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Race and Criminal Sentencing: A Review of the Literature and an Empirical Study of the Relationship between Race and Sentence Outcome

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RACE AND CRIMINAL SENTENCING:
A REVIEW OF THE LITERATURE AND AN
EMPIRICAL STUDY OF THE RELATIONSHIP BETWEEN
RACE AND SENTENCE OUTCOME

by

Keith W. Coopridger

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University of Chicago in Partial Fulfillment
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Master of Arts

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VITA

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INTRODUCTION

The purpose of the present study is to examine the relationship between race and criminal sentencing. By reviewing the pertinent literature and by analyzing a body of relevant empirical data, certain key theoretical, conceptual, empirical, and methodological issues will be addressed which embody this particular research problem as it has evolved in the sociological and criminological traditions. It is not my intention to test a certain theory or to develop new conceptual schemes, but rather to explore the impact of race on criminal sentencing outcomes. Hence, the project at hand has an exploratory function, namely, to become familiar with the association between race and sentencing.

The "sentencing problem" consists of various dimensions including the objectives of punishment, the criteria for sentencing, and the consistency of sentencing (Green, 1961). Although they are related issues, the latter problem - the lack of uniformity in sentence outcomes given similar crimes - is the central concern of this thesis. More specifically, this paper will focus on the following research question: Are black convicted criminal offenders more likely than white convicted criminal offenders to receive a sentence of incarceration rather than a sentence of probation? Suther-

land and Cressey (1978:138) assert that "numerous studies have shown that blacks are more likely to be . . . committed to an institution than are whites . . . and many other studies have shown that blacks have a poorer chance than whites of receiving probation. . . ." Since incarceration can be one of the most oppressive aspects of our legal system, it is important to identify what criteria effect such a judicial disposition and to determine the "fairness" of its application. Any racial impact on sentencing decisions may indicate racial discrimination in the administration of criminal justice and perhaps suggest that the significance of race is not "declining" in American society.

STATEMENT OF THE PROBLEM

Race has long been considered an important concept and variable in sociological inquiry. Its impact on social relations and social processes has continued to stimulate theoretical construction and social scientific research in many different areas of sociology. Indeed, the subject of race itself partially embodies a unique sociological sub-field, which is generally referred to as the study of "minority groups" or "race and ethnic relations." In short, race is often a significant source of variation in a number of different kinds of sociological analyses.

In particular, the influence of race or racial attributes has attracted much attention in the field of criminology - whether it be, broadly speaking, on the investigation of the association between race and criminal behavior or the relationship between race and the various events (e.g., arrest, conviction, sentencing) in the criminal justice process. One essential part of the criminal justice system is the criminal court. The functions of the court ordinarily consist of determining whether or not the accused person is guilty of committing a given crime and, if so, imposing some sort of punishment on that person. Although judges in most cases possess the

legal authority to make the final decision (at least symbolically) regarding the kind of punishment imposed, prosecutors, defense counsels, and probation officers also provide influential input into the sentencing decision-making procedure, especially during the process of plea-bargaining.¹ Neubauer (1979:392-96) calls this aggregate of judicial actors the "courtroom group" (see also Eisenstein and Jacob, 1977). In this sense, criminal sentencing is a collective decision-making process. The influence of race on this process continues to draw both empirical and theoretical interest in the field of criminology.

In general, criminal sentencing refers to the application of a specific type and form (e.g., the length of imprisonment or the conditions of probation) of punishment to a convicted offender by a sentencing authority (Neubauer, 1979:368). Traditionally, there are five sentencing alternatives: fines, suspended sentence, probation, incarceration, and capital punishment. However, excluding capital punishment and assuming that statutory provisions entail such a determination, the "major decision at sentencing involves a choice between probation (a sentence to community supervision without incarceration) or a sen-

¹Neubauer (1979) notes that the interaction of the courtroom group and its effect on the outcome of the sentencing decision-making process is most pronounced during plea-bargaining.

tence to jail or prison" (Newman, 1975:261; see also Dawson, 1969:70; Wheeler et al., 1982; Diamond and Zeisel, 1975).² This decision is often referred to as the "in-out" decision, that is, the choice between incarceration or nonincarceration.

The in-out decision is the first determination to be made at sentencing, a process which has been described as a two-step "bifurcated" sequence of events (Wilkins et al., 1978; Sutton, 1978a). The second step in the sentencing decision-making process is the determination of the length of sentence to be imposed. Given incarceration, the sentencing authority must decide the length of imprisonment within statutory guidelines. In essence, the sentencing process consists of two empirically and conceptually distinct decisions: (1) the decision to incarcerate, and (2) the decision as to length of sentence. This distinction is important because the criteria that determine incarceration may differ from the criteria that determine length of imprison-

²As will be seen, this study precludes examination of capital punishment and therefore is not of concern here.

ment.³ Although both decisions make-up the sentencing process and the latter decision may be somewhat contingent upon the outcome of the former decision, both events can be addressed separately. The present examination of criminal sentencing will focus on the incarceration or in-out decision.

The impact of race on the incarceration decision may be reflected in the overrepresentation of blacks in the state and federal prison systems. Blacks at the end of 1981 composed 46 percent of the combined federal and state prison population - almost four times greater than their 12 percent share of the total 1981 U.S. population (U. S. Department of Justice, 1983:5). Table 1 illustrates the wide discrepancy between white and black incarceration rates at the national, state, and regional levels. As can be seen, for example, the national incarceration rate for blacks was more than six times greater than that for whites in 1981. This discrepancy also exists in similar proportions at the state

³For example, Sutton (1978a) found that "type of offense" at conviction was the best predictor of length of prison term, while "prior criminal record" was the best predictor of incarceration. The various objectives of punishment (deterrence, incapacitation, rehabilitation, and retribution) may also play a role in determining incarceration and length of imprisonment. The idea of deterrence may affect more strongly the incarceration decision, but the length of sentence decision may be more affected by the need for incapacitation. On the other hand, the chance of receiving a probationary sentence may be enhanced by a strong rehabilitative philosophy (see Remington and Newman, 1971:540-42).

Table 1

INCARCERATION RATES BY JURISDICTION,
REGION, AND RACE, 1981¹

<u>REGION/INSTITUTION</u>	<u>TOTAL</u> ²	<u>BLACKS</u>	<u>WHITES</u>
United States, Total	163 ³	635	101
Federal Institutions	12	33	8
State Institutions	150	602	93
Northeast	109	550	62
North Central	123	634	71
South	212	601	125
West	128	637	108

¹Number of prisoners per 100,000 U.S. population in each category.

²Includes all races not shown separately.

³Federal and State totals do not add to U.S. totals because of rounding.

SOURCE: U.S. Department of Justice, Prisoners in State and Federal Institutions on December 31, 1981., March 1983.

and regional levels of analysis. Some of this difference in the rates of incarceration may result from blacks committing a disproportionate amount of serious crimes (Hindelang, 1978; Blumstein, 1982), having more extensive prior criminal records, or being less "socially stable" (e.g., unemployed, unstable residence). Past empirical research and sociological theory suggests, however, that some of it may be due to the differential or 'alternative' treatment (racial discrimination?) of blacks in the criminal justice system, particularly at the point when choosing between prison and proba-

tion. It would appear at least initially that there is some sort of justification for the continued analysis of the relationship between race and criminal sentencing outcomes, or to put it more hypothetically, for the proposition that race is a structural antecedent to the differential imposition of incarceration.

The differential imposition of punishments to criminal offenders in the judicial system can be linked to the broader sociological problem of variations in societal reactions to crime.⁴ More specifically, the fundamental question of what to do with criminals once they have been found guilty of committing a given crime has involved various societal responses which, in effect, have stimulated different policies and methods of criminal sentencing.⁵ One

⁴The term societal reaction is used in its less restrictive sense, referring to the methods of dealing with crime and criminals. It does not imply, at this immediate juncture, the more formal labeling or "societal reaction" perspective (see Bernstein et al., 1977a).

⁵The distinction between the precise and fixed punishment of determinate sentencing and the imprecise penalties of indeterminate sentencing is a relevant example. The various ways in which society has reacted to criminality are complex and enormous, to say the least. Generally speaking, however, societal reactions to crime in terms of criminal sanctions range from a pure punitive philosophy to a more enlightened, "positivistic" approach of treatment and intervention. For an introduction to the study of variations in societal reactions see Sutherland and Cressey (1978:301-84). Dershowitz (1976) also examines historical variations in the allocation of criminal sentencing authority and indicates some of their effects on judicial discretion and sentence consistency.

of the major criticisms of criminal sentencing is the occurrence of "unjustified variation" or disparity in the severity of sentences meted out to different groups in society. Indeed, the sentencing problem is often defined as the problem of sentence disparity (see Green, 1961) based upon certain legally-irrelevant criteria or "status characteristics" such as race, income, or social class (see Hagan and Albonetti, 1982).⁶ Sutherland and Cressey (1978:333) note that the "reactions to the crimes of persons of one status are different from the reactions of persons of another status. Discriminations have been made and are made because of the age, sex, wealth, education, political prestige, race, nationality, and other characteristics of the offender." Although some variation (e.g., differences due to offense seriousness) is to be expected (Wilkins et al., 1978:1; Sutton, 1978b:2), the differential response to crime based on extralegal factors such as those noted above are generally considered inappropriate and contradictory to the expectation that justice "be done" in our society (Nettler, 1979; Hagan and Bumiller, 1983:5-10). But it is in these socially significant factors that variations in societal reactions to crime are found and variations in criminal sentences are produced. The differential response

⁶The concepts of sentence disparity and racial discrimination will be examined in greater detail below.

to crime based upon race may signify, as Myrdal ([1944] 1962) indicated years ago, the existence of a dual standard or conflict of values in American society.

Given the postulates that race affects social behavior and that criminal sentencing is a form of social behavior, the possibility of racial influence in criminal sentencing leads us to the essential research question:

Are black criminal defendants more likely than white criminal defendants to receive a sentence of incarceration rather than a sentence of probation; and, if so, how does this vary based on differences in offense seriousness, prior criminal record, and in the relationship of the victim to the defendant?

SOME CONCEPTUAL DILEMMAS

Previous studies and discussions on racial discrimination in criminal sentencing or sentence disparity based upon race have often failed to define adequately, if at all, the concepts of "discrimination" and "disparity" (Forst, 1982; Hagan and Bumiller, 1983). The failure to accurately define these terms and, if they were defined, the inconsistency of their meanings and uses has created conceptual problems in sentencing research. One may ask, given racial differences in criminal sentencing outcomes, what do we infer: sentence disparity or racial discrimination? Of course, one could avoid this issue by simply concluding that racial differentials in criminal sentencing outcomes do exist, if such was the finding. However, racial discrimination and sentence disparity are legitimate and fundamental causes of social, political, and moral concern and to disavow or minimize the presence of such phenomena is to perhaps undermine the abstract ideals of justice, fairness, and equality under the law and their practical application in our society (see Nettler, 1979; Unnever et al., 1980:197).

If racial discrimination or sentence disparity was defined, it was frequently a general or vague definition.

For example, in regards to disparity, D'Esposito (1969:182) suggests that unjustified sentence disparity exists when the "rationale" for disparate sentences "cannot be traced to relevant distinctions of character or behavior which bear a certain known relationship to the aims of punishment." Dawson (1969:215) simply defines sentence disparity as the "unjustifiable differences in the use of probation and the length of prison sentences." Green (1961) seems to equate sentence disparity with the lack of uniformity in sentences for cases of equivalent gravity. Wilkins et al. (1978:1) refer to disparity as "unjustified variation" in sentencing outcomes given "similar offenders committing similar offenses." Finally, given persons committing the same offense under similar circumstances, Forst (1982:30) refers to disparity as different sentences that "cannot be justified by reference to some legally-relevant variables, that is, to factors that have some rational relationship to the aims of the criminal law." It appears, then, that in some cases disparity implies the intrusion of extralegal factors that undermine the sociolegal objectives of the sentencing system, whereas in other cases disparity suggests the incongruity or inequitable differentiation of sentencing outcomes. Although there are some common elements apparent in this sample of definitions, the lack of consistency and

precision when defining disparity appears throughout the sentencing literature (Blumstein et al., 1983a:72).⁷

The same confusion applies to the concept of discrimination. Kleck's (1981) review of the literature on differentials in the racial distribution of criminal sentences defines racial discrimination as the "imposition of more severe dispositions on members of a subordinate racial group, independent of their legally relevant individual merits, and primarily as a direct result of the conscious or unconscious racial prejudice of the sentencing decision-makers." Discrimination, according to Nagel (1969:102), "implies a deliberate attempt on the part of judicial process decision makers to favor one group over the other." Although Hagan and Bumiller (1983:9) define (for

⁷One of these elements is the idea of variation. Indeed, the essence of disparity is variation (Forst, 1982:24) or the condition of being different from some norm or standard. Unfortunately, the word "disparity" has become pejorative and connotes "malicious practices on the part of judges" (Wilkins et al., 1978:1). The distinction, usually based on a value judgment or an arbitrary decision, is sometimes made between legitimate variation and "disparity." On the contrary, both concepts imply differences in sentences. Without the problem of deciding where legitimate variation ends and disparity begins, we can simply speak of warranted or justified disparity and unwarranted or unjustified disparity; thus avoiding the labeling of variation as disparity. In short, disparity does not only imply unjustified variation in its pejorative context, but refers to any kind or degree of differences in sentences meted out to offenders. It may or may not reflect differences that are often appropriate, such as, disparity due to varying degrees of offense seriousness and prior criminal record.

the purposes of their article) discrimination as "a pattern of sentencing regarded as unfair, disadvantaging, and prejudicial in origin," Hagan's (1977) earlier analysis of the concept of discrimination revealed multiple meanings of the term, "each of them vague and lacking in empirical criteria."⁸ Blumstein et al. (1983a:73) suggest that a finding of any kind of discrimination "first requires evaluation of the legitimacy of the potential factors associated with sentencing outcomes." Assessment of these factors can be "highly subjective" and relative. For example, employment may be a legitimate factor when deciding to release from custody a defendant pending trial, but that same factor may be illegitimate if used when determining sentence. Although race is clearly an illegitimate criterion for the determination of sentences, perhaps the consideration of what is discriminatory will always be an arbitrary one, often involving subjective value judgments by the various actors in the criminal justice system.

Given these conceptual difficulties that prevail in the sentencing research, Blumstein's et al. (1983a) important review of the sentencing literature provides clarification of the concepts of disparity and discrimination as they

⁸Hagan (1977) does suggest a way to avoid these definitional problems by designating the "search" for discrimination as the study of the antecedents (and consequences) of differential or alternative treatment.

Table 2

CHARACTERIZING SENTENCE OUTCOMES IN TERMS
OF DISPARITY AND DISCRIMINATION

Application of Sentencing Criteria

<u>Legitimacy of Sentencing Criteria</u>	<u>Consistent</u>	<u>Inconsistent</u>
Legitimate	No Disparity and No Discrimination	Disparity
Illegitimate	Discrimination	Disparity and Discrimination

SOURCE: Alfred Blumstein, Jacqueline Cohen, Susan E. Martin, and Michael H. Tonry, Editors. Research on Sentencing: The Search for Reform, Vol. I, 1983a.

relate to criminal sentencing. The two concepts can be distinguished in terms of the legitimacy of the criteria used in determining sentences and the consistency in the application of those sentencing criteria given similar cases. As indicated in Table 2, discrimination involves the consistent use of "illegitimate" criteria in determining sentences whereas disparity entails the "inconsistent" application of legitimate sentencing criteria. The authors suggest that race is the "clearest example" of an illegitimate criterion, while differences among judges within the same jurisdiction or in different jurisdictions is a common example of disparity. Discrimination is said to occur "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." On the other hand, disparity "exists when 'like cases' with respect to case attributes - regardless of their legitimacy - are sentenced differently." Discrimination relates to some aspect of the case itself, whether it be the attributes of the offense, the characteristics of the offender, or case-processing variables, such as pretrial release status or method of conviction. Disparity pertains to the attributes of the sentence decision-making process (or system), such as the social context in which a sentence decision is made, the various social, legal, political, and philosophical backgrounds of the individual decision-makers, and the procedural and organizational features of the crime processing system. As Blumstein et al. (1983a:73) point out,

discrimination focuses largely on the invidious role of certain personal attributes of the offender, particularly race and socioeconomic status, and the use of various case-processing variables. Concern for disparity, on the other hand, centers on the role of the organizational or structural context in which sentencing decisions are made and on the attributes of individual decision makers.

Based on the above conceptualizations, it is perhaps more accurate to speak of discrimination based upon the racial attributes of the criminal offender than it is to speak of sentence disparity based upon race. For the

purposes of this study then, I will refer to racial discrimination in criminal sentencing.

Another conceptual problem in sentencing research is the distinction made between legal and extralegal factors in sentencing decisions. Much of the theoretical discussions and empirical studies focusing on differential sentencing use the terms "legal" and "extralegal" frequently but fail to provide clear, if any, definitions of these concepts. Conflict and labeling theorists seem to equate extralegal variables with the social attributes of the offender, such as race and social class (Quinney, 1970:168; Bernstein et al., 1977a). Green (1961:29) indicates that legal factors in sentencing are those "variables which are recognized by law as suitable measures of the gravity of a case: the nature of the offense, the extensiveness of the criminal activity charged, and the prior criminal record of the offender." Conversely, Green suggests that legally-irrelevant factors are those variables not incorporated into the law for consideration in sentencing decisions, such as race, sex, and minority-group status. Hagan (1974:380n) notes that 'extralegal attributes' are those "perceived characteristics of the offender that are legally irrelevant to the imposition of sentence." Lotz and Hewitt (1977:39) identify, among other variables, age, education, socioeconomic status, marital status, and employment history as 'legally

irrelevant' criteria "because they are not recognized as violations of criminal statutes or as sufficient grounds for rescinding civil rights or liberties." It appears that the distinction between what is legal and what is extralegal is based upon a given criterion's embodiment (or lack thereof) with the precepts of the criminal law. Hence, for the present purposes, legal factors are those criteria defined in the criminal statutes as relevant to the sentencing decision, whereas extralegal variables have no basis or grounding in the criminal law.

However, it should be noted that the law has been criticized as being an "ambiguous guide" to those factors which may legitimately influence sentencing decisions (Hagan and Bumiller, 1983). Bernstein et al. (1977b:367) illustrate the problem:

First, there is considerable variation from one jurisdiction to another in the procedural law that stipulates what factors are legal versus those that are extra-legal in criminal justice decisions. Second, what is specified in a statute as legal for one stage of criminal justice processing may not be legal for another stage, e.g., community ties (flight risk) is generally a legal consideration for pre-trial release status decisions, but not for plea bargaining or sentencing decisions. Third, some variables ordinarily placed in the 'legal' category (e.g., prior record of convictions) may themselves have resulted from some combination of consideration of legal and extra-legal variables in some prior processing.

The changing and ambiguous nature of legal standards constitutes a major obstacle to the clear distinction

between legal and extralegal variables that may affect sentencing decisions as well as other decisions in the criminal justice process.

Rather than thinking in terms of legal and extralegal, Hagan and Bumiller (1983:5-10) advise to speak of "legitimized" and "nonlegitimized" influences on criminal sentencing. Considered as a "product of ongoing social and legal processes," Hagan and Bumiller define legitimate and nonlegitimate influences as "those within a given social structure and context that the public thinks should and should not affect sentence severity." For example, the authors present data, based on a 1977 national survey of public attitudes regarding factors which may affect sentencing decisions, that indicate that prior criminal record and offense type are legitimate influences on sentencing decisions whereas economic and ethnic characteristics are considered nonlegitimate influences. This closely corresponds to what traditionally has been called legal and extralegal. In spite of this similarity, this alternative conceptualization attempts to acknowledge the "empirical" nature of criminal sentencing decisions as opposed to its purely legal dimension. Given these conceptual dilemmas, it appears that no matter how one labels the factors which affect sentence decision-making, if one is to detect extralegal or nonlegitimate influences in criminal sentencing,

one must understand the social and legal context and conditions in which certain factors become known as extralegal or nonlegitimate.

RACE, SENTENCING AND SOCIOLOGICAL THEORY

Criminal sentencing can be viewed as a social process that involves the interaction of various actors situated in the context of the criminal court. The sentencing process may begin during the pretrial stages, when the defendant and counsel negotiate a plea of guilty with the prosecuting attorneys in exchange for a specified sentence. Or, it may not begin until the judge or jury has determined guilt and at that point the presentence investigation by the probation officer starts the sentencing process. However the sentencing procedure is modeled, it consists of various role interrelationships which exist in a certain organizational and community social structure. Hence, criminal sentencing is amenable to sociological analysis and theory.

The sociological study of criminal sentencing has historically involved the examination of the effects of extralegal factors on criminal sentencing dispositions. Indeed, Hagan (1974) defines the sociological perspective in sentencing studies as the focus on extralegal attributes, which differs from the emphasis on purely "legalistic" criteria stressed in the "official-normative descriptions of the criminal justice system." As Hagan (1974:358) points out,

studies of judicial sentencing have tended to adopt a 'sociological viewpoint,' emphasizing the role of 'extra-legal attributes' of the offender in the determination of judicial dispositions. The independent variables given prominence by this approach include the race, sex, age, and socio-economic status of the defendant. Although such variables are presumably legally irrelevant to the imposition of sentence, sociologically-oriented studies have attempted to detect their extra-legal influence.

Given this broad sociological perspective or "viewpoint" on the role of extralegal attributes in criminal sentencing, race in particular has attracted much attention in sentencing studies (Hagan, 1974; Kleck, 1981). However, it has been repeatedly noted that the search for systematic bias and racial discrimination in criminal sentencing is not guided by any clear theoretical frameworks (Harris and Hill, 1982; Lotz and Hewitt, 1977; Hagan and Bumiller, 1983). Some authors suggest that this lack of theoretical substance in criminal sentencing studies is due to sociology's and criminology's traditional emphasis on the study of crime causation (Lotz and Hewitt, 1977; Sutherland and Cressey, 1978:301). Others point out the futility of conventional "monolithic" theories to capture the empirical and theoretical complexity of discrimination in criminal sanctioning (e.g., Harris and Hill, 1982:166), while Hagan (1975:626) asserts that sociological theories (such as conflict and labeling theories) do isolate salient variables, but "they do not suggest propositions sufficiently precise to allow a deductive model-testing approach. . . ." It may even be argued that the concept of race itself is not fully inte-

grated with theoretical sociology (van den Berghe, 1967). As van den Berghe points out, race is either incorporated with a larger theoretical framework such as social status differentiation or broken down into analytical components, for example racial distinctions. "Thus a sociologist might regard racial distinctions as a special case of invidious status differentiation" (van den Berghe, 1967:6). In short, van den Berghe suggests that there is no sociology of race in and of itself, at least not at the theoretical level.

Whatever the reasoning behind the lack of sociological theoretical guidance in sentencing studies (as well as crime processing studies in general), there have been attempts by sociologists to connect the problem of race and criminal sentencing with conflict and labeling theories (e.g., Hagan, 1975; Chiricos and Waldo, 1975; Lizotte, 1978; Bernstein et al., 1977a). Since the stated purpose of this paper is not to test certain theories or to review the limited empirical support and/or refutation of such theories, I will direct my discussion towards a description of the relationship of the problem of race and criminal sentencing to the conflict and labeling theoretical frameworks.

In relation to our problem, that is, race differences in criminal sentencing, conflict theory begins with the postulate that the formulation of laws in our society are

designed to protect the interests and preserve the hegemony of the ruling or dominant class. It conceives "modern capitalism as an economic infrastructure that requires a coercive system of criminal justice to preserve the domination of one class by another" (Hagan et al., 1979:507). In effect, discrimination or bias enters the criminal justice system at its earliest stages, namely, at the legislative or political stage where certain behaviors are criminalized and the legal response in the form of criminal penalties is established. The problem becomes one of unequal application of the laws to particular groups in society who lack "power and resources," specifically those groups located in the lower socioeconomic order. The "idea is that law is applied differentially to protect the hegemony of a ruling elite and that, while those at the top may violate the law, they are less vulnerable to its authority because they have more power and resources to escape severe dispositions" (Unnever et al., 1980:204). Thus criminal sanctioning will vary based upon one's status in the social structure. Accordingly, Chambliss and Seidman (1971:475) assert the following conflict propositions:

Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of the offender, the greater is the likelihood that sanctions will be imposed on him.

When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class.

Race is often considered a conflict variable (Quinney, 1970; Chambliss and Seidman, 1971; Hagan, 1975; Chiricos and Waldo, 1975; Lizotte, 1978; Unnever et al., 1980; Hagan and Albonetti, 1982). It is presumably linked with the social class of the defendant and consequently represents an important source of conflict in our society. Conflict theory suggests that race, as well as other extralegal characteristics of the offender, has a strong influence on the decision-making process in the criminal justice system. Hence, it is traditionally predicted by conflict theorists that minority racial groups, specifically blacks, will receive more severe sentences than whites.

In summary, conflict theory views the criminal justice system in general and criminal sentencing in particular as a process of differential treatment or differential criminalization of offenders based upon class-linked, extralegal factors, such as race. Furthermore, the imposition of punishment is a social process regulated by group interests and is a function of the power and resources available to the criminal defendant. Racial differences in criminal sentencing are, for the most part, reflections of the unequal application of the law to particular groups in society. Indeed the "conflict perspective supplies a format to test for inequality in the legal system. [It] states that our legal system does not apply the law impartially with regard to . . . race" (Lizotte, 1978:565). A central

theme, then, of conflict theory as it pertains to criminal sanctioning is the inequalities of the legal system.

Although not as popular as conflict theory when it comes to explain racial differentials in criminal sentences, labeling theory has attracted some attention in sentencing research (e.g., Bernstein et al., 1977a; Chiricos et al., 1972). Generally speaking, the labeling or interactionist perspective attends to the process by which alleged law violators come to have a criminal status conferred upon them (Bernstein et al., 1977a). This process is a socially-constructed one, involving the interaction of the defendant with the various officials of the crime processing system and consisting of a "definition of the situation" that emerges through this interaction. As Hagan (1975:621) explains, this perspective

views the administration of justice as a socially constructed process, mediated by symbol exchange, and guided by control agent perceptions and definitions of the situations involved. Emphasized in this perspective are the control agent's on-view perceptions, and consequent definitions, formed in interaction with clients.

Thus, Piliavin and Briar (1964) found that processing decisions "were based largely on cues which emerged from the interaction between the officer and the youth, cues from which the officer inferred the youth's character." These "cues" included personal characteristics of the defendant, such as age, race, demeanor, and the youth's group

affiliations, and these factors were found to influence the disposition of a case more so than the offense itself. In a similar vein, Sudnow (1965) found that the criminal justice personnel's definition of the situation influenced the manner in which a case was handled for disposition. Sudnow explained that public defenders and prosecuting attorneys construct offense and offender categories derived from socially-significant criteria. These conceptual categories constitute what Sudnow calls "normal crimes," which the aforementioned judicial actors regard as "the typical manner in which offenses of given classes are committed, the social characteristics of the persons who regularly commit them, the features of the settings in which they occur, the types of victims often involved, and the like." It is not necessarily the "statutorily conceived features" that are important for processing routine, "normal" offenses but their "socially relevant attributes." Hence, by defining the situation (i.e., the crime and criminal) as normal, the public defender and prosecuting attorney utilize a socially-constructed conceptual apparatus for case disposal.

The imposition of sentence is part of the process by which a person becomes labeled a criminal. Sentencing decisions are, in effect, labeling decisions, that is, "decisions that can be taken as valid indicators of formal societal reactions" (Bernstein et al., 1977a:745). Indeed, labeling theory focuses on the societal reaction to crime

and the consequences of this social reaction to crime. The central question of this perspective is, controlling for the offense, what factors produce variation in the societal reaction? In reference to criminal sentencing, a core assumption of labeling theory is that societal reaction to crime varies with the "social attributes" of the defendant (Bernstein et al., 1977a). Race is considered a social attribute and the expectation is that blacks will be responded to more harshly than whites.⁹ This is evident when one examines the racial similarity or dissimilarity of the victim-offender relationship. Garfinkel (1949) found that blacks who killed whites generally received more severe sentences than in the other victim-offender racial combinations. Garfinkel linked this differential response to crime to different types of social definitions of the situation. From arrest to final disposition, "the offender is involved

⁹In this respect, labeling and conflict theories are similar in that they both assume that social or extralegal characteristics affect the outcome of sentencing (see Harris and Hill, 1982). However, the object of analysis in the labeling perspective relative to criminal sanctioning is, generally speaking, the causes and consequences of variation in societal reaction, whereas the object of attention in the conflict perspective is the preservation of the dominant group's interests and the unequal application of the law. Conflict and labeling theories are also similar in that they both recognize the importance of status, power, and resources and their effects on criminal sanctioning. Labeling theory predicts that power and resources are positively related to the ability to avoid criminal stigma (Chiricos et al., 1972; see also Harris and Hill, 1982; Lotz and Hewitt, 1977).

in a system of procedures of definition and redefinition of social identities and circumstances." These definitions varied based on the interracial relationship of victim and offender. The consequence was a "highly discriminative type of treatment" accorded to black offender-white victim homicides.

Nevertheless, it is not enough to simply suggest that race and other social attributes are a source of variance in the societal reaction. More specifically, if black criminality is more likely to invoke a stronger societal reaction in terms of sentence severity than white criminality, than this unequal application of the criminal label could theoretically lead to a further commitment to a criminal identity or career on the part of blacks (Lemert, 1972:68; Chiricos et al., 1972). It follows that a stronger commitment to criminality ("secondary deviance") increases the probability of receiving a more severe sentence, that is, of receiving a sentence of incarceration rather than probation.

In summary, labeling theorists would view racial differentials in criminal sentences as one aspect of the much larger problem of variation in societal reactions to crime. The cause of this variation is presumably linked, in part, to social attributes of the offender, such as race. The sentencing decision is viewed as a labeling decision, that is, it indicates the degree of societal response to a

person who commits a crime. It is further suggested that the unequal imposition of the criminal label encourages the development of a criminal identity or career, thereby enhancing the risk of incarceration.

As noted earlier, there is a dearth of sociological theory in the criminal sentencing research literature. Much of the past sentencing research has been, sociologically speaking, atheoretical. Most of the research either reflects an "individual-processual" approach or a "structural-contextual" perspective (Hagan and Bumiller, 1983).¹⁰ Although the latter perspective has sociological significance, it is not tied to the traditional, extant sociological theories often used to explain differentials in the racial distribution of criminal sentencing outcomes. Conflict theory by far has been the most popular sociological theory to explain race differences in sentencing, but even its utility has been limited and criticized. As mentioned earlier, a major criticism of "grand" sociological theories is that they are too monolithic to grasp the "empirical and theoretical subtleties" apparent in the criminal sanctioning process. What may be needed to explain the complexity of differential sentencing is the construction of

¹⁰The individual-processual and structural-contextual perspectives will be explained more fully in the next chapter.

elaborate, multivariate models with the introduction of several legal and extralegal variables. Perhaps we should be focusing on the development of "middle-range" theories or grounded theory to explain the dynamics of differential sentencing.

to Hagan and Bumiller, why some studies find racial discrimination while others do not. Those studies that find discrimination (and, conversely, those that do not) are specifying the structural and contextual conditions that are most likely (or not likely) to result in discrimination.

The apparent inconsistencies in the empirical findings is also due in part to the methodological problems, various designs, and inadequate data of past criminal sentencing research. Several authors have discussed the methodological limitations and research deficiencies of existing sentencing studies (e.g., Hindelang, 1969; Hagan, 1974; Pope, 1975; Gibson, 1978; Sutton, 1978b; Spohn et al., 1981-82; Hagan and Bumiller, 1983; Blumstein et al., 1983a). Most of the relevant critiques are discussed below.

1. The Lack of Appropriate Legal and Extralegal Control Variables. Early sentencing studies had few, if any, control variables and, consequently, these early studies neglected to consider alternative hypotheses and explanations for the association between the defendant's race and the sentence imposed. Perhaps most importantly, they often failed to control for the influence of legally-relevant variables, such as offense seriousness and prior criminal record. When controls were used for offense and prior record, there were fewer findings of discrimination than in studies without such controls (Hagan and Bumiller,

1983:20). Kleck (1981:789) notes that the failure to control for prior criminal record "is probably the most important flaw in studies drawing a conclusion of racial discrimination, since the most methodologically sophisticated sentencing studies have consistently shown various measures of prior record to be either the strongest predictor, or among the strongest predictors, of sentences received." It would seem that some measure of control of prior criminal record and/or offense seriousness tends to reduce the likelihood that a study will find discrimination.¹² Moreover, the inadequate control of extraneous variables may result in a correlation between race and sentence that is actually spurious.

2. Alternative Sentencing Measures. The operationalization of the dependent variable - sentence - in the research literature is characterized by its lack of uniformity. Sentence has been measured in a variety of ways, including length of imprisonment, sentence type (e.g., prison, jail, probation, suspended sentence, fine), or by a manufactured scale based on the degrees of the "severity" of the sentence. Besides the practical problem of comparing studies with different operationalizations of sentence, this

¹²Controlling for the effects of prior criminal record and offense seriousness may not, however, offset discrimination that may have occurred at earlier stages of the criminal justice system, for example, at the arrest or prosecution stage.

inconsistency in the measurement of the dependent variable has led to problems in the culmination of research findings (Hagan and Bumiller, 1983).

In a similar vein, previous research has generally failed to distinguish between the type of sentence and the length of incarceration (Sutton, 1978b). Earlier studies have primarily viewed sentencing as involving a single decision. Only recently have researchers explicitly realized the importance of making the distinction between the decision to incarcerate the criminal and the decision as to length of sentence (e.g., Levin, 1977; Eisenstein and Jacob, 1977; Spohn et al., 1981-1982). This analytical and operational separation is important since the absence of discrimination in one decision may obscure discrimination present in another decision. Hence, it is necessary to examine these decisions separately. Furthermore, implicit in this bifurcation is a model of how sentencing decisions are actually made. This model, then, attempts to alleviate in part another criticism of the sentencing literature, that is, the absence of formal models of processing decisions (e.g., dismissal, conviction, sentencing) in the criminal justice system (see Klepper et al., 1983).

3. Inadequate Data and Sampling Problems. In previous research efforts, data often failed to reflect the complexity of the dynamics behind the sentence outcome.

Decisions at an earlier stage in the criminal justice system may affect decisions at the sentencing stage (see Bernstein et al., 1977; Swigert and Farrell, 1977). Much of the past research lacked the adequate data to analyze this "dynamic perspective" of criminal sentencing. The inadequacy of the available data also placed limitations on the measurement of the severity of sentences. Usually there was only indicator of sentence severity, namely, length of incarceration, and, as a consequence, the total range of sentences could not be operationalized. In addition to these problems, sentencing data represented various levels of analysis. Samples have been taken at the federal, state, and municipal levels, and these different social contexts or settings conceivably constitute a source of variation in and of themselves. For the most part, sentencing data tended to reflect a court or institutional level, but some samples consisted of individual judges as the unit of analysis. Sentencing studies have also been criticized for having small samples which sometimes necessitated the aggregation of dissimilar data bases. Aggregation of data could possibly mask the existence of discrimination (Eisenstein and Jacob, 1977); Gibson, 1978). In brief, limitations in research design and methodology were often a reflection of the shortcomings inherent in the data.

4. Inadequate Statistical Techniques. Besides the lack of control variables as noted above, earlier sentencing

studies tended to employ tests of statistical significance which indicated the probable existence of a relationship between two variables, but these studies neglected to use appropriate measures of association that indicate the strength of a given relationship. The relationship between race and sentence was often statistically significant, but the substantive significance, i.e., the strength of the association, was usually small (see Hagan and Bumiller, 1983). Hence, studies that concluded racial discrimination based on tests of statistical significance had no substantive meaning because the strength of the association between race and sentence was often weak. Given appropriate measures of association, perhaps a discrimination finding would not of been supported. In addition to the problem of appropriate statistical tests, certain quantitative methods of research fail to capture the analytical complexity of the determinants of sentencing. Simple bivariate crossclassifications characteristic of some sentencing research did not benefit from the use of control variables. Although a significant improvement over earlier research methods, linear regression models with additive assumptions were insensitive to the interactions among explanatory variables.

5. Absence of a Broad Range of Offenses. Single offenses or similar-type offenses were used in many studies, often resulting in a skewed or unrepresentative sample of

offenses. In many cases, only the most serious crimes such as robbery and homicide, which have a greater probability of receiving a more severe sanction like imprisonment, were incorporated into the research design.

6. Different Measures of Prior Criminal Record and Offense Seriousness. The concepts of "prior criminal record" and "offense seriousness" have been operationalized in a variety of ways, which have produced different degrees of correlation with sentence outcome (Hagan and Bumiller, 1983:12-13). Offense seriousness, for example, has been measured by type of offense or legal categories of criminal behavior, constructed scales of offense seriousness, judge's perception of crime seriousness, and by public surveys of appropriate sentences for crimes of different gravity. The measurement of prior criminal record has included the presence and absence of prior arrests and/or convictions, the number of previous arrests or convictions, the number of prior felony convictions, and the most serious prior conviction charge. These various operationalizations of prior record and offense seriousness raise the question of measurement error, i.e., how accurately are we measuring the influence of these factors? As noted above, different measures of prior record and offense seriousness correlate differently with sentence outcome thus suggesting that one way of measuring a given variable could display a stronger

impact on sentence outcome than an alternative measurement (see Unnever et al., 1980).

The fact that some studies find racial discrimination in criminal sentencing while others do not is tied to the methodological problems and criticisms that have been discussed above. Failure to utilize appropriate measures of association or to control for legally-relevant variables, for example, can result in conclusions of race discrimination that are, at the very least, questionable since in many instances the relationship between the defendant's race and sentence imposed is weak or suspect to the problem of spuriousness. This is not to suggest in total that contradictory findings in the literature are an artifact of methodological problems or faulty research designs. On the contrary, it is quite obvious and certain that any given study may find discrimination, but another study will uncover just the opposite. The important issue is to discover why some studies find discrimination while others do not. Once consistent patterns of findings are distinguished, general statements about the relationship between race and sentencing can be made. However, the inconsistencies in the extant sentencing research is a major cause of concern, since the inconclusive empirical findings have tended to inhibit the generation of "precise statements" about the relationship between race and

sentencing as well as to limit the development of a general theory of criminal sentencing.

Despite these problems and the fact that much of the variance in criminal sentences is unexplained, past research has given some perspective on and definition to the nature of the sentencing problem. For example, the evolution of the sentencing research has shown the importance of legally-relevant factors which are critical to the sentence decision and which tend to mediate the influence of race on sentence outcomes. Perhaps the two most predominant legally-relevant variables that affect sentences are prior criminal record and offense seriousness. As the comprehensive and state-of-the-art literature review of Blumstein et al. (1983a:11) points out,

the more serious the offense and the worse the offender's prior record, the more severe the sentence. The strength of this conclusion persists despite the potentially severe problems of pervasive biases arising from the difficulty of measuring - or even precisely defining - either of these complex variables. This finding is supported by a wide variety of studies using data of varying quality in different jurisdictions and with a diversity of measures of offense seriousness and prior record.

In addition to identifying variables crucial to the sentence decision, the literature has indicated that although race discrimination may not be "widespread" in criminal sentencing, there is evidence to suggest that it does occur under certain conditions and settings, for example, in specific regions or types of jurisdictions, with

certain types of crime, and in particular organizational processes and social contexts in which sentencing decisions are made (Hagan and Bumiller, 1983; Blumstein et al., 1983a; Kleck, 1981). Moreover, researchers and theorists are beginning to recognize the conceptual and empirical distinction between the decision to incarcerate the offender and the decision as to length of sentence. This bifurcation of sentencing suggests that the sentence (assuming that the crime is not nonprobationable) is a product of the two aforementioned decisions. Finally, if anything is indicative of this preliminary review of the literature it is the realization that the dynamics of the criminal sentencing process, and ultimately the sentence decision itself, are extremely complex. Although the underlying theme or grand thesis of much of the related sentencing research is that race directly influences sentencing, the relationship between race and sentence is usually indirect, often being linked by a number of other intervening variables in the causal chain. The more recent and sophisticated statistical methods such as path analysis and log-linear analysis have been able to reveal the complex indirect and interactive effects among a variety of explanatory variables.

Given the complexity of the subject matter, it is necessary to define the relevant boundaries of the research problem at hand. Since this paper specifically addresses

the question of whether black criminal offenders are more likely than white offenders to be incarcerated (either in jail or prison), I will limit the second part of the literature review to the following parameters of the sentencing problem:

1. the "in-out" decision, i.e., the judge's decision on whether an offender will be incarcerated or remain in the community on probation.

2. Noncapital-punishment sentencing. This thesis will only examine those studies which do not involve the death penalty. Research that has studied the relationship between race and the imposition of the death penalty will be excluded primarily for two reasons: (1) the 1974 dataset used in this research project does not have death penalty information, because the District of Columbia, which is the jurisdictional source of the data, did not authorize capital punishment in 1974 (U.S. Department of Justice, 1981:10), and (2) the literature tends to make the distinction between capital- and noncapital-punishment sentencing studies. This dichotomy may be one of convenience, reflecting a sizeable body of information for both types, or it may represent the assumption that the antecedents of capital sentencing are different from the dynamics of noncapital sentencing. Nettler (1979:41-2) suggests the latter interpretation when he states, after reviewing the literature on the broader topic

of judicial dispositions, that legal factors rather than social bias are the prevailing determinants of criminal sanctions with the possible exception of the application of the death penalty. Hagan (1974:362) also notes that since "capital cases may more directly involve an expression of social mores, because they are more often tried before juries, and because sentencing decisions in these cases usually follow protracted litigation, it seems reasonable to expect different patterns of disposition in samples made up of capital cases."

3. Adult offenders. Studies that involve juvenile court dispositions are also excluded since the process of sentencing youthful offenders usually entails a widely different set of standards and procedures than those of adult sentencing. Finally, research reviewed here is primarily of a quantitative and statistical nature. Case studies, simulation studies, and experiments are excluded from analysis. It should also be pointed out that some of the studies reviewed below do not chiefly concern themselves with racial discrimination in criminal sentencing but nonetheless address, to some extent, the race-sentencing relationship as it pertains to the in-out decision and subsequently reach some conclusion regarding racial differentials in sentencing outcomes. Given these studies, only those areas bearing upon the matter at hand will be discussed.

Green (1961). Generally speaking, Green postulated that certain legal factors, legally-irrelevant criteria, and factors in the criminal prosecution affect sentencing. In terms of legally-irrelevant criteria such as race, he specifically hypothesized that black defendants and white defendants would differ significantly in the severity of the sentence imposed upon them. Using chi-square as his statistical method of analysis and without any controls, Green found statistically significant differences between the two racial groups. White defendants were nearly twice as likely to receive a sentence of probation than black defendants in terms of percentages ($N = 1425$ chi-square = 20.5; $p < .01$). Although Green did not have a measure of the strength of the association between race and sentencing, he considered however the substantive differences between the two groups as "moderate." Nevertheless, he still posed the question of why do whites get more probationary sentences than blacks. Green offered a legalistic interpretation.

Green pointed out the following: in his data over 70 percent of the cases that were granted probation had no prior felony convictions; over 80 percent involved so-called "minor" offenses (misdemeanors, thefts, and burglaries) as opposed to violent crimes; and over 60 percent were offenders in the aforementioned minor crime categories who had no history of felony convictions. Green's data indicated that

white defendants tended to meet the above criteria to a far greater extent than black defendants. Thus, white defendants generally committed less serious crimes and were less likely to have any prior record of felony convictions. Black defendants, on the other hand, were more likely to have a previous record of felony convictions as well as commit more serious (i.e., violent) crimes. In order to test for racial discrimination in granting probation, Green compared the racial distribution of sentence outcomes while controlling for defendants who have no prior convictions and have committed either misdemeanors or felony property crimes. The results were statistically nonsignificant ($N=207$; $\text{chi-square} = 5.0$; $.30 > p > .20$). By controlling for type of offense and prior criminal record, the differences between white and black defendants in terms of receiving a probationary sentence were not statistically significant. Green concluded by stating that sentence differentials apparently due to race are actually due to differences in patterns of criminal behavior, for example, in the types of crimes committed and in patterns of recidivism. The importance of Green's study was to show that when taking into account some measure of prior criminal record and type of offense, the association between race and sentence disappears, or at least diminishes to statistically nonsignificant levels.

One final note before leaving Green's study. His data has some suggestive evidence of an interaction effect between race and prior criminal record. Controlling for type of offense (burglary) and prior record of felony convictions, Green found that in cases involving burglary defendants with no previous record, the association between race and sentence outcome becomes statistically nonsignificant (chi-square = 1.0; $p > .80$). However, in cases involving burglary defendants with one or more prior felony convictions, the probability that the observed sentencing differences between black and white defendants occurring by chance decreased substantially (chi-square = 4.9; $.20 > p > .10$). Although not statistically significant at conventional levels ($p = .05$ or less), the results of this analysis suggest a possible interaction effect between race and prior criminal record. In other words, it appears that race tends to have an impact on sentence severity only under certain conditions (one or more prior felony convictions) but not under other conditions (no prior record of convictions). Hence, the relationship between race and sentencing is contingent upon the extent of the defendant's prior criminal record.

Nagel (1969). Nagel's comprehensive study of the legal process examines the causes or "stimuli" that influence the various stages and outcomes in the administration of criminal justice. One aspect of this study is his investigation

offense and, for one type of crime, prior criminal record. Other than for zero-order relationships, his findings were not substantiated by either a test of statistical significance or by a measure of association. Subsequently, Hagan (1974) reanalyzed Nagel's data using a test of significance (chi-square) and a measure of association (Goodman and Kruskal's tau-b). Hagan found statistically significant relationships between race and sentence in four of the eight offense classifications.¹⁴ For the most part, the statistically significant relationships involved larceny cases. However, the strength of the associations were quite weak as measured by tau-b.

Hagan (1974) also described the interaction effect between race and prior criminal record that was previously unmentioned in Nagel's study. As indicated in the original study, there is a 14 percent difference in the rate of incarceration between black and white defendants who have been convicted of federal larceny. However, when controlling for prior record, this discrepancy varies. With defendants having no previous record, the black and white incarceration rate differs only by 6 percent and loses

¹⁴The eight offense categories included state cases (assault and larceny combined), state felony assault, federal assault, federal larceny cases with no prior record, federal cases (assault and larceny combined), state larceny, federal larceny, and federal larceny cases with some prior record. The latter four classes of offenses were statistically significant.

statistical significance. Those defendants with some prior record, the difference between the black and white imprisonment rate increases to 16 percent and maintains statistical significance. As only suggested in Green's (1961) earlier study, Nagel's data clearly illustrates an interaction effect between race and prior criminal record.

Gerard and Terry (1970). This study examines various stages in the administration of criminal justice in order to determine whether black defendants are treated differently than white defendants. Their method of analysis is also a simple comparison of percentages without using any measures of association or tests of statistical significance. Furthermore, they fail to control for prior criminal record and their sample is relatively small ($N = 195$), which makes the comparison of percentages difficult to interpret in a meaningful way. Nevertheless, the authors found major differences in the treatment of white and black defendants. Overall, their data indicated that 80 percent of the blacks received a sentence of imprisonment whereas only 62 percent of the whites were sentenced to prison. Controlling for various types of felonies however, they found that for homicide and rape offenses everyone convicted of said offenses were sentenced to prison. For burglary offenses, an equal proportion of blacks and whites were sentenced to prison and placed on probation. However, for the remainder

of the felonies studies (assault, auto theft, forgery, gambling, theft, narcotics, and robbery), their data revealed that a greater proportion of blacks than whites were sent to prison rather than placed on probation. Given these observations, it appears that the race of the defendant is a basis of differential sentencing but is dependent upon the type of crime involved.

Gerard and Terry hypothesized that the racial differences found in sentencing outcomes could be related to type of attorney: private, court-assigned, or public defender. However, given any type of attorney, black defendants were still more likely than white defendants to receive a sentence of incarceration rather than a probationary sentence. The authors also noted that receiving a sentence of probation could be dependent upon social factors such as employment and residential and family stability; factors that are also presumably related to pretrial release status. Their data showed that a greater proportion of non-indigent blacks remained in custody pending trial. Hence, the authors speculated that the effect of race may only be "indirect," operating through pretrial release status and social stability indicators.

Conklin (1972). This study examines the offense of robbery, from the motivation to commit the crime to the final disposition of robbery cases in court. Without controlling for prior criminal record or type of offense,

Conklin reported, by analyzing percentages in a crosstabulation, that a weak and inconsistent relationship existed between race and robbery case dispositions at both the district and superior court levels.¹⁵ Although there were some observable differences between black and white defendants in terms of sentences received, these discrepancies were considered small by Conklin. More important variables related to the disposition of a case were the court in which the case was tried, the number of prior incarcerations of the defendant, and the role of the victim. Conklin noted that there was no consistent trend for blacks to be sentenced more severely than whites, and in some instances, blacks were treated more leniently relative to whites. For example, black defendants in 1968, at both the district and superior court levels, were slightly more likely than white defendants to receive a probationary sentence. Moreover, whites in 1968 at the superior court level were more likely than blacks to be sentenced to the state prison (61.7% vs. 54.5%). This was quite a significant turnabout from 1964 when blacks were much more likely to receive a prison sentence (61.8% vs. 39.5%). Although

¹⁵Conklin did however control for type of court (district vs. superior) and time (1964 vs. 1968). Controlling for type of court indirectly controls for type of offense, since those who were convicted in district court have been convicted on a lesser charge.

there is no "consistent tendency" for black defendants to be treated either more or less harshly than white defendants, there were a few, isolated incidences of what appear to be substantial discrepancies in sentencing outcomes.

Kulig (1975). This study examines the significance of race upon the sentencing decision by comparing the percentage of whites versus minorities (i.e., blacks and others) receiving probation. Kulig found that in six out of seven crime categories minorities were less likely to receive probation than their white counterparts. Controlling for prior arrest record, this racial differential diminished to some extent, but on the whole minorities were still not given probationary sentences as often as whites. Kulig attributed this to the greater tendency of minority offenders to have more extensive prior arrest records. Indeed, no clear pattern of racial bias was found among offenders with a "low" prior arrest record, but a racial discrepancy tended to emerge at the "medium" and "high" levels of prior arrests; thus suggesting an interaction effect between race and prior criminal arrest record.

Moreover, Kulig found that minorities were less likely to plead guilty than whites, and those who pled guilty as opposed to those who pled not guilty and went to trial were much more likely to receive probation. Consequently, Kulig suggested that the type of plea (i.e., method of conviction)

may account for some of the differences in probationary sentences received by white and minority defendants. In conclusion, Kulig's data indicated that minorities receive less probationary sentences than whites, but that this discrepancy is reduced to a certain extent when controlling for previous arrest record and method of conviction.

Pope (1975). This study examines the judicial processing of felony offenders in California as it pertains to differential sentencing. Pope assumed a bifurcated model of the sentencing process; that is, he incorporated into his analysis two indicators of sentence severity: type of sentence (probation, jail, or prison) and length of sentence. Besides the basic controls for prior criminal history and type of offense (original charge at arrest divided into violent, property, drug, and "other" offenses), Pope added contextual attributes into his analysis, namely, urban versus rural areas and lower versus superior courts. He also added an interesting offender attribute, "criminal status," that is, whether or not the defendant was under some form of supervision at the time of his arrest, such as parole or probation. Pope did not use a statistical test of significance, but rather used an arbitrary criterion for assessing the magnitude of an observed relationship. A relationship was considered "substantial" if the degree of difference was 10 percent or greater. His technique of

analysis was the "test factor standardization" method, which involves comparing the original bivariate table with a standardized table that takes into account one, two, or three different test factors, that is, control variables (see Pope 1975; see also Rosenberg, 1970).

Pope generally found that courts in rural areas tended to sentence black offenders more severely than white offenders at both lower and superior court levels. More specifically, blacks in rural courts were more likely to be given an incarceration sentence and less likely to be given a probationary sentence. Lower court sentencing patterns in rural areas, even while controlling for prior record (measured by no arrests/some convictions but no prison/some previous prison), original charge, and criminal status, revealed substantial differences between black and white offenders. Superior court sentencing in urban areas displayed the weakest relationship between race and sentence outcome. What minimal differences that did occur in urban areas tended to disappear when control variables were introduced. Besides providing insight into the urban/rural variation in sentencing outcomes, Pope's study indicates the importance of contextual attributes, such as rural court settings, in seeking out racial discrimination in criminal sentencing.

Clarke and Koch (1976). This study addresses the general question of what factors influence the probability

that an arrest will result in a prison sentence. With a sample of 798 larceny and burglary cases, Clarke and Koch observed a significant zero-order relationship between race and prison outcome (23% of the black defendants went to prison whereas 13% of the white defendants were sentenced to prison; chi-square = 11.08; $p < .01$). However, this difference between white and black defendants in terms of receiving a prison sentence diminished when income and other factors were controlled. By adjusting for offense severity, income, prior criminal arrest record, and promptness of arrest after the alleged offense took place, Clarke and Koch found that race does not significantly affect the probability that a convicted offender will receive a prison sentence rather than some other disposition. The most significant influences effecting a prison outcome are, in order of importance, offense charged, income, and prior arrest record. The income effect seemed to operate through pretrial release status (the ability to make bond) and type of attorney. The probability of going to prison was highest for low-income defendants charged with nonresidential burglary (the most serious offense in this study) and who were arrested on the same day the offense took place. The authors concluded that, at least in their study, race had no relevance in determining whether or not a burglary or larceny offender will emerge from court with a prison sentence.

Eisenstein and Jacob (1977). This study examines the felony disposition process in three urban areas (Chicago, Detroit, and Baltimore) from an organizational perspective. Along with the "traditional" modes of explaining felony dispositions (e.g., defendant's characteristics, case-processing variables), Eisenstein and Jacob added another dimension to the study of crime processing in the criminal justice system, namely, the criminal court itself as it is manifested by the "courtroom workgroup." The courtroom workgroup, which includes prosecutors, defense counsels, judges, probation officers, clerks, and bailiffs, represents the complex web of roles and norms in the organizational structure of the criminal court. As Eisenstein and Jacob (1977:10) point out:

The defendant does not encounter single persons or agencies as his case is processed; rather he confronts an organized network of relationships Individual biases against blacks . . . become operative only when permitted to do so by the norms and actions of the collective, the courtroom workgroup.

. . . Each courtroom workgroup may differ significantly from others operating in the same court.

Using multiple discriminant function analysis, the authors found that race had little effect on the decision to sentence a defendant to prison. On the contrary, the original charge and the "identity of the courtroom" (i.e., which courtroom did the sentence decision take place identified by the judge who presided) accounted for more variance than other factors when attempting to explain differences in

types of sentences imposed. The authors concluded by noting that the sentence meted out to a given defendant is a product of the structure of the criminal court organization, that is, of the complex and collective interactions of various actors in the courtroom workgroups.

Levin (1977). Generally speaking, this study is interested in the judicial behavior of criminal-court judges and how this behavior, especially as it pertains to sentencing decisions, is influenced by the political environment in which it operates. Given this broad backdrop, Levin, who assumes a bifurcated model of sentencing, examines racial differences in probationary sentences received by convicted defendants in Minneapolis and Pittsburgh. He generally found that in both cities whites, while controlling for prior record, receive a greater percentage of probationary sentences than blacks in most of the nine offense categories studied. However, relative to Pittsburgh, black defendants in Minneapolis were treated much more severely than white defendants in terms of receiving less probationary sentences. Levin attributed this discrepancy to the unique political culture or context in which judicial behavior is formed and which is correspondingly reflected in the different nature of the sentencing decision-making process in each city. In Minneapolis, where a reform-oriented, "good" government is portrayed, sentencing and judicial behavior

tends to be legalistic, universalistic, and apolitical in nature. Sentencing is geared toward the protection of society and reflects a "judicial" decision-making model. On the other hand, sentencing in Pittsburgh, which is characterized by a highly-politicized, traditional form of urban government, represents an "administrative" model of sentencing decision-making. Judicial behavior is pragmatic, particularistic, and policy-oriented. Its emphasis is on the defendant rather than the community, and its sentencing decision-making is based more on administrative efficiency than on the rule of the law. In short, Levin's study indicates that racial differences in criminal sentences are a product of the unique relationship between different types of political systems and judicial behavior.

Lotz and Hewitt (1977). This study examines the relationship between sentencing and several legally-irrelevant factors including race. The dependent variable, sentence, was broken down into four different categories: prison, jail, suspended sentence, and deferred sentence. The last two kinds of sentencing are forms of probation, but the former sentence implies a record of conviction whereas the latter sentence implies no record of conviction if the period of supervision is completed successfully. Lotz and Hewitt found that black defendant's were about 10 percent more likely to receive the most severe sentence (prison),

while they were about 10 percent less likely to receive the most lenient sentence (deferred). The strength of the zero-order relationship, although not negligible, was minimal ($\gamma = .20$). However, while controlling for prior record and weapon or violent offense, the association weakened considerably. Using a method of path analysis, Lotz and Hewitt found that race had little direct effect on sentencing, and what effect it did have operated through offense-related variables and, to a limited extent, through presentence recommendations made by probation officers and prosecutors. In other words, race affected the offense, use of weapon or violence, and presentence recommendations and these variables in turn influenced sentence outcomes. This indirect effect of race indicated that although race has some impact on sentencing, it was primarily through legally-relevant factors. The authors concluded that sentence outcomes are more strongly influenced by legalistic criteria than by legally irrelevant factors.

Sutton (1978). The general goal of this complex study was to determine the sources of sentence variation for the following eight federal felonies: robbery, narcotic violations, auto theft, counterfeiting, marijuana violations, larceny, selective service violations, and embezzlement. Using multiple regression analysis and predictive attribute analysis, Sutton found that at both the aggregate and offense-specific levels race was not a

significant source of variation in the type of sentence imposed. On the contrary, prior criminal record followed by method of conviction and type of offense were the best predictors of incarceration. However, race did seem to emerge as an important influence under certain conditions for the offense of auto theft. Specifically, white defendants with extensive prior records who retained private attorneys and were convicted in federal districts with a low jury trial to total trial ratio were substantially less likely to be sentenced to prison than black defendants meeting the same criteria (40.9% vs. 70.6%; Sommer's $d = -.297$). On the other hand, black males with minimal prior records who were convicted of auto theft by means other than a jury trial in districts where the relative number of jury trials to total trials was low were less likely to be sentenced to prison than their white counterparts (15.3% vs. 40.7%). Hence, when race did have an impact it was not always to the disadvantage of the black defendant. Nonetheless, the overall contribution of race to patterns of sentence variation in Sutton's study was negligible.

Myers (1979). This study examines the role of various victim characteristics in the sentencing process. In regard to race, Myers did not investigate the influence of race per se on sentencing outcomes, but rather she examined the effect of race as manifested in the racial composition of

the victim-offender relationship. Dichotomizing the type of sanction as a prison sentence or other less serious sentence such as probation, Myers found that the effect of the defendant's race on the type of sentence received was somewhat dependent upon the race of the person victimized. Blacks victimizing blacks received lighter sentences than whites victimizing whites or blacks victimizing whites. The effect of race however tended to be indirect, operating through case-processing variables such as pretrial release status, conviction charge(s), and probation officer's sentencing recommendations. Thus, Myers' findings indicated that race did have some impact on sanctions, but its effect was mediated by prior case-processing outcomes and decisions that occurred at earlier stages in the criminal justice system.

Hagan, Hewitt, and Alwin (1979). Although many researchers have implied a causal ordering of variables when they indicate that the effect of race is mediated by certain offense-and court-related characteristics, this study explicitly described the sentencing process as consisting of "complex linkages of variables reflecting different theoretical orientations." Consequently, the authors constructed an a priori causal model that incorporates variables abstracted from conflict, consensus, and organizational theories. The model's first component, which reflects variables emphasized in the conflict perspective,

consisted of a number of offender characteristics including race. Employing a dichotomy of sentence outcome (deferred sentence vs. incarceration sentence), Hagan et al. found that the zero-order relationship between race and sentence is statistically significant ($p < .05$). However, controlling for offense severity, prior convictions, and use of a weapon or violence, the effect of race loses its statistical significance. The authors findings suggested to them that the effect of race is largely indirect, operating through the aforementioned variables. In short, race affected the sentence a defendant received because nonwhites were more likely to commit more serious offenses, possess a record of prior convictions, and use a weapon while committing a crime.

Unnever, Frazier, and Henretta (1980). This study specifically examines the influence of race on criminal court sentencing outcomes. Suggesting that minority racial groups receive harsher penalties than the "dominant" white class, the authors used a logit model to test their hypothesis. A logit model, while simultaneously controlling for a number of independent variables, basically predicts changes in the odds ratio (the number receiving probation divided by the number incarcerated) of the dependent variable for a given unit change in the independent variable. Data for their analysis was obtained from a sample of court

cases (N = 229) processed in an urban county in Florida. Controlling for a series of legal and extralegal variables, the authors found a moderate direct race effect on sentence disposition. The predicted change in the odds ratio for whites was 2.3 times that of blacks; that is, the likelihood of a white defendant receiving a sentence of probation compared to a sentence of incarceration was 2.3 times greater than that for a black defendant. The authors interpreted these race differences as being a function of the sentencing recommendations provided by probation officers, police, and prosecutors.¹⁶ Their analysis revealed that a recommendation for incarceration by any court official (including police) reduced the chance of receiving a probationary sentence. Indeed, the predicted change in the odds ratio decreased from 2.3 to 1.4 when controlling for the probation officer's sentence recommendation. Thus, the authors suggested that the effect of race occurs at earlier stages in the sentencing process and is "passed on in the form of sentencing recommendations" made by the probation officer. Racial discrimination, in other words, may be a function of the cumulative nature of the criminal justice decision-making process.

¹⁶The authors also noted that this apparent racial bias could be explained by other characteristics of the defendant that are correlated with race but are unmeasured in their research.

Spohn, Gruhl, and Welch (1981-82). An important feature of this study is its explicit distinction between the decision to incarcerate an offender and the decision as to length of sentence. Some research has implied such a separation, but it has only been recently that the sentence outcome itself has been conceived, in any formal sense, as a product of the two aforementioned decisions. The data for this study was obtained from a sample of 50,000 felony cases that were processed between 1968 and 1979 in a major metropolitan city located in the northeast portion of the United States.

The authors hypothesized that race would have no direct effect on the incarceration decision. They found, however, that the zero-order correlation between race and the prison/no prison dependent variable was statistically significant ($r = .14$; $p < .05$). Black defendants were more likely to be incarcerated than white defendants. Even when controlling for offense seriousness, prior record, and extralegal factors, the relationship remained statistically significant (although the strength of the association diminished). Given these controls, blacks had about a 20 percent greater chance than whites of being sent to prison. Employing the technique of path analysis, the direct effect of race however was not as strong as its indirect effect through offense seriousness. Thus, Spohn et al. showed that

black defendants not only are more likely to receive a prison sentence because of their race, but also because blacks are charged with a more serious crime than their white counterparts.

Wheeler, Weisburd, and Bode (1982). This study examines the severity of sentences meted out to individuals convicted of federal white-collar crimes. For the purposes of this study, white-collar crime was defined as "economic offenses" which involve the elements of fraud, deception, or collusion. The eight federal offenses examined were anti-trust crimes, securities and exchange fraud, postal and wire fraud, false claims and statements, credit and lending institution fraud, bank embezzlement, IRS fraud, and bribery. This study also clearly distinguished in its research design the sentence decision to incarcerate from the decision as to length of imprisonment. Interviews with judges clearly indicated the relevance of this distinction. Race was just one of several variables collected from presentence investigation reports in seven geographically-dispersed federal districts. Using logit regression analysis to determine the predicted changes in the probability of imprisonment, the authors found that race was not a statistically significant factor that affects the decision to incarcerate. In short, race did not increase the probability of imprisonment. The authors did find however that offense seriousness, offender-related variables including number of previous arrests, most

serious prior conviction, and socioeconomic status, and "other" variables, namely, age, sex, and district of conviction were significantly related to the in/out decision. Generally speaking, offense-related variables were the most significant followed by offender-related characteristics, the aforementioned "other" variables, and, to a much lesser extent, "legal process" variables such as type of attorney and method of conviction.

Petersilia (1983). This study compares the treatment of white and minority (black and Hispanic) defendants at key decision points in the crime processing system, from arrest to final disposition. In regards to sentencing, the study specifically addresses the issue of whether or not racial minorities have a greater chance of receiving a prison sentence rather than a jail or probation sentence. Using Offender-Based Transaction Statistics (a system of tracking cases from arrest to sentencing), Petersilia found moderate racial differences at the sentencing stage. Petersilia first examined the sentence disposition of all felony arrestees and found that a greater percentage of whites receive probationary sentences than blacks or Hispanics (21 versus 15 and 12 percent respectively). There was also an apparent racial discrepancy in the prison commitment rate; black and Hispanic felony arrestees were more likely than whites to be sent to prison following a felony conviction.

Furthermore, when a felony arrest was processed as a misdemeanor, blacks and Hispanics were more likely than whites to receive county jail time upon conviction. In short, once convicted of a misdemeanor racial minorities were more likely to go to jail instead of being placed on probation and, if convicted of a felony, they are more likely to receive a prison sentence. Even after controlling for prior record, criminal status (being under some type of supervision such as probation or parole at the time of arrest) and other factors, racial differences at the aggregate level remained.

Petersilia went on to study only robbery arrestees and found a similar pattern of racial differences. Multiple regression analysis revealed that black robbery defendants had a statistically significant greater chance of being sentenced to prison than whites or Hispanics. Interestingly, at most key decision points in the criminal justice system whites and racial minorities were treated the same, but it was primarily at the sentencing stage when racial differences emerged.

Peterson and Hagan (1984). This study attempts to explain the so-called anomalous findings of past research which indicates that nonwhite criminals receive more lenient sentences than white offenders. The authors link the pattern of differential leniency (and severity) in sentence outcomes to the changing designation of victim status.

Studying federal drug offenders, Peterson and Hagan argue that, historically, racial minorities were identified as primary offenders in the illicit drug trade but that this conception of racial minorities has changed to one of being victims of drugs and of society. This changing conception of race as it pertains to the victim-offender dichotomy of drug crimes is manifested by the distinction between drug user and drug dealer, that is, "drug victim" and "drug villain." Comparing time periods of 1963-68, 1969-73, and 1974-76, the authors, using multiple regression techniques, found that nonwhite drug offenders were less likely than white offenders to receive jail sentences in all three periods, but, contrary to their expectations, the racial effect was smallest and statistically insignificant for the middle time period. As hypothesized, Peterson and Hagan found that their measures of the changing conceptions of race and crime had a significant impact on the likelihood of imprisonment. Moreover, education, age, and pleading not guilty also were significantly related to incarceration. The authors concluded that the role of race in sentencing is variable and can only be understood when the broader social context is taken into consideration. The status of nonwhite drug users as society's victims rather than perpetrators of drug-related crime may assist in explaining the more lenient sentencing of black defendants.

What, then, has this review of the literature told us about the relationship between race and criminal sentencing? In regard to the particular research question addressed here, black defendants generally are not more likely than white defendants to receive an "in" sentence rather than an "out" sentence. In most of the studies that found a statistically significant zero-order relationship between race and sentence outcome, the relationship became statistically nonsignificant after appropriate control variables were introduced (Green, 1961; Clarke and Koch, 1976; Lotz and Hewitt, 1977; Hagan et al., 1979). At times, the relationship would remain statistically significant, but the strength of the association would weaken (e.g., Unnever et al., 1980). Nonetheless, some studies supported a discrimination hypothesis. If racial discrimination did occur however, it took place with certain qualifications: for example, with some types of crimes (Nagel, 1969; Gerard and Terry, 1970), in specific regions or jurisdictions (Nagel, 1969; Pope, 1975; Levin, 1977), or in combination with other offender characteristics (Kulig, 1975). In other words, the results of the studies that "found" discrimination were usually mixed, in part consistent with a discrimination hypothesis but in other parts refuting such a hypothesis (see Kleck, 1981). In brief, there is no substantial evidence to suggest the existence of widespread racial discrimi-

mination in reference to the decision to incarcerate an offender.

Those studies that did not find racial discrimination often revealed the importance of legally-relevant variables in the sentencing process (Green, 1961; Clarke and Koch, 1976; Eisenstein and Jacob, 1977; Lotz and Hewitt, 1977; Sutton, 1978; Wheeler et al., 1982). Various measures of prior criminal record, offense seriousness, and, to a lesser extent, case-processing variables had more of an impact on the sentencing decision than race. In some studies, race had an indirect effect, usually operating through offense-related variables and prior criminal record (Lotz and Hewitt, 1977; Myers, 1979; Hagan et al., 1979). Hence, blacks were generally more likely than whites to receive a sentence of incarceration because they were more likely to commit more serious crimes and have more extensive or serious prior criminal records. The effect of race was also sometimes mediated by court-related or case-processing variables, such as probation officer's sentencing recommendations and pre-trial release status (Myers, 1979; Lotz and Hewitt, 1977).

X Indeed, the research findings in general suggest that racial discrimination may occur at earlier decisions and events in the criminal justice system. Rather than an isolated event, sentencing is a product of prior outcomes in the crime processing system. As Blumstein et al. (1983a:124-25) point out:

It is also important to remember that sentencing decisions are not made in isolation; they occur in the context of a variety of earlier decisions that potentially influence sentence outcomes Sentencing decisions must be viewed more broadly to reflect the impact of earlier decisions that result in convictions in some cases, thus making offenders vulnerable to sentencing.

Finally, it is clear that as the sentencing research has evolved, more control variables have been incorporated into the research designs of various studies. In most cases, it appears that when a number of different kinds of control variables are introduced, a study is less likely to discover racial discrimination. The addition of "contextual attributes" also delimits those particular settings or conditions in which differential sentencing is most likely, or not likely, to occur (Nagel, 1969; Conklin, 1972; Pope, 1975; Eisenstein and Jacob, 1977; Levin, 1977; Myers, 1979; Wheeler et al., 1982; Peterson and Hagan, 1984). Moreover, as the sentencing research has progressed, it has become more methodologically sophisticated. Changes in methodology, from simple comparison of percentages to complex multivariate techniques of analysis, have been accompanied by changes in research results regarding the incarceration decision. Although it may be difficult to separate the effects of new techniques from the effects of less discriminatory sentencing practices, when more recent and sophisticated methodology is used the trend in findings

has revealed "more justice" and "less injustice" in the criminal processing system (see also Nettler, 1979:41).

In summary, the review of the literature reveals that race is a basis of differential sentencing only under certain limited conditions. Direct race effects tend to be minimal and if there were race effects, they were often indirect. Overall, legalistic criteria appear to be more important in determining the in-out sanction than extra-legal criteria.

AN EMPIRICAL INVESTIGATION INTO THE RELATIONSHIP
BETWEEN RACE AND SENTENCE OUTCOME

The second part of this study is to present and analyze a body of relevant empirical data as it pertains to the relationship between race and criminal sentencing. This will entail a preliminary analysis of sentencing data using the statistical technique of log-linear analysis. The data were obtained from the 1974 PROMIS File for Washington, D.C. The PROMIS data set was provided by the Interuniversity Consortium for Political and Social Research. Information on both case and defendant characteristics was originally collected by the U.S. Bureau of the Census for the Law Enforcement Assistance Administration. The data were prepared for public release by the Institute for Law and Social Research (INSLAW). Data were obtained on all cases and defendants brought before the Superior Court Division of the U.S. Attorney's office in the District of Columbia during 1974. The data base initially consists of 17,543 adult felony cases with a listing of 295 variables that cover offense characteristics, defendant characteristics, and detailed information on the processing of each case.

The variables used for the analysis are as follows: sentence, offense seriousness, prior criminal record, race,

and the relationship of the victim to the defendant. The first three variables are legalistic factors whereas the last two variables are extralegal criteria.¹⁷ Sentence is dichotomized into an incarceration category (a sentence to jail or prison) and a nonincarceration category (probation, suspended sentence, or fine). This dichotomy corresponds to the "in-out" aspect of the aforementioned sentencing decision-making model. Offense seriousness is measured by a "crime score" derived from a modified version of the Sellin-Wolfgang scale of crime seriousness (see Sellin and Wolfgang, 1964). The PROMIS crime score, which is based on a system similar to that developed by Sellin and Wolfgang, is a computed score (values from zero to ninety-nine) that rates the gravity of the crime in terms of personal injury or death, weapon involved, intimidation, the inclusion of a sex crime, and property loss or damage (see Institute for Law and Social Research, 1976). The higher the score, the more serious the offense. The gravity of the crime or crime score is meant to reflect the harm done to society rather

¹⁷Although the victim-offender relationship is considered an extralegal attribute, the role of the victim-offender relationship is becoming more legally-relevant at the sentencing stage. For example, the new Illinois Criminal Sexual Assault statutes (1984) have special sentencing options when family members are involved in a sexual assault. For the most part however, the victim-offender relationship has been classified as an extralegal characteristic, but research in the future may have to be aware of its emerging legal significance.

than the "legal nomenclature" of the offense. For this study, I have divided offense seriousness into three ordinal categories - low, medium, and high - taking into account the distribution of the crime score values in the data. The first category consists of those cases with a crime score of zero; cases with a crime score of 1, 2, 3, or 4 fall into the middle category; and cases scoring 5 or higher make-up the the last category. Prior criminal record is measured by a "defendant score" that is based upon a recidivism predictor scale developed by Gottfredson and Beverly (1962; see also Gottfredson and Bonds, 1961; Gottfredson and Ballard, 1966). The PROMIS defendant score is a computed sum that rates the gravity of the defendant's prior criminal history in terms of the number and density of previous arrests, the use of aliases, and the number of previous arrests for crimes against the person. The higher the score, the more extensive and serious the prior record. Again, I have divided prior criminal record into three ordinal categories - none, some, and extensive - taking into account the distribution of the defendant score values in the data. Those cases having a zero defendant score make-up the first category; the second category consists of cases scoring between 2.5 and up to and including 12.5; and cases with a score of 15 to 22.5 make-up the final category. The variable race is simply divided into two categories: white and black.

As noted earlier, research that has studied the extralegal influence of race on criminal sentencing has begun to systematically incorporate different kinds of control variables into their research design. Perhaps most importantly has been the introduction of legalistic criteria, specifically various measures of prior criminal record and offense seriousness. However, other types of extralegal or nonlegitimate factors also have been introduced to help explain variation in sentencing outcomes. A certain amount of attention has been given to the "nonlegitimized" influence of the relationship between the victim and the offender. Most of these studies have examined the effect of the racial composition of the victim-offender relationship on sentence outcome (e.g., Johnson, 1941; Garfinkel, 1949; Green, 1964; Farrell and Swigert, 1978). However, with the exception of Myers (1979) and a study done by the Vera Institute of Justice (1977), virtually no research has been done that examines the effect of the "intimacy versus impersonality of victim-offender relationships" on sentencing decisions.¹⁸ This study thus

¹⁸Some research has been done that studies the impact of the victim-offender relationship on other decisions and events in the crime processing system, namely, the effect on prosecution decisions (Williams, 1978), likelihood of conviction (Forst et al., 1977) and case dismissals (McIntyre, 1968). The first two studies listed above used the PROMIS File for Washington, D.C., in 1973 and 1974.

includes the relationship of the victim to the defendant as part of its analysis. The variable, relationship to victim, is divided into three categories: (1) family, friend, or acquaintance, (2) stranger, and (3) unknown.

If anything is indicative of the aforementioned review of the literature, it is the realization that the dynamics of the criminal sentencing process, and ultimately the sentence decision itself, are extremely complex. To capture the analytical complexity of criminal sentencing, I will employ the log-linear model. Log-linear analysis is a statistical technique that analyzes the relationships between various categorical variables crosstabulated in a multidimensional contingency table. This technique examines the effects of categorical variables on other categorical variables present in a complex, multiway crossclassification table. It basically does this by generating expected frequencies and comparing them with the observed frequencies. The object is to reduce the discrepancy between the expected values and the observed values and subsequently produce a model that best "fits" or explains the data.¹⁹ In other words, the goal is to essentially form

¹⁹"A model . . . is a statement of the expected cell frequencies of a crosstabulation (f_{ij} 's) as functions of parameters representing characteristics of the categorical variables and their relationships with each other" (Knoke and Burke, 1980:11). These "effect" parameters are related to "odds" and "odds ratios." The odds, which is the basic form of the variation to be explained in the log-linear

a model that best represents the associations apparent in a multiway frequency table (as that presented in Table 3). By trying to fit a model to the data, log-linear analysis identifies those variables and interactions that account for - and on the contrary do not account for - most of the variance in the table. Its virtue is its ability to analyze a complex contingency table and describe the effects of variables and the interaction among the variables.²⁰ Log-linear analysis is an appropriate tool when complex inter-

model, is the "ratio between the frequency of being in one category and the frequency of not being in that category." Odds that are calculated within the body of the table are called conditional odds. An odds ratio is simply computed by dividing the first conditional odds by the second conditional odds. As noted above, odds and odds ratios are related to effect parameters (τ s). τ s represent the effects that variables have on the cell frequencies, and λ s are the logs of the τ s. Hence, the log-linear model uses the logarithm of the expected cell frequency in order to determine the statistical significance of the effect parameters. See Knoke and Burke (1980).

²⁰"From a statistical point, an interaction effect is a function of a ratio of odds ratios. When the odds ratio between a pair of variables at the first level of a third variable differs from the odds ratio at another level of the third variable then this 'odds ratio' will depart from 1.00" (Knoke and Burke, 1980:34). In other words, interaction effects are conditional effects, that is, the relationship between offense and sentence, for example, depends on the value of another variable, namely, prior criminal record. Discrimination may occur under condition A but not under condition B. To put it another way, the effect of offense on sentence may be greater when an offender has a high defendant score than a lower defendant score.

action effects are involved, which appears to be the case when examining the relationship between legalistic factors, extralegal factors, and criminal sentencing.

As noted earlier, this is a preliminary or "exploratory" analysis of the PROMIS data. It differs from what has been called a "confirmatory" analysis or procedure (Burke and Turke, 1975:316).

On the confirmatory side, for example, one may have a particular model derived from theory which includes only certain relationships and interactions, which one wants to test in order to see whether such a model adequately reproduces the data On the other hand one may not have any prior hypotheses and may wish to follow exploratory procedures, trying out a series of models until one is found that does fit the data.

In this analysis, a particular hypothesis or model is not being tested but rather a series of models will be explored to determine the most appropriate model that fits the data. In a certain sense, this analysis does not assume a dependent variable because the general log-linear model normally does not make the distinction between independent and dependent variables (Knoke and Burke, 1980:11).

The first task is to select an appropriate model that best fits the data in Table 3. To accomplish this, a model of expected values is developed that doesn't significantly differ from the observed data. Generally speaking, the procedure begins by taking the simplest model (i.e., the independence model with no interactive effects) and adding increasingly complex interaction terms until an acceptable

TABLE 3

Observed Frequencies of Sentence Category by Race, Victim Relation, Offense Seriousness, and Prior Record

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>			
				<u>Prison</u>	<u>Probation</u>	<u>Total</u>	
Family, Friend, Acquaintance	White	Lo	Lo	0	2	2	
			Med	0	11	11	
			Hi	0	15	15	
		Med	Lo	1	0	1	
			Med	2	3	5	
			Hi	2	1	3	
	Hi	Lo	0	1	1		
		Med	2	2	4		
		Hi	0	2	2		
	Stranger	Black	Lo	Lo	4	13	17
				Med	3	72	75
				Hi	40	112	152
Med			Lo	2	7	9	
			Med	4	23	27	
			Hi	29	36	65	
Hi		Lo	7	8	15		
		Med	31	48	79		
		Hi	63	49	112		
Stranger		White	Lo	Lo	3	46	49
				Med	5	39	44
				Hi	4	40	44
	Med		Lo	0	9	9	
			Med	2	8	10	
			Hi	1	5	6	
	Hi	Lo	1	15	16		
		Med	9	9	18		
		Hi	2	3	5		
	Black	Lo	Lo	12	109	121	
			Med	43	171	214	
			Hi	50	113	163	

Table 3 (continued)

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>			
				<u>Prison</u>	<u>Probation</u>	<u>Total</u>	
Stranger	Black	Med	Lo	10	49	59	
			Med	44	89	133	
			Hi	44	43	87	
		Hi		Lo	27	82	109
				Med	168	185	353
				Hi	130	72	202
	Unknown	White	Lo	Lo	11	69	80
				Med	1	20	21
				Hi	0	35	35
Med			Lo	2	15	17	
			Med	1	10	11	
			Hi	1	7	8	
Hi		Lo	1	13	14		
		Med	0	7	7		
		Hi	2	6	8		
Black		Lo		Lo	127	393	520
				Med	22	152	174
				Hi	30	200	230
		Med	Lo	25	124	149	
			Med	25	82	107	
			Hi	22	72	94	
	Hi	Lo	59	219	278		
		Med	96	136	232		
		Hi	63	91	154		

fit or model is obtained. To evaluate the goodness-of-fit of the models, the likelihood ratio chi-square statistic (G^2) is used. The chi-square statistic tests for statistically significant differences between the observed frequencies and the expected frequencies. Traditionally, a large chi-square is desired, thus indicating significant differences between the observed and expected frequencies. However, in log-linear analysis a small chi-square value is desired indicating minimal differences between the expected frequencies and the observed frequencies, thus suggesting that the model based on the expected frequencies adequately fits the observed data. Hence, the objective is to reduce the value of chi-square by generating various models of expected frequencies and comparing them with the observed values. A large chi-square indicates a lack of fit of the model to the data; consequently, the model must be rejected. Ideally the differences should be statistically nonsignificant, but sometimes it is necessary, for the sake of a more parsimonious (fewer interactions) model, to settle for a relatively lower chi-square statistic rather than to reach a level of nonsignificance. What constitutes an "acceptable" model is not necessarily guided by strict statistical criteria but by the researcher's judgment and the "economy" of the model.

Before we proceed, a brief word is required on notation and the concept of hierarchical models. The letters, S, C,

D, R, and V, represent the variables in the study. Hence, S refers to sentence, C to crime score, D to defendant score, R to race, and V for victim relation. Commas separating the factors indicate that the variables are unrelated, that is, they are not interacting with one another in the model. The absence of a comma signifies the interaction of two or more variables. For example, [SD,CV,R] means that sentence and defendant score in addition to crime score and victim relation have an interactive effect. These are called second-order effects. Race, a first-order or main effect, is acting independently in this model. An example of a higher-order effect would be SCD. This higher-order or third-order effect represents a three-way interaction between sentence, crime score, and defendant score. Higher-order effects include all lower-order effects. This is the concept of hierarchy. The concept of hierarchical structure assumes that the existence of a complex multivariate relationship requires inclusion of less complicated interrelationships. Hence, a third-order effect or model will contain all second-order effects and first-order effects. When assuming a hierarchical model, "higher order relationships implicitly include all combinations of lower order effects which can be formed out of the components of the former" (Knoke and Burke, 1980:20).

As noted above, the procedure begins with the independence model [S,C,D,R,V] with no interactive effects. In other words, only the main or first-order effects are present in this model. Expected values using the above model are generated and a likelihood ratio chi-square statistic is computed ($G^2 = 1487.94$; see Table 4).²¹ The large chi-square indicates substantial differences between the observed and expected values and therefore the independence model should be rejected as a suitable representation of the

TABLE 4

Likelihood Ratio Chi-Square Values for Some Models Pertaining to the Data in the Five-Way Table of Sentence (S), Crime Score (C), Defendant Score (D), Race (R), and Victim Relation (V).

<u>Model</u>	<u>Chi-Square*</u>	<u>Degrees of Freedom</u>	<u>p</u>
S,C,D,R,V	1487.94	99	0.0
S,CV,D,R	850.27	95	0.0
SCV,D,R	669.48	87	0.0
SCD,SCV,R	268.64	77	0.0

*Test of Significance of the difference between the new model and the former model.

²¹The computer assigns a value of 0.5 to each table cell to compensate for the cells that have zero cases. This has to be done since the appearance of zeros in the data can be a problem, since odds and odds ratios, the basis of the log-linear model, are undefined with zeros in the denominator (see Knoke and Burke, 1980:63-65).

variable associations present in Table 3. In other words, the [S,C,D,R,V] model does not fit the data well. The task now is to reduce this chi-square by building a new model where the differences between the observed and the expected frequencies are relatively minimal or statistically nonsignificant. This is accomplished by a "stepwise" process of adding higher-order interaction terms to the independence model. After fitting all possible new models, the model that reduces chi-square the most is selected as the 'best' model. In this particular case, by adding the second-order interaction term of CV to the independence model, the chi-square is reduced to 850.27 (see Table 4). The interaction of offense seriousness and victim relation has reduced the original chi-square by 637.67 ($P < .01$). Hence, the model [S,CV,D,R] is the best-fitting model at this stage of the analysis; however, the difference between this new model and the original model is still statistically significant. Therefore, it is necessary to add more interaction terms to this new model in order to reduce the chi-square even further.

By adding the third-order interaction term of SCV to the model [S,CV,D,R] the chi-square is reduced to 669.48. Hence, the interaction of sentence, offense seriousness, and victim relation reduces the second model's chi-square by 180.97 ($P < .01$). The newest model generated, [SCV,D,R], continues to close the gap between the expected values and

the observed values, but the differences between the second model [S, CV, D, R] and this model are still statistically significant. Thus, more interaction terms can be added to find a more suitable model. By adding the third-order interaction term of SCD to the model [SCV, D, R], the chi-square is reduced to 268.64. The interaction of sentence, offense seriousness, and prior criminal record reduces the chi-square of model [SCV, D, R] by 400.84 ($P < .01$). Although a level of statistical nonsignificance is still not achieved with the differences between the observed values and the expected values of this newest model [SCD, SCV, R], this stepwise process of model building has reduced the original chi-square of 1487.94 to a chi-square of 268.64. Further testing suggested that adding more interactive terms increased the complexity of the model without reducing the chi-square to any substantial degree. Moreover, the addition of more interaction terms verges on a saturated model, which includes every single possible effect - significant or otherwise. Balancing the aim for a statistically best-fitting model with the need for a substantive and parsimonious model that is still close to the observed data, it appears that the model [SCD, SCV, R] is an acceptable model that adequately fits the data. That is, it appears that the best description of the associations between the different factors in the contingency table is the three-way inter-

action of sentence, offense seriousness, and prior criminal record, the three-way interaction of sentence, offense seriousness, and victim relation, and the main or first-order effect of race.

Now that an appropriate model has been selected that adequately fits the data, what does the model [SCD,SCV,R] tell us? First of all, the above model is a hierarchical model, that is, all lower-order effects and interactions are included or "nested" into the higher-order effects. Hence, the model [SCD,SCV,R] reads [S,C,D,V,R,SC,SD,CD,SV,CV,SCD,SCV] and therefore includes various other effects, for example, the interaction effect between sentence and offense seriousness (SC), the interaction effect between offense seriousness and victim relation (CV), and the first-order effect of prior criminal record. Since these variables and their interactions satisfactorily reproduce or explain the observed data, the remaining third-order interactions, the fourth-order interactions, and the fifth-order interaction can be ignored. It should be kept in mind however that all of the lower-order effects in model [SCD,SCV,R] may not be a significant or meaningful source of variation.

The model also tells us that the variable race does not interact with sentence, or with any other variable for that matter. Indeed, throughout the analysis race consistently had no interactive effect with any of the variables. It

TABLE 5

Expected Values Using Model SCD,SCV,R

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>		
				<u>Prison</u>	<u>Probation</u>	<u>Total</u>
Family, Friend, Acquaintance	White	Lo	Lo	1.0	1.9	2.9
			Med	0.8	7.5	8.3
			Hi	3.8	13.2	17.0
		Med	Lo	0.3	0.6	0.9
			Med	0.8	3.5	4.3
			Hi	3.0	4.3	7.3
	Hi	Lo	0.6	1.0	1.6	
		Med	3.2	6.3	9.4	
		Hi	7.8	5.8	13.6	
	Black	Lo	Lo	8.1	16.3	24.4
			Med	6.6	62.9	69.6
			Hi	31.6	110.7	142.3
Med		Lo	2.2	5.3	7.5	
		Med	7.0	29.3	36.3	
		Hi	25.4	35.7	61.1	
Hi	Lo	4.9	8.8	13.7		
	Med	26.6	52.4	79.0		
	Hi	65.4	48.3	113.7		
Stranger	White	Lo	Lo	3.2	17.9	21.1
			Med	4.8	23.4	28.2
			Hi	6.4	16.9	23.4
		Med	Lo	0.9	5.8	6.7
			Med	5.1	10.9	16.0
			Hi	5.2	5.5	10.6
	Hi	Lo	1.9	9.6	11.6	
		Med	19.4	19.5	38.9	
		Hi	13.4	7.4	20.7	
	Black	Lo	Lo	26.6	150.1	176.7
			Med	40.4	195.8	236.2
			Hi	54.0	141.7	195.7

Table 5 (continued)

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>			
				<u>Prison</u>	<u>Probation</u>	<u>Total</u>	
Stranger	Black	Med	Lo	7.1	48.9	56.1	
			Med	42.5	91.2	133.7	
			Hi	43.3	45.7	89.0	
		Hi	Lo	16.3	80.6	96.9	
			Med	161.9	163.2	325.1	
			Hi	111.7	61.8	173.6	
	Unknown	White	Lo	Lo	12.9	47.9	60.9
				Med	2.6	19.0	21.6
				Hi	3.3	25.1	28.5
Med			Lo	3.5	15.6	19.1	
			Med	2.7	8.9	11.6	
			Hi	2.7	8.1	10.8	
Black		Hi	Lo	7.9	25.7	33.7	
			Med	10.5	15.9	26.3	
			Hi	6.9	11.0	17.9	
		Lo	Lo	108.3	400.8	509.1	
			Med	21.8	159.3	181.1	
			Hi	27.9	210.3	238.2	
Black	Med	Lo	29.1	103.7	159.8		
		Med	22.9	74.2	97.1		
		Hi	22.4	67.8	90.2		
	Hi	Lo	66.3	215.2	281.6		
		Med	87.5	132.7	220.2		
		Hi	57.8	91.7	149.5		

appears then that race acts independently and is unrelated to the other variables in the model.

Once an appropriate model is chosen that adequately explains the distribution of cases in the data, it is often useful to compare directly the observed and expected frequencies (see Table 5). By comparing the differences between the observed and expected values, it can be determined what parts of the table closely correspond to the model [SCD,SCV,R] and what cells of the table do not. In other words, the model may be appropriate for most but not all of the cell frequencies. If the discrepancies in certain cells are relatively large, then the model does not fit or explain that area of the table very well; if the discrepancies are relatively small, then the model adequately explains the frequencies in those particular cells. Though the chi-square statistic provides an overall indication of how well the model fits the data, there can be some variation of this goodness-of-fit within certain cells.

For the most part, the differences between the observed and expected values in the various cells of the table are relatively small (see Table 6). However, in certain cells and strata of the table, the discrepancies are substantial. Perhaps most significantly, for both white and black offenders with a defendant score of zero (no prior criminal record) who have committed crimes against strangers, there are relatively large disparities between the observed and

TABLE 6

Differences Between Observed and Expected Values Using
Model SCD,SCV,R

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>	
				<u>Prison</u>	<u>Probation</u>
Family, Friend, Acquaintance	White	Lo	Lo	- 0.5	0.6
			Med	- 0.3	4.0
			Hi	- 3.3	2.3
		Med	Lo	1.2	- 0.1
			Med	1.7	- 0.0
			Hi	- 0.5	- 2.8
	Hi	Lo	- 0.1	0.5	
		Med	- 0.7	- 3.8	
		Hi	- 7.3	- 3.3	
	Black	Lo	Lo	- 3.6	- 2.8
			Med	- 3.1	9.6
			Hi	8.9	1.8
Med		Lo	0.3	2.2	
		Med	- 2.5	- 5.8	
		Hi	4.1	0.8	
Hi	Lo	2.6	- 0.3		
	Med	4.9	- 3.9		
	Hi	- 1.9	1.2		
Stranger	White	Lo	Lo	0.3	28.6
			Med	0.7	16.1
			Hi	- 1.9	23.6
		Med	Lo	- 0.4	3.7
			Med	- 2.6	- 2.4
			Hi	- 3.7	0.0
	Hi	Lo	- 0.4	5.9	
		Med	- 9.9	-10.0	
		Hi	-10.9	- 3.9	
	Black	Lo	Lo	-14.1	-40.6
			Med	3.1	-24.3
			Hi	- 3.5	-28.2

Table 6 (continued)

<u>Victim Relation</u>	<u>Race</u>	<u>Defendant Score</u>	<u>Crime Score</u>	<u>Sentence Category</u>		<u>Total</u>	
				<u>Prison</u>	<u>Probation</u>		
Stranger	Black	Med	Lo	3.4	0.6		
			Med	2.0	- 1.7		
			Hi	1.2	- 2.2		
		Hi	Lo	11.2	1.9		
			Med	6.6	22.3		
			Hi	18.8	10.7		
	Unknown	White	Lo	Lo	- 1.4	21.6	
				Med	- 1.1	1.5	
				Hi	- 2.8	10.4	
Med			Lo	- 1.0	- 0.1		
			Med	- 1.2	1.6		
			Hi	- 1.2	- 0.6		
Black		Hi	Lo	- 6.4	-12.2		
			Med	-10.0	- 8.4		
			Hi	- 4.4	- 4.5		
		Lo	Lo	19.2	- 7.3		
			Med	0.7	- 6.8		
			Hi	2.6	- 9.8		
Black	Med	Lo	- 3.6	- 6.2			
		Med	2.6	8.3			
		Hi	0.1	4.7			
	Hi	Lo	- 6.8	4.3			
		Med	9.0	3.8			
		Hi	5.7	- 0.2			

expected values in the probation category at all levels of offense seriousness. Hence, the model [SCD,SCV,R] does not explain very well these six multidimensional cell frequencies. It could be hypothesized that race is interacting with some other variable in these cells and, since our model does not include a race interactive effect, this would explain the lack of fit.

For black offenders with high defendant scores (extensive prior criminal records) who have committed crimes against strangers, there are also notable differences between expected and observed values in both the probation and prison/jail categories at all levels of offense seriousness, except the cell that reflects cases with a low crime score in the probation category. A similar pattern is observed with white offenders, but the differences are not as large. It appears that many of the larger differences between the observed and expected values are found in the stranger subcategory under victim relationship.

Finally, for white offenders with either extensive or no prior records and when the victim relation is unknown, there are also some substantial differences between expected and observed values in the probationary category at most of the levels of offense seriousness. Again, there are larger differences in the probation category relative to the prison/jail category. Indeed, overall twenty-one cells in the probation deviate from the observed data by a value of five

or more, whereas only fourteen of the cells in the prison/jail category deviate from the observed data by a value of five or more.²² It is possible then that the model [SCD,SCV,R] is more appropriate for the explanation of incarceration sentences than probationary sentences. Moreover, the model appears to explain better the subcategory "family, friend, and acquaintance" and, to a lesser extent, unknown relationships than it explains associations in the stranger subcategory.

To provide further insight into the relationships between the various factors in the multidimensional table, I will examine the estimates of the log-linear model effect parameters. In Table 7, multiplicative parameters are presented for some of the more noteworthy second-order interaction effects and third-order interaction effects observed in the model [SCD,SCV,R]. These effect parameters indicate the general nature and strength of the interactions between the variables. The magnitude of an effect is measured by its deviation from 1.00. The greater the value from 1.00, the stronger the relationship. Specific effect parameters are listed in Table 7 if their deviation was greater than 0.10.

²²Or, to put it another way, twelve of the cells in the probation category deviate from the observed data by a value of ten or more, whereas only six of the cells in the prison category deviate by a value of ten or more.

In regard to second-order effects, the interaction between offense seriousness and sentence is stronger when the crime score is either high or low. Offenders who commit the most serious crimes are more likely to be incarcerated, whereas offenders who commit the least serious crimes are more likely to receive probation. There is also interaction between prior criminal history and sentence. Persons with

TABLE 7

Summary of Estimates of the Multiplicative Parameters
for Model SCD,SCV,R

<u>Second-Order Interactions</u>	<u>Parameter Estimates</u>
Low Crime Score, Probation	1.143
High Crime Score, Prison	1.228
Low Defendant Score, Probation	1.305
High Defendant Score, Prison	1.319
Low Defendant Score, Low Crime Score	1.406
High Defendant Score, Medium Crime Score	1.313
Family-Friend-Acquaintance, High Crime Score	1.913
Stranger, Medium Crime Score	1.354
Unknown, Low Crime Score	2.278
 <u>Third-Order Interactions</u>	
Low Defendant Score, Low Crime Score, Prison	1.319
Low Defendant Score, Medium Crime Score, Probation	1.140
Low Defendant Score, High Crime Score, Probation	1.156
High Defendant Score, Low Crime Score, Probation	1.223
High Defendant Score, Medium Crime Score, Prison	1.118
Family-Friend-Acquaintance, Low Crime Score, Prison	1.230
Family-Friend-Acquaintance, Medium Crime Score, Probation	1.247
Stranger, Low Crime Score, Probation	1.344
Stranger, Medium Crime Score, Prison	1.134
Stranger, High Crime Score, Prison	1.185
Unknown, High Crime Score, Probation	1.202

extensive prior arrest records are more likely to be sent to jail or prison, while persons with no prior criminal record are more likely to be sentenced to probation. The parameter estimates of the relationship between prior criminal record and offense seriousness indicate a relatively strong association between a low crime score and a low defendant score. Offenders with no prior arrest records are more likely to commit the least serious offenses. The second-order interactions between victim relation and offense seriousness reveal that the most serious crimes are committed against family, friends, and acquaintances. There is also a very strong relationship between defendants who commit the least serious crimes and whose relationship to the victim is unknown.

In regard to the third-order interactions between sentence, offense seriousness, and prior criminal record, the most surprising finding is that the strongest interaction (relatively speaking) is between incarceration and those persons with no arrest records who have committed the least serious crimes. In other words, it appears that offenders with no prior record and who have committed the least serious crimes are more likely to be sentenced to jail or prison. A possible explanation for this finding is that a sizeable number of offenders are being sentenced to jail or prison for short periods of time rather than being sentenced to probation. Indeed, an examination of the original fre-

quencies shows that 22 percent of the total number of defendants who were given incarceration sentences went to jail for under six months; 18 percent went to jail for six months to eleven months; and 21 percent went to prison for one to three years. Adding the first two percentages reveals that 40 percent of the total number of defendants who were given incarceration sentences went to jail for less than one year; and adding all three percentages indicates that over 60 percent were given incarceration sentences less than three years in length. It can be suggested that many of these cases are possibly "borderline," that is, "cases where the judge could either decide to impose a lengthy . . . probation sentence or a short . . . prison sentence" (see Spohn et al., 1981-82:85). Certainly, many of the offenders with no prior record and who have committed the least serious crimes qualify for short-term incarceration sentences.

Finally, the effects between sentence, offense seriousness, and victim relation also indicate some moderate interactions. Perhaps most significantly is the association between probation and those offenders who committed the least serious crimes against strangers. These defendants are more likely to receive a probationary sentence. However, offenders who committed the most serious crimes against strangers are more likely to receive an incarceration

tion disposition. Overall, it appears that the third-order interactions are slightly weaker than the second-order interactions; thus suggesting that the latter interactions have stronger effects on the distribution of cases in the data.

SUMMARY AND DISCUSSION

The guiding theme of this research has been that race affects criminal sentencing outcomes. However, the relationship between race and criminal sentencing is far more complex than the simplicity that the above proposition may imply. The literature on this subject matter clearly reveals the various factors which potentially have some sort of impact on the race-sentence linkage. The statistical technique of log-linear analysis was used in this study in an attempt to specify the nature and degree of this complexity. Log-linear analysis is able to show that the effects of certain variables are not constant, but vary depending upon the value of other variables. Using this technique, the log-linear model that best fits the data is the three-way interaction of sentence, offense seriousness, and prior criminal record; the three-way interaction of sentence, offense seriousness, and victim relation; and the first-order effect of race [SCD,SCV,R]. The results of this analysis indicate that race is unrelated to sentence outcome. That is, race does not have an impact on whether a defendant will be given an "in" sentence as opposed to an "out" sentence. To answer the particular research question

addressed here, black criminal offenders are not more likely than white criminal offenders to receive a sentence of incarceration rather than a sentence of probation. Generally speaking, the absence of a direct race effect on sentencing outcomes in this study is consistent with the expectations derived from the literature.

Race is ~~not~~ only unconnected to sentence outcome, it also ~~has no~~ interactive effects with prior criminal record, offense seriousness, and victim relation. This finding ^{after} ~~contradicts some earlier findings~~ that race has an interactive effect with prior criminal record (see Green, 1961; Nagel, 1969; Kulig, 1975) and is sometimes linked to offense seriousness (see Lotz and Hewitt, 1977; Myers, 1979; Hagan et al., 1979; Hindelang, 1978; Blumstein, 1982). In an illustrative analysis using log-linear modeling, Burke and Turk (1975) found a significant third-order interaction of age by race by prior incarceration. Be that as it may, this study found no interactive effects between race and the other variables in the study.

Although the primary variable of interest - race - is unrelated to the other variables in this study, the results of the log-linear analysis reveal some relevant second- and third-order interactive effects. For the most serious crimes, the probability that a defendant will be given an incarceration sentence is greater than the likelihood of receiving a probationary sentence. The same finding applies

to defendants with the most extensive prior arrest records. These two findings provide further empirical support for the generalized statement in the literature (e.g., Blumstein et al., 1983a) that the two key determinants of criminal sentences are offense seriousness and prior criminal record.

Though race does not have an extralegal influence, the other extralegal attribute in this study, victim relation, does. Perhaps most interestingly, family, friends, and acquaintances are more likely than other types of victims to be a victim of the most serious crimes. This may help explain the three-way interaction between sentence, offense seriousness, and victim relation (SCV). Speaking of third-order effects, a surprising finding was that defendants with no prior records and who have committed the least serious crimes were more likely to be incarcerated. It was suggested that these cases could be "borderline" cases (i.e., cases that could of gone either "in" or "out"), but which ultimately resulted in a short period of incarceration.

As noted earlier, the best model identified was [SCD,SCV,R]. For the most part, the differences between the observed and expected values are relatively small but in certain cells and strata of the table, the discrepancies are substantial. By comparing these differences, two observations are noted: (1) the model may explain incarceration sentencing better than probationary sentencing, and (2) the

model seems to explain certain types of victim relationships better than others. With this in mind, the inclusion of other variables, such as social stability indicators or other victim characteristics, into the log-linear model may be required to achieve a better fit.

The results of this preliminary analysis suggest that the societal response to black criminality in terms of criminal sanctioning does not significantly differ from the response to white criminality. Legalistic factors appear to be more relevant in determining sentencing outcomes than extralegal criteria. Although race has historically and theoretically been associated with discrimination in criminal sentencing, the sentencing research in general and this research in particular has revealed little, if any, racial discrimination in criminal sentencing. Though it does occur in certain situations, racial bias in most cases does not seem to adequately explain differential sentencing. Further research should look at other sources of variation; namely, the sociological context in which crime occurs and the total criminal processing system from arrest to final disposition. A persistent theme in the literature is that sentencing is not a static, isolated phenomenon, but an outcome linked to a causal chain of prior events. Research methodology and data collection should take into consideration this "dynamic perspective" of criminal sentencing.

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APPENDIX A

EMPIRICAL STUDIES ON RACE AND SENTENCING

Study	Sample	Offense(s)	Control for Prior Record	Control for Offense	Contextual Attributes	Other Control Variables	Measure of Significance	Measure of Association	Discrimination Finding?
Green; 1961	Non-Jury Convictions; N= 207	Burglary, Misdemeanors	No Prior Convictions	Yes	--	--	Chi-Square	--	No
Nagel; 1969	N=2,327	Assault Larceny	Prior Conviction(s)/ No Prior Convictions	No	Federal and State Cases	--	--	gamma (zero-order only)	Yes, mainly in larceny cases.
Gerard and Terry; 1970	N=195	Various Felonies	None	Yes	--	Type of Attorney	--	--	Yes, for some felonies.
Conklin; 1972	N=405	Robbery	None	No	Type of Court; Time	--	--	--	No
Kulig; 1975	N=1,474	Felonies, Misdemeanors	Low, Medium, High Arrest Record	Yes	--	Method of Conviction	--	--	Yes, mainly involving defendants with "medium" or "high" arrest record.

Study	Sample	Offense(s)	Control for Prior Record	Control for Offense	Contextual Attributes	Other Control Variables	Measure of Significance	Measure of Association	Discrimination Finding?
Pope; 1975	N=32,694	Various Felonies	No Arrests/ Convictions but No Prison/ Some Prison	Yes	Urban vs. Rural; Lower vs. Superior Courts	Criminal Status	--	--	Yes, in rural courts at both court levels.
Clarke and Koch; 1976	N=798	Burglary, Larceny	No Arrests/ Prior Arrests	Yes	--	Income, Arrest Promptness	Chi-Square	--	No
Eisenstein and Jacob; 1977	N=2,809	Various Felonies	Prior Arrests	Yes	Identity of Courtroom	Evidence Strength, Defendant Characteristics, Method of Conviction	P<.01	Canonical Correlation	No
Levin; 1977	N=6,837	Various Felonies	Prior Record	Yes	Political Culture	Type of Plea, Age	--	--	Yes, in Minneapolis
Lotz and Hewitt; 1977	N=504	Felonies	Prior Record	Yes	--	Weapon	F-Ratio	gamma	No

Study	Sample	Offense(s)	Control for Prior Record	Control for Offense	Contextual Attributes	Other Control Variables	Measure of Signi- ficance	Measure of Association	Discri- mination Finding?
Sutton;N=9,384 1978		Eight Felonies	Conviction/ Incarceration	Yes	--	Method of Conviction and other Case-processing Variables	F-Ratio	Pearson's r Somers's d	No
Myers; 1979	N=205	Various Felonies	Arrest Conviction/ Incarceration	Yes	Victim- Offender Relation- ship Character- istics	Age, sex, Probation Officer's Recommendation, Type of Counsel, Pretrial Release	F-Ratio	Pearson's r	No
Hagan, Hewitt, and Alwin; 1979	N=504	Various Felonies	Prior Convictions	Yes	--	Sex, Work History, Family Ties, Bail, Plea, Probation Officer's Recommendation, Weapon	P < .05	Beta Coefficients	No

Study	Sample	Offense(s)	Control for Prior Record	Control for Offense	Contextual Attributes	Other Control Variables	Measure of Significance	Measure of Association	Discrimination Finding?
Unnever, Frazier and Henretta; 1980	N=219	Various Offenses	1-Arrests 2-Convictions	Yes	--	Age, Sex, Employment Marital Status, Education, Recommendations by Police, Prosecutors, and Probation Officers	--	Beta Coefficients	Yes, but weakens when controlling for probation officers recommendation.
Spohn, Gruhl, and Welch; 1981-82	N=2,366	Various Offenses	Number of times a defendant has been sentenced to prison for more than one year.	Yes	--	Type of Attorney, Type of Plea, Charge Reduction, Bail Amount, Pretrial Status	$P \leq .05$	Pearson's r	Yes, but the direct effect is not as strong as the indirect effect through offense.
Wheeler, Weisburd, and Bode; 1982	N=1,094	Eight Federal "White-Collar" Crimes	No Prior Convictions/ Most Serious Prior Conviction	Yes	Federal District, Type of Victim	Several Offense-Related, Offender-Related, and Legal Process Variables	$P < .001$	--	No

Study	Sample	Offense(s)	Control for Prior Record	Control for Offense	Contextual Attributes	Other Control Variables	Measure of Signi- ficance	Measure of Association	Discri- mination Finding?
Peter- silia; 1983	N=2,193	Robbery	Number and Seriousness of Prior Contacts with Criminal Justice; Ranging from No Arrests to Three or More Convictions	Yes	--	Criminal Status	F-Ratio	Beta Coefficients	Yes
Peterson and Hagan; 1984	N=4,371	Federal Drug Offenses	Number of Prior Convictions	Yes	Time Periods, Character- istics of the Judge	Several Social Status Character- istics, Legally- relevant Offender and Case Characteristics.	$P \leq .05$	Beta Coefficients	No (in terms of sentence severity)

APPROVAL SHEET

The thesis submitted by Keith W. Coopridier has been read and approved by the following committee:

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The final copies have been examined by the director of the thesis and the signature that appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval by the Committee with reference to content and form.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

April 19, 1985
Date

Richard Block
Director's Signature