Journal of Criminal Law and Criminology

Volume 55
Issue 3 *September*

Article 5

Fall 1964

Inter- and Intra-Racial Crime Relative to Sentencing

Edward Green

INTER- AND INTRA-RACIAL CRIME RELATIVE TO SENTENCING

EDWARD GREEN*

The claim that criminal courts in the United States practice racial discrimination in sentencing is widely affirmed in the American literature of criminology. The research evidence on which the charge is grounded is somewhat equivocal in that some studies show a general tendency on the part of the court to impose heavier penalities on Negroes in comparison with whites, while others show that for most offenses Negroes receive lighter sentences. In a previous report the writer challenged the conclusions drawn in the former studies pointing out that they fail to take into adequate account legally significant differences between whites and racial minorities in patterns of criminal behavior.[1] This paper will focus on the latter studies and particularly the apparent inconsistency that the relatively less strict treatment accorded to the Negro defendant signifies racial discrimination against the Negro.

The paradox is resolved by the contention that Negroes only seem to receive preferential treatment; that community norms tolerate a less rigorous enforcement of the law when the victim is also a Negro, but demand strict enforcement when the victim is white.[2] Accordingly, in analyzing the influence of race on sentencing, we need four offender-victim categories, and these would rank in the severity of punishment as follows: Negro versus white, white versus white, Negro versus Negro, and white versus Negro.

This opinion has become an important tenet of American criminology[3] despite a rather meager empirical foundation. The only direct test of the hypothesis, so far as the writer can ascertain, is Johnson's comparison of the four offender-victim groupings with respect to the penalities imposed for homicide in sections of Virginia, North Carolina, and Georgia.[4] Although the results conform neatly to the predicted ranking stated above, the absence of controls for the legal aspects of sentencing vitiates their validity. Criminal homicide is not one but several offenses of widely differing gravity under the law.[5] The investigator has obviously thrown together cases of all forms of homicide without regard to whether they are first or second degree murder or manslaughter. Also it is determinable that the defendants in the several groupings differ appreciably in the proportions of the various forms of homicide of which they were convicted. The percentage of cases with sentences falling within the range of the penalty for first degree murder is substantially the highest for the N-W, much lower for the W-W, and by far the least for the N-N.[6]

*Dr. Green is Professor of Sociology in Eastern Michigan University, Ypsilanti, Michigan. He has previously served in the departments of sociology of the University of South Florida, Beaver College, and Mount Holyoke College. Dr. Green received the A.B., A.M., and Ph.D. degrees from the University of Pennsylvania.

[1] GREEN, JUDICIAL ATTITUDES IN SENTENCING 8–11 (vol. xv, Cambridge Studies in Criminology, 1961).

[2] Johnson, *The Negro and Crime*, 271 ANNALS 93 (1941), also in VEDDER, KOENIG & CLARK, CRIMINOLOGY, 256–71 (1953), and in WOLFGANG, SAVITZ & JOHNSTON, THE SOCIOLOGY OF CRIME AND DELINQUENCY 145–63 (1962); Bullock, *Significance of the Racial Factor in the Length of Prison Sentences*, 52 J. CRIM. L., C. & P.S. 411 (1961).

[3] See, *e.g.*, BARNES & TEETERS, NEW HORIZONS IN CRIMINOLOGY 169–70 (1959); CAVAN, CRIMINOLOGY 59–60 (1955); SUTHERLAND & CRESSEY, PRINCIPLES OF CRIMINOLOGY 139–40 (1960); TAFT, CRIMINOLOGY 134 (1956); TOCH, LEGAL AND CRIMINAL PSYCHOLOGY 9–10 (1961).

[4] Johnson, *supra* note 2. Bullock, *supra* note 2, at 416, has applied this explanation to data which show that in Texas, Negroes compared with whites receive longer prison sentences for burglary and shorter sentences for murder (unclassified as to degree). Pointing out that for the Negro burglary is mainly an interracial offense and murder, an intraracial offense, he states, "These judicial responses *possibly* [italics mine] represent the indulgent and non-indulgent patterns that characterize local attitudes concerning property and interracial morals." He does not, however, control for the race of the victim in making the comparison. Since Texas is one of the few states in which the jury fixes the sentence, even if the hypothesis were confirmed, the results would argue more convincingly for depriving the jury of the sentencing function than for the inference that *law enforcement officials* practice racial discrimination. As Tappan points out, "This [sentencing by jury] represents the weakest among the sentencing techniques, since the jury is both untrained and inexperienced in such matters. The jury may reflect community opinion in some measure, but in doing so, it is likely to be too lenient or too harsh in its action." See TAPPAN, CRIME, JUSTICE AND CORRECTION 438–39 (1960).

[5] For the relevant statutory provisions, see VA. CODE tit. 18, §§4394, 4396 (1950); N.C. GEN. STAT., ch. 14, §§17–18 (1953).

[6] The percentage of first degree murder convictions for the N-W in the Virginia data is 100, and for the

These deductions are confirmed in data assembled by Garfinkel[7] from criminal court records in North Carolina. The information shows that the N-W cases involve conviction of first degree murder four times as frequently as the W-W cases and ten times as frequently as the N-N cases with percentages, respectively, of 29.4, 6.7, and 2.6. Convictions of manslaughter, on the other hand, comprise 9.8 per cent of the N-W cases, 20 per cent of the W-W cases, and 35.6 per cent of the N-N cases.

This differential, as Garfinkel suggests, may be due to racial discrimination in the designation of the degree of homicide. Yet, a growing body of evidence more convincingly indicates that it is a product of subcultural differences in patterns of crime resulting from enforced racial segregation. Rates of the predominantly intra-racial offense of homicide are consistently much higher for Negroes compared with whites than can be accounted for merely by discriminatory law enforcement practices. The greater proneness of the Negro to resort to violence in responding to slights or settling disputes[8] coupled with a tendency to carry "protective" weapons[9] subjects him to a much greater risk than the white of slaying or being slain in an intraracial brawl. There is commonly a quality of intimacy in the relationship between the principals in an in-group homicide; the slaying of a Negro by a Negro is likely to be the culmination of an altercation between friends, lovers, or spouses. As Wolfgang points out in his discussion of the role of the victim in precipitating his own demise, the Negro victim much more frequently than the white victim has provoked his slayer to assault him.[10] Since the killing which resolves such a conflict is rarely premeditated, the legal element of "heat of passion" is more apt to be present, and the element of "intent to kill," problematic, thereby mitigating the seriousness of the offense.

The circumstances surrounding the N-W homicides, on the other hand, are conditioned by the social distance which characterizes race relations in the United States. The relatively small percentage of interracial homicides in empirical studies attests to the slight probability of a fatal clash between white and Negro.[11] A N-W slaying is less likely than a N-N slaying to have arisen out of an altercation between intimates. Rather in most instances the killing is an unpremeditated act committed in the course of a predatory crime such as robbery,[12] thus automatically elevating the offense to the level of first degree murder.[13]

An Empirical Demonstration

An analysis by the writer[14] of 1437 consecutive cases disposed of by conviction in a criminal court of Philadelphia disclosed pronounced differences between whites and Negroes in the proportions of the various types of offenses and, in connection with certain offenses, equally marked differences in the gravity of prior criminal records and in the number of separate criminal acts of which the defendant was found guilty. The control of such differences yielded a remarkable uniformity in sentences between the races. The presumption remains, however, that the resulting parity in sentences is spurious, that the racial factor exerts its effect through the racial identity of the victim as well as the offender.[15] Thus, perhaps undue severity in sentencing N-W cases is offset by undue leniency in sentencing N-N cases. We shall explore this possibility, testing the hypothesis that *patterns of criminal behavior constituting a given offense differ intrinsically not only between the*

W-W and N-N, respectively, no more than 46.7 and 27.7. The figures in the North Carolina data are: N-W, 47.0 per cent; W-W, 23.8 per cent; and N-N, 5.9 per cent. The Georgia data contain too few cases for purposes of analysis.

[7] Garfinkel, *Research Note on Inter- and Intra-Racial Homicides*, 27 Social Forces 369–81 (1949). Johnson's North Carolina material was supplied by Garfinkel. See Johnson, *supra* note 2, at 98–99 n.10.

[8] Wolfgang & Ferracuti, *Subculture of Violence, An Interpretive Analysis of Homicide*, 1962 Internat'l Annals of Criminology 56.

[9] Moses, *Differentials in Crime Rates Between Negroes and Whites*, 12 Am. Soc. Rev. 411 (1947); Schultz, *Why the Negro Carries Weapons*, 53 J. Crim. L., C. & P.S. 476 (1962).

[10] Wolfgang, Patterns in Criminal Homicide (1958). See also Wolfgang, *Victim Precipitated Criminal Homicide*, 48 J. Crim. L., C. & P.S. 1 (1957).

[11] Wolfgang, *supra* note 10; Johnson, *supra* note 2; Garfinkel, *supra* note 7; Bensing & Schroeder, Homicide in an Urban Community (1960).

[12] Bensing & Schroeder, *op. cit. supra* note 11. In a study of homicide in Cleveland, Ohio, 20 out of the 27 N-W first degree murder cases were felony-murders. To warrant a conviction of felony-murder it is unnecessary to prove premeditation; proof of intent is sufficient.

[13] The character of the white versus white homicides, it is thought, would be likely to vary according to the social class of the slayer and his victim. The lower class pattern would correspond to the general run of N-N slayings, crimes of passion predominating. The middle class pattern would more often involve the element of rational planning. See Wolfgang & Ferracuti, *supra* note 8, at 54 n.

[14] Green, *op. cit. supra* note 1.

[15] Johnson, Savitz & Wolfgang, The Sociology of Punishment and Correction 2 (1962).

races but within each race according to the race of the victim and that such differences are legally sufficient to account for the apparent racial differential in sentencing.

The research sample consists of the 118 cases of robbery and the 291 cases of burglary (including burglary of a vehicle) in the original study for which information on the race of the victim was available.[16] These offenses recommend themselves to our purpose since they involve considerable crossing of racial lines by Negro offenders and are more representative of the day to day grist of the judicial mill than more widely publicized offenses, such as murder. As a measure of the severity of prison sentences of indeterminate length we shall employ the minimum term, inasmuch as release from prison on parole usually follows shortly upon its expiration.[17] The sentences are classified into three broad categories as follows:

(1) Penitentiary—prison sentences with minima of no less than one year.
(2) Prison—short prison sentences with minima of three to eleven and one-half months.
(3) Non-imprisonment—with the exception of three suspended sentences these consist of probations or their equivalent in the form of bench paroles.

The figures on the racial offender-victim composition of the cases are consistent with the difference in economic status between the races; both Negro and, particularly, white offenders show a preference for white victims. Remarkably, out of the 413 cases of robbery and burglary combined there is not a single case of a white offender with a Negro victim! Of the 118 robbery cases, 51 involve a Negro offender with a white victim; 45, a Negro offender with a Negro victim; and 22, a white offender with a white victim. The distribution of offenders and victims by race in the 295 burglary cases is as follows: Negro versus white, 149; Negro versus Negro, 66; and white versus white, 80.

[16] The original number of cases for each of these offenses was 135 and 343, respectively. The shrinkage is due to the unavailability in some cases of information on the race of the victim.

[17] The Pennsylvania penal code provides that prison sentences for offenses punishable by separate or solitary confinement at hard labor—and these include robbery and burglary—be indeterminate in length with a maximum term no greater than the maximum fixed by statute and a minimum term no greater than one half of the maximum term imposed.

RESULTS

Robbery

The criminal code of Pennsylvania recognizes two degrees of robbery. In its *simple* form, robbery consists of "the taking of personal property by menace or force from the person of another, or in his presence," and is punishable by a fine not exceeding $5,000 or by a prison term not exceeding 10 years or both. Its *aggravated* form includes one or more of the following elements: commission with an offensive weapon, an accomplice, or violence; and is punishable by a fine as great as $10,000 or imprisonment not exceeding 20 years or both.[18] As Table 1 shows this distinction is not without effect. Defendants convicted of armed robbery suffer much heavier penalties than those convicted of unarmed robbery, receiving proportionately more than half again as many penitentiary sentences (63.3%:37.7%) and less than half as many probations (10.2%:26.17%). The data also indicate that the unarmed offender who resorts to violence or injures the victim suffers an aggravation of the penalty, but information on these matters is not sufficiently reliably reported to make use of it.

The number of separate and unconnected robberies of which the defendant is convicted measured by the number of bills of indictment on which he is found guilty exerts a profound influence on the penalty awarded. Table 2 shows that defendants convicted on two or more bills of indictment receive more than twice as many penitentiary sentences as those convicted on one bill (60.0%: 23.7%); moreover the mean average length of the prison sentence imposed in cases with 2 or more bills of indictment is three times longer than that imposed in cases with one bill.

The seriousness of the offender's prior record weighs heavily into the determination of the sentence. Referring again to Table 1, we see that the judges differentiate among the following three types of offenders listed in descending order of the severity of the penalties imposed:[19]

[18] REIMEL, PENNSYLVANIA CRIMINAL LAW DIGEST 270 (1944).

[19] In offenses of lesser gravity than robbery the sheer *number of prior felony convictions* significantly influences the severity of sentences, but as the offense becomes more serious, in felonious crimes involving violence or the threat of violence, this variable becomes less important. Concomitantly the *intrinsic gravity of the crimes* contained in the prior record contributes increasingly to the weight of the penalty. See GREEN, *op. cit. supra* note 1, at 47–49.

TABLE 1

THE SEVERITY OF SENTENCES FOR ROBBERY ACCORDING TO SELECTED LEGAL VARIABLES AND THE RACE OF THE OFFENDER AND THE VICTIM

	Sentence*								
	Penitentiary: 12 months & up		Prison: 3–11 months		Non-Imprisonment		Total		Mean Minimum Term of Prison Sentences (in months)
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	
Type of Robbery									
Armed	31	63.3	13	26.5	5	10.2	49	100.0	36.1
Unarmed	26	37.7	25	36.2	18	26.1	69	100.0	18.7
Bills of Indictment									
2 or more	48	60.0	17	21.3	15	18.7	80	100.0	33.4
1	9	23.7	21	55.3	8	21.0	38	100.0	12.3
Prior Convictions									
Robbery or Felony Against Person	18	75.0	6	25.0	—	0.0	24	100.0	43.8
Other Felonies or Misdemeanors Against Persons	21	53.8	12	30.8	6	15.4	29	100.0	17.8
Other Misdemeanors or no Convictions	18	32.7	20	36.4	17	30.9	55	100.0	23.7
Race of Offender & Victim									
Negro vs White	31	60.8	14	27.5	6	11.7	51	100.0	31.2
White vs White	13	59.1	6	27.3	3	13.6	22	100.0	26.0
Negro vs Negro	13	28.9	9	20.0	23	51.1	45	100.0	29.2
White vs Negro	—	—	—	—	—	—	—	—	—

* Prison sentences are tabulated according to the minimum term.

(1) those who have been convicted of robbery or a felonious crime of violence,

(2) those who have been convicted of lesser felonies (burglary, theft, etc.) or crimes against the person of misdemeanor grade,

(3) those with no prior felony convictions or with convictions of minor misdemeanors.

By far the heaviest sanctions fall upon the defendants in the first category—75 per cent receive penitentiary sentences, 25 per cent receive prison sentences of less than a year (3–11½ months), and none receive probation. The mean length of their prison sentences is 43.8 months. The defendants in the second category compared with those in the third receive decidedly more penitentiary sentences (53.8%:2.7%) and fewer probations (15.4%:30.9%). However, the average length of the prison sentences for the defendants with prior records of intermediate gravity is six months less than for those with the least serious prior records (17.8 months to 23.7 months). This is due to the fact that a larger percentage of the cases in the latter category involve the use of a deadly weapon (48.4%:30.3%).

Examining now the distribution of the various types of sentences according to the racial factor, it would seem that the court, indeed, adopts an indulgent attitude toward the Negro who robs a Negro. As Table 1 shows he receives the mildest penalties, with only half as many penitentiary sentences and four times as many probations as either the N-W or the W-W, both of whom receive virtually the same percentages of the various forms of penalties. The mean length of time of the minimum term of the N-N prison sentences, however, exceeds that of the W-W by 3.2 months and falls short of that of the N-W by 2 months.

However, before venturing any firm conclusion concerning the influence of the racial equation on sentencing, it is necessary to consider the possible association between the racial composition of the cases on the one hand, and the variables constituting the legal criteria of the gravity of robbery on the other. Table 2 shows that the rank order of the

TABLE 2

SELECTED LEGAL CRITERIA OF GRAVITY IN ROBBERY CASES ACCORDING TO THE RACE OF THE OFFENDER AND THE VICTIM

	Race of Offender and Victim					
	N-W		W-W		N-N	
	No.	Pct.	No.	Pct.	No.	Pct.
Type of Robbery						
Armed	31	60.8	12	54.5	6	13.3
Unarmed	20	39.2	10	45.5	39	86.7
Total	51	100.0	22	100.0	45	100.0
Bills of Indictment						
2 or more	37	72.5	17	77.3	17	37.8
1	14	27.5	5	22.7	28	62.2
Total	51	100.0	22	100.0	45	100.0
Prior Convictions						
Robbery or Felony Against Person	17	33.3	5	22.7	8	17.8
Other Felonies or Misdemeanors Against Person	9	17.7	9	40.9	15	33.3
Other Misdemeanors or no Convictions	25	49.0	8	36.4	22	48.9
Total	51	100.0	22	100.0	45	100.0

three offender-victim categories with respect to the gravity of the cases is the same as the rank order with regard to the severity of the sentences: the N-W have on the whole slightly more serious cases than the W-W, and the N-N have by far the least serious cases. Armed robberies constitute 60.8 per cent of the N-W cases, 54.5 per cent of the W-W cases, but only 13.3 per cent of the N-N cases. As stated above, the writer could not reliably distinguish in cases of unarmed robbery between those involving conviction of simple robbery and those involving conviction of aggravated robbery. However, of the 18 cases that are clearly of the lesser degree, Negro offenders having Negro victims predominate with 12 cases; the N-W and W-W contribute only 4 and 2 cases, respectively.

The defendants in W-W cases were found by the court to be the most active in crime, having been convicted on 2 or more bills of indictment in a slightly greater percentage of instances than the N-W (77.3%: 72.5%). The N-N, by contrast, incurred conviction on two or more bills only half as frequently (37.8%) as either of the other two categories. The slight edge in gravity of the W-W cases over the N-W cases with regard to the number of bills of indictment is substantially offset by the generally more serious prior record of the N-W offenders; 22.7 per cent of the former and 33.3 per cent of the latter involve a prior conviction of robbery or a felonious crime against the person. Again, the N-N present the least grounds for an aggravation of sentence—only 17.8 per cent have prior records containing a conviction of either of these more serious types of offenses.

Since the criminal act in robbery differs in its jural characteristics according to the race of the offender and the victim, the analysis of the effect of the racial factor on sentencing must incorporate suitable controls. Table 3 compares the weight of the penalties awarded the defendants in the three separate categories—N-W, W-W, and N-N—with the variables for the legal criteria held constant. The measure of the severity of the penalties is the mean average number of months of the minimum term of imprisonment. In computing the mean, dispositions which do not involve imprisonment (probation or bench parole) are assigned a value of *zero*. The data of Table 3 reveal no consistent tendency

TABLE 3

MEAN NUMBER OF MONTHS OF SENTENCES* FOR CONVICTION OF ROBBERY BY RACE OF OFFENDER AND VICTIM WITH SELECTED LEGAL VARIABLES HELD CONSTANT

Type of Robbery	No. of Bills of Indictment	Prior Convictions	Race of Offender and Victim			
			N-W (No.)	W-W (No.)	N-N (No.)	Total (No.)
Armed	2 or more	Robbery or Felony Against Person	59.3 (9)	66.0 (2)	— (—)	60.5 (11)
		Other	32.7 (19)	27.1 (9)	5.0 (3)	28.4 (31)
	1	Robbery or Felony Against Person	— (—)	— (—)	11.0 (2)	11.0 (2)
		Other	2.5 (3)	11.0 (1)	3.0 (1)	3.8 (5)
Unarmed	2 or more	Robbery or Felony Against Person	17.5 (2)	— (—)	69.0 (4)	51.8 (6)
		Other	7.7 (7)	7.0 (6)	11.6 (19)	9.9 (32)
	1	Robbery or Felony Against Person	11.8 (4)	— (—)	6.0 (1)	10.6 (5)
		Other	16.6 (7)	16.3 (4)	6.7 (15)	10.5 (26)
		Means of Totals	27.5 (51)	22.4 (22)	14.3 (45)	21.5 (118)
		*Theoretical Means***	*27.1*	*21.9*	*15.0*	*21.5*

* Dispositions other than imprisonment—probation, bench parole, suspended sentence—are assigned the value of *zero*.

** Obtained by scoring each case according to the mean sentence of the subcategory of legal variables in which it occurs (see total column) and computing the weighted mean of the scores.

to be unduly severe or lenient toward any particular offender-victim grouping. The relatively mild treatment accorded a particular group in certain subcategories of the legal variables is offset by the relatively severe punishment inflicted in other subcategories. We note for example that the few cases of N-N armed robbery convicted on 2 or more bills of indictment receive decidedly milder sentences than cases of comparable gravity in either of the other offender-victim groups; but in cases of unarmed robbery, particularly those with prior convictions of robbery or felonious crimes against the person, the N-N receive the heaviest sentences.

In an attempt to determine more precisely if, in the overall picture, any particular group of defendants incurs relatively undue strictness or mildness of punishment, for each offender-victim group the mean length of the sentences is compared with the theoretically expected mean—the value that would occur if all cases of equivalent gravity, irrespective of race, receive the same sentence. The derivation of the theoretically expected mean is as follows. Each case is assigned a score which is simply the mean average number of months of the minimum term of imprisonment[20] of all the cases in the particular sub-category of the cross-classification of legal variables in which it occurs. The expected mean sentence, then, is the weighted mean of the scores assigned the cases of a particular offender-victim group. The amount and direction, plus or minus, of the discrepancy between the observed and the expected means provides a practical meas-

[20] Sentences of non-imprisonment are summed as *zero*.

TABLE 4

THE SEVERITY OF SENTENCES FOR BURGLARY ACCORDING TO SELECTED LEGAL VARIABLES AND THE RACE OF THE OFFENDER AND THE VICTIM

	Sentence*								
	Penitentiary: 12 mos. & up		Prison: 3-11 mos.		Non-Imprisonment		Total		Mean Minimum Term of Prison Sentences (in months)
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	
No. of Bills of Indictment									
3 or more	40	66.7	11	18.3	9	15.0	60	100.0	29.5
2	15	17.2	46	52.9	26	29.9	87	100.0	10.3
1	26	17.6	64	43.2	58	39.2	148	100.0	9.9
No. of Prior Felony Convictions									
3 or more	28	45.2	32	51.6	2	3.2	62	100.0	18.9
2	14	33.3	20	47.6	8	19.1	42	100.0	14.5
1	23	31.9	34	47.2	15	20.8	72	100.0	12.6
0	16	13.4	35	29.4	68	57.2	119	100.0	13.4
Race of Offender & Victim									
Negro vs White	40	26.8	70	47.0	39	26.2	149	100.0	14.3
White vs White	25	31.3	25	31.3	30	37.5	80	100.1	19.7
Negro vs Negro	16	24.2	26	39.4	24	36.4	66	100.0	11.0
White vs Negro	—	—	—	—	—	—	—	—	—

* Prison Sentences are tabulated according to the minimum term.

ure of the court's retributiveness or indulgence toward any one of the offender-victim groups relative to the others. The results recorded across the bottom of Table 3 show that for N-W and W-W cases the amount by which the observed mean exceeds the expected mean is virtually identical, .4 and .5 months, respectively. Apparently the advantage of a higher percentage of non-prison sentences enjoyed by the W-W over the N-W is counter-balanced by the disadvantage of somewhat longer prison sentences. The observed mean of the N-N cases falls short of the expected mean by .7 months. In other words, the N-W and the W-W are sentenced a little more severely relative to the N-N, but the difference, in the writer's estimation, is of no significance, especially in view of the evidence noted earlier which indicates that the N-N cases of unarmed robbery contain a higher percentage of "simple" robberies than the N-W or W-W cases.

Burglary

The analysis of the burglary cases is somewhat simplified by the absence of the element of violence in the criminal act.[21] Table 4 presents the data on sentences according to the legal criteria of the seriousness of burglary and the race of the offender and the victim. The number of separate offenses of which the individual is convicted, measured by the number of bills of indictment, and the gravity of the prior criminal record, measured by the number of prior felony convictions are the major determinants of the severity of the sentences. Defendants convicted on 3 or more bills of indictment receive penitentiary sentences in 66.7 per cent of cases, proportionately four times as many as those convicted on one or two bills; and they receive non-prison sentences in 15 per cent of cases, only half as frequently as those convicted on fewer bills. Those convicted on one bill of indictment receive about the same percentage of penitentiary sentences as those convicted on two bills. The latter group, however, receives fewer non-prison sentences (29.9%: 39.2%) and more short prison sentences (52.9%: 43.2%). Going from cases with no prior felony convictions to those with 3 or more prior felony convictions, the range of the percentages of penitentiary sentences imposed is from 13.4 to 45.2, and the range of percentages of non-prison sentences is from 57.2 to 3.2.

The rank order of the three racial offender-victim groups starting with the most severely sen-

[21] Burglary is the illegal entry into a building with the intent to commit a felony therein. See REIMEL, *supra* note 18, at 37.

TABLE 5

SELECTED LEGAL CRITERIA OF GRAVITY IN BURGLARY CASES ACCORDING TO THE RACE OF THE OFFENDER AND THE VICTIM

	Race of Offender and Victim					
	N-W		W-W		N-N	
	No.	Pct.	No.	Pct.	No.	Pct.
No. of Bills of Indictment						
3 or more	28	18.8	25	31.2	7	10.6
2	40	26.8	26	32.5	21	31.8
1	81	54.4	29	36.3	38	57.6
Total	149	100.0	80	100.0	66	100.0
No. of Prior Felony Convictions						
3 or more	35	23.5	14	17.5	13	19.7
2	21	14.1	9	11.2	12	18.2
1	33	22.1	23	28.8	16	24.2
0	60	40.3	34	42.5	25	37.9
Total	149	100.0	80	100.0	66	100.0

TABLE 6

MEAN NUMBER OF MONTHS OF SENTENCES* FOR CONVICTION OF BURGLARY BY RACE OF OFFENDER AND VICTIM WITH SELECTED LEGAL VARIABLES HELD CONSTANT

No. of Bills of Indictment	No. of Prior Felony Convictions	Race of Offender and Victim			
		N-W (No.)	W-W (No.)	N-N (No.)	Total (No.)
3 or more	3 or more	39.8	81.0	30.0	51.7
		(8)	(4)	(1)	(13)
	1–2	27.0	16.2	8.0	18.7
		(9)	(13)	(4)	(26)
	0	19.1	16.4	2.0	16.4
		(11)	(8)	(2)	(21)
2	3 or more	9.8	7.0	19.0	11.8
		(6)	(2)	(3)	(11)
	1–2	7.5	10.3	6.9	9.0
		(22)	(11)	(10)	(43)
	0	5.6	3.6	1.5	3.5
		(12)	(13)	(8)	(33)
1	3 or more	7.2	5.9	14.9	8.7
		(21)	(8)	(9)	(38)
	1–2	9.1	4.5	6.6	7.5
		(23)	(8)	(14)	(45)
	0	4.6	1.6	1.9	3.4
		(37)	(13)	(15)	(65)
	Means of Totals	10.62	12.28	6.96	10.3
		(149)	(80)	(66)	(295)
	*Theoretical Means***	*10.44*	*11.88*	*8.30*	*10.3*

* Dispositions other than imprisonment—probation, bench parole, suspended sentence—are assigned the value of *zero*.

** Obtained by scoring each case according to the mean sentence of the subcategory of legal variables in which it occurs (see total column) and computing the weighted mean of the scores.

tenced is W-W, N-W, and N-N, with penitentiary sentences in, respectively, 31.3 per cent, 26.8 per cent, and 24.2 per cent of cases. The same order of gravity holds with respect to the mean length of the prison sentences: W-W, 19.7 months; N-W, 14.3 months; and N-N, 11.0 months. The W-W cases, however, receive the highest percentage of non-prison sentences (37.5) followed closely by the N-N cases (36.4), and at a greater distance by the N-W cases (26.2).

Probing for differences among the three racial offender-victim groupings in the legal criteria of gravity, we find adequate justification for the variation in the severity of the sentences among the three groups. Table 5 discloses that the white offenders were convicted on three or more bills of indictment proportionately more than one and a half times as frequently as Negro offenders with white victims and three times as frequently as Negro offenders with Negro victims (31.2%: 18.8%: 10.6%). Cases representing differing degrees of recidivism are about evenly distributed among the three groups of offenders, the W-W cases, on the whole, presenting slightly less serious prior records than either of the other groups.

Controlling now for the effect of differences in the legal makeup of the cases, as shown in Table 6, we compare for each offender-victim group the average number of months of the minimum term of imprisonment of the sentences imposed with the average that would result if the sentences for cases of equal gravity were identical.[22] The degree of concordance between the two measures in each instance is high. In the W-W cases and the N-W cases the average of the imposed sentences slightly exceeds the average of the expected sentences. The difference for the former is .40 months, and for the latter, .18 months. Negro offenders with Negro victims, in comparison, receive somewhat milder sentences relative to the gravity of their cases with the expected mean average sentence exceeding the actual mean average by 1.34 months.

Discussion

The evidence does not support the hypothesis that the court differentiates the seriousness of crimes according to the race of the offender relative to the race of the victim—certainly not, as between Negro interracial and white intraracial offenders. The slightly less severe sentences accorded Negro intraracial offenders is not in the writer's estimation of any consequence. The limited number of legal criteria that could be reliably converted from the official records patently show that the N-W and W-W robbery cases exhibit a much higher degree of malicious intent than the N-N cases. Undoubtedly other factors not as easily detected or measured impinge upon the judge's decision. Those which are discernible also suggest the lesser gravity of N-N criminality. We have already noted, for example, that in cases of unarmed robbery N-N cases less often than the others indicate the use of violence or threats of violence. The criminal deed in the lesser variety of unarmed robbery consists typically of purse-snatching or looting the pockets of a victim lying in a drunken stupor. Also, data on age-differences among the three groups independently suggest that the N-W, W-W, and N-N cases, in that order, represent diminishing degrees of maturation in robbery. Close to one-half of the Negro intraracial robbers compared with one-fourth of the white intraracial robbers and one-sixth of the Negro interracial robbers are under 21 years of age.

The data in the burglary cases likewise disclose marked differences among the racial offender-victim divisions in criminal behavior systems related to the legal criteria for sentencing. In addition, nearly all of the N-W cases and a substantial majority of the W-W cases (except for cases of burglary of a vehicle) involve the looting of business premises such as a store, warehouse, or the like. By contrast virtually all of the N-N cases involve the looting of residential premises—understandably, since Negroes are seldom business property owners. Although there does not appear to be a direct relationship between the type of property burglarized and the weight of the penalty, collateral evidence from the official arrest reports and notes of trial testimony suggests that intraracial burglaries of private residences are frequently the work of non-professional and no more than episodic offenders. In Negro intraracial burglary, particularly, the criminal act commonly springs from a personal relationship between the offender and the victim, who may be acquaintances or relatives occupying separate apartments in the same building or separate houses in the same neighborhood. The offender has been a visitor in the dwelling of the victim and takes advantage of a detailed knowledge of the premises and the times when the victim is apt to be away to effect an entry and commit

[22] The procedure is described in the text at note 20, *supra*.

larceny. The mitigation of the penalty in such instances may be a response to the defendant's assertion that as a regular visitor he did not enter illegally, or that the burglarized articles were really his own property which he was reclaiming, or that the complainant owed him money and that the alleged theft was merely to liquidate the debt, or to the promise of restitution by the defendant. In one case, for example, the defendant burglarized the residence of his mother-in-law with whom his estranged wife was residing. He contended that he had a right to the articles he was charged with stealing. The leniency extended by the judge in that instance was a response to hopeful signs of reconciliation between the defendant and his spouse.

The conclusiveness of these results is obviously limited by the size of the sample and the hazard inherent in generalizing the situation in Philadelphia to other locales. One might indeed attribute the racial equality of sentences in this study to the fact that Philadelphia is not a southern community and thus lacks a "caste" tradition in race relations. It would be unrealistic, however, to assume that racial prejudice is negligible in northern communities. While its manifestations may not be as institutionalized as in the south, it is nevertheless a widely expressed attitude and a potent force in the drift of community affairs.[23]

Finally, the writer wishes to comment on the implications of the results for theory on minority group prejudice and discrimination as it relates to the administration of criminal justice. The view that the prevailing racial biases of the community automatically infect the decisions of criminal court judges fails to consider that persons differ in their susceptibility to prejudice depending upon the character of their involvement in the community structure. Nor does prejudice inevitably touch off acts of discrimination; the normative prescriptions embodied in the official morality of the land, denoted by Myrdal "the American creed," serve to curb the acting out of prejudice or at least to deflect its overt expression into areas of conduct which are indistinctly covered by civil rights legislation. Gordon Allport, generalizing upon the circumstances under which the American creed is an effective counterforce to prejudice states:

> "Where clear conflict exists, with law and conscience on the one side, and with custom and prejudice on the other, discrimination is practiced chiefly in covert and indirect ways and not primarily in face to face situations where embarrassment would result."[24]

The criminal court exemplifies, at least in part, such a situation; even more, the court proceedings are highly accessible to public scrutiny. The court is an official instrument for maintaining some of the loftiest ideals of the national ethos. The law governing procedure in criminal cases, as much as any sector of the law, contains explicit, unambiguous safeguards for the rights of the defendant in a criminal action. The presiding judge by virtue of the technical requirements of the law, his professional training, and his oath of office is, of all public officials, one of the least likely to bow to local custom or prejudice when it opposes the American creed. This does not deny that there are or have been judges of lesser commitment to this ideal or that in some communities the ideal is still unattainable. It suggests, however, that unfairness to minority groups before the law, to the extent that it exists, is more apt to occur in the less public phases of the administration of justice than in the courtroom, or indirectly as a function of the minority group defendant's socioeconomic disadvantage in exploiting all avenues of recourse offered by the law to the accused before and after conviction.[25]

[23] See GRODZINS, THE METROPOLITAN AREA AS A RACIAL PROBLEM (1958). Events since World War II have aggravated the state of race relations in Philadelphia, which, like other large American communities, has received an influx of southern Negro migrants. The swelling of Philadelphia's Negro population from 18 per cent of the total in 1946 to 30 per cent by 1960 has been accompanied by the usual problems of housing, education, and mass exodus of the whites to the suburbs. Concomitantly the city has experienced a staggering wave of predatory crime which is largely attributed by police officials to the recent migrants. See KEPHART, RACIAL FACTORS AND URBAN LAW ENFORCEMENT 180–82 (1957). But whether migrant or native to the areas the Negro, comprising about 30 per cent of the city's population, contributes 70 per cent of the arrests for Part I offenses—homicide, felonious assault, robbery, burglary, larceny, etc. The high visibility of Negro crime has produced widespread resentment and indignation in the white community and expressions of mortification in the law abiding and more noticeably middle class Negro element.

[24] ALLPORT, THE NATURE OF PREJUDICE 56, 315 ff. (1958).

[25] See, *e.g.*, Wolfgang, Kelly & Nolde, *Comparison of Executed and Convicted Among Admissions to Death Row*, 53 J. CRIM. L., C. & P.S. 301 (1962). This study shows a significant difference in commutation rates between death row cases with private counsel and those with court-appointed counsel. Negroes with private counsel fare no worse than whites with private counsel, but Negroes with court-appointed counsel suffer a sig-

CONCLUSIONS

Revaluation of the data of previous research and the analysis of the data herein presented discloses no warrant for the charge of racial discrimination in sentencing. Variation in sentencing according to the race of the offender and the victim does exist, but it is a function of intrinsic differences between the races in patterns of criminal behavior. The Negro pattern is a product of the isolative social and historic forces that have molded the larger Negro subculture. The wide social distance between the races has pointed implications for the situational context, the behavior system and, accordingly, the legal character of interracial crime in contrast with intraracial crime. Crimes against the person arise commonly out of a matrix of intimate relationships; hence, are predominantly intraracial. The superior economic status of the white man strongly inclines offenders of both races in property crimes to prey upon whites.

The offenses of Negroes who transgress against members of their own race are relatively high in impulsiveness and low in the elements of repetitiveness and malicious intent. Hence they are the least severely punished. The greater strictness of the penalties awarded in N-W cases compared with W-W cases for assaultive offenses, including robbery, is due to the fact that the crimes of the N-W are of a more aggravated nature, indicating a deeper internalization of the value of violence.[26] In burglary, a non-violent offense, white intraracial offenders receive the strictest sentences because they are convicted on the average of a greater number of separate violations. The pattern of activity in Negro interracial crime generally more closely resembles the pattern of W-W crime than of N-N crime. This tendency suggests the acculturation of the Negro offender to the white criminal culture.

The fault then lies not with the subversion of the judicial system by undemocratic racial attitudes, but with the wall of segregation limiting the Negro's access to culturally patterned norms of deviant behavior as well as conventional behavior. To the degree that the Negro is more closely assimilated to the white middle class culture value system, his crime rate should decline. Concomitantly the Negro pattern of crime and punishment received for crime should increasingly approximate the white pattern.

nificantly higher proportion of executions than whites with court-appointed counsel.

[26] See Wolfgang & Ferracuti, *supra* note 8, for an exposition on the "Subculture of Violence."