

**Researchers**

Marianne Bertrand  
The University of Chicago

Sendhil Mullainathan  
Harvard University

David Abrams

**Timeline**

1995-2001

**Sample Size**

34,227 felony cases, 70 judges

**Research Implemented by IPA**

No

# Discrimination in the Judicial System

## Policy Issue

In 2004, over 40% of sentenced inmates in the United States were African-American; with African-American males incarcerated at seven times the rate of white males. A long-standing principle of the United States' justice system is that defendants should not be treated differently because of their race, codified in the "Equal Protection" clause of the 14th amendment to the Constitution. Differential sentencing or conviction rates by race could be evidence of a violation of this clause, making this an important issue to address on legal grounds. However, it is possible that the observed racial gap in sentencing can be explained by other factors such as income, education level, or factors which are more difficult to observe. Establishing whether or not courts differentially treat minority defendants also has important social implications: such practices might further exacerbate social inequalities and could contribute to a self-confirming equilibrium where expectations of racial discrimination affect criminal behavior.

## Context of the Evaluation

Cook County, Illinois is the largest unified court system in the United States, with over 2.4 million cases processed each year in both civil and criminal courts. It is also a racially mixed urban area, with a population that is 48% white, 26% African-American, and 20% Hispanic. Illinois state courts are governed by sentencing guidelines, which provide suggested sentencing ranges by category of offense. Previous studies have found that guidelines do mitigate inter-judge sentencing variation, but not substantially. Judges in the Cook County court are initially appointed or elected, and subsequently subject to retention elections every six years.

## Details of the Intervention

Researchers use data from the state courts of Cook County, starting with data from felony cases initiated between 1995 and 2001. The racial breakdown in the data is 12% white, 72% African-American, and 16% Hispanic, reflecting substantially different rates of representation by race in the criminal justice system. Rather than asking whether there is a racial gap in sentencing, this study seeks to determine whether there are systematic differences across judges in the racial gap in sentencing – in other words, are certain judges more likely to mandate punishments for members of a particular race? If there were no racial bias, then we would expect the gap in sentencing for people of different races to be the same across judges. But when cases are assigned to judges randomly, any difference across judges in the sentencing gap may reflect people of a particular race receiving different treatment from particular judges.

For the primary analysis, data is restricted to defendants who are African-American or white (excluding the 16% classified as Hispanic). Data is further limited to those cases adjudicated by a subset of judges in the Cook County Criminal Courts who did not have any unusual circumstances (such as lengthy capital trials) that would have resulted in non-random assignment of cases. The random assignment of cases to judges is central to this study as it ensures that each judge receives the same types of defendants of different races. Once random case assignment has been established, it can be inferred that any differences in judicial decision patterns are due to differences across judges and not to differences in case or crime characteristics.

## Results and Policy Lessons

Evidence suggests that there is significant disparity in the racial gap in incarceration rates across judges, supporting the idea that at least some judges treat defendants differently based on their race.

Researchers observed an average incarceration rate of 38% for whites and 51% for African Americans, although as mentioned above this gap could be explained by factors which are difficult to observe. However, when moving from the 10th to the 90th percentile judge in terms of racial discrimination, the gap in incarceration rates increased by 18 percentage points, suggesting significant variance in the sentencing gap across judges. The estimated average difference in sentence length is 10 months, however this cannot statistically be distinguished from a situation where race played no role in sentence length.

Although judges differ in the degree to which race influences their sentencing, no evidence is found to suggest that observable characteristics such as judges' gender or age significantly predict their treatment of members of different races. Similarly, no systematic pattern emerges with respect to work history (such as whether the judge ever worked in public defense). However, there is somewhat stronger evidence that the racial gap in sentencing is smaller among African-American judges. Further, judges who are harsher overall (as measured by incarceration rate) are more likely to sentence African-Americans to jail relative

to whites.

March 22, 2013