

Science AMA Series: Hi Reddit! We're Dr Rhys Hester and Dr Todd Hartman. We published a paper on racial bias in criminal sentencing which highlights inequalities in incarceration rates and sentence len

RacialBias<sup>1</sup>andr/ScienceAMAs<sup>1</sup>

<sup>1</sup>Affiliation not available

April 17, 2023

[REDDIT](#)

## Science AMA Series: Hi Reddit! We're Dr Rhys Hester and Dr Todd Hartman. We published a paper on racial bias in criminal sentencing which highlights inequalities in incarceration rates and sentence len

RACIAL\_BIAS [R/SCIENCE](#)

[removed]

[READ REVIEWS](#)

[WRITE A REVIEW](#)

### CORRESPONDENCE:

#### DATE RECEIVED:

April 12, 2016

#### DOI:

10.15200/winn.146037.75488

#### ARCHIVED:

April 11, 2016

#### CITATION:

Racial\_Bias , r/Science , Science AMA Series: Hi Reddit! We're Dr Rhys Hester and Dr Todd Hartman. We published a paper on racial bias in criminal sentencing which highlights inequalities in incarceration rates and sentence len, *The Winnower* 3:e146037.75488 , 2016 , DOI: [10.15200/winn.146037.75488](https://doi.org/10.15200/winn.146037.75488)

© et al. This article is distributed under the terms of the [Creative Commons Attribution 4.0 International License](#), which permits unrestricted use, distribution, and redistribution in any medium, provided that the original author and source are credited.



I think one of the challenges in dealing with racial/gender bias is that people are generally unwilling to admit that they are capable of implicit bias. In reality, we are all biased all the time and stereotypes about race and ingroup biases obviously make a difference.

Assuming that these judges are all good people who genuinely believe themselves to be acting fairly (which is likely true for most), how do we combat an issue where people don't realise, and are unlikely to accept that, they're doing the wrong thing?

[ImNotJesus](#)

RH: For an interesting treatment of this issue in the judicial context see Guthrie et al.'s article "Blinking on the Bench." Some thoughts on combatting the issue: (1) I think as a baseline it would be reasonable for society to insist on government collecting and maintaining robust data on issues like this so that these important policy issues can be reliably analyzed. Dr. Hartman and I were fortunate that SC collected this data in order to model proposed (but never adopted) sentencing guidelines and to forecast prison growth. Many US states do maintain sentencing databases, but most do not. (2) Education and awareness. I think the dialogue on racial bias is raising awareness of that issue and hopefully as we all come to grips with that reality we'll find ways to try to consciously deal with these subconscious tendencies. (3) Also, I do think the research suggests sentencing guidelines can help in the particular context of sentencing.

I think one of the challenges in dealing with racial/gender bias is that people are generally unwilling to admit that they are capable of implicit bias. In reality, we are all biased all the time and stereotypes about race and ingroup biases obviously make a difference.

Assuming that these judges are all good people who genuinely believe themselves to be acting fairly (which is likely true for most), how do we combat an issue where people don't realise, and are unlikely to accept that, they're doing the wrong thing?

[ImNotJesus](#)

TH: There's a large body of research on implicit bias in psychology. One key finding from this literature is that these types of biases are automatic, which means they occur instantly (so quickly that they their effects can be measured outside of one's conscious awareness). That being said, it doesn't mean that these automatic biases cannot be controlled. However, existing research suggests that motivation and

cognitive resources are needed to override automatic stereotypes. We make no statement about whether the racial biases we find in our criminal sentencing project are intentional; there are many possible explanations for why we might find this pattern in the data (including explicit/implicit biases).

Is the bias due to a small group of highly biased judges (we could fire), or are nearly all judges biased (do we need education). That would be important information to look for solutions.

More in general: what do you see as effective solutions?

[VictorVenema](#)

RH: I prefer to speak in terms of this research finding evidence of racial disparities in the outcomes (as opposed to evidence of biased judges). The disparities could be the result of explicit or implicit bias, or could also be attributable to other socio-economic factors or legal system process factors that we weren't able to examine. We don't examine judge-level differences in this study, but I have looked into judge differences with this data in other work and I have found a remarkable degree of similarity among judges in sentencing outcomes. It's also important to note that judges aren't making these decisions unilaterally; the sentencing process is highly interactive among the judge, prosecutor, and defense attorney. All that said, and I think this will come up more with some of the other questions, my best suggestions would be: to collect and analyze data as much as possible so that we can access the extent of the problem; and to talk openly about any race differentials (whether they be from systemic disadvantage, implicit bias, or other source). Adopting sentencing guidelines, scaling back war on drug penalties, and reducing or eliminating mandatory minimums are specific policies that would probably help reduce disparities.

Is the bias due to a small group of highly biased judges (we could fire), or are nearly all judges biased (do we need education). That would be important information to look for solutions.

More in general: what do you see as effective solutions?

[VictorVenema](#)

TH: One thing to note, although the outcome we looked at in this study was judicial decisions, there could be other reasons why we see a disparity in sentencing outcomes that have nothing to do with the judges themselves. For example, it could be that minority defendants had access to different legal representation, which led to the patterns we see in the data.

I tend to be an optimist and think that most people, most of the time are trying to do what they feel is right. Does that mean we achieve a perfect outcome every time? Of course not. And, while there may be a few "bad apples" among the group, most judges would prefer to make decisions that are uninfluenced by what we would perceive as unfair criteria (e.g., race).

From that perspective, raising awareness is a key (and logical) first step. Next, we need to learn more about how widespread this problem is, and what its root causes are. If the implicit biases of judges are partly responsible for these issues, then we'd need to address that. But it's not clear to me, that's the only/root cause at this point.

Is there any correlation between the age of a judge and the level of racial bias demonstrated?

Similarly, do you notice any other patterns of unconscious bias (gender, sexuality) that correlates to age?

[Calamity\\_Payne](#)

TH: Very good questions. Although we have an indicator for each judge in the dataset, we currently don't have any other information about them. It could be possible for us to go back and collect some of

this information, or at a minimum look at these sorts of issues in any future research we do. Sorry, I wish I had a better answer for you, but at this point is a question that I don't have the information needed to answer it.

Hi and thank you for doing this AMA. Racial disparities in policing practices and incarceration remain a key issue in America - an instance of prejudice and bias eroding the core American principles of justice and equality.

As experts in your fields, I was hoping you could weigh in on the criminal justice reform platforms of the current US Presidential candidates. Which candidate(s) have the best policy in your opinion? Which issues that aren't receiving enough attention from politicians would you like to see receive more attention?

Thanks!

[SirT6](#)

RH: Thanks for the question. The context is that since the 70s, US jurisdictions have adopted increasingly punitive policies. US incarceration rates were once like those in European countries and now are 4-5 times greater. In the last few years there's been a lot of talk about scaling back some of those punitive policies--for example, mandatory minimums, severe drug punishment, etc., including from very prominent conservative politicians (see the group "Right on Crime). There's been a little movement at the federal level, but so far it's mostly just been talk, and we don't know whether meaningful reform will occur. But well over 95% of all felonies in the US are processed in states, not at the federal level. So the next president might be able to influence the direction of federal policy, but any substantial change must occur at the state level.

Is there enough data to see if things go in the other direction with Black judges?

Does this affect other minorities as well?

[TheIraAK](#)

RH: this jurisdiction didn't maintain clear records on Hispanics at the time of our data. Based on the other research in the field from the US, I think the prevailing findings are that Hispanics in the US are sentenced somewhere in between blacks and whites in terms of punitiveness. Studies have also found American-Indians experience harsher punishment. At least one study has found that Asian-Americans receive less punitive treatment than whites.

Is there enough data to see if things go in the other direction with Black judges?

Does this affect other minorities as well?

[TheIraAK](#)

RH: I used this data for my dissertation research. Part of that included a multi-level judge model where I included some judge characteristics. Unfortunately, there were only 2 or 3 black judges out of the 50 or so sitting at the time (2001), so there isn't enough judge race variation to analyze it. Others have looked at judge race in other jurisdictions (see Brian Johnson's 2006 article in Criminology for a good example and review of the literature); the findings are quite mixed and often judge race has no impact.

How large is this difference? Previous studies have found a 10-15% sentencing difference when judges have discretion; since you're separating cases further, we should expect the group with differences to have more than that to account for the lower difference in the other cases.

Secondly, do you think the benefits of judge discretion outweigh the negatives?

[itisiike](#)

RH: on your second point, I spend a lot of time thinking and writing about this. Even when a jurisdiction adopts sentencing guidelines, you're not removing all judicial discretion, you're just constraining it some. And even if you take some discretion away, discretion inherently exists in the US criminal justice system. Most scholars agree that as more structured sentencing has removed some judicial discretion over the last 40 years, it has shifted this discretion to prosecutors. My own personal thoughts are that guidelines are good to the extent that they result in more uniform sentencing. The federal guidelines are not the gold standard among most of us who study guidelines--quite the opposite. While they are high in profile and receive a lot of attention, they are very different from most good state guidelines systems. The best models are from places like Minnesota, Washington, Kansas, etc. Regardless, an issue we have to confront today is that of prosecutorial discretion. The past 3 or 4 decades saw adoption of guidelines in some jurisdictions, but the proliferation of mandatory minimums, truth-in-sentencing, and drastically increased drug penalties in almost every jurisdiction. These, along with other punitive mechanisms like life without parole, 3 strikes, and various penalty enhancements have considerably increased prosecutorial power and discretion. The trick is to find the best policy balance between maintaining uniformity on the one hand (so that like cases are treated alike), but allowing for the proper balance of discretion on the other (so that different cases are treated differently).

I appreciate your body of work. I thought that by now that the "defendant's" income level was the overriding factor in how they were adjudicated much more so than race. Are you normalizing for income, and still finding racial bias in sentencing? As much as I dislike it, wealthier people are likely to get shorter sentences than poorer people for two reasons- they can afford better lawyers and, in the bigger picture, they need to stay out of prison to keep the wheels of commerce turning.

[torpedomon](#)

RH: Our data didn't have any indication of income or economic status and that, unfortunately, is generally true of sentencing data. Two points related to your question: (1) Race and income are highly intertwined in many US jurisdictions and this is particularly true in SC. In previous research I've constructed socio-economic indexes based on Census data and those measures correlated at something like .96 with race at the county level. So in important respects, to speak of income in SC is to speak of race. (2) While I agree that it surely seems like you'd have an advantage if you had a lot of money to hire the best lawyer (or, say, one of the top 5 high profile defense attorneys in this jurisdiction), there are some theories that suggest defendants are no worse off, and perhaps even better off, with the public defender. It's counter-intuitive, but the theory here is that PDs handle hundreds and thousands of cases with the prosecutors and judges and together these actors make up an efficiently functioning "courtroom workgroup." An outsider may be able to give a defendant lots of attention and get better results, but it's also possible that they come in as an outsider, don't know how to play by the working norms of the workgroup, and consequently end up getting a worse result for their client.

Only tangentially related to your research, but do you have any opinions on why so many people's immediate reaction to studies like yours is to attack your methodology or to look for confounding factors? Do you think this knee jerk rejection of any evidence of racial bias plays into letting these things continue?

[NVCarthage](#)

RH: This is a good question which has already led to a robust discussion below. I can only speculate. Certainly at some level we're all susceptible to having a first reaction to criticism, which is to find a way to reject it. Fortunately, we're often able to overcome that instinct so that we can learn from constructive criticism. I think NVCarthage's question, though, is whether issues of race lead to a more entrenched rejection of the criticism and a more systematic tendency to attack the criticizer. If this is true, it could

be because the stakes are higher; it's one thing for a student to say one of my exam questions is misleading or unfair; it's quite another for a student to say that as a whole I am bad and unfair professor. It does seem like bringing up race touches a raw and polarizing spot for a lot of us in America. I've been reminded of this with divergent reactions to the high-profile police-citizen encounters associated with Black Lives Matter over the past few years in the US. In some of these cases the police action appears to have been justified and in others it appears to have been murder (including, notably, one example that took place in South Carolina and for which a white police officer is currently awaiting trial for shooting a black man in the back). But the dialogue on social media, at least anecdotally, seems to be this polarization where police are frequently demonized on one side or unquestionably defended on the other. If there are disparities or biases in policing or courts and part of our population won't acknowledge it as a problem then its a sobering reminder that we have a lot of progress to make on racial issues.

Only tangentially related to your research, but do you have any opinions on why so many people's immediate reaction to studies like yours is to attack your methodology or to look for confounding factors? Do you think this knee jerk rejection of any evidence of racial bias plays into letting these things continue?

[NVCarthage](#)

TH: First, we welcome closer scrutiny of our results, and other studies that find similar biases. I don't expect anyone to simply accept our findings without carefully interrogating them.

Second, and more to your point, when people encounter things that cause cognitive dissonance, they can proceed in one of two ways: a) they can accept the new information and change their prior beliefs; or b) they can reject the information (as biased, problematic, whatever) and remain the same. It's often easier to choose option b. If you're interested in this sort of thing, look up "motivated reasoning" or "motivated skepticism".

Thanks for doing this AMA. While the findings would be potentially damaging, did you consider doing the analysis with the identity of the judge as one of the characteristics? It would appear that the liberation hypothesis would also be supported by individual judges giving heavier sentences on average in the absence of guidelines, regardless of the race of the offender.

[straydog1980](#)

RH: It would be possible to run separate regression analyses for each judge. I've experimented with (but have not yet published) doing something similar to this by running regressions with and without extralegal characteristics (age, race, gender) by each judge, and comparing the variance explained by the legal only models and the legal+demographics models. Those preliminary results showed that for most judges there was no statistically significant difference between the two models. Where they results were stat sig. the variance explained changed by only 2-3 %. I do think it's an interesting avenue for future research though.

Thanks for doing this AMA. While the findings would be potentially damaging, did you consider doing the analysis with the identity of the judge as one of the characteristics? It would appear that the liberation hypothesis would also be supported by individual judges giving heavier sentences on average in the absence of guidelines, regardless of the race of the offender.

[straydog1980](#)

TH: Yes, we could run this as a multi-level model and look at the effect of each individual judge (in the published paper, we opted to simply cluster standard errors by judge). Without more information about the judges, it seemed less important than documenting the bias. In addition, we're not necessarily interested in identifying specific miscarriages of justice; just that there appears to be a problem of racial

disparity across the system for certain types of offenders.

Hello there! Thank you for participating in this AMA and for all of your years of research.

What steps can we take as a society/democracy to tackle racial bias in the justice system?

[omjvivi](#)

TH: Well, I think awareness is key; it's not possible to address an issue like racial bias if people don't recognize that this is a problem in the first place. Next, we'd need to identify the causal mechanisms in various contexts. For our example, our research indicates that it's a problem in criminal sentencing, but we don't have a clear sense of why this is the case. For example, it could be that judges are (un)intentionally using that information when making sentencing decisions. Or, it could be that minority defendants face institutional hurdles in their cases making them more likely to go to prison and for longer sentences. Or it could be a combination of factors (which is most likely). It's impossible to say with the specific dataset we analyzed, but just knowing that it occurs is troubling IMO.

[deleted]

[\[deleted\]](#)

There was a very small number of offenders who were not coded in the data as white or black. So when we speak in the paper of black-vs-white effects these individuals were not included as black. There were not enough of "other" minority groups in our data for analysis, but other studies have examined effects of being Hispanic, American-Indian, and Asian-American.

In addition to the race of the convicted, what impact does the race of the judge have on sentencing? Are judges any more or less sympathetic to people of their own race?

[revision29](#)

RH: In 2001, the year for our data, there were only 3 or so black trial judges, so there wasn't enough variation to examine this. Judge-level studies tend to have very mixed findings. Often there is no race-of-the-judge impact. When there is, it tends to be quite modest and sometimes even in unexpected directions. The general theoretical answers to these (possibly unexpected) emphasize the intensive socialization process for lawyers in general, and the socialization and selection processes for judges in particular. That plus judges become embedded in a social network of prosecutors and defense attorneys in which efficiency becomes a leading priority.

In addition to the race of the convicted, what impact does the race of the judge have on sentencing? Are judges any more or less sympathetic to people of their own race?

[revision29](#)

TH: Great question. There's only a few (3) non-white judges in the dataset, so we can't really say at this point. We have data on several other states, so we may be able to look at this sort of thing in upcoming research. Wish I had a better answer for you.

Thank you in advance for taking the time out to answer these questions. In your blurb it stated you reviewed decisions from SC. Did you select this state solely due to it uniquely having these kinds of situations where judges could select sentencing more liberally or does that exist in other places as well? If that is not unique to SC why did you select it and do you think you may see any different results if you looked in places other than the SE of the USA such as more northern or west coast jurisdictions?

[Gimme The Loot](#)

RH: Over half of US jurisdictions do not have guidelines. Here's the problem: to study the issue one needs data. Since guidelines were adopted starting in the early 1980s, those states with guidelines have collected data and sentencing scholars have made very good use of it. But for the majority of states, there is no sentencing commission, and thus there is no natural source of the data; as a result indeterminate sentencing has largely gone unexamined. We chose SC because that state collected this dataset when it was considering the adoption of guidelines, so there was something to analyze. If the data (or funding to get the data) were readily available, it'd be great to look at other non-guidelines jurisdictions. I think things probably would be different in different states. I actually think some unique aspects of the SC judicial system probably operate to minimize geographical differences, and possibly race differences, in outcomes. These include the fact that SC judges are appointed by the legislature, not in public, partisan elections, and also the fact that SC judges still rotate from county to county.

Thank you in advance for taking the time out to answer these questions. In your blurb it stated you reviewed decisions from SC. Did you select this state solely due to it uniquely having these kinds of situations where judges could select sentencing more liberally or does that exist in other places as well? If that is not unique to SC why did you select it and do you think you may see any different results if you looked in places other than the SE of the USA such as more northern or west coast jurisdictions?

[Gimme The Loot](#)

RH: Thanks for this question. Over half of US jurisdictions do not have guidelines. Here's the problem: to study sentencing you have to have sentencing data. Since guidelines were adopted starting in the early 1980s, those states with guidelines have collected data and sentencing scholars have made very good use of it. But for the majority of states, there is no sentencing commission, and thus there is no natural source of the data; as a result indeterminate sentencing has largely gone unexamined. We chose SC because that state collected this dataset when it was considering the adoption of guidelines, so there was something to analyze. If the data (or funding to get the data) were readily available, it'd be great to look at other non-guidelines jurisdictions. I think things probably would be different in different states. I actually think some unique aspects of the SC judicial system probably operate to minimize geographical differences, and possibly race differences, in outcomes. These include the fact that SC judges are appointed by the legislature, not in public, partisan elections, and also the fact that SC judges still rotate from county to county.

Have there been any experiments with normal citizens performing the duties of a judge and giving sentences? If yes, are citizens more or less biased than judges?

[VictorVenema](#)

RH: I think Jeffrey J. Rachlinski (at Cornell Law School) and colleagues have done some similar research to this. My recollection is that judges are similar to the control groups, but I don't recall the specifics so I'd refer anyone interested to those papers.

Have there been any experiments with normal citizens performing the duties of a judge and giving sentences? If yes, are citizens more or less biased than judges?

[VictorVenema](#)

TH: There's no reason for me to think that individual members of the public would be better at making sentencing decisions. This is extremely difficult and complicated work. In many ways, judges are trying to decide what is a reasonable punishment for the crime, while at the same time minimizing the threat to society from offenders across a wide array of contexts.

Thank you for doing this AMA, do you think that this is more of a problem in US society or do you think the results would be evident in other countries (UK, South Africa, Oz etc?) if you did a similar study. If there is a difference, what do you think the cause is?

[TimboExeter](#)

RH: Dr. Hartman will probably have some good insight on this question. My thoughts are that racial disparities in sentencing are part of a much larger phenomenon that is not unique to America or sentencing decisions. Research from other jurisdictions has found disparate punishment based on race. If there's anything unique about America its the magnitude of the race relations history here.

Thank you for doing this AMA, do you think that this is more of a problem in US society or do you think the results would be evident in other countries (UK, South Africa, Oz etc?) if you did a similar study. If there is a difference, what do you think the cause is?

[TimboExeter](#)

TH: My sense is that different societies will have their problems, too, but they may not be the exact same sorts of racial issues as the US. Because we know that stereotyping is an inherent human process (relating to categorisation), there's no reason to think we wouldn't see bias in other countries.

Thanks for doing this study. Hopefully it helps open more eyes to this terrible problem. The more people that know, the sooner we begin the process of eliminating prejudice in the justice system, and with any luck, make justice truly blind.

My question, what can we (average citizens) do to curb the heavy bias against minorities in the justice system? There doesn't seem to be much attention paid to it because it seems like people are less willing to care for those they consider criminals.

[Buzz8522](#)

TH: This is a very good question. One potential problem is that society may turn a blind eye toward instances of racial/ethnic bias when it applies to known criminals (presumably because they have violated the law and deserve punishment anyway; it's the "why should we care about people like this?" argument). As a society, we're judged by our institutions, and if we want to be a beacon of democracy, then the US needs to do a better job eliminating instances of bias like this. I suspect Americans would resoundingly agree that the justice system should be unbiased (i.e., the whole "blind justice" metaphor).

What to do about it is a much more difficult question. Of course, awareness is a crucial step: We as citizens can demand that accurate data is collected on these sorts of issues. With that information, experts and members of the public can examine the role that extra-legal factors play in shaping sentencing outcomes. But I suppose I would say that as a stats person.

In my state, judges and counsel have access to a confidential pre-sentence investigation report prepared by the adult probation officer in every case. Does SC use those and did you gave access to them?

[AkumaBengoshi](#)

RH: SC does not use pre-sentence investigation reports. There is a statutory mechanism that allows judges to request these but they virtually never request them and PSIs are not part of the sentencing regime in SC the way they are at the federal level and in most (I believe) other states. However, I do think it's worth noting that we should be cautious in casting all of our attention on judges. 98% of these cases were plea bargains, not trials. Judges work very closely with the prosecutors and defense attorneys in these cases, and although, ultimately, the judge has the final say, these decisions are

made in this highly interactive and symbiotic group. Judges in SC may not be influenced by PSRs, but they are not making unilateral decisions.

In my state, judges and counsel have access to a confidential pre-sentence investigation report prepared by the adult probation officer in every case. Does SC use those and did you give access to them?

[AkumaBengoshi](#)

RH: SC does not use pre-sentence investigation reports. There is a statutory mechanism that allows judges to request these but they virtually never request them and they are not part of the sentencing regime in SC the way they are at the federal level and in most (I believe) other states. However, I do think it's worth noting that we should be cautious in casting all of our attention on judges. 98% of these cases were plea bargains, not trials. Judges work very closely with the prosecutors and defense attorneys in these cases, and although, ultimately, the judge has the final say, these decisions are made in this highly interactive and symbiotic group. Judges in SC may not be influenced by PSRs, but they are not making unilateral decisions.

Have you encountered any gender bias? Are men sentenced more harshly than women, or versa? Also, what factors did you use to qualify a sentence as being "severe"?

[HurleyBurger](#)

See the paper by Koons-Witt, Sevigny, Burrow, and Hester for an examination of gender differences using this data. We did find men were sentenced more punitively than women, but there were some interesting interaction effects. Thanks!

Sentencing biases aside, are African-Americans committing crimes at higher rates than other demographics in the United States?

[farkdog](#)

RH: For one, as the comment below suggests, we only analyzed data of convicted offenders, so our paper doesn't consider this issue. With reference to other work, I think the best answer has three critical parts. (1) Let's be clear about what we can show. We don't have any reliable data on actual crime commission. Our two best sources on crime in the US are (A) the FBI's Uniform Crime Reports (UCR) which document crimes reported to police, and (B) the National Crime Victimization Survey (NCVS) which polls people on whether they've been a victim of a crime. From the UCR data we know that black offenders are arrested for more street crimes than whites per capita. This could be due to higher prevalence of crime among blacks (e.g., due to socio-economic conditions in disadvantaged neighborhoods, etc.), or due to more aggressive policing of certain neighborhoods, or some combination thereof. (2) Even assuming blacks have higher rates of involvement in these types of crimes, the data show that their involvement has been dropping significantly over the past 20 or so years, yet the rates of racial disproportionality in our prisons has not enjoyed a similar decline. See Professor Michael Tonry's book *Malign Neglect* for these data and an excellent discussion of this. (3) Notice that parts 1 and 2 of the answer focus on what we might call street crime. It's worth noting that many other types of crime are not included.

1. In the federal system the guidelines calculation of a sentence is a range of months, often quite large. Do the results of your study hold in this context? (You might have addressed this in your paper, but unfortunately I can't afford to buy access).
2. What about downward departures (i.e., do sentencing judges in a guidelines jurisdiction depart downward more often when the defendant is of a certain race)?

3. Predictably a lot of people are asking about how to solve this problem. The solutions that most states seem to use are mandatory minimum sentences or guidelines. Are there any possibilities I haven't thought about?

[walkerb](#)

RH: we're running out of time so unfortunately I can't do all of this question justice. But a few important points: SC judges don't have guidelines so their discretion is even larger, frequently as large as 0-5 years, 0-10 years, 0-15 years, etc. Since there are no guidelines, there are no departures--the full range of discretion is at play. Finally, I think guidelines are a viable way to address sentencing disparities. Mandatory minimums, however, appear to make things much worse. Thanks for the questions!

Thanks for doing an AMA!

Does the discriminatory gap grow or shrink proportionally as the sentence/fine gets bigger?

[gyhjams1](#)

TH: The gap is largest for minor to moderate black offenders and this disparity vanishes (or reverses) for more serious crimes or those with longer criminal histories.

How did you control for other variables, such as education level?

[baaimasheep](#)

RH: these data did not include an education indicator, so no we weren't able to control for education. We did control for the type and severity of offense and the offender's prior record among other things. The question highlights an important issue. Most administrative sentencing data does not include education level and most also does not include income level, employment information, presence of dependent children, or victim information. How we punish offenders is an incredibly important policy decision; surely it's worth the investment to collect and maintain good data on these things.

How did you control for other variables, such as education level?

[baaimasheep](#)

TH: Our models control for a number of case and extra-legal characteristics. You can see the results from the full models on Tables 3 & 4, pages 14 and 17 of the [published paper](#)

First, no guidelines is REALLY strange, and most systems in each state don't work that way.

Second, were Asians or other races categorized?

Lastly, as someone who has worked with SAs and PDs for years, I can tell you that culture has a HUGE role in how easy it is to incarcerate someone. But you can't quantify that easily, and it was avoided by your analysis, although it is the single biggest factor in prosecution. Did the defendant talk about their crime, are they proud about it? These make it easier to prosecute. Often white people would be silent (unless they were sovereigns), and it is much harder to prosecute for the same crime because of their attitudes toward the system and what they SAY (the entire backbone of every case). I never saw any bias against black defendants, but they were sometimes easier to prosecute because of said cultural differences. This lack of context makes an issue focus on the exact opposite aspect of what it should focus on.

[L-Carpetron-D](#)

RH: Thanks for the comment and questions. Actually, there are more US states without guidelines than with, though it's a common misconception. Depending on how you count, it's about 20 jurisdictions with and the rest without. The non-guidelines states include some of the biggest states too--California, New York, and Texas, just to cherry pick from the largest. I do recognize that social processes among workgroup members is very important. The empirical questions from your anecdotal account are (1) does your experience generalize to other jurisdictions and (2) how reliability and validity were you able to detect bias. For example, if a similar observer were to say that a minority had a less pleasant demeanor and attitude toward the court and that these cultural differences led to harsher sentencing not skin tone, I'd be concerned that cultural differences were simply a proxy (very possibly unconsciously) for race differences.

But more fundamentally, I think it's true that there's not a tremendous amount of disparity at the sentencing phase. For many of us, any level of disparity will raise concerns. But probably more troubling for me are (1) trying to figure out why the disproportionality in prison populations is so tremendous and (2) having almost no ability to analyze critical decision points leading up to sentencing--for example, charging and plea bargaining decisions, dismissals, reductions, etc.

First, no guidelines is REALLY strange, and most systems in each state don't work that way.

Second, were Asians or other races categorized?

Lastly, as someone who has worked with SAs and PDs for years, I can tell you that culture has a HUGE role in how easy it is to incarcerate someone. But you can't quantify that easily, and it was avoided by your analysis, although it is the single biggest factor in prosecution. Did the defendant talk about their crime, are they proud about it? These make it easier to prosecute. Often white people would be silent (unless they were sovereigns), and it is much harder to prosecute for the same crime because of their attitudes toward the system and what they SAY (the entire backbone of every case). I never saw any bias against black defendants, but they were sometimes easier to prosecute because of said cultural differences. This lack of context makes an issue focus on the exact opposite aspect of what it should focus on.

[L-Carpetron-D](#)

TH: If we had data on these sorts of things, we'd certainly try to model them. Unfortunately, the data we have is broad (it includes the entire population of criminal offenders for a given year), but it is shallow (it doesn't include many of the factors we believe/expect would affect sentencing decisions). It is what it is. No more, no less.

Is this from minor offenses on up? Or did you guys look at specifically lesser or more serious cases?

[Mystik Reaper](#)

We looked at all felony offenses. We didn't include minor offenses. The operationalization was anything labeled a felony, but also included serious misdemeanors for which more than a year of incarceration could have been imposed (which is the traditional definition of a felony).

Is this from minor offenses on up? Or did you guys look at specifically lesser or more serious cases?

[Mystik Reaper](#)

TH: Felonies and serious misdemeanors. Basically, any offence in which a prison term isn't unreasonable (although not mandatory).

Hello, and thanks for doing this AMA. Do you plan to expand this research to other states in the U.S.?

It's probably fair to say that South Carolina has an extensive history of racial discrimination and animosity. Do you think you'd make similar findings in other states with more tolerant racial histories?

[Little\\_Six](#)

TH: Yes, we plan to look at other states with newly collected data. And we totally agree that South Carolina's history may make it different than other US states. That's an empirical question. But, previous research also finds similar patterns to us. Just look for "liberation hypothesis" and criminal sentencing.

My university published a study looking at all the correlations of death sentences in Tennessee. The most surprising thing i found in the study was that there was a higher death penalty rate for white males rather than blacks contrary to social beliefs. Also if you killed a woman or a police officer you are up to 5 times more likely to get the death penalty. If you want more of the study i can link it.

[coolnasir139](#)

TH: We found a similar pattern in that the racial disparity vanishes or reverses for the most serious offences.

In an episode of Through The Wormhole they showed a study where they had police officers in a room with pop-up cardboard people either holding a cell phone or a gun. The officer had a second to make a decision to shoot or not.

Blacks represented were shot at a higher rate than whites. Then they did the same study using black police officers but it led to the same/similar results.

Are you aware of this study? Do you have more details on it? Do you know if there are further studies in this area?

[sproket888](#)

TH: Look up the "shooter bias" paradigm. I think that's what you're referring to.

Thank you for doing this AMA.

When you say "similar white offenders," what do you mean? Do you mean that everything was the same or substantially the same between the black and white offenders except race/skin color? Does this include things like socioeconomic background, general disposition/attitude during court proceedings, proficiency of attorney, social connections (ie gang affiliations), etc? It seems that there could be a whole mess of factors that could contribute to the disparity beyond skin color that could complicate the results. Or am I misunderstanding your findings and I'm simply off-base (which I freely admit is a legitimate possibility!)

Thanks! This is fascinating work!

[AndABananaCognac](#)

TH: It means for "white offenders" who have committed similar offences. The dataset contains a number of legal and extra-legal covariates. Unfortunately, the SC Sentencing Commission did not collect data on the socio-economic status of the offenders or other more nuanced variables that you mention. That would have been ideal, and one hope that we have is that our research will encourage better data collection so that these sorts of issues can be investigated. Race/ethnicity is a noisy measure, but it's what's available in the dataset. If we had those other measures, we would have included them in the analysis.

The implication is that judges are biased when sentencing. There are potentially other reasons for this - that police are biased when making arrests, that prosecutors are biased when prosecuting, that representation is biased when defending clients, that criminal elements are actually racially segmented, or that there is a racial divide among those that are visibly and demonstrably remorseful and that lack of remorse plays a large role.

Have you been able to make any headway in determining the actual cause for the bias in criminal sentencing? Whether or not you have, do you have any thoughts on it?

[ftg3](#)

TH: We're not implying that judges are biased. They could be, but we're not saying because we don't have data on why there are racial disparities. We simply notice that disparities exist in certain circumstances that they shouldn't exist. It's up to future research to determine why.

A lot of people have already questioned your use of controls for income, education, etc. To add to this list, I wonder whether the defendants demeanor toward the judge has an impact. If a defendant is aggressive or uncooperative, it seems there may be more likely to receive a stiff sentence. This behavior could be exacerbated by cultural norms related to how various groups perceive the justice system. It seems this type of thing would be hard to quantify, but was any thought given to it?

[rollie82](#)

TH: Of course, these are all very good points. There's certainly a whole slew of important things that we cannot include in our analysis because there's no data on it. We'd love to have controls for income, education, etc, as these certainly impact sentencing decisions. We modelled outcomes as best we could given the data that were available; we've not tried to hide or misrepresent our results by saying it's solely race. All we've said is that there are racial disparities in sentencing outcomes; it's up to future research to determine why that's the case.

Hi, any research into the justice system I think is invaluable, so keep it up. My question is, what other ethnic group's were examined in your study? I live in the UK and I've often wondered how this sort of thing effects the large Pakistani population here.

[G t P](#)

TH: Unfortunately, we only had a measure that identifies white and black offenders. There is other research that has looked into other minority groups, though. The question about ethnic disparities in the UK would be very interesting to examine.

Can you provide the model you used to estimate the effect? I am interested to see what variables were included and their significance levels.

[staring\\_at\\_keyboard](#)

See here:

[http://tkhartman.staff.shef.ac.uk/\\_content/documents/Hester.Hartman2016.Journal.of.Quantitative.Criminology.pdf](http://tkhartman.staff.shef.ac.uk/_content/documents/Hester.Hartman2016.Journal.of.Quantitative.Criminology.pdf)

Can you provide the model you used to estimate the effect? I am interested to see what variables were included and their significance levels.

[staring\\_at\\_keyboard](#)

RH: thanks for your interest! If you can't access the JQC version you should be able to find the pre-publication draft on our SSRN page.

How much is due to race and how much is due to correlated factors?

For instance, someone who is poor is more likely to again commit a crime because he or she does not have the same support mechanisms as wealthier people. Does this (and should this) play a role in sentencing?

[Kasper-X-Hauser](#)

TH: That's a difficult question, one we cannot answer. Race is a noisy measure, and surely one that is correlated to a host of other factors. With better data, we'd be able to parse out the unique contribution race makes to sentencing decisions irrespective of other things like socio-economic status, etc.

Do you think this study will help reduce length of of sentences for African Americans or increase sentence length for others?

[jondus1](#)

TH: Good question. Although I'd like to think that our research is going to lead to reform, I suspect it will do neither because key actors won't/don't read this sort of thing.

Who paid for the research and data collection? Is the raw data publicly available?

[VesperLynde](#)

TH: The SC Sentencing Commission collected the data. We've made the data available for replication purposes on my website.

Great research - thanks for Ama'ing. Did you have the race of the judges available? Did you see the same results with minority judges?

[Hollis-](#)

TH: Most judges in the dataset were white, with only 3 or so nonwhite judges. In future research, we'll certainly be interested in looking at this sort of issue.

I can't read the article because it's behind the paywall but in the abstract it says A, B, and C felonies show a reduction in the sentence length for blacks. If these data fit the liberation hypothesis, shouldn't there be no correlation to race?

[easy\\_peazy](#)

TH: The ungated paper is available on my website. The liberation hypothesis is a misnomer--judges are "liberated" to consider extralegal factors when the case facts are ambiguous or for less serious offences.

Does your study take into account repeat offenders and the subsequent increase in sentence length?

[Araxies](#)

TH: Yes. Criminal history is a key explanatory variable.

Although race is often discussed in the press as a binary choice, either white or black, it's actually a multidimensional vector with a continuous range of components.

How do you define "race"? What percentage of African genes must a person have to be defined as "black", and what about mixes of other ethnic groups? How do you deal with this in your mathematical analysis?

[MasterFubar](#)

TH: Race is an identity, a social construct that is either ascribed to or promoted by the individual.

As a matter of interest, is it possible that there were other mitigating factors in each of the cases? Maybe this is covered in the study already & if so I apologise, but for example, the law is generally more sympathetic to those who are leading 'productive' lives. That is, having a family & working for example. Only a few years ago 18.3% of white children were living without a father in their lives, but 48.5% of black children were living in fatherless homes. Similarly, the unemployment rates for blacks was closer to 14%, whereas for whites it's around 7%.

So essentially what I'm saying is - is it possible that certain races are considered to be leading better, more productive lives, and that this plays a large factor when considering sentencing?

[Mozzerrr](#)

TH: Any of these explanations is possible. We simply don't have any data on this to be able to model/test it.

How did you control against the average difference in socio-economic factors?

More money = better lawyer whether you are white or black.

[ellingeng123](#)

TH: We don't. It wasn't collected by the SC Sentencing Commission. It would be great to have such a measure, but it's just not available. It could be that black offenders receive longer sentences because of differential access to legal representation or other institutional hurdles. As it stands, we just know that there are racial disparities (not why).

I couldn't view the paper on mobile but I'd like to ask if the study is black-centered (blacks vs nonblacks), white-centered (white vs nonwhite), a stark black vs white comparison, or does it also include other races as well. Thank you!

[penatbater](#)

TH: The SC Sentencing Commission only collected usable information into two categories (white and black).

Have you noticed a difference between your findings and other Judges in Northern States? As the South tends to have a history of racism and "White Master" complex, do you think this is just local (the south) or a more widespread issue?

[Wrest216](#)

TH: We haven't (yet) looked at other states, so we can't answer this question.

Our police agency utilizes a self reported questionnaire about people's criminal past. It's simple questions such as age, age of first arrest, total number of arrests, etc. based on this they are given a score which is allegedly tied to probability of recidivism. The prosecutor and judge can then use that in charging/sentencing.

Have you heard of this type of practice, and is it actually effective or more of a "feel good half-measure"?

[drdonuts88](#)

TH: Interesting (this is something with which Dr. Hester may be familiar).

I wonder what type of data you'd get from self-reports (particularly if respondents learn/know that their answers could be used in sentencing decision). In general, I'm in favour of this type of information, though, because I think it's what judges are doing anyway--why not make it explicit and come up with a system that we can debate, test, etc.

A very short and to the point question. Is it looking like it might be getting better in the near future? There seems to be an incredible amount of attention on the issue.

[Dubsland12](#)

TH: The data we have is only a snapshot in time, so we can't make any claims about trends in either direction. I suspect that these sorts of issues won't be resolved any time, given the long history of racial issues in the US. If sentencing data were collected more regularly, then we'd be able to investigate these sorts of research questions.