the overt and subtle ways in which the offender’s race is factored into the sentencing equation.

Researchers also should attempt to determine if there is discriminatory treatment of racial minorities at earlier stages in the criminal court process. A number of studies have demonstrated that sentence severity is affected by pretrial detention, charge reductions, and sentence concessions, but there is relatively little research investigating the effect of race/ethnicity on these important pretrial decisions. If racial minorities are treated more harshly than whites at early stages of the process, and if bail, charging, and plea bargaining outcomes are themselves related to sentence severity, racial minorities would suffer from what Zatz refers to as “cumulative disadvantage.” In other words, if race/ethnicity has small effects on decisionmaking at early stages of the process, “as the person moves through the system, these add up to substantial . . . disparities in processing and outcomes for different social groups” (Zatz 1987, 76).

The findings of the studies reviewed here have policy as well as research implications. A primary goal of the sentencing reforms of the past quarter century was to reduce unwarranted disparity and eliminate racial discrimination. To that end, legislators at the State and Federal levels abandoned indeterminate sentencing and embraced determinate sentencing, sentence guidelines, mandatory minimum sentences, and other reforms designed to constrain judicial discretion. The fact that racial discrimination persists despite these policy changes suggests that reformers may have had unrealistic expectations about the ability of the reforms to alter the sentencing process and/or that the reforms themselves have not been implemented as intended. Policymakers should continue to scrutinize sentencing policies and procedures with an eye toward determining whether the reforms incorporate, intentionally or unintentionally, substantive or procedural loopholes that foster unwarranted disparity in sentencing.

Conclusion

The findings of this review suggest that the disproportionate number of racial minorities confined in our Nation’s jails and prisons cannot be attributed solely to racially neutral efforts to control crime and protect society. Although it is irrefutable that the primary determinants of sentencing decisions are the seriousness of the offense and the offender’s prior criminal record, race/ethnicity and other legally irrelevant offender characteristics also play a role. Black and Hispanic offenders—and particularly those who are young, male, or unemployed—are more likely than their white counterparts to be sentenced to prison; they also may receive longer sentences than similarly situated white offenders. Other categories of racial minorities—those convicted of drug offenses, those who victimize whites, those who accumulate more serious prior criminal records, or those who refuse to plead guilty or are unable to secure pretrial release—also

may be singled out for more punitive treatment. Coupled with the fact that significant race effects were found in Southern and non-Southern jurisdictions, in State and Federal court systems, and in jurisdictions with and without sentencing guidelines, these results suggest that earlier refutations of the discrimination thesis were premature.

Notes

1. Other researchers (Zatz 1987; Kleck 1981) use “overt discrimination” to characterize main effects and “subtle discrimination” to characterize indirect or interaction effects. This is somewhat misleading; direct, indirect, and interaction effects could all result from either overt or covert discrimination.
2. This review includes two studies that are in press (Spohn and DeLone in press; Spohn and Spears 2000).
3. Studies of the capital sentencing process are not included primarily because most of them do not use post-1980 data. For example, the Baldus, Woodworth, and Pulaski (1990) study of death penalty decisions in Georgia used data from 1973 through 1979. Gross and Mauro’s (1989) analysis of death penalty decisions in eight States was based on data from 1976 through 1980.
4. I also include one study (Zatz 1984) based on 1978 data. It is one of very few studies that examines sentence outcomes for Hispanics and is based on data collected during the first year of California’s Determinate Sentencing Act.
5. Five of the studies use ordinary least squares regression, rather than logistic regression or probit analysis, to analyze the dichotomous in/out decision (Klein, Petersilia, and Turner 1990; Miethe and Moore 1985; Moore and Miethe 1986; Petersilia 1983; Walsh 1987).
6. There were only four exceptions to the requirement that the study include a measure of prior criminal record. The series of studies conducted in Georgia (Myers 1987; Myers and Talarico 1986, 1987) did not include a control for prior criminal record in the analysis of the decision to incarcerate or not. Smith and Damphousse (1996), who examined the length of sentence imposed on federally indicted terrorists and nonterrorists, did not include a control for prior criminal record.
7. Two of the studies (Dixon 1995; Nelson 1995) compared whites with nonwhites (blacks and Hispanics). The estimates produced by these studies are combined with those produced by studies comparing blacks and whites.
8. Walsh (1991) found that white males were significantly more likely than black males to be sentenced to prison in Ohio. He concluded that this probably reflected leniency extended to black offenders rather than discrimination against white offenders. As he noted, “We may be observing efforts on the part of judges to compensate for the much-

reported anti-black bias in sentencing in the past” (p. 15). An analysis of sentencing decisions in sexual assault cases (Walsh 1987) also revealed that blacks were less likely than whites to be sentenced to prison. Further analysis revealed that this reflected devaluation of black victims: Blacks who sexually assaulted whites faced higher odds of incarceration than blacks who assaulted other blacks. Two studies of sentencing outcomes in Georgia (Myers 1987; Myers and Talarico 1986) found that blacks received somewhat shorter sentences than whites. Klein and colleagues’ (1990) analysis of California offenders revealed that Hispanics convicted of robbery and theft were less likely than whites convicted of robbery to be sentenced to prison.

9. Typically, the presence of an interaction effect (between race/ethnicity and some other independent variable) in the absence of a main effect (for race/ethnicity) signals that the effect of race/ethnicity is positive for some categories of the second independent variable but negative for other categories. For example, Spohn and DeLone (in press) found that race did not have a direct effect on sentence length in Kansas City. Further analysis revealed that blacks convicted of property offenses ($b=6.57$; $SE=2.91$) and drug offenses ($b=14.10$; $SE=5.20$) received longer sentences than whites, while blacks convicted of violent crimes ($b=-17.17$; $SE=14.59$) received shorter sentences (but note that the coefficient for violent crimes was not statistically significant). Most researchers, however, do not discuss this potential explanation.

10. Exhibit 3 includes a number of findings indicative of harsher sentences for white offenders. Previous reviews have criticized the tendency to characterize these findings as “merely anomalous results” (Kleck 1981, 799) or as “simply random fluctuations from a trend toward equality” (Peterson and Hagan 1984, 57). Like Hawkins (1987), Peterson and Hagan (p. 69) suggest that findings of more lenient treatment of black offenders reflect “context-specific conceptions of race” and contend that “[t]he role of race is more variable and more complicated than previously acknowledged.”

The small number of effects indicating more severe punishment of white offenders makes it difficult to reach conclusions regarding the meaning of these effects. Three of the State-level studies (Klein, Petersilia, and Turner 1990; Wooldredge 1998; Zatz 1984) found that whites were sentenced more harshly than racial minorities for certain types of crimes. Klein and colleagues (1990), for example, found that Hispanics, who were more likely than whites to be incarcerated for drug offenses, were less likely than whites to be incarcerated for robbery or theft. Zatz (1984) reported that whites convicted of homicide received longer sentences than Hispanics convicted of homicide, and Wooldredge found harsher sentences for whites among the least serious offenses. It is possible, given the fact that most crimes are intraracial, that the harsher sentences imposed on whites for crimes against persons (homicide, robbery, theft) reflect race-of-victim rather than race-of-offender effects, but none of these studies tested for this possibility.

There are several other effects indicating harsher treatment of white offenders. Wooldredge (1998) found that marital status had differential effects on Anglos and Mexican-Americans; unmarried Anglos received longer sentences than unmarried Mexican-Americans. Myers and Talarico’s (1987) analysis of sentence outcomes in

Georgia revealed that whites got longer sentences than blacks in counties with high crime rates; they also reported that, whereas blacks were sentenced more harshly than whites from 1976 to 1982, the pattern was reversed from 1982 to 1985. Finally, Albonetti's (1997) examination of sentences imposed on Federal drug offenders revealed that increases in the guideline offense level and the offender's criminal history score produced greater increases in sentence severity for whites than for either blacks or Hispanics.

Although it would be inappropriate to dismiss these effects as simply random deviations from a general pattern of disadvantage for racial minorities, the meaning is unclear. In fact, the authors of the studies that found effects indicating harsher treatment of white offenders typically mentioned, but offered no explanation for, the effects (Zatz 1984 is an exception). This suggests that the authors themselves either regarded the effects as "anomalies" or believed that "one could expect these results by chance alone . . . even when such biases do exist" (Wooldredge 1998, 174).

11. Albonetti (1997) also explored the possibility that pleading guilty would have differential effects on sentence outcomes for black, Hispanic, and white drug offenders sentenced in Federal district court. She found that the effect of a guilty plea did not vary among the three groups.

12. Research on the capital sentencing process, which is not included in this review, similarly demonstrates that blacks convicted of murdering whites are more likely to be sentenced to death than are other offender/victim racial dyads (cf. Baldus, Woodworth, and Pulaski 1990; Gross and Mauro 1989; Paternoster 1984).

13. The State of Florida has had sentencing guidelines since 1983. The purpose of the guidelines is "to establish a uniform set of standards to guide the sentencing judge" and "to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related criteria." To meet these objectives, each offender is assigned a "sentence score" based on the seriousness of the offense(s) and his/her prior criminal record. This score determines the recommended sentence. Judges retain some discretion under the guidelines. For example, if the total sentence points for a particular offender are less than 40, the presumptive sentence is a non-State prison sentence. In this situation, the judge has discretion to sentence the offender to county jail for a maximum term of 364 days or to impose probation or some other alternative to incarceration. The judge also has discretion to withhold adjudication. If the total points are greater than 40 but less than or equal to 52, the judge has discretion to sentence the offender to State prison or not. If the points total 52, the sentence must be a prison sentence, with the months in State prison calculated by subtracting 28 from the total sentence points. The judge can, however, increase or decrease the sentence length by 25 percent (without providing a written statement delineating the reasons for the departure) or more (with a written statement of the reasons for the departure). [Fla. Stat. § 921.001 (1995)]

14. The Pennsylvania sentencing guidelines, which were adopted in 1982, apply to both felonies and misdemeanors. The guidelines establish sentence ranges for each combination of the offender's criminal history score (which ranges from 0 to 6) and

offense seriousness score (which ranges from 1 to 10). For each combination, there is an aggravated range, a standard range, and a mitigated range; the presumption is that the judge will impose a sentence from the standard range. Judges must justify departures with a written statement of the reasons for the departure.

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Appendix. Indirect and interaction effects found in studies of race and sentencing (State-level studies)

Study	Interaction effects—in/out	Interaction effects—sentence length
<p>Spohn and DeLone in press</p>	<p>Chicago: offenders w/o prior prison term—blacks more likely than whites; no differences among those with prior prison term</p> <p>Chicago: unemployed offenders—Hispanics more likely than whites; no differences among the employed</p> <p>Chicago: offenders convicted of violent crimes—Hispanics more likely than whites; no differences for less serious crimes</p> <p>Miami: offenders convicted of drug offenses—Hispanics more likely than whites; no differences for violent crimes</p> <p>Miami: offenders with prior prison term—Hispanics more likely than whites; no differences among those w/o prior prison term</p>	<p>Chicago: unemployed offenders—blacks and Hispanics got longer sentences than whites; no differences among employed</p> <p>Kansas City: offenders convicted of drug and property crimes—blacks got longer sentences than whites; no differences for violent crimes</p>
<p>Spohn and Holleran 2000</p>	<p>Chicago: young black males, young Hispanic males, and middle-aged black males more likely than middle-aged white males</p> <p>Chicago: unemployed black males and unemployed Hispanic males more likely than employed white males</p> <p>Miami: young black males, young Hispanic males, and older Hispanic males more likely than middle-aged white males</p> <p>Kansas City: young black males and young white males more likely than middle-aged white males</p> <p>Kansas City: unemployed black males more likely than employed white males</p>	

continued

Appendix (continued) (State-level studies)

Study	Interaction effects—in/out	Interaction effects—sentence length
Spohn and Spears 2000	<p>Miami: blacks convicted of third-degree felonies more likely than whites</p> <p>Miami: blacks with a prior felony conviction more likely than whites</p>	<p>Chicago: offenders convicted of most serious drug offenses—Hispanics got 16 months longer than blacks</p> <p>Chicago: offenders with at least one prior felony conviction—Hispanics got 11 months longer than blacks</p> <p>Chicago: unemployed offenders—Hispanics got 12 months longer than blacks</p>
Nobiling, Spohn, and DeLone 1998	<p>Kansas City: unemployment increased odds of incarceration only for blacks</p> <p>Chicago: young males only—unemployed blacks and unemployed Hispanics more likely than employed whites</p>	<p>Chicago: unemployment increased odds of incarceration only for blacks</p>
Spohn, DeLone, and Spears 1998	<p>Dependent variable=withhold of adjudication</p> <p>Repeat offenders: white females, Hispanic females, black females, and Hispanic males more likely than black males to have adjudication withheld; no differences among first-time offenders</p> <p>Repeat offenders: black females more likely than black males, white females more likely than white males; no differences among first-time offenders</p>	

Appendix (continued)

(State-level studies)

Study	Interaction effects—in/out	Interaction effects—sentence length
<p>Wooldredge 1998</p>		<p>Male offenders: Mexican-Americans incarcerated longer than Anglos Lower income offenders—Mexican-Americans incarcerated longer than Anglos Offenders with previous prison sentence—Mexican-Americans incarcerated longer than Anglos Offenders sentenced by Anglo judges—Mexican-Americans incarcerated longer than Anglos Offenders convicted of least serious offenses—Anglos incarcerated longer than Mexican-Americans</p>
<p>Crawford, Chiricos, and Kleck 1998</p>	<p>Dependent variable—sentenced as habitual offender Level of seriousness—greater disadvantage for blacks for less serious offenses (armed robbery is exception) Type of crime—greater disadvantage for blacks for property and (especially) drug-related crimes Community context and violent/weapons crimes—no context in which race had an effect Community context and property crimes—race significant regardless of percentage black, racial inequality, rate of drug arrests, and violent crime rate Community context and drug-race—significant only where percentage black and racial inequality are low</p>	

continued

Appendix (continued) (State-level studies)

Study	Interaction effects—in/out	Interaction effects—sentence length
Steffensmeier, Ulmer, and Kramer 1998	<p>Young black males face higher odds of incarceration than all other offenders; among males, effect of race diminishes as age increases</p> <p>White females face lower odds of incarceration than black females, regardless of age</p>	<p>Young black males receive longer sentences than all other offenders; among males, effect of race diminishes as age increases</p> <p>Black females receive longer sentences than white females, regardless of age</p>
Ulmer 1997 Ulmer and Kramer 1996	<p>Conviction at trial increases odds of incarceration for blacks more than for whites</p> <p>Conviction at trial decreases odds of dispositional departure for blacks more than for whites</p> <p>Smaller race effect among offenders with serious prior records (statewide data); larger race effect among offenders with serious prior records in Metro County, Pennsylvania</p> <p>No race effect in Southwest County, Pennsylvania</p>	<p>No race effect in Southwest County</p>
Spohn and Spears 1996	<p>Blacks who sexually assaulted black strangers more likely to be incarcerated than blacks who assaulted black nonstrangers</p>	<p>Blacks who sexually assaulted whites got longer sentences than black-on-black (37 months) and white-on-white (51 months)</p> <p>Blacks who sexually assaulted white strangers got longer sentences than black-on-black nonstranger, white-on-white stranger, and white-on-white nonstranger</p> <p>Blacks who sexually assaulted black strangers got longer sentences than black-on-black nonstranger</p>

(State-level studies)

Appendix (continued)

Study	Interaction effects—in/out	Interaction effects—sentence length
Holmes et al. 1996		Bexar County, Texas: blacks and Hispanics less likely than Anglos to have private attorneys; those with private attorneys sentenced less harshly
Nelson 1994	Larger racial disparities among defendants with prior arrest record	
Walsh 1987	Blacks who sexually assaulted white nonstrangers more likely to be incarcerated than blacks who assaulted black nonstrangers	Blacks who sexually assaulted whites got longer sentences than blacks who assaulted blacks Blacks who sexually assaulted white strangers got approximately 1 year longer than blacks who assaulted black strangers Blacks who sexually assaulted white nonstrangers got approximately 7 months longer than blacks who assaulted black nonstrangers
Chiricos and Bales 1991	Blacks more likely than whites to be detained; those detained more likely to be incarcerated All offenders and male offenders—unemployed blacks, employed blacks, and unemployed whites more likely than employed whites to be incarcerated Young male offenders—unemployed blacks 5.2 times more likely than employed whites to be incarcerated	

continued

(State-level studies)

Appendix (continued)

Study	Interaction effects—in/out	Interaction effects—sentence length
Crew 1991		Blacks less likely to be released; those not released charged more harshly; those charged more harshly got longer sentences Blacks more likely to go to trial; those tried got longer sentences
Klein, Petersilia, and Turner 1990	Hispanics more likely than whites to be incarcerated for drug offenses	
Myers 1989	Blacks more likely than whites to be incarcerated for drug use, drug sale/distribution, drug trafficking; differences greatest for trafficking Racial differences most pronounced from 1980 to 1982	
Myers 1987 Myers and Talarico 1987 Myers and Talarico 1986	Context—blacks faced greater disadvantage than whites in counties with higher crime rates Context—young blacks faced greater disadvantage than others in counties with high unemployment rate	Context—whites got longer sentences than blacks in counties with higher crime rates Blacks got longer sentences than whites from 1976 to 1982 and shorter sentences than whites from 1982 to 1985
Zatz 1984		Conviction for homicide produces longer sentences for whites than for Hispanics Conviction for rape produces longer sentences for Hispanics than for whites Prior record produces longer sentences for Hispanics than for whites Pleading guilty produces larger sentence reduction for whites than for Hispanics

(Federal-level studies)

Appendix (continued)

Study	Interaction effects—in/out	Interaction effects—sentence length
Albonetti 1997	<p>Conviction for possession rather than trafficking produces larger decrease in odds of incarceration for whites than for blacks or Hispanics</p> <p>Departure for substantial assistance produces larger decrease in odds of incarceration for whites than for blacks or Hispanics</p> <p>Guideline offense level and criminal history score produce larger increase in odds of incarceration for whites than for blacks or Hispanics</p> <p>Increases in education produce greater benefit for whites than for blacks or Hispanics</p>	<p>Conviction for possession rather than trafficking produces larger reduction in sentence length for whites than for blacks or Hispanics</p> <p>Departure for substantial assistance produces larger reduction in sentence length for whites than for blacks or Hispanics</p> <p>Guideline offense level and criminal history score produce longer sentences for whites than for blacks or Hispanics</p> <p>Increases in education produce greater benefit for whites than for blacks or Hispanics</p> <p>Effect of race disappeared when mode of disposition added to model</p>
Langan 1996	<p>Fraud offenses—significant effect for Hispanics due to fact that Hispanics more likely than whites to be convicted of offenses involving false ID, which were more likely to result in incarceration than offenses involving making false statements</p>	<p>Bank robbery—blacks got longer sentences than whites only among offenders with more serious prior records</p>