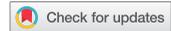


ARTICLE



Assessing Sentencing Disparities among American Indians within the Eighth, Ninth, and Tenth Federal Circuit Courts

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ABSTRACT

In a fair and equitable criminal justice system, one's race should not influence their sentencing outcomes. Research studies conducted in the United States often report evidence that ethnic minorities are at an increased risk for receiving more punitive punishments at the time of their sentencing. The existing scholarship, however, has largely focused on assessing differences between Black and Hispanic defendants in relation to White defendants. There has been far less academic exploration of potential sentencing disparities among other less populated ethnic groups, including American Indians. To address this gap in knowledge, we use data collected from the United States Sentencing Commission to test whether American Indians receive different sentencing outcomes when compared to other racial groups. Our study findings indicate that American Indian defendants are more likely to be sentenced to prison than White, Black, and Hispanic defendants, but among those incarcerated, American Indians received similar sentence lengths to Whites.

KEYWORDS

federal courts; Native Americans

Race and crime are undoubtedly intertwined in the United States. Research often suggests that criminal justice actors treat ethnic minorities more severely throughout the justice system, including by police officers at time of arrest (Beckett, Nyrop, & Pflingst, 2006; Correll et al., 2007; Smith & Alpert, 2007; Smith, Visher, & Davidson, 1984), by prosecutors during plea deals and trials (Beichner & Spohn, 2005; Schlesinger, 2005), and by judges at the time of sentencing (Everett & Wojtkiewicz, 2002; Franklin, 2013, 2015; Steffensmeier, Ulmer, & Kramer, 1998). Other scholarship, however, contends that when one considers other legally relevant factors (e.g., criminal history, offense type, demeanor) the magnitude of this differential treatment is much less severe (Mitchell, 2005; Wu, 2016). As such, it remains important to determine if racial disparities exist within the justice system, and if so to take steps that alleviate these concerns.

In the current study, we focus on the issue of racial equity at one stage of the criminal justice process: the imposition of the criminal sentence. More specifically, we draw upon the focal concerns framework to anticipate that American Indians are more likely to receive harsher punishments at the time of sentencing. We then test our proposition using sentencing data collected from the United States federal court system and discuss the implications of our study's findings.

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Focal concerns theory

Race and sentencing scholarship tend to indicate that ethnic minorities receive more severe sentences when compared to Whites (Mitchell, 2005; Wu, 2016). One of the more popular perspectives to explain this differential treatment is focal concerns theory (Steffensmeier et al., 1998). According to this perspective, judges desire to base their sentencing decisions on three factors: (1) the blameworthiness and culpability of the offender, (2) a desire to protect the community, and (3) concerns about practical constraints and consequences (see also Steffensmeier & Demuth, 2006; Steffensmeier, Painter-Davis, & Ulmer, 2017). Unfortunately, court officials rarely have the time to properly evaluate defendants on these dimensions, so judges must develop their own short-hand strategies for making these determinations using the information that is readily available (e.g., criminal history, offense type, level of cooperation). This position also maintains that racial stereotypes can influence a judges' perceptions of these factors, which, in turn, can affect their sentencing decisions (Albonetti, 1997; Steffensmeier et al., 1998).

Empirical research confirms that judges first and foremost base their sentencing decisions on legal factors, such as the seriousness of the offense and the offender's prior criminal record (Albonetti, 1997; Johnson, 2006; Spohn, 2009; Spohn & DeLone, 2000; Steffensmeier et al., 1998; Ulmer, 1997). In addition, however, some scholarship suggests that even when accounting for pertinent legal information, other extra-legal factors, such as the defendant's race, maintain an influence on sentencing outcomes (Demuth, 2003; Demuth & Steffensmeier, 2004; Johnson, 2003; Steffensmeier & Demuth, 2006; van Wingerden, van Wilsem, & Johnson, 2016). In brief, this literature suggests that ethnic minorities are more likely to be imprisoned and to receive longer sentences than Whites. Although informative, the existing scholarship on race and sentencing has largely focused on Blacks and Hispanics (e.g., Albonetti, 1997; Demuth, 2003; Demuth & Steffensmeier, 2004; Johnson, 2003, 2006; Steffensmeier & Demuth, 2006). As such, there is much less known about how other less populated minority groups fare during the sentencing process. This gap in knowledge has led to many calls for more quantitative investigations on these understudied racial groups, including American Indians (Alvarez & Bachman, 1996; Franklin, 2013; Wilmot & DeLone, 2010).

American Indians and sentencing

American Indians comprise approximately 1% of the total United States population, yet account for nearly 3% of the inmates in its federal prison system (Franklin, 2013). This difference certainly warrants cause for academic inquiry into the potential that Native American and Alaska Natives receive disparate treatment during the sentencing process. Although research on American Indians and sentencing is uncommon, there is some evidence to suggest that such disparities exist. For example, Alvarez and Bachman (1996) found that even when controlling for one's previous criminal record and other demographic variables (i.e., age, gender and education), American Indians in Arizona were nearly six times more likely than Whites to receive a longer sentence for a conviction of burglary and robbery. Wilmot and DeLone (2010) similarly concluded that even when controlling for one's offense type, the presumptive sentencing guidelines, plea type, age, and gender, American Indians received more punitive sentencing decisions than Whites in

Minnesota. Finally, Franklin (2013) reported that even when controlling for one's offense type, the presumptive sentencing guidelines, age, gender, and education, American Indians were incarcerated 37% more often and received an average of a 4% longer sentence than Whites in the United States federal court system. Although these investigations suggest that Native American and Alaska Natives receive harsher punishments at the time of sentencing than their White counterparts, there is far less known about why such differential treatment may occur.

One possible theoretical explanation for the differential treatment of American Indians in criminal sentencing is the focal concerns perspective (Steffensmeier et al., 1998). Although this theoretical model has primarily been applied to the study of Black and Hispanic offenders, one can easily see how this framework can be applied to American Indians as well (see also Franklin, 2013). For example, this theory asserts that a racial stereotype for Blacks is that they are aggressive, violent, and more prone to criminal behavior, which, if believed, could lead a judge to perceive an African American defendant as being more dangerous to society, and therefore necessitating a more punitive sentence (Steffensmeier et al., 1998). To parallel this logic, a racial stereotype for Native Americans and Alaska Natives is that they are drunks, uncivilized, and behave as savages (Alvarez & Bachman, 1996; Leiber, Johnson, Fox, & Lacks, 2007; Mieder, 1993; Ostler, 2015), which, if believed, could lead a judge to perceive an American Indian defendant as being more threatening to society, and therefore requiring the imposition of a more severe criminal sentence.

Current study

By using the focal concerns perspective as our theoretical guide, we anticipate that even when accounting for other legal and extra-legal factors, American Indians, like Blacks and Hispanics, are more likely than Whites to receive harsher penalties at the time of sentencing from judges in the United States. In the current study, we evaluate the merits of this proposition by using federal sentencing data to test the following two hypotheses:

Hypothesis One: American Indians are more likely than Whites to receive a disposition of prison at the time of sentencing.

Hypothesis Two: Among those incarcerated, American Indians are more likely than Whites to receive a longer prison sentence.

Method

Data

We obtained the data for this study from the United States Sentencing Commission (USSC), which is an independent agency that operates within the judicial branch of the federal government. The USSC collects sentencing data at the federal level and makes this information publicly available on-line in a deidentified format. Given our focus here on American Indians, we examined only data from the Eighth, Ninth, and Tenth federal circuits for the fiscal year of 2016.¹ These circuits were purposely selected because they each possessed sufficient proportions of Native American and Alaska Natives necessary for

conducting the empirical analyses described below (i.e., 8.3%, 4.7%, and 2.8%, respectively). The remaining circuits all contained fewer than 2% of American Indians.

Measures

This study involved two criminal sentencing outcomes.² The first was whether or not the defendant's sentence included being incarcerated in prison (1 = yes, 0 = no), and the second, for those who were incarcerated, was a continuous measure of the sentence length imposed. This latter variable was coded in months and it was naturally logged to correct for a skewed distribution (Hosmer, Lemeshow, & Sturdivant, 2013).³

The main independent variable of interest in this study was offender race. We separated this variable into four categories, including American Indian, Black, Hispanic, and White (coded as 1 = yes and 0 = no for each).⁴ We also introduced several legal and extra-legal measures to assist in isolating the independent effects of race on the two dependent variables, including minimum sentence (number of months listed as the mandatory minimum sentence for the crime according to the federal guidelines),⁵ multiple counts (1 = convicted on multiple counts, 0 = convicted on one count), prior criminal history (previously convicted for a federal offense: 1 = yes, 0 = no), and seven offense types (dummy variables for person crimes [e.g., assault, murder, robbery], property crimes [e.g., arson, auto theft, burglary], drug crimes [e.g. manufacturing, possession, trafficking], white-collar crimes [e.g. extortion, forgery, fraud, tax offenses], weapon crimes [e.g. fire-arm possession, trafficking, use], sex crimes [e.g., child pornography, sexual abuse], and other offenses [e.g. gambling, prison offenses, wild life offenses]).

We also tracked how each sentence fit within the federal guidelines. This included above guidelines (sentenced higher than maximum: 1 = yes, 0 = no), below guidelines (sentenced lower than minimum for any reason: 1 = yes, 0 = no), early disposition (sentenced lower than minimum for defendant's prompt cooperation: 1 = yes, 0 = no), significant assistance (sentenced lower than minimum for defendant's assistance in other federal cases: 1 = yes, 0 = no), government departure (sentenced lower than minimum for defendant's assistance in other governmental matters: 1 = yes, 0 = no), and within range (sentenced within the range specified in guidelines: 1 = yes, 0 = no). In addition, we also incorporated demographic information, including offender age at sentencing (measured in years), gender (1 = male, 0 = female), and highest education level (dummy variables for less than high school or general education diploma, high school or general education diploma, and college degree). Finally, we coded a dichotomous variable for each of the three federal sentencing circuits (Eighth, Ninth, and Tenth: 1 = yes, 0 = no).

Statistical analyses

We performed the statistical analyses of this study in three steps. First, we compared the offender characteristics of the four different racial groups. Second, we examined the bivariate correlations between each racial category and our two sentencing outcomes. Finally, we conducted two multivariate regression models, including the use of binary logistic regression to predict our dichotomous incarceration measure and ordinary least squares regression to predict our continuous sentence length measure (Cohen, Cohen, West, & Aiken, 2002; Pedhazur, 1997).

Results

The final study sample involved 10,970 individuals sentenced for a felony or misdemeanor crime in the Eighth, Ninth, and Tenth federal circuit courts during the fiscal year of 2016. Table 1 presents the descriptive statistics of the sample, which we separated by racial group for comparative purposes. Approximately 10% of the defendants in the sample were American Indians, 22% were Black, 24% were Hispanic, and 44% were White. The largest proportion of American Indians were sentenced in the Ninth Circuit (48%), followed by the Eighth (35%) and Tenth (17%).

As can be seen in the table, the four racial groups differ only modestly on many of the dimensions examined. Other characteristics, however, warrant some attention. For example, American Indians were most likely to be convicted of a person crime (35%), Blacks for weapon (35%) or drug offenses (32%), Hispanics for drug crimes (66%), and Whites for drug (33%) or white-collar offenses (23%). Hispanics were also the most likely to receive a sentence with an early disposition departure (23%), and American Indians and Blacks to receive a sentence falling within the statutory guidelines (47% and 44%, respectively). American Indians were the least likely to be sentenced on multiple counts (14%), and

Table 1. Descriptive statistics by racial group.

Variable	American Indian (<i>n</i> = 1,088)	Black (<i>n</i> = 2,409)	Hispanic (<i>n</i> = 2,656)	White (<i>n</i> = 4,817)
	<i>M</i> (<i>SD</i>)	<i>M</i> (<i>SD</i>)	<i>M</i> (<i>SD</i>)	<i>M</i> (<i>SD</i>)
Legal measures				
Ln minimum sentence	3.61 (1.20)	3.91 (1.05)	4.02 (.97)	3.93 (1.23)
Multiple counts	.14 (.35)	.23 (.42)	.18 (.39)	.21 (.41)
Prior criminal history	.94 (.24)	.95 (.22)	.79 (.41)	.82 (.38)
Offense type				
<i>Drug crimes</i>	.19 (.39)	.32 (.47)	.66 (.48)	.33 (.47)
<i>Person crimes</i>	.35 (.48)	.04 (.19)	.03 (.17)	.04 (.19)
<i>Property crimes</i>	.03 (.18)	.02 (.13)	.01 (.11)	.03 (.16)
<i>Sex crimes</i>	.13 (.34)	.04 (.19)	.02 (.14)	.13 (.34)
<i>Weapon crimes</i>	.11 (.32)	.35 (.49)	.13 (.33)	.16 (.37)
<i>White-collar crimes</i>	.05 (.21)	.18 (.38)	.11 (.31)	.23 (.42)
<i>Other crimes</i>	.14 (.35)	.07 (.25)	.05 (.21)	.09 (.28)
Sentencing guidelines				
<i>Above guidelines</i>	.07 (.26)	.04 (.20)	.02 (.13)	.03 (.16)
<i>Below guidelines</i>	.22 (.41)	.26 (.44)	.22 (.41)	.28 (.45)
<i>Early disposition</i>	.01 (.10)	.01 (.09)	.23 (.41)	.02 (.13)
<i>Government departure</i>	.18 (.38)	.14 (.35)	.16 (.37)	.18 (.38)
<i>Significant assistance</i>	.06 (.24)	.11 (.31)	.15 (.36)	.16 (.36)
<i>Within guidelines</i>	.47 (.50)	.44 (.50)	.24 (.43)	.34 (.48)
Extra-legal factors				
Age	34.02 (10.48)	35.39 (10.54)	33.07 (10.40)	41.37 (12.57)
Male	.81 (.40)	.88 (.33)	.77 (.42)	.80 (.40)
Education				
<i>Less than HS/GED</i>	.37 (.48)	.30 (.46)	.41 (.49)	.15 (.36)
<i>HS/GED</i>	.43 (.50)	.42 (.50)	.37 (.48)	.43 (.50)
<i>College degree</i>	.20 (.40)	.29 (.45)	.22 (.41)	.42 (.49)
Federal circuits				
Eighth circuit	.35 (.48)	.54 (.50)	.11 (.31)	.41 (.49)
Ninth circuit	.48 (.50)	.31 (.46)	.67 (.47)	.39 (.49)
Tenth circuit	.17 (.38)	.15 (.36)	.22 (.41)	.20 (.40)
Sentencing outcomes				
Incarcerated	.89 (.31)	.90 (.30)	.90 (.30)	.83 (.38)
Ln sentence length	3.46 (1.16)	3.82 (1.04)	3.61 (1.06)	3.72 (1.18)

Note. *M* = mean. *SD* = standard deviation. *Ln* = natural log. *HS/GED* = high school diploma or general education diploma.

Hispanics and Whites were the least likely to have a prior federal conviction (79% and 82%, respectively). Whites were also considerably older than the three minority groups (41 years old, compared to 34, 35, and 33, respectively), and the most likely to possess a college degree (42%, compared to 20%, 29%, and 22%, respectively). Finally, Whites were less likely than the other groups to receive a sentence of incarceration (83% compared to 89%, 90%, and 90%, respectively), and American Indians received the shortest average sentence length.

As a prelude to our main analyses, we conducted a series of bivariate correlations (i.e., Pearson product-moment coefficients) between the four racial groups and the other independent and dependent measures (see Table 2). Although we detected a statistically significant relationship between our racial groups and the two sentencing outcomes in all eight of these comparisons ($p \leq .01$), we also found that the magnitude of the absolute values of these coefficients were all small according to Cohen's (1988) standards. The positive direction of these coefficients suggested that American Indians, Blacks, and Hispanics were more likely to be incarcerated, and Blacks and Whites were more likely to receive a longer sentence. The negative direction of these coefficients indicated that

Table 2. Bivariate correlations between race, legal and extra-legal factors, federal circuit, and sentencing outcomes.

	American Indian	Black	Hispanic	White
Legal measures				
Ln minimum sentence	-.08**	.00	.06**	.02*
Multiple counts	-.05**	.03**	-.02**	.01
Prior criminal history	.08**	.15**	-.08**	-.06**
Offense type				
<i>Drug crimes</i>	-.14**	-.08**	.30**	-.10**
<i>Person crimes</i>	.38**	-.06**	-.08**	-.10**
<i>Property crimes</i>	.02*	-.02**	-.04**	.03**
<i>Sex crimes</i>	.06**	-.08**	-.12**	.15**
<i>Weapon crimes</i>	-.06**	.22**	-.08**	-.05**
<i>White-collar crimes</i>	-.11**	.00	-.10**	.11**
<i>Other crimes</i>	.07**	-.03**	-.07**	.02*
Sentencing guidelines				
<i>Above guidelines</i>	.08**	.03**	-.04**	-.03**
<i>Below guidelines</i>	-.03**	.01	-.05**	.05**
<i>Early disposition</i>	-.07**	-.11**	.35**	-.15**
<i>Government departure</i>	.01	-.03**	.00	.03**
<i>Significant assistance</i>	-.07**	-.04**	.02*	.05**
<i>Within guidelines</i>	.08**	.09**	-.13**	-.02*
Extra-legal factors				
Age	-.09**	-.09**	-.20**	.28**
Male	.00	.09**	-.06**	-.02
Education				
<i>Less than HS/GED</i>	.08**	.04**	.18**	-.22**
<i>HS/GED</i>	.01	.00	-.05**	.04**
<i>College degree</i>	-.09**	-.4**	-.12**	.17**
Federal circuits				
Eighth circuit	.00	.21**	-.27**	.11**
Ninth circuit	.01	-.16**	.23**	-.13**
Tenth circuit	-.02	-.05**	.04**	.04**
Sentencing outcomes				
Incarcerated	.03**	.06**	.06**	-.09**
Ln sentence length	-.05**	.07**	-.04**	.03**

Note. Reported values are Pearson product-moment correlation coefficients (r).

** $p \leq .01$. * $p \leq .05$.

Whites were less likely to be incarcerated, and American Indians and Hispanics were less likely to receive a longer sentence.

As our main set of analyses, we conducted two multivariate regression models to assess if race had any statistically significant or sizably meaningful impact on the sentencing outcomes above and beyond the influence of the legal and extra-legal factors commonly associated with sentencing decisions. The first model used binary logistic regression to examine if race had any influence on the judges' decision to incarcerate net of the other explanatory factors (see Table 3). The assumptions of observations being independent and independent variables being linearly related to the logit were checked and met (Cohen et al., 2002). Diagnostic tests further indicate that multicollinearity was not an issue (Belsley, 1991). The findings from this analysis suggested that all three racial groups were at an increased risk for incarceration when compared to Whites; however, American Indians maintained the only statistically significant relationship ($p \leq .01$). According to our analyses, the predicted probability of an American Indian being incarcerated was 36.6% compared to 26.7% for Blacks, 24.3% for Hispanics, and 23.2% for

Table 3. Multivariate logistic regression model predicting incarceration (N = 10,970).

Variable	<i>b</i>	<i>SE</i> (<i>b</i>)	<i>OR</i>	<i>p</i>
Race^a				
American Indian	.65	.17	1.91	<.001
Black	.19	.12	1.21	.105
Hispanic	.06	.12	1.06	.625
Legal measures				
Ln minimum sentence	1.75	.06	5.78	<.001
Multiple counts	.57	.12	1.76	<.001
Prior criminal history	.63	.10	1.88	<.001
Offense type ^b				
<i>Person crimes</i>	.00	.22	1.00	.985
<i>Property crimes</i>	-.30	.24	.74	.201
<i>Sex crimes</i>	.25	.29	1.28	.403
<i>Weapon crimes</i>	.01	.14	1.01	.922
<i>White-collar crimes</i>	-.05	.12	.95	.659
<i>Other crimes</i>	-.06	.15	.95	.703
Sentencing guidelines ^c				
<i>Above guidelines</i>	1.37	.69	3.94	.048
<i>Below guidelines</i>	-3.01	.15	.05	<.001
<i>Early disposition</i>	-3.07	.23	.05	<.001
<i>Government departure</i>	-3.28	.17	.04	<.001
<i>Significant assistance</i>	-3.45	.18	.03	<.001
Extra-legal factors				
Age	-.02	.00	.98	<.001
Male	.44	.09	1.56	<.001
Education ^d				
<i>Less than HS/GED</i>	.08	.11	1.09	.454
<i>College degree</i>	-.24	.10	.78	.010
Federal circuits^e				
Eighth circuit	-.34	.10	.71	.001
Tenth circuit	-.27	.11	.77	.016
Constant	-1.20	.28	.30	<.001
Model Chi-square (<i>df</i>)	3,095.32 (23)			
-2 Log Likelihood	4,242.98			
Nagelkerke <i>R</i> ²	.51			

Note: *OR* = odds ratio. *HS/GED* = *high school diploma or general education diploma*.

^a Reference group = white. ^b Reference group = drug crime. ^c Reference group = within guidelines.

^d Reference group = HS/GED. ^e Reference group = ninth circuit.

Whites. In addition, our analyses revealed that individuals who were younger, male, less educated, had multiple counts, a prior federal conviction, and were facing longer mandatory minimums were more likely to be incarcerated.

Among those incarcerated, the second model used ordinary least squares regression to assess if race had any bearing on the length of sentence imposed (see Table 4).⁶ Assumptions of linearity, normally distributed errors, and uncorrelated errors were checked and met (Cohen et al., 2002). The beta weights from this analysis indicated that there was a null effect of being American Indian on the logged number of months sentenced to prison. Blacks and Hispanics, on the other hand, were found to receive longer sentences than Whites. In addition, individuals who were male, had multiple counts, a prior federal conviction, and were facing longer mandatory minimums were more likely to receive longer sentences.

Discussion

Research on race and crime has generally indicated that judges impose more punitive sentences among ethnic minorities than to Whites (Mitchell, 2005; Wu, 2016). This

Table 4. Multivariate Ordinary Least Squares (OLS) regression model predicting sentence length (N = 9,524).

Variable	<i>b</i>	<i>SE</i> (<i>b</i>)	β	<i>p</i>
Race^a				
American Indian	.00	.03	.00	.939
Black	.05	.02	.02	.008
Hispanic	.03	.02	.01	.099
Legal measures				
Ln minimum sentence	.79	.01	.76	<.001
Multiple counts	.22	.02	.08	<.001
Prior criminal history	.18	.02	.05	<.001
Offense type ^b				
<i>Person crime</i>	-.05	.03	-.01	.107
<i>Property crime</i>	-.21	.06	-.02	<.001
<i>Sex crime</i>	-.02	.03	-.01	.416
<i>Weapon crime</i>	.04	.02	.02	.020
<i>White-collar crime</i>	-.20	.02	-.07	<.001
<i>Other crime</i>	-.24	.03	-.05	<.001
Sentencing guidelines ^c				
<i>Above guideline</i>	.60	.04	.10	<.001
<i>Below guideline</i>	-.54	.02	-.22	<.001
<i>Early disposition</i>	-.77	.03	-.12	<.001
<i>Government departure</i>	-.58	.02	-.20	<.001
<i>Significant assistance</i>	-.72	.02	-.22	<.001
Extra-legal factors				
Age	.00	.00	.01	.342
Male	.16	.02	.05	<.001
Education ^d				
<i>Less than HS/GED</i>	-.01	.02	.00	.506
<i>College degree</i>	-.05	.02	-.02	.001
Federal circuits^e				
Eighth circuit	.07	.02	.03	<.001
Tenth circuit	-.05	.02	-.02	.006
Constant	.53	.05		<.001
Equation <i>F</i> (<i>df</i>)	914.83 (23)			<.001
<i>R</i> ²	.69			

Note: *Ln* = natural log. *HS/GED* = high school diploma or general education diploma.

^a Reference group = white. ^b Reference group = drug crime. ^c Reference group = within guidelines. ^d Reference group = HS/GED. ^e Reference group = ninth circuit.

literature, however, has largely focused on Black and Hispanic offenders, leaving much less known about how judges treat other minority groups, such as American Indians, during the sentencing process. One of the popular explanations for the existence of racial disparities in sentencing is the focal concerns theory (Steffensmeier et al., 1998). This perspective maintains that racial stereotypes can influence a judges' perception of the culpability of an offender, a desire to protect the community, and concerns about the practical consequences, which, in turn, can influence their sentencing decisions. For instance, if judge happens to perceive that Blacks are aggressive and dangerous, then he may be more likely to impose a more serious sentence disposition among African Americans. We have argued here that the focal concerns framework can also be applied to the treatment of American Indians in criminal courts (see also Franklin, 2013). If, for example, a judge perceives Native American and Alaska Natives to be more barbaric and prone to violence, then he may also be more likely to impose a harsher penalty at the time of sentencing among American Indians.

The findings of this study provided mixed support for the prediction that American Indians would receive more punitive sentences from federal judges in the United States. The results supported the first hypothesis, which stated that net of other legal and extra-legal factors, American Indians would still be more likely than Whites to receive a sentence of incarceration. Our logistic regression analysis revealed that American Indians were nearly twice as likely as Whites to be incarcerated. This investigation, however, failed to support the second hypothesis, which anticipated that among those incarcerated, American Indians would receive longer prison sentences than Whites. Our OLS regression analysis uncovered no statistically significant or substantively meaningful differences in sentence length between American Indians and Whites.

As with any study, it is important to acknowledge the limitations in our methodological design. First, we analyzed sentencing data from the three federal circuits with the highest proportion of American Indian offenders. Our results, therefore, may not necessarily generalize to other sentencing jurisdictions, including state systems, other federal circuits, or those that process lower proportions of American Indians. We encourage future studies to include different sampling frames (e.g., states, districts, courts) to test the external validity of these findings.

Second, we relied on secondary information readily available from the USSC website. Although this data was sufficient to test our two hypotheses, it also possessed limited offender and case processing information. For example, the dataset included no information from the police reports, prosecutors' office, defense counsel, or other courtroom decisions (e.g., bail). The USSC also codes American Indians as a homogenous group, despite the existence of thousands of tribes falling within this category. Future research should strive to acquire more intricate information about individuals, their specific crimes, and other courtroom procedures, as well as assess if differences in outcomes may exist between Tribal groups.

Finally, we drew upon the focal concern perspective to inform the development of our hypotheses, but we were not able to formally test this theory. Furthermore, the basis of our predictions rest on the assumption that judges may be more likely to view Native Americans as more barbaric and prone to violence. Another possibility, however, is that judges could be reacting to their perceived needs of the American Indian population and they may see incarceration as the only mechanism for getting these individuals into the

types of services that they would not otherwise be able to obtain. Given the limitations with our dataset, we are unable to disentangle such possibilities. In addition, there are certainly other theoretical perspectives that seek to explain racial differences in sentencing that may help shed light on how Native Americans are sentenced relative to other racial groups. As such, we encourage future researchers to undertake not only quantitative, but also qualitative investigations, that can explore in more depth the potential factors that judges rely on to make their sentencing decisions.

Despite these limitations, the current study adds mixed empirical support to a small but growing body of literature that suggests American Indians are sentenced more severely than Whites (Alvarez & Bachman, 1996; Franklin, 2013; Wilmot & DeLone, 2010). This investigation concludes that American Indians are more likely than Whites to receive a sentence of incarceration, but among those incarcerated, American Indians receive similar sentence lengths as Whites. Although not the focus of our investigation, we failed to find evidence of racial disparities in the sentencing outcomes for Black and Hispanics. Our two multivariate regression models indicated that no statistically significant relationships existed between these two races and either the decision to incarcerate or the length of sentence imposed.⁷

One possibility for this finding is that the increased academic attention and legislative efforts to increase consistency in sentencing (e.g., establishing sentencing guidelines) over the last several decades have influenced judges to sentence Blacks and Hispanics more uniformly with Whites. It is also quite probable that racial inequities remain a problem within the criminal justice system, but simply exist at an earlier stage of the process, such as in the decisions to arrest, prosecute, and grant bail. It must also be acknowledged that racial inequities are systemic to the communities in which the criminal justice system serves (Clear, 2007). Racial disparities in household income, for example, will cause some communities to be more and less financially stable (Akee, Jones, & Porter, 2019). As such, without invoking broader social change aimed at reducing the sources of these disparities, it may be inevitable that differential treatment before the law will exist across racial groups, no matter how fair and equitable the criminal justice system and its actors strive to become. Nevertheless, it remains clear that academic and public interest in race and sentencing have raised awareness about racial inequalities and influenced changes in policies and practices (Yang, 2015). We hope that our work helps raise public concern and inspires further empirical investigations for this often-overlooked population of American Indian offenders.

Notes

1. These three circuits include the following jurisdictions: Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Northern Mariana Island, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.
2. We excluded immigration offenses because Native American and Alaska Natives are United States citizens and are not subject to prosecution for this type of crime.
3. One of the assumptions of OLS regression is that the dependent variable is normally distributed. It is often recommended that variables with a skewness value greater than the absolute value of 1 be transformed before use in OLS regression. The skewness value for sentence length was 5.81, which suggests that the variable should be transformed. After the log transformation,

the skewness value was reduced to $-.85$, which indicates that OLS regression modeling is an appropriate strategy for analyzing this outcome.

4. We excluded other races, including Asian and Pacific Islander, due to so few cases falling within each category (i.e., $< 2\%$).
5. This measure was also naturally logged to account for its skewed distribution. The skewness value went from 10.64 to $.47$ following the log transformation.
6. As a supplemental analysis, we conducted a negative binomial regression model with incarceration length as the dependent measure and the results were substantively similar to those produced via OLS regression. The Native American variable was small in magnitude and not statically significant ($\beta = .006$, $p = .745$). We thank one of the anonymous reviewers for recommending this analysis as a robustness check.
7. Although not statistically significant at the $.01$ level, the magnitude of the effect of Black on incarceration is still concerning; Blacks were 21% more likely to be incarcerated than Whites (see Table 3).

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