

Racial Disparities in Federal Drug Sentencing

by

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Abstract

This thesis delves into the history, standards, and practices of the United States federal government. Prior to the Sentencing Reform Act, federal judges were essentially unchecked and possessed unmatched power in terms of sentencing. This influx of power allowed, and continues to allow, disproportionate sentences to be given to offenders based upon biased reasons, one of those reasons predominately being Race. This thesis proposes that federal judges sentence Black men for longer periods of time for drug cases than White men. To test this hypothesis, the 2015-2016 Federal Prisoner Report was downloaded from the ICPSR website. The data set was condensed into the specific variables needed: drug offenders, race, prison length in months, and probation length in months. The total sample includes 21,387 offenders. The findings conclude that Black men serve an approximately 30% longer sentence than White men for a drug crime. The findings also conclude that Black men and White men serve a proportionate amount of time on federal probation.

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List of Terms

MONRACE: The defendant's race

NEWRACE: Defendant's race including Hispanic

PRISDUM: Did the defendant get prison time, yes or no.

PROBUM: Did the defendant get probation, yes or no

PROBATN: Total probation time served in months

SENTTOT: Total prison time served in months without zeros

SENTTOT0: Total prison time served in months with zeros

Chapter I

Introduction

Prior to the establishment of the 1984 Sentencing Reform Act, federal judges conducted their business and administered sentences to offenders with virtually no discretion, often resulting in inconsistent sentences for offenders. The implementation of the Sentencing Reform Act established a set of guidelines to follow while sentencing. The guidelines were comprised of seven sections that addressed previous gray areas in sentencing discretion:

- the circumstances of the offense and the characteristics of the offender;
 - the sentence must reflect the primary purposes of sentencing;
 - the types of sentences that are available in correlation to the offender's charges;
 - the established sentencing range, relevant information--such as policy statements--that are declared or addressed by the Commission;
 - the obligation to avoid disparity in sentencing among offenders with previous similar circumstances; and
 - the commitment to provide restitutions to the victims or parties involved
- (United States Sentencing Commission, n.d.).

Despite the corrections made to the structure of Federal Sentencing, disparity continues through the application of judicial discretion to raise the sentence length through a preponderance of evidence rather than guilt beyond a reasonable doubt

determined by the jury. This type of judicial discretion is crucial to the offender's sentence length outcome. Depending on the bias that may be present in the jury's mind, an offender may serve a significantly longer sentence. At the sentencing stage of the trial, the prosecution in a federal trial utilizes preponderance of evidence as the burden of proof instead of guilt beyond a reasonable doubt. Guilt beyond a reasonable doubt means that when all facts are presented to the court room, no other reasonable conclusion can be drawn other than the defendant is guilty; whereas the preponderance of evidence statute applies at federal trials when the prosecution convinces the jury that there is greater than 50% chance the crime was committed by the defendant. This issue was addressed in *United States v. Booker* (2005), which resulted in the acknowledgement of excessive judicial discretion; furthermore, the Federal Sentencing Commission adopted a three-part process, allowing the more careful examination of the facts to determine an appropriate and proportionate sentence length (*UNITED STATES V. BOOKER, 2005*). These changes reflect the duty of the court and justice system to convict offenders and sentence them appropriately and proportionately to the crime that has been committed.

In the early 1760s, Cesare Beccaria published his renowned essay "Crime and Punishment," which addresses the urgency for a lawful society with just, reasonable, and proportionate laws and in turn sentence lengths:

It is upon this then that the sovereign's right to punish crimes is founded; that is, upon the necessity of defending the public liberty, entrusted to his care, from the usurpation of individuals; and punishments are just in proportion, as the liberty, preserved by the sovereign, is sacred and valuable. (1764)

Despite Beccaria's essay being published over 200 years ago, the issues arising from sentencing disparity continue to persevere in the Federal Court system. The revisions to the 1984 Sentencing guidelines after *United States v. Booker* addressed some gray areas, but not all of them. In the sentencing phase of federal trials, hearsay evidence and evidence otherwise illegally obtained are admissible despite the clause to the 6th amendment, the confrontation clause. The evidence that can be utilized to increase sentence length must be submitted to a jury, in turn creating more conviction-prone juries. This coupled with other factors—such as prosecutorial aggressiveness and racial discrimination—continue to create an unjust and inconsistent federal court system. Beccaria's essay addresses the simple notion that "punishment should be just and fit the crime," yet the federal court system continues to administer two different sentence lengths to similarly committed crimes (Beccaria et al., 2006). These decisions often impact racial minorities at a higher rate, in turn undermining the overall public faith in the criminal justice system.

The essential point of this thesis is to discuss racial disparity in federal drug sentencing. The research question being posed is: “Do federal judges sentence African Americans to harsher sentences than Caucasians for similarly committed drug offenses?”

The hypotheses are:

1. Research hypothesis: Federal judges sentence African Americans more harshly for drug offenses than Caucasians who committed similar crimes.
2. Null hypothesis: Race has no statistically significant impact on the sentence federal judges give African American and Caucasian drug offenders.

The remainder of this thesis provides an analysis of federal data, census data, prominent historical cases, and similar sources to investigate the hypotheses stated above.

Chapter II

Literature Review

The criminal justice system contains a myriad of issues and concerns that are voiced by the people and government officials alike; however, a specific area of concern is the inherent and explicit racial bias in the criminal justice system. The racial tensions within the United States are more evident and addressed at this point in American history than ever before. With that being said, minorities and specifically African Americans face discriminatory practices that increase their likelihood of arrests and incarceration (Cohen, 2012). Within recent years, the Bureau of Justice Statistics has gathered information about demographic characteristics among sentenced prisoners. In its study, the Bureau determined that, by the end of the year 2016, 2.5% of the Black population in the United States were in jail or prison (Bureau of Justice Statistics, 2016). Also, the Bureau found that Black men ages 18-19 were 11.8 times more likely to be arrested than their White male counterpart the same age, for the same crime (Bureau of Justice Statistics, 2016). This is a glimpse of the disproportionate statistics and racial bias that riddle the criminal justice system.

Despite the Supreme Court's ruling in the Booker (2005) case, which concluded that the federal sentencing guidelines were merely suggestions—however, the judges are still required to consult the guidelines and given extenuating circumstances can veer outside the guideline range—prosecutors continue to have additional power and discretion when charging offenders with sentences that contain a mandatory minimum. The discretion of prosecutors to decide which cases they want to pursue and charge and

how they charge those cases is relatively unchecked; however, the criminal trial itself is a check on prosecutorial aggressiveness due to the fact that if even a single element of the indictment is not proven, the case is dismissed or acquitted. A prosecutor may choose one charge over another for a number of reasons; however, implicit racial bias appears to be one of the substantial indicators of how an offender will be charged. This is supported by Rehavi and Starr's (2014) article "Racial Disparity in Federal Criminal Sentences," the authors conclude from a study of 36,659 offenders that over half of the Black-White sentencing disparity—after accounting for charge severity—stems from the prosecutorial decision to bring a mandatory minimum charge (Rehavi & Starr, 2014). Black men are overall more likely to be charged with a sentence containing a mandatory minimum. As a result, Black men overall are sentenced to prison for longer terms of confinement. Prosecutorial aggressiveness and implicit racial bias are merely one area of concern that influences the Black-White disparity in the criminal justice system. The remainder of this literature review discusses additional categories that play a dominant role in sentencing outcomes and how this impacts Black men at a higher, more substantial rate than white men.

Type of Defense Attorney

There are many of studies about the subsequent impact on the defendant based on which type of defense attorney is utilized: Thomas Cohen in "Who is Better at Defending Criminals?" explains the implicit racial bias behind attorney type (Cohen, 2012). The first area to consider is the three types of counsel that are offered: private attorney, public defender, or assigned counsel. The success of each of these respective attorneys depends on financial resources, strengths and weaknesses of the different systems, skills and

qualifications, schooling, and experience. The success of private attorneys and public defenders is roughly proportionate, yet the success rate of assigned counsel is significantly lower than private attorneys or public defenders. The reality behind offenders with assigned counsel is that, “convicted defendants represented by public defenders or assigned counsel were more likely than those hired by private attorneys to be sentenced to incarceration” (Cohen, 2012). The success of private attorneys is greater than that of public defenders before trial, yet, at the trial stage, if the offender is sentenced to imprisonment, the sentence is shorter than if the defendant has a public defender. The disadvantages inherent in the assigned counsel system, such as less trial experience and insufficient financial resources, negatively impact the defendant by increasing the likelihood of being charged and sentenced to incarceration.

The statistical difference between attorney type based on race further suggests that Black men are more disadvantaged by type of counsel: 29% of White defendants were represented by assigned counsel whereas 47% of Black defendants were represented by assigned counsel (Cohen, 2012). Furthermore, 91% of felony convictions come from defendants that have assigned counsel. In the drug category, the sentences that were produced for offenders were markedly inconsistent with the sentence lengths under private attorneys and public defenders: convicted defendants were incarcerated 37% longer under assigned counsel (Cohen, 2012). Therefore, indigent defendants and Black defendants are more likely to receive assistance from assigned counsel and, in turn, are more likely to face incarceration and increased sentence lengths compared to White defendants.

Disparities in Sentencing Departures

The implementation of sentencing guidelines allows for little judicial discretion when deciding the sentence length for offenders. Notably, judges have less discretion when the charge carries a mandatory minimum sentence. The federal sentencing statute provisions allow federal judges to depart from the sentencing guidelines for extenuating reasons not based on race, gender, religion, or class (Doerner, 2012). Prior research on gender and sentencing departures is discussed by Jill Doerner (2012) in her journal article “Gender Disparities in Sentencing Departures: An Examination of Federal Courts.” In this article, prior research has discerned that White defendants are more likely to receive a sentence departure that is more lenient than other groups.

The greatest disparity between Black people and White people was found in the drug offense category. Along with this information, Black defendants were less likely to receive no incarceration if that is an option granted by the prosecution or courts; Black defendants are more likely to receive an upward adjustment in sentencing departure (receiving the longest sentence lengths, approximately 50% longer than White defendants); and if Black defendants receive a departure with a reduced sentence, the reduction is less than the reductions offered to white defendants and females (Doerner, 2012). The study also concluded that Black defendants and defendants without high school degrees were less likely than White defendants to receive a substantial assistance departure.

This aspect of sentencing departures disproportionately affects those in poverty. Furthermore, the decision to employ a favorable sentencing departure to the defendant is used more often in favor of white men and women. It has been concluded, after taking all legal and extra-legal factors into account, that judges and prosecutors utilize racial stereotyping when sentencing Black offenders.

Chapter III

Methodology

This study discusses the observable differences between the sentence length (length of incarceration or length of probation) for federal drug offenders based upon race. This study is meant to analyze the different sentence lengths for offenders based upon race. Previous literature on this topic consistently displays a disproportionate sentence for Black federal drug offenders compared to White federal drug offenders. However, despite receiving longer incarceration sentences, Black offenders receive a probation sentence proportionate to White people that receive a probation sentence.

Research Design

The essential research design of this thesis is that of a quasi-experimental study with the control group being White offenders and the experimental group being Black offenders. The independent variable for this study is race, a nominal variable, and the dependent variable for this study is sentence length. This study addresses the type of punishment received, probation or incarceration, as well as the length of the sentence for incarcerated offenders, measured in months; this is a ratio level variable. The method of data collection is gathering and collecting data from the Federal Sentencing Commission, which is secondary data that is available on the website ICPSR (icpsr.umich.edu). The data collected is case-level data.

Sampling

The federal sentencing data that is used contains a national sample of cases obtained from the federal court system. Utilizing this source, a purposive sample is procured by limiting the sample size to include only drug cases in federal courts. The sample has been limited to include only federal drug cases due to the excessive judicial discretion that is utilized in the Federal Courts system. The sample is limited to a single year, 2015-2016, and then limited to only drug offenders, in order to establish a more suitable data set and to control for spurious effects of various offenses. The population for this thesis research project is all United States federal cases. The sampling frame is 2015-2016 federal drug cases. The sample size is 21,387 federal drug offenders.

Chapter IV

Results

The data obtained from the ICPSR website was utilized to assess the sentence length of federal drug offenders. The dataset that was downloaded from the ICPSR website was the 2015-2016 federal prisoner catalog. Once this dataset was downloaded it was converted to SPSS. At this point the variables were narrowed down; all variables that did not involve race, sentence length, and probation length were deleted from the original dataset to account for the impact of spurious variables. The remaining variables were MONRACE, NEWRACE, PRISDUM, PROBUM, SENTTOT, SENTTOT0. These variables were grouped into pairs and trios in order to determine the total time served in prison and on probation for offenders based upon race. First, the data set, Table 1, that contains the demographic for federal drug offenders is listed below.

Table 1: Race of Defendant

		DEFENDANT'S RACE			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	White / Caucasian	15331	71.7	71.7	71.7
	Black / African-American	5202	24.3	24.3	96.0
	American Indian or Alaskan Native	262	1.2	1.2	97.2
	Asian or Pacific Islander	324	1.5	1.5	98.7
	Multi-racial	14	.1	.1	98.8
	Other	101	.5	.5	99.3
	Info on race not available	151	.7	.7	100.0
	Non-US American Indians	1	.0	.0	100.0
	10	1	.0	.0	100.0
	Total	21387	100.0	100.0	

As shown in Table 1, the total sample size includes 21,387 federal drug offenders. The frequency of White federal drug offenders is approximately 71.7%, 15,331 individuals, of the total federal drug prisoner population. The frequency of Black federal drug offenders is approximately 24.3%, 5,202 individuals, of the total federal drug prisoner population.

Next, a statistical data set, Table 2, displaying the total probation ordered in months, PROBUM, and the total prison sentence in months without zeros, SENTOT, is displayed below. According to Table 2 the mean for length of probation is approximately thirty-six months whereas the mean for total prison sentence is approximately sixty-five months for federal drug offenders. This information simply reflects that the average federal drug offender will serve approximately thirty-six months on probation. This information also reflects that if a federal drug offender is sentenced to time in prison the average sentence is approximately sixty-five months. An interesting aspect of this table is the difference in standard deviation from the mean for probation length versus incarceration length. The average, mean, amount of months an offender will serve on probation is approximately 36 months, with a 16-month standard deviation from the mean, meaning an offender will typically serve between 20 months and 52 months on probation. The average prison time, however, is a different story. The mean amount of time served incarcerated is approximately 65 months, with a standard deviation of 63 months. Therefore, a defendant may be facing between 2 months and 128 months incarcerated.

Table 2: Total Prison Time and Probation Time in Months

		Statistics	
		TOTAL PROBATION ORDERED IN MONTHS	TOTAL PRISON SENTENCE IN MONTHS WITHOUT ZEROS
N	Valid	1100	19640
	Missing	20287	1747
Mean		36.14	65.3914
Median		36.00	48.0000
Mode		36	60.00
Std. Deviation		16.648	63.31742
Minimum		2	.03
Maximum		60	528.00

The variables MONRACE, PRISDUM, and SENTTOT were grouped together and used to create Table 3 displaying the total time in prison in months for Black federal drug offenders and White federal drug offenders. Table 3 is an independent T-test measuring race and sentence length. Table 3 is listed below. Using the information from Table 3 below, the length of prison time for White federal drug offenders, 14,167 individuals, is approximately sixty months. The length of prison time for Black federal drug offenders, 4,764 individuals, is approximately eighty months.

Table 3: Group Statistics, Total Prison Time without Zeros

Group Statistics					
	DEFENDANT'S RACE	N	Mean	Std. Deviation	Std. Error Mean
TOTAL PRISON SENTENCE IN MONTHS WITHOUT ZEROS	White / Caucasian	14167	60.3553	61.35044	.51544
	Black / African-American	4764	80.8556	67.15882	.97301

Table 4 below contains information concerning the mean and standard deviation as well as the statistical significance relating to the total prison sentence in months without zeros. The data in Table 4 shows that the statistical significance of the results is .000.0 This indicates the results are statistically significant and we reject the null hypothesis stated in the introduction of this thesis.

Table 4: Independent Sample Test, Prison Time in Months

		Independent Samples Test								
		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
TOTAL PRISON SENTENCE IN MONTHS WITHOUT ZEROS	Equal variances assumed	45.364	.000	-19.472	18929	.000	-20.50035	1.05282	-22.56397	-18.43673
	Equal variances not assumed			-18.618	7609.806	.000	-20.50035	1.10110	-22.65882	-18.34189

Finally, the two remaining tables, Tables 5 and 6, concern the frequency, rate, and standard deviation of probation ordered in months for federal drugs offenders. The independent sample t-test utilized for race and probation length is listed below, Table 5. The sample size includes 732 White federal drug offenders and 282 Black federal drug offenders. The average, mean, probation length for White offenders is approximately thirty-seven months on probation whereas the average, mean, probation length for Black offenders is approximately thirty-four months.

Table 5: Group Statistics, Total Probation Time Ordered in Months

Group Statistics

	DEFENDANT'S RACE	N	Mean	Std. Deviation	Std. Error Mean
TOTAL PROBATION ORDERED IN MONTHS	White / Caucasian	732	37.05	16.271	.601
	Black / African- American	282	34.95	17.373	1.035

The last data set, Table 6, listed below, contains Levene’s test for equality of variances, the statistical significance, and the standard deviation of probation for federal drug offenders. The statistical significance of this data set resulted in a .072, which is considered not statistically significant; therefore, this data set accepts the Null Hypothesis discussed in the introduction.

Table 6: Independent Sample Test, Total Probation Time in Months

		Independent Samples Test								
		Levene's Test for Equality of Variances		t-test for Equality of Means					95% Confidence Interval of the Difference	
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	Lower	Upper
TOTAL PROBATION ORDERED IN MONTHS	Equal variances assumed	2.854	.091	1.799	1012	.072	2.091	1.162	-.190	4.372
	Equal variances not assumed			1.748	481.866	.081	2.091	1.197	-.260	4.442

Chapter V

Discussion

This thesis studies and analyzes the differences between Black federal drug offenders and White federal drug offenders. After gathering information and data from the ICSPR website, the information was studied and condensed into a few variables and analyzed through tables. The results indicate a significant disparity between the time served in prison for White federal drug offenders and Black federal drug offenders. The average sentence length for a White offender was approximately sixty months served in federal prison, whereas a Black offender will serve an average length of approximately eighty months in a federal prison. This is approximately a thirty percent longer sentence for Black offenders based solely upon race.

Building on the information in the Literature Review Chapter, Black offenders may serve significantly longer sentences due to inadequate counsel, the type of attorney used during trial, as well as disparities in sentencing departures. The influence and power of significant judicial discretion appears to result in discriminatory sentences for Black offenders more so than White offenders for the same crime. However, the prior history of criminals is also a factor in the total length of their sentence. In this study, there was no dataset or breakdown of prior criminal history; therefore, it is uncertain whether offenders that were incarcerated for longer periods of time were habitual offenders or not. Also, this study did not include the type of attorney used during trial; therefore, it is uncertain whether the type of defense played a role in the longer sentence length for Black offenders.

Analyzing the probation data, there is not a significant disparity between the length of probation for White offenders versus Black offenders. White offenders will serve approximately thirty-seven months on federal probation, whereas Black offenders will serve approximately thirty-four months on federal probation. There could be several reasons for the increased probation time for White offenders versus Black offenders. One of the potential reasons could be that since White offenders are less likely to receive longer incarceration time, they are more likely to receive a longer probation sentence in place of time spent in incarceration. Also, judges may look at White offenders and Black offenders who are eligible for probation as less violent and less of a societal risk therefore the probation sentences are more proportionate across the board for both Black and White offenders. Another reason for the increased probation length for White offenders could derive from the significantly higher number of White federal drug offenders than Black federal drug offenders. Future research on this subject may find it beneficial to analyze how offenders that receive probation are viewed differently than offenders that receive incarceration.

Conclusion

The Research Question of this thesis concerns the longer incarceration of Black federal drug offenders versus White federal drug offenders imposed by federal judges. The research hypothesis—Federal judges sentence African American men more harshly for drug offenses than Caucasian men who committed similar crimes—was proven true for incarceration through this study and analysis. This study concludes that Black federal drug offenders will receive incarceration for about thirty percent longer than White federal drug offenders. However, the lack of discrepancy for probation was a surprising

discovery made during the study. The study produced results that reflect an almost proportionate time on federal probation for White and Black offenders. In terms of policy implications, lessening judicial discretion by reinstating mandatory sentencing guidelines, the guidelines were repealed in 2004, and offering civil or criminal charges to be pressed against judges that use unjust discretion while sentencing could deter racial bias and ensure that disparity between Black and White offenders is reduced. A theoretical implication of this study relates to the previously quoted statement by Cesare Beccaria in the introduction describing the balance between the crime and the punishment. In other words the punishment should be “just and fit,” or proportionate to the crime. Yet how can a punishment be “just and fit” when a White offender and a Black offender receive different sentences for the same crime.

One of the limitations of this study is the lack of information on the offender’s past criminal history. Without this information, it is uncertain whether or not the length of incarceration is based solely upon race or other factors; however, there is a significant observable difference between the length of incarceration for White offenders and the length of incarceration for Black offenders.

For future research it would be interesting to see an account of the levels of criminal history of White and Black offenders and how that plays a role in the sentencing of federal drug offenders. It would also be interesting to see this study repeated with poverty as a variable. This study can also be reconstructed to study one of the many federal and state crimes such as, violent crimes, property crimes, and cyber-crimes to determine if race is a critical factor in sentencing.

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