
5 Discrimination in Sentencing: Patterns of Sentencing for Assault Convictions

Using section 245 [now 266]
and 246 [now 270] (assault) of
the *Criminal Code*

by
Don Clairmont
with the assistance of
Winston Barnwell

January 1989

Contents

- Introduction
- Discrimination and Sentencing: Theory and Issues
- Previous Research
- Analysis and Findings
- The Data Set
- Basic Patterns
- Second-Level Analysis
- Correlation and Regression Analysis
- Structural Discrimination
- Special Issues
- Discussion

Tables

- 1** Description Profile, Males Convicted of Assault 1986 to Present
by Race
- 2** Legal Profile, Males Convicted of Assault 1986 to Present
by Race
- 3** Assault Charges Type by Race
- 3a** Sentencing Outcomes by Race
- 3b** 'Extreme' Sentences by Race
- 4a** Sentence Severity by Charge Severity
- 4b** Sentence Severity by Race
- 5** Sentence Severity by Race Controlling for Charge Severity
- 6a** Sentence Severity by Prior Convictions
- 6b** Sentence Severity by Whether Offender was Under Sentence at
the Time
- 6c** Sentence Severity by Whether Offender Was Facing Other
Charges
- 7** Sentence Severity by Race Controlling for Prior Convictions

-
- 8** Sentence Severity by Race Controlling for Charge Severity When Case Embedded
 - 9** Correlations and Beta Coefficients in Relation to Sentence Severity
 - 10a** Sentence Severity by Employment Status
 - 10b** Sentence Severity by Socio-economic Status
 - 11** Black Offenders: Selected Assault Characteristics by Race of Victim

Figures

- 1** Coding Considerations
- 2** Map A - Nova Scotia Blacks, 1980
- 3** Race and Sentencing: A Structural Discrimination Model

Introduction

Discrimination and Sentencing: Theory and Issues

Certainly one of the most widely debated issues in the criminological literature concerns the extent to which there is racial bias in the administration of justice. Race is taken essentially as socially defined. The question of bias extends throughout all dimensions/spheres of the criminal justice system. The American literature has focussed especially upon discrimination against Blacks (and increasingly of late discrimination against Hispanics). In Canada, given the small black population prior to recent immigration, the bulk of the literature has dealt with the issue of anti-Native bias.

In the area of sentencing the debate rages on (*e.g.*, Hawkins, 1987) despite the considerable improvement in the quality of data sets and in the methodologies employed (*e.g.*, controlling for relevant variables, use of sophisticated causal or process models). Key variables which must be controlled for in evaluating discrimination in sentencing have been identified; in addition to race, sex, age and region these include the number, type and recency of prior criminal convictions, the legal embeddedness of the case (*e.g.*, whether the accused is already under sentence), the seriousness of the offence, pre-sentence reports and dependency (*i.e.*, whether the offender is caring for dependents). The issues now focus largely on measuring the more subtle indirect and often statistically insignificant but cumulative ways in which racial bias operates to affect sentencing, and conceptualizing the nature of racial bias in the context of social class (*i.e.*, both economic and cultural factors) and the increasing formal rationality of modern society. Overall overt, direct racial bias in sentencing, whether in the United States or Canada, is seen to have been significantly attenuated (Hagan, 19; Kleck, 1981; Zatz, 1987; Hacker, 1988).¹

The social class aspect of the sentencing controversy is rooted in the fundamental premise that insofar as equal protection of the law is a commodity which must be purchased then this equality cannot be anything but a legal fiction as long as resources for such a purchase are distributed in a profoundly unequal fashion (Kleck, 1981). Social class factors clearly structure the resources, economic and other, that affect sentencing. As Zatz observes, "social groups differ not only in their abilities to shape and define deviance but also to mobilize resources once involved in the legal system" (Zatz, 1987, p.84). From this perspective it would be expected that social class factors would have both direct and indirect affect on sentencing. Directly, the impact would be via judicial bias; indirectly, the impact would be

1. For an excellent overview of successive "waves" of research dealing with racial/ethnic bias in sentencing, see Zatz (1987). Zatz identifies four waves wherein different issues and styles of research could be identified. In the current, fourth wave in the adopted by legislatures "studies show subtle, if no longer overt, bias against minority defendants" (p. 70). These new Policies have shifted more discretion to the prosecutor (*e.g.*, charges laid and plea bargaining).

via defence strategies, legal resources and personal offender assessments. The low social class background of most Blacks and Natives, quite apart from racism, would clearly disadvantage them according to this theory. Presumably racial bias would augment that disadvantage.

Weber's depiction of the increasingly formal rational organization of modern society has generally been adopted by modern sociologists (Parsons, 19; Marcuse, 19). The implications for the issues at hand are that the values and procedures or rules of social organization are increasingly universal, impersonal and bureaucratic. In addition to being detailed and written they are presumably regularly monitored. In this context it would be expected that race bias would be less and less overt and more and more to be found through appreciation of rule setting and interpretation (*e.g.*, why this rule? who sets and benefits from these "rational" policies?) and differential resources be they economic, informational or social (*i.e.*, access). Even social class effects in sentencing would presumably be increasingly indirect and "masked". Clearly such a system favours some individuals and groups and disadvantages others. Weber himself observed that "formal justice guarantees the maximum freedom for the interested parties to represent their formal legal interests. It is precisely this abstract character which constitutes the decisive merit of formal justice to those who wield the economic power at any given time and who are therefore interested in its unhampered operation" (Zatz, *op.cit.*, p 85).

Overall then it can be expected that race/ethnic bias is becoming more inextricably tied to social class factors which in turn become increasingly "laundered" in formal rational rules and policies. What stays the same according to most criminologists is that the poor, and especially Blacks and Natives, get convicted and incarcerated. Justice in a substantive rather than a formal rules/criteria sense receives less heed. What's to account for special leniency: future contribution to society which under the circumstances favour the socially advantaged, or what Hacker (1988) describes as "the sheer strain of such an existence (that of the urban poor Blacks in the United States) which takes its toll in many ways"? Issues of the quality and substance of justice would suggest the need for a more "proactive justice system" just as sensitivity and fairness as regards the implications of rules and policies would seem to require less control by special class or race interests.

Previous Research

A recent poll in "Time" (August 8, 1988) indicated that only 28 percent of the Blacks questioned felt that the courts are evenhanded toward White and Black defendants. Recent research has established that both Blacks and non-Blacks in Nova Scotia perceive discrimination to be significant here. The criminal justice system is not exempt from this accusation. The Head/Clairmont report (1989) indicates that police are generally perceived as treating Blacks less fairly. As for the courts, close to 50 percent of Blacks and 33 percent of non-Blacks in the survey report the perception that here too Blacks are treated less fairly. While non-Blacks and Blacks over 55 years of age are more likely to consider discrimination to be on the wane, a surprising number are less optimistic. Interestingly the study also shows that the perception of discrimination and the lack of optimism is common too among those Blacks most familiar with the operation of the courts (*e.g.*, lawyers). Typically these persons report the racism to be subtle and implicit (rather than overt) in language, understandings and expectations (*ibid.*, pp.40-46). Spectacular or special instances of how such racism or discrimination manifests itself in lenient or harsh sentencing have been cited in the Royal Commission on the Donald Marshall, Jr., Prosecution as well as in recent publications (*e.g.*, Harris, 1984; B.U.F., 1988).

Research conducted into sentencing as part of the Royal Commission focussed on convictions for theft. It was addressed to the question: "Do Blacks convicted of the same offence receive the same sentences as non-Blacks and if not, what factors account for the difference?" The relatively small sample - 51 Blacks and 126 non-Blacks - consisted of many first offenders and most sentences were fines or discharges. Blacks were less likely to obtain discharges and more likely to be incarcerated than non-Blacks. The differential sentencing held up when prior convictions and a few other variables were controlled for. In the case of absolute discharge no Blacks were granted one while 14 percent of the non-Black offenders were. Analyses indicated that while a "legal" factor such as type of plea usually differentiated persons getting such a discharge from those not getting one, there was some evidence that socio-economic factors were also important.

The theft study was interesting and suggestive but it was flawed in several key respects as regards its relevance for the issue of discrimination in sentencing. Data were not collected on variables identified as crucial in the literature on sentencing such as the recent prior convictions and the actual type of priors (whether related or not). Other important missing data included the embeddedness of the case (*e.g.*, whether the offender was already under sentence) and

whether the offender had dependents. Theoretically too the focus on theft was limiting since theft is largely an impersonal type of offence and does not tap the interpersonal relations often giving rise to discrimination; nor for that matter does it tap the issue of devaluation of race (*i.e.*, the differential sentencing depending on the victim's race). For these and other reasons it was deemed useful to consider all recent assault convictions. Assault cases generally are more serious offences than theft, involve interpersonal relations, and facilitate a broader examination of the discrimination thesis.

Figure 1
Coding Considerations

It is the objective to obtain the following information on the cases selected for analysis.

- | | | |
|---|--|--|
| <p>1. I.D. (a six # Case code)
 Name (uncoded)
 Address (uncoded)</p> <p>2. Precise Charge: (an 8 field code) .
 245.1 to 246 _____</p> <p>3. Age: year of birth 19.....</p> <p>4. Date of Offence (month, year) 19.....</p> <p>5. Date of Sentence (month, year) 19.....</p> <p>6. Race:
 Black = 1
 Non-Black (excluding Native) = 2</p> <p>7. Marital Status
 single = 1; married (or common law) = 2
 separated/divorced = 3; widowed = 4</p> <p>8. Dependency A:
 caring for kids; yes = 1; no = 2</p> <p>9. Dependency B:
 caring for others; yes = 1; no = 2</p> <p>10. Education A:
 last year formal schooling completed</p> <p>11. Education B:
 any trade credentials; yes = 1; no = 2</p> <p>12. Employment A: working; yes = 1; no = 2</p> <p>13. Employment B: type of job</p> <p>14. Judge's name</p> <p>15. Prosecutor's name</p> <p>16. Defence counsel's name</p> | <p>17. Legal Rep: no = 1; legal aid = 2; private = 3</p> <p>18. Type of Court:
 county = 1; supreme = 2; mag = 3; prov = 4</p> <p>19. Jury?
 no = 1; yes = 2; unclear = 9</p> <p>20. Plea: not guilty = 1;
 changed to guilty = 2; guilty = 3</p> <p>21. Victim's race:
 Black = 1; non-Black = 2; Native = 3</p> <p>22. Victim's Sex: male = 1; female = 2</p> <p>23. Victim's age: date of birth 19.....</p> <p>24. Relation to Assaulter:
 kin = 1; acquaint = 2; other = 3; no = 4</p> <p>25. Injury?
 ser & per = 1; ser & < per = 2; not ser = 3</p> <p>26. Special Severity Circumstance
 (WRITE IN) yes = 1; no = 2</p> <p>27. Special Leniency Circumstance
 (WRITE IN) yes = 1; no = 2</p> <p>28. Priors? code from 0 to 8 (leaving 9 for dk)</p> <p>29. Related Priors? (ie B&E plus any violence
 code)</p> <p>30. Year of last conviction 19.....</p> <p>31. Embeddedness A:
 other charges/avoid add-ons; yes = 1; no = 2</p> <p>32. Embeddedness B:
 already under sentence; yes = 1; no = 2</p> | <p>33. Embeddedness C:
 on probation/parole; yes = 1; no = 2</p> <p>34. PSR* ? yes, very pos = 1; yes, fair = 2;
 dk = 3; yes neg = 4; no = 5</p> <p>35. PSR?
 accepts blame; yes = 1; no = 2</p> <p>36. PSR? shows remorse; yes = 1; no = 2</p> <p>37. PSR? social environ negative; yes = 1; no = 2</p> <p>38. PSR? attitude/alcohol or drug problem?
 yes = 1; no = 2</p> <p>39. Pre-sentence atonement (money/apology
 etc); yes = 1; no = 2</p> <p>40. Sentence: MAIN disch = 1;
 susp sent = 2; fine = 3; incar = 4</p> <p>41. Sentence: fine?
 yes = 1; no = 2</p> <p>42. Sentence: probation? yes = 1; no = 2</p> <p>43. Sentence: community service? yes = 1; no = 2</p> <p>44. Sentence: restitution? yes = 1; no = 2</p> <p>45. Sentence: treatment? yes = 1; no = 2</p> <p>46. Length of time incarcerated - from 0000 to
 whatever in days</p> <p>Comments</p> <p>.....</p> <p>.....</p> <p>.....</p> |
|---|--|--|

*PSR refers to Pre-sentence report.

Analysis and Findings

The Data Set

For this project data were gathered and coded for all males convicted of and sentenced for assault in the metropolitan Halifax-Dartmouth area over the period from roughly 1987 to the present. The phrase "roughly 1987" is employed since the researchers had access to all court files involving assault that were still in the Crown Prosecutor's office and had not been sent to storage; very few pre-1987 files were thus readily available. While virtually all sentences were rendered in the years 1987 and 1988, most offences occurred in the years 1986 and 1987. The sample of 221 males represents almost the total population of convicted metropolitan male assault offenders for the period in question. A handful of males convicted for child abuse were excluded from the analysis and an equally small number of offenders (all apparently non-Black) were excluded due to data problems. Three cases were dropped since they involved repetition of the charge and the victim. The number of females convicted of assault over the same period was less than a handful so they were also excluded. Finally three young offenders, aged 16 or less, were also dropped from the analysis.

2. Pre-sentence reports usually contain materials obtained by a court worker probation officer from interviews with the offender, his family, employer and others and from examination of school, police and other records. A portrait of the offender is provided for the sentencing judge. While such a report may be requested by judge or attorney it is often considered to be an advantage for the offender and accordingly the onus is on the offender, and indirectly his counsel, to cooperate fully. The absence of a pre-sentence report generally means that neither judge nor lawyer requested one but it could also mean that the offender did not cooperate.

Figure 1 - Coding Considerations (on previous page) - indicates the variables utilized in this study and how each variable has been coded. For the most part appropriate data were available though the court dockets had to be searched carefully in the light of acronyms, illegible scrawlings and cryptic comments - understandable since the dockets were in-house documents, not reports neatly done up for outside researchers; indeed the fact that they were not "sanitized" was often beneficial in our appreciating aspects of the case at hand. The most serious short-fall concerned the absence of a pre-sentence report in precisely 50 percent of the cases.² Where the latter was unavailable it was usually impossible to obtain information on remorse, alcohol or drug addiction and social environment; also the absence of a pre-sentence report reduced the likelihood of data on education and employment and necessitated more sleuthing and checking by the researchers on such basic facts as the sentencing judge. (This was largely because the pre-sentence report always neatly listed basic data such as the trial judge, the prosecutor and defence counsel on its cover sheet). Two additional data problems deserve attention. Race itself was rarely noted in the court dockets/prosecutorial files; consequently, while always ultimately successful, considerable effort had to be expended looking for clues in the files and consulting local police records. Of course the issue of race identification is a thorny one for reasons of theory, practicality

and social policy. Secondly, information on "remand", a factor that could influence subsequent sentencing (*i.e.*, if a person has been incarcerated pending the outcome of his/her current case that might be taken into account by the judge in his/her sentencing), was difficult to decipher so it was not utilized. Overall the quality of the data was quite good and little missing data resulted. Apart from considerations noted above with respect to pre-sentence reports, missing data on education and job status were the only significant shortfalls; the former was a problem only in the case of non-Blacks where educational data was missing for 20 percent of the grouping while the latter was a problem for both groupings.

Figure 2: Map A
Nova Scotia Blacks, 1980



Table 1
Descriptive Profile, Males Convicted of Assault 1986 to Present, by Race

Personal Characteristics	Total Population N=221	Non-Blacks N=170	Blacks N=51
Age 25 years plus	53%	54	51
Single	60%	59	65
Separated/Divorced	9%	8	10
Dependent Children	27%	24	35
H.S. Graduate/Plus	16%	22	0
Trade Credentials	14%	16	8
Employed	48%	53	31
"Low" Job Status	80%	77	95
Offence Characteristics			
High Severity Charge*	70%	70	67
Victim Non-Black	90%	95	75
Victim Female	44%	41	56
Victim Stranger	52%	52	51
Serious Injury	44%	46	36
Embeddedness**	30%	27	38
Special Leniency	7%	9	2
Special Severity	6%	8	0

*High severity charges are defined as indictable carrying a maximum imprisonment beyond five years.

**Embeddedness here refers to the presence of other charges laid against the offender.

3. Because so many offenders were unemployed and pre-sentence reports were unavailable for so many, it was possible to assess the type of work usually engaged in by the offenders in only 16 cases among the Black grouping and 87 cases among the non-Blacks. Roughly half of the known Black cases fell into the basic unskilled job category while a third of the known non-Blacks cases did so. The unemployed would likely also be in that category.

Basic Patterns

Certainly the most basic point about the data patterns is that Black males were disproportionately represented among the population of males convicted of assault. About 22 percent of this population was Black whereas in the larger metropolitan population the proportion of Blacks is probably no more than five percent and more likely about three percent. Figure 2 indicates that the known Black population in the whole of Halifax county in 1980 was less than 10,000 while the total population of metropolitan Halifax alone exceeded 275,000. Undoubtedly a good portion of

the Black over-representation in these court records has to do with socio-economic status as will be discussed below.

Table 1 provides a descriptive profile of the male assault offenders. It is clear that low socio-economic status is a basic characteristic. Virtually 80 percent of the total population for whom employment could be determined (whether at the time of sentencing or previously) worked at semi-skilled or unskilled jobs; in the case of Blacks the figure rose to 95 percent.³ Only half the non-Black offenders were employed at the time of sentencing and less than one-third of the Blacks. Just one quarter of the non-Blacks had graduated from high school and not one of the Blacks had. Few males had any specific trade credentials. Blacks and non-Blacks were reasonably alike in terms of age and marital status (mostly single and in their twenties) but Blacks were somewhat more likely to report having to care for dependent children. In sum low socio-economic status is strongly featured in the population of males convicted for assault and Blacks in particular experienced that condition as most were unemployed and without significant educational or trade credentials. Apart from the job status variable there was little missing information so there is little ambiguity concerning the above patterns.

Characteristics of the assault offence itself are also presented in Table 1. There it can be observed that roughly two-thirds of the cases, from all groupings, involved charges of high severity, that is

Table 2
Legal Profile, Males Convicted Of Assault 1986 to Present by Race

Characteristics	Total Population N=221	Non-Blacks N=170	Blacks N=51
High Severity Charge	70%	70	67
Legal Aid Used	67%	65	74
Private Legal Service	27%	31	16
Magistrate Court	60%	58	68
Jury Involved	13%	13	12
Not Guilty Plea	41%	39	46
No Priors	30%	34	18
3+ Priors	44%	39	58
2+ Related Priors	32%	29	42
Prior Since 1983	56%	52	62
Other Charges Laid	30%	27	38
Under Sentence	12%	7	29
Probation/Parole Violation	14%	14	14
Favorable PSR*	34%	37	24
Incarceration**	46%	44	55

*PSR refers to Pre-sentence report.

**Incarceration refers to a jail term of more than one day.

4. About 1,000 assault offences each year are recorded by the Halifax Police Department alone. HPDs reported 70 percent clearance rate reflects largely the "cleared otherwise" categorization. For example, of the 1,000 cases in 1985, 513 were cleared otherwise, and only 217 were cleared by charge. For the cities of Halifax and Dartmouth combined, over the period of 1985 to 1987 a total of 950 assaults were charged. Approximately 275 of these were of the low severity type. The largest category by far of assault charges was assault with a weapon/ causing bodily harm which accounted for 450 of the 950 charges for that period.

charges that were indictable and entailed maximum imprisonment sentences of at least ten years. Cases of lesser severity (*i.e.*, s.245(a) and (b), s.246(1)(a), s. 246.1(1)(b)) involved common assault, assaulting a peace officer and less severe types of sexual assault. The researchers were quite surprised that these cases were not more numerous. Presumably many simple assaults are either not being prosecuted or charges are escalated. Apart from the probable underreporting of these offences in the first instance it

may well be that "not charging" is as common as "overcharging".⁴ In any event the relatively small number of cases forced researchers to group the assault charges into two larger categories of less and more severe rather than work with a wider classification.

The victims of assaults, whether by Blacks or non-Blacks, were overwhelmingly non-Blacks though Blacks assaulted other Blacks in one quarter of their offences. Interestingly about half the assault victims were strangers to their offender, a statistic that did not vary across groupings. In the case of Black offenders the victim was more likely to be female and the injury caused less serious. There were few cases in this sample where special leniency (*e.g.*, a strongly provoked assault) or special severity circumstances (*e.g.*, assault of a pregnant woman) could be identified. Black offenders were somewhat more likely than their non-Black counterparts to have confronted other charges along with the assault charge. In sum apart from the fact that the victim in this predominantly non-Black metropolitan region was usually non-Black, there was quite a bit of variation in offence characteristics. Males and females, strangers and kin/acquaintances, serious and non-serious injury, embeddedness or lack thereof were well represented as victims or conditions and differentiation by Black/non-Black offender groupings was only modest at best.

Table 2 focusses on the legal aspects of each assault case. As might be expected on the basis of the earlier analysis of socio-economic status, the male offenders, especially the Blacks, depended heavily upon legal aid services. Private legal services were engaged only in 31 percent of the non-Black cases and about half that in the

Table 3
Assault Charge Type by Race

Charge Type	Black	Non-Black
Common Assault	19% (10)	16 (27)
'Serious' Assault	55% (28)	58 (99)
Sexual Assault	18% (9)	14 (23)
Assault Peace Officer	8% (4)	12 (21)
Totals	100.0% (51)	100.0 (170)

() - Represents number of people.

Table 3a
Sentencing Outcomes By Race
(N = 221)

Sentences	Blacks	Non-Blacks
Discharge	0% (0)	4 (7)
Suspended Sentence	20% (10)	22 (38)
Fine	25% (13)	30 (52)
Incarceration (more than one day)	55% (28)	43 (73)
Total	100.0% (51)	100.0 (170)

() - Represents number of people.

Table 3b
'Extreme' Sentences by Race
(N = 20)*

	Black	Non-Black
Discharge	0	7
Two Year plus incarceration	5	8

*Expected ratios assuming only charge severity controls would be two to five for discharge and three to ten for long incarceration.

event of Black offenders. Juries were utilized infrequently. Not-guilty pleas were maintained about 40 percent of the time and in another 20 percent the initial not-guilty plea was changed to guilty. In general, differences by race of offender were not pronounced in any of these characteristics, the largest being the rather predictable, modest difference between non-Blacks and the less well-off Blacks in hiring private legal counsel.

Differences by race were more pronounced when the criminal records of offenders were examined. Black offenders were more likely to have had prior convictions, more "priors", more prior convictions on related offences (*e.g.*, assault, threatening, armed robbery and break and enter) and recent priors (*i.e.*, 1983-88). Black offenders were also more likely to have faced other charges at the time of their conviction and indeed to have been under sentence when convicted or sentenced. Additionally Blacks were less likely than non-Blacks to have obtained favourable pre-sentence reports. While some of these differences are modest and the sample numbers are relatively small, there is an overall consistency which makes the subsequent finding that Blacks were more likely to be incarcerated (55 percent to 44 percent) rather predictable.

Table 3 provides data on the types of assault charges faced by the male offenders in this sample. It can be noted that the differences between Black and non-Black offenders in these regards were quite miniscule. For both groupings there was the same rank-ordering of charge types ("serious" assault, common assault, sexual assault and assault of peace officer in that order) and the percentages for each type were quite similar. Perhaps the only finding of note is the greater frequency of "serious" (indictable, maximum imprisonment of at least ten years) assault charges compared to common assault charges.

The sentences given to Blacks and non-Blacks for assault violations are detailed in Tables 3a and 3b. There it may be noted that no Blacks received a discharge while the majority were incarcerated. Among non-Blacks a few obtained discharges and the most frequent sentence - though not majority - was incarceration. The rank-order of sentences was similar for both groups: incarceration, fine, suspended sentence, discharge. As indicated in Table 3b, taking only the variable of charge severity into account and considering only the 20 statistically "extreme" cases of discharge or two years plus incarceration, the actual distribution differs from the expected distribution (expected that is if one simply extrapolated from the ratios associated with low and high charge severity) in the direction of Blacks receiving harsher sentences though the differences are modest (the small numbers preclude statistical significance).

Table 4a
Sentence Severity By Charge Severity* (N = 221)

Sentence Severity	Charge Severity	
	Low	High
Low	47 (69%)	72 (47%)
High	21 (31%)	81 (53%)

$\chi^2 = 8.35$
 $P < .002$
 $C = .21$

* See text for specific operationalizations.

Table 4b
Sentence Severity By Race (N = 221)

Sentence Severity	Black	Non-Black
	Low	23 (45%)
High	28 (55%)	74 (44%)

$\chi^2 = 1.61$
 $P < .20$
 $C = .10$

Table 5
Sentence Severity by Race Controlling for Charge Severity (N = 221)

Sentence Severity	Low Severity		Sentence Severity	High Severity	
	Black	Non-Black		Black	Non-Black
Low	11 (65%)	36 (71%)	12 (35%)	60 (50%)	
High	6 (35%)	15 (29%)	22 (65%)	59 (50%)	

$\chi^2 = .02$
 $P > .5$
 $C = .05$

$\chi^2 = 1.86$
 $P > .17$
 $C = .13$

Overall the basic descriptive patterns indicate that convicted male assault offenders have very much in common, especially low socio-economic status, and that Black offenders have even lower, socio-economic status than their non-Black counterparts. Blacks' more limited resource position manifests itself directly in their lesser likelihood of employing private legal counsel and perhaps indirectly in their failure to obtain a discharge sentence. At the same time the data clearly indicate that the Black offenders did differ from the non-Blacks on criteria clearly legally relevant (Culliton, 1970; Salhany, 1984) in sentencing such as criminal record, embeddedness and pre-sentence assessment. The group profiles of Blacks and non-Blacks on both assault charges and assault sentences are really quite similar. On the surface at least the sentencing patterns for assault do not provide much basis for the hypothesis of significant discrimination by race. On the other hand, there is little indication from these files that the court system does anything positive or proactive to effect a more substantive fairness given the societal inputs it receives. There was nowhere in the files, correspondence, trial records or pre-sentence reports any indication of sensitivity to the Black experience in Nova Scotia or for that matter to the problems of the resourceless in general.

Second-Level Analyses

In this section the analysis is advanced by contingency table comparisons where relevant "legal" variables can be controlled. Here for example the effect of prior conviction and charge severity will be

examined in conjunction with race of offender and other factors. Table 4a indicates that there is indeed a significant relation between charge severity (as defined above) and sentence severity (*i.e.*, incarceration beyond one day is high severity while all other sentences are collapsed into the low severity category). The fact that the relationship is not as strong as expected - the contingency coefficient is only .21 - is apparently due to the tendency

for more severe charges to almost equally yield either low severity or high severity sentences. This latter tendency in effect means that other criteria such as perhaps prior record, counsel type, pre-sentence

Table 6a
Sentence Severity by Prior Convictions

Sentence Severity	Two or Less Priors		Three or More Priors	
	Count	Percentage	Count	Percentage
Low	88	(72%)	30	(32%)
High	34	(28%)	65	(68%)

$\chi^2 = 33.8$
 $P < .000$
 $C = .38$

Table 6b
Sentence Severity By Whether Offender was Under Sentence at the Time (N = 221)

Sentence Severity	Under Sentence		Not Under Sentence	
	Count	Percentage	Count	Percentage
Low	2	(7%)	118	(61%)
High	25	(93%)	76	(39%)

$\chi^2 = 27.3$
 $P < .000$
 $C = .33$

Table 6c
Sentence Severity by Whether Offender Was Facing Other Charges (N = 213)

Sentence Severity	Facing Other Charges		Not Facing Other Charges	
	Count	Percentage	Count	Percentage
Low	27	(43%)	89	(59%)
High	36	(57%)	61	(41%)

$\chi^2 = 4.85$
 $P < .03$
 $C = .15$

report and the like play a significant role in the sentencing process.

Table 4b affirms statistically what our initial analysis indicated, namely that while Blacks were somewhat more likely to be incarcerated for assault the relationship between sentence severity and race was not significant in this relatively small sample (*i.e.*, the probability of a difference such as found in the Table occurring by chance is high, almost one time in five). Table 5 examines the relationship between sentence severity and offender's race taking charge severity into account. In the case of the low severity charges the relationship between sentence severity and race was clearly insignificant. However, when dealing with more serious charges the relationship between sentence severity and race of offender approximated though it did not reach statistical significance (*i.e.*, $p = .17$). Consistent with the analysis of Table 4a above, Table 5 indicates that it is with respect to the more severe charges that race, or by implication factors associated with race such as type of counsel, "priors" and so forth, may affect the sentencing process at least modestly.

It was noted earlier that criminal record and embeddedness factors (*i.e.*, factors such as facing other charges or being under sentence or having broken parole/probation) differ by race grouping and that they can be expected to strongly affect sentencing. Tables 6a, 6b and 6c indicate the nature of that impact. Table 6a, based on 217 cases shows that sentencing severity was strongly related to prior convictions. Those offenders with "high priors" (three or more prior convictions) were likely to receive severe sentences and those with "low priors" (two or fewer previous convictions) were likely to avoid incarceration. The relationship between whether one was already under sentence and severity of sentence for the particular assault conviction was also significant and of comparable strength (see Table 6b). Offenders already under sentence were especially likely to receive an incarceration sentence, not surprisingly since they were often already in jail or prison. Least strong but still significant was the embeddedness factor of facing other charges; again offenders facing other charges were more likely to be incarcerated (see Table 6c). The significance and strength of these three relationships clearly suggest that since they were associated with race, race would have had to exercise a very strong impact on sentencing in order to remain significant when these other variables were controlled for. Of course in these data, as noted, the basic "zero-order" relationship between race and sentencing severity was modest and non-significant to begin with.

Following up on the above points the next two Tables (on the following page) examine the relationship between race and sentence severity controlling for prior conviction and embeddedness. Table 7

Table 7
Sentence Severity by Race Controlling for Prior Convictions (N = 215)

Sentence Severity	Two or Less Priors		Three or More Priors	
	Black	Non-Black	Black	Non-Black
Low	15 (71%)	73 (72%)	7 (24%)	23 (35%)
High	6 (29%)	26 (28%)	22 (76%)	43 (65%)
	$X^2 = .0$ $P > .9$ $C = .0$		$X^2 = 1.06$ $P > .3$ $C = .10$	

Table 8
Sentence Severity by Race Controlling for Charge Severity When Case Embedded* (N = 77)

Sentence Severity	Low Severity		High Severity	
	Black	Non-Black	Black	Non-Black
Low	5 (50%)	11 (52%)	3 (19%)	10 (33%)
High	5 (50%)	10 (48%)	13 (81%)	20 (67%)
	$X^2 = .01$ $P > .9$ $C = .02$		$X^2 = .49$ $P > .4$ $C = .15$	

*Embedded here refers to the offender's facing other charges and/or already being under sentence.

indicates that controlling for high or low "priors" renders more questionable the argument that race on the average affects sentence. Within each category of priors the race/sentence association was weak and not significant. The same results ensued when embeddedness, measured by facing other charges and/or already being under sentence, was controlled for. It should be clear that these statistical analyses provide results that are "on the average" and that are influenced by the number of cases being considered.

As a matter of curiosity, and admittedly stretching the value of cross-tabular analyses given the sample size here, an examination was made of the race-sentence relationship controlling for both charge severity and embeddedness (as defined above). The results shown in Table 8 can be compared with Table 5. Clearly

the utilization of an additional control variable, namely embeddedness, weakens further the weak race-sentence relationship depicted in Table 5. The same effect predictably occurs when Table 4b is rerun only for that portion of the sample where embeddedness was indicated; the weak race-sentence relationship is further weakened.

In summary, cross-tabular analyses provides little support for the hypothesis that race significantly affects sentencing either directly or as an amplifier/elaborator of other sentencing relationships. There were some race-related differences, especially in the case of the more serious assault charges, which were in the hypothesized direction but always these differences were modest and without statistical significance.

Table 9
Correlations and Beta Coefficients in Relation to Sentence Severity

Variable	Zero-Order Correlation	Beta Coefficient	Beta's Significance
Related Priors	.37	.22	.009
Severity of Victim's Injury	-.17	-.20	.004
Embeddedness	.28	.19	.005
High Priors	.38	.16	.05
Court Type	-.15	----	----
Charge Severity	.11	----	N.S.
Race	-.13	----	N.S.
Employed	.23	----	N.S.
Private Counsel	-.14	----	N.S.
Not-Guilty Plea	-.14	----	N.S.
Victim Unknown	.18	----	N.S.
Victim Sex	----	----	N.S.
Dependents	----	----	N.S.
Favourable PSR	----	----	N.S.

Multiple R = .53, R² = .28.

5. By "legal variables" is meant those variables clearly deemed to be legally relevant for sentencing. Prosecutors expect for example that probation or parole violation would be reflected in sentencing for offences incurred under that condition. And it is accepted that prior convictions are properly taken into account in sentencing and do not reflect double jeopardy (Salhany, 1984). The argument appears to be that one is rarely sentenced at the maximum permissible by law so leniency is being exercised and therefore a judge can consider previous convictions. The wide range of sentence possibilities (for the gravity of the offence and character of the act) would also be readily acknowledged as a proper consideration. Beyond these factors what is to be taken as legal or extra-legal is subject to some ambiguity largely because the judge has to be sensitive to competing norms imposed by the *Criminal Code* (see Culliton, 1970). Age for example is often taken (now post-18) as an extra-legal variables since as Trudell (1986) notes the age of an offender is generally taken into account only in cases of extreme youth or older age. Family (and dependants) responsibility has been another ambiguous factor. Race, education, socio-economic status and work history are more unambiguously defined as extra-legal.

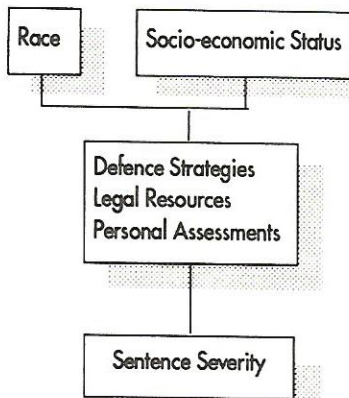
Correlation and Regression Analysis

The objective here is to examine the variable, sentence severity, utilizing all pertinent variables for which data have been obtained and thus identifying more precisely the comparative significance of the various offender characteristics, offence characteristics and legal considerations specified in Tables 1 and 2. In this way, for this sample, it will be possible to "place" the race factor more clearly. To facilitate the correlation/regression analyses

the values of all variables were recoded into two-value sets (*i.e.*, all variables were made "dummy variables"). The variables themselves are identified in Table 9, on the following page. Looking first at the basic correlations with sentence severity, Table 9 indicates that having related "priors" and having a high number of "priors" were the variables most strongly associated with sentence severity. Other moderate correlates of sentence severity included case embeddedness and employment status (*i.e.*, unemployment was associated with incarceration). Weaker correlates were severity of the victim's injury (*i.e.*, the less severe or permanent, the less likely incarceration), court type (*i.e.*, severe sentences were less likely in magistrate's court), having private counsel (*i.e.*, having private counsel was associated with less severe sentences), relationship with victim (*i.e.*, more severe sentences were associated with the victim being a stranger), plea (*i.e.*, guilty pleas were associated with less severe sentences), charge severity and race (*i.e.*, being Black was associated with receiving severe sentence). Other variables such as the sex of the victim, age of the offender, whether the offender had dependents and whether the offender had a favorable pre-sentence report were not correlated with sentence severity.

While the correlation analysis indicates that the stronger correlates of sentence severity in this sample were clearly the predictable "legal" variables, regression analyses were undertaken in order to see what would result when all variables were thrown into the mix.⁵ Simultaneous multiple regression analysis can be likened to a free fight among variables which yields both an overall measure of how much of the variance in sentencing these variables can account for when acting together (*i.e.*, the multiple r and the r²) and which of the

Figure 3
Race and Sentencing: A Structural
Discrimination Model



variables are the most important (*i.e.*, the beta coefficient and its significance probability). The results are shown in Table 9. Only four variables turned out to be important and significant controllers of sentence severity and all were of the more strictly legal type. Clearly the most important was the record of past convictions. Both having related prior convictions and, after controlling statistically for that, having a high number of priors were important determinants of sentence severity. How serious or permanent the victim's injuries were also survived the statistical "free fight" as did the variable of embeddedness. Together these four variables accounted for roughly 30 percent of the variation in sentence severity as defined. None of the other variables proved to be significant and neither singly nor in concert did they advance the explained variance of roughly 30 percent.

The correlation/regression analyses point to the importance of more strictly intrinsic or legal variables in affecting sentencing. The most significant "extrinsic" correlate was employment status but it fell out in the regression analyses. Race was a weak correlate of sentence severity and not surprisingly it too was not significant in the regressions. Again the reader should be reminded that sample size, the distribution of variables' values and the operationalizations of variables all affect the statistical results. The absence of pre-sentence reports for half the offenders clearly reduced the likelihood that that variable would be significant. Similarly the socio-economic homogeneity of this sample (quite apart from race and employment status) limited any potential significance of education or job status. The fact that this research dealt only with the sentencing of males convicted for assault also precluded for practical reasons an examination of whether the factors such as priors, severity of injury, embeddedness and charge (*i.e.*, what have been referred to as legal or intrinsic variables) operate in precisely similar ways in effecting sentencing outcomes for Blacks and non-Blacks. In subsequent research where the sample size will be greater and more charge types considered it will be possible to compare and assess statistically regression models estimated separately for each group (see for an example of the technique, Apostle, Clairmont and Osberg, 1985).

Structural Discrimination

It is clear that from the data statistically analyzed here it would be difficult to develop an empirically convincing model of indirect and structural discrimination.⁶ The rationale behind such a model would be that while race is not on the surface or at the zero-order level or directly a particularly strong determinant of sentencing severity it at least has some such impact and, most importantly, it affects

6. There are a variety of terms to describe such a pattern of discrimination. The approach adopted here has some affinity to an adverse effects model of discrimination which has developed out of human rights legislation and administration. The kernel of the latter is indirect discrimination related to a seemingly neutral criterion which disadvantages certain groups (Vizkeley, 1987). Institutional discrimination is a concept highlighting how integral discrimination is to the very nature of the system considered. Class and economic discrimination refer to resource issues as well as lifestyle factors. None of these fully and tightly cover the notions of both direct and indirect effects, race, subculture and economic differentials which must be considered.

Table 10a
Sentence Severity By
Employment Status (N = 208)

	Em- ployed	Unem- ployed
Low	66 (67%)	49 (45%)
High	33 (33%)	60 (55%)
$X^2 = 9.04$ $P < .002$ $C = .21$		

Table 10b
Sentence Severity By
Socio-economic Status*

	Low Status	Modest Status
Low	79 (56%)	41 (51%)
High	61 (44%)	40 (49%)
$X^2 = .48$ $P > .4$ $C = .05$		

*See text for operationalization.

moderately at least other variables that are strongly related to sentencing patterns. These other variables are posited to be factors rather extrinsic to legal considerations, factors such as employment, education and socio-economic status in general which directly affect in turn legal resources (*e.g.*, private counsel), favourable personal assessments (*e.g.*, pre-sentence reports) and possible defence strategies (*e.g.*, pre-sentence atonement such as covering the victim's medical bills). And these latter considerations in turn affect sentencing. Without formalizing such a model (though see Figure 3 for a depiction of these processes) and empirically testing it, it is still possible to explore these data with such an approach or model in mind.

It has already been noted that in this sample race was modestly related to sentence severity but that the relationship was not statistically significant and became even less so when other variables were controlled for. Race was also correlated with the four variables: priors, related priors, embeddedness and victim injury - which controlled sentencing. While these correlations were modest at best, ranging from .08 to .17, all were in a consistent direction predicting greater sentence severity for Blacks. What can be said from a structural discrimination perspective? Perhaps the first thing to note is that race itself was modestly correlated (.13) with having private counsel (Blacks were less likely to have such counsel), having a favorable pre-sentence report (Blacks were less likely to have one, $r = .13$) and pleading not guilty (Blacks were more likely to plead not guilty). Interestingly too, although there were only 13 cases of pre-sentence atonement action only one of these was by a Black offender; virtually all those engaging in pre-sentence atonement were either employed and/or had trade credentials or high education. All of these relationships were weak statistically but all were in the direction predicted by the model. It has already been noted however that these latter variables did not themselves figure significantly in the regression analysis. Overall then the linkages at each "step" as implied by the structural (or class-culture) models were only weakly and non-significantly (statistically) reflected in these data.

The strongest correlate of race in these data was employment status. Again the correlation was modest - .17 - but again it was in the direction predicted by the model, namely that Blacks were more likely to be unemployed. In order for the model to hold - following now the linkages from status to sentencing - employment status and other status-type measures would have to be at least moderately and significantly (in a statistical sense) related to sentence severity and/or to the factors such as counsel, plea and personal assessment just discussed. Of course these latter in turn would have to be at least moderately related to sentencing outcomes. Table 10a indicates that

7. Persons with at least a grade 12 education or with trade credentials or having at least the job status of semi-skilled workers were grouped together in the "modest status" category and compared to the remaining offenders in terms of the sentences they received. Clearly this represents a quite truncated operationalization of socio-economic status. Unfortunately the data did not permit a more adequate measurement.

the first requirement was partly met. Employment status was significantly and moderately (.21) related to sentencing outcomes. However "socio-economic status", (measured by a composite of high education, trade credentials and at least semi-skilled work)⁷ was unrelated to sentence severity (Table 10b). The insignificance of socio-economic status is undoubtedly related to the lack of variation (and the numbers) in this sample, a situation which limits analysis of status largely to the comparison of semi-skilled and unskilled workers. Other operationalizations of status such as adopting a more restrictive classification by grouping semi-skilled and unskilled together, only reduced the numbers in the "modest status" category to about 50 cases and still did not differentiate on sentencing.

The linkages between status measures and legal resources, et cetera could also be argued to have been met in a minimalist sense. Employment status was related modestly in the predicted direction to plea, pre-sentence report (.16) and having private counsel (.19). Pre-sentence atonement actions however were not associated with having employment. Also as noted above the linkage in turn between legal resources, personal assessment and sentencing was weak in these data.

Overall then the analyses do not support a robust adverse effects or structural discrimination model as regards sentencing and Blacks. The direction of relationships and linkages were as predicted by such a model but they were weak and not statistically significant and clearly not as determinative of sentence severity as criminal record, injury caused and case embeddedness. Limited values, truncated distributions and small sample numbers make it difficult for the model in a statistical sense. The well-off and the socially or politically influential were not represented in the sample which constituted virtually the entire population of convicted assaulters in recent years in metropolitan Halifax-Dartmouth. While these analyses allow the conclusion that, on the average, Blacks are not particularly discriminated against in sentencing for assault, what about special instances such as when Blacks assault non-Blacks rather than Blacks and what about special leniency such as discharges? It is to these matters that analysis now turns.

Special Issues

A common specification of the discrimination in sentencing argument is that Black offenders are punished more severely for assaulting non-Blacks than for assaulting Blacks. Typically this kind of discrimination is seen as representing a devaluation of the non-White victim (Kleck, 1981; Zatz, 1987). Bearing in mind again the small numbers available in this data set, this issue was examined.

Table 11
Black Offenders: Selected Assault Characteristics by Race of Victim

Characteristics	Black Victim N = 13	Non-Black Victim N = 38
Victim Known to Offender	100%	32
Victim Female	76%	50
Injury Mild	76%	60
Incarceration Sentence	46%	60
Suspended Sentence/Probation	40%	13
Offender Had "High Priors"	23%	68
Offender Had Related Priors	30%	63

Table 11 indicates that the hypothesis received support. While 40 percent of the Blacks convicted of assaulting a Black received a suspended sentence or probation, only 13 percent of those who assaulted a non-Black did so. Incarceration was more common where the victim was non-Black (60 percent to 46 percent). It is interesting that

these results obtained despite the fact that the Black victims were more likely to have been females. At the same time however the data indicate that Black victims were more likely to be relatives and acquaintances of the offender and to have suffered mild injuries. Moreover Blacks assaulting non-Blacks were much more likely to have had both more prior convictions and related prior convictions than Blacks assaulting Blacks. Overall then these results are quite in keeping with the correlation-regression analyses which emphasized the importance of criminal record and injury caused rather than race of the offender.

In the introduction to this paper it was noted that related local research (Renner and Warner, 1981; Clairmont, Barnwell and O'Malley, 1988) has found that Blacks rarely received discharges, sentences which in effect allow offenders to avoid the stigma and other implications of having a record of convictions. As Salhany (1984, p.421) observes "if an accused is discharged whether absolutely or upon condition, he is deemed not to have been convicted of the offence". Renner and Warner contended in their paper (*op. cit.*, p.76) that "discharges are reserved for those both *socially stable and White*" (their italics). Again in this data set the same result obtained. Seven persons received discharges but not one of these was Black. The fact that three successive sentencing studies in this metropolitan area all found that discharge sentences were predominantly given to non-Blacks (and that all absolute discharges were given to non-Blacks) is indeed remarkable. Subsequent perusal of the criminal records of Blacks convicted of assault or break and enter within the past two years did discover a number of conditional discharges, an indication perhaps that Blacks may have gotten into trouble earlier and so from a sentencing point-of-view used up their "credit" by the time they were convicted for the crimes considered in the three studies. (It would be useful to explore in these regards the impact of the young offenders legislation.) Still it would be important to specifically and directly examine discharges in recent years to determine the impact of class and race factors since the

argument has often been made that the institution of that sentencing option in 1972 was largely to benefit the well off in society (especially their children).

In a previous paper dealing with discrimination in sentencing and focussing on theft under s. 294 of the *Criminal Code* (see Appendix 4) a boolean matrix comparison was utilized to determine if the legal and extra-legal aspects or characteristics of those receiving absolute discharges were shared by Blacks and non-Blacks who did not receive that lenient sentence (Clairmont, Barnwell, O'Malley, 1988). The findings were that a legal type variable such as type of plea or poor pre-sentence report did differentiate the eligible (*i.e.*, having no prior convictions) Black offenders while in the case of eligible non-Blacks, the impact of lower socio-economic status was more readily detectable. The relevant numbers here were much smaller but a similar analysis was undertaken. Of the seven non-Black offenders who received discharges none had prior convictions and in all of the six adult cases the accused pleaded guilty. In two of the seven cases the injury caused was serious and it was for one of these that the only incident in this sub-sample of someone both having done pre-sentence atonement and having a pre-sentence assessment was reported. Interestingly in four of these seven cases the offender was represented by private counsel, a ratio significantly higher than in the sample at large. Age-wise the seven discharged ran the gamut from 17 to 61 but three were in their teens.

Blacks without prior convictions were also examined on the characteristics noted above. There were nine cases. All Blacks but two were in the prime age group for harsher sentences (Renner and Warner, 1981, p.73), namely their twenties; the two exceptions included a teenager and a 40 year-old. Six of the nine Blacks had pleaded not-guilty, also a factor which would work against receiving a discharge (see below). Surprisingly five of the nine had pre-sentence reports and three had private counsel. Three of these nine offenders were incarcerated. On the surface there were several cases where a match with one of the seven non-Black discharges was faulted only on an extra-legal variable such as employment. Usually however there was a legal variable such as a not-guilty plea or multiple charges or severe injury which differentiated the Black offender's case, though what that specific factor was varied from comparison to comparison. Non-Blacks without prior convictions also infrequently obtained discharges; of the 50 who did not, 11 were incarcerated. Match-ups between these 50 cases and the non-Black discharges essentially revealed the same patterns as discussed above.

Case by case comparisons can be frustrating since the perfect match is elusive even on legal variables such as severity of injury,

8. It is generally held that a not-guilty plea should not work against the accused. However, Salhany (*op. cit.*, p.388) observes that "a plea of guilty should be regarded as a mitigating factor with regard to sentence as it is in the public interest and is some indication of remorse on the part of the accused".

9. There are no Black prosecutors operating out of the local courts and until last year there were no Black judges. Thus social ties and shared meanings which might facilitate leniency are not present in the case of the Black offender. While undoubtedly most court officials are well-meaning and fair, awareness of and sensitivity to the Black experience cannot be assumed. Certainly the two studies have shown that appearance and demeanor of the offender is significant in sentencing and generally works against Blacks (Renner and Warner, 1981; Stewart, 1985). Studies have been carried out probing the issue of judicial discretion via what is known as "the simulated cases to judges" approach where similar cases are given to a sample of judges who render a sentence as well as the principles they employed in the sentencing (e.g., Palys and Divorski, 1986). The results are interesting but there is little indication of how useful this kind of exercise is in the explanation of actual sentencing.

plea and multiple charges, never mind other relevant variables such as age, type of counsel, et cetera. Also from these files it is impossible to determine whether in fact a discharge was requested. Certainly some special cases crop up. In one instance a non-Black first offender inflicted severe injury but received a discharge whereas in several seemingly similar cases Blacks and some non-Blacks inflicting ostensibly less serious injury did not; the key seemed to be that in the former case there was both a private lawyer and significant pre-sentence atonement. Several cases involving wife-beating also yielded sharply different sentences, ranging from discharge to incarceration and here from file information only the accused's plea was different.⁸ Overall the indication from these analyses is that resource mobilization on the part of the accused may be important. In that regard the socio-economic legacy of racism if not continuing, subtle racism, disadvantages Blacks. It is unclear what is going on at the level of the prosecutor and judge but the indication is that their leniency in these discharges is perhaps idiosyncratic but more responsive to the demeanor and perceived futures of the accused than to their present situations or historical experiences. Informed local Black lawyers have argued that the demeanor of Black offenders is often misunderstood by court officials who are virtually all White and share different social ties and meanings.⁹ Clearly other considerations - data unavailable to this study - might be operative such as the prosecutor's or judge's sense of the spontaneity rather than deliberateness of the assault, etc. Clearly too more systematic study of discharges is required before one can be confident that discharges are given out either fairly or truly idiosyncratically.

Discussion

This research has focussed on the issue of sentencing in the case of males convicted of assault. With few exceptions all such sentences meted out in the metropolitan Halifax/Dartmouth area over the past few years were considered. The findings overall are consistent with earlier research conducted in the same locale but focussing on convictions for theft. Essentially there is little support for the proposition that on the average the race of an offender directly affects the sentencing he will receive. Not only does race not have this effect but also it does not amplify other relationships; for example race does not seem to interact with factors such as "high priors" to enhance the latter's impact on sentencing nor does it create a differential impact within subcategories of such factors. Finally a structural discrimination model, which posits in collaboration with socio-economic factors, direct and indirect race effects via defence

strategies, resources and personal assessments is weak and without statistical significance. The variables that do clearly control sentencing variance are "legal" factors such as criminal record, severity of injury and embeddedness of the particular case (*e.g.*, offender a probation violator). In these regards this research is consistent with recent work on discrimination in sentencing in both Canada and the United States which has generally found (research methods have also improved!) that such discrimination has become much more subtle, sporadic and driven either into earlier stages of the charge/conviction/sentencing process or into the "backroom" of the court.

Notwithstanding the above it is important to note that virtually all the relationships examined were in the direction predicted by a discrimination supposition. More Blacks were, percentage-wise, incarcerated; none received a discharge; Blacks did receive the longer sentences; Blacks assaulting non-Blacks were sentenced more harshly than Blacks assaulting Blacks (the idea of devaluation is integral to the idea of discrimination). As noted too the relations and patterns implied by a structural discrimination model were weak but correctly cast by theory. Being Black was related to defence strategies, resources and personal assessments which in turn affected weakly sentence severity. And the linkages through socio-economic status were in the predicted direction at least. Of course none of these relations was statistically significant and the legal variables could usually be counted upon to better account for the relationships hinted at by the race-based supposition.

Statistical analyses provide results which are on the average. Statistical evaluations such as significance tests are very much influenced by the number of cases available as well as by the strength of relationships. In this instance race is not "robust" and the number of cases is limited (as well the distribution of cases is skewed with only 51 Blacks but 170 non-Blacks). Larger samples might well establish statistical significance for a race factor in sentencing but the results from both this study of assault and our previous study of theft suggest that after the legal variables the most important factors in sentencing variation would be economic resources and class-based cultural factors; the latter might be manifested in plea, demeanor and what might be called court understandings/expectations which work to the benefit of the better-off and especially the privileged. Since the legal variables explained only 30 percent of the variance in sentencing severity as operationalized, clearly there is still 70 percent to be explained by some factors.

In examining sentencing severity here it is obvious that socio-economic factors would be underestimated since the sample is overwhelmingly made up of offenders of low and modest social

status. This homogeneity has the benefit perhaps of isolating any strictly race impact on sentencing - though the Black sub-sample is still significantly worse off in terms of education employment and job status - but it also inhibits larger considerations of social class. There were too few cases of well-off offenders to capture that effect. The fact that employment status is moderately correlated with sentence severity and that both having private counsel and rendering pre-sentence atonement also are, point to the salience of social class. Similarly the fact that a "successful" social class-based strategy of the assaulter pleading guilty, hiring a good lawyer and paying the victim compensation prior to being sentenced could be discerned in a few cases, points again to the potential significance of social class factors. Since the sample for this study was virtually the entire population of recently convicted offenders it may mean that social class factors will always be underestimated since the number of middle and higher status convicted offenders will always be few. Clearly research has to focus also upon earlier stages of the process including the laying of charges, plea bargaining and stays of prosecution if the full impact of socio-economic factors is to be seen.

Even within the clearly truncated social class sample available here the Black offenders are less well-off. Perhaps that fact plus the historical legacy referred to by Head and Clairmont (*op. cit.*, 1989) account for the disproportionate number of Blacks represented in this assault sample as well as for the weak discrimination effects found. A less truncated sample and/or a broader study of the justice process as defined above would probably show up the race impact better since Nova Scotian Blacks are underrepresented among the better-off in the province. Presumably the cumulative discrimination effects would be more clearly seen.

In sum, this research has shown that the race impact on sentencing either directly or indirectly is quite weak. A race discrimination factor appears to be present in sentencing but the fact that the effect is weak, that the number of cases is limited and that sentencing for assault is largely confined to persons of low or modest status all combine to reduce its impact. More attention has to be given to the laying of the charge itself, stays of prosecution, discharges overall and the implicit understandings and expectations of Blacks, lawyers and court officials. Racism in a system of formal rationality cannot but be subtle and cumulative. Statistical analysis of the sort done here may be too blunt a tool to capture this well. Special instances of harshness or leniency occasionally dramatize the interconnections of discrimination, social resources and informal acceptances while on the average the formal rationality of the system is most manifest. Without historical studies to fall back on it is unclear whether the subtle and cumulative effects are declining. Older Blacks and most

non-Blacks appear to think so but even they acknowledge the present pervasive unfairness. Sensitivity to the legacy of racism and appreciation of its modern guises was not evident in the court dockets nor in the special acts of leniency encountered (*e.g.*, discharges). Such sensitivity in conjunction with a concern for more equitable legal resources and socio-economic opportunities would seem to be required to truly eradicate racism and discrimination. As long as the persons making and interpreting rules and administrative policies are drawn from narrow class and race/ethnic backgrounds the sensitivity and change might be hard to come by.