

UCLA

Chicana/o Latina/o Law Review

Title

Implications of the Rand Study: Racially-Based Sentencing Disparities in the Criminal Justice System

Permalink

<https://escholarship.org/uc/item/7q92v18b>

Journal

Chicana/o Latina/o Law Review, 7(0)

ISSN

1061-8899

Authors

Compean, Efren A.
Sanchez, Ruben F.

Publication Date

1984

DOI

10.5070/C770020958

Copyright Information

Copyright 1984 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

NOTE

IMPLICATIONS OF THE RAND STUDY: RACIALLY-BASED SENTENCING DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

I. INTRODUCTION

The following is an examination of a two year study on the racial disparities within the criminal justice system. The report containing the results of the study was prepared for the National Institute of Corrections, United States Department of Justice and published by The Rand Corporation. The report is entitled, *Racial Disparities in the Criminal Justice System* ("Rand Study" or "Study").¹ In general, research on the subject has been inconsistent and contradictory.² But the problems of most other research efforts have been overcome in this study: the methodology is sound and the data sufficiently extensive. In fact, as articulated in the Study, a principle aim was to overcome many of the perceived shortcomings in the methodology employed in previous research efforts.³

1. Petersilia, *Racial Disparities in the Criminal Justice System* (Rand Corporation Report No. R-2947-NIC) (June 1983).

2. For studies purporting to find evidence of discrimination see, e.g., Thornberry, *Race, Socioeconomic Status and Sentencing in the Juvenile Justice System*, 64 J. CRIM. LAW & CRIMINOLOGY 90 (1973); Gibson, *Race as a Determinant of Criminal Sentences: A Methodological Critique and Case Study*, 12 LAW & SOC'Y REV. 455 (1978). For a study that found no evidence of discrimination see Chiricos and Waldo, *Socioeconomic Status and Criminal Sentencing: An Empirical Assessment of a Conflict Proposition*, 40 AM. SOC. REV. 753 (1975); Terry, *Discrimination in the Handling of Juvenile Offenders by Social-Control Agencies*, 4 J. RESEARCH CRIME & DELINQ. 218 (1967). Some studies have purportedly found reverse discrimination, with minorities treated more leniently than whites in particular cases and particular phases of judicial processing. See, e.g., Greenwood, et al., *Prosecution of Adult Felony Defendants in Los Angeles County: A Policy Perspective*, (Rand Corporation) (1973).

3. The Study attempted to overcome the material and methodological limitations of earlier research in two ways: (1) By using both official records and information from a large sample of prison inmates about aspects of their background and criminal behavior; and, (2) By using multiple regression techniques when possible to analyze the resulting data, techniques that allow the analyst to control for other fac-

The Study examines the racial discrimination within the criminal justice system: in general, in regard to possible racial differences in criminal behavior that might influence treatment, and with respect to treatment at key points in the criminal justice system which might be created by racial biases. The Study pursues three objectives:

1. To discover whether there is any evidence that the criminal justice system systematically treats minorities differently from whites;
2. If there is such evidence, to see whether that treatment represents discrimination or is simply a reaction to the amount of crime committed by minorities; and,
3. To discuss the policy implications for correcting any bias.

The Rand Study provides evidence of racial differences in both criminal behavior and the treatment of offenders in the three states involved.⁴ While it is impractical to describe the analysis in the Study at length, it is important that we review the major findings.

II. THE FINDINGS OF THE STUDY

One finding of the Rand Study was that racial differences were found at two key points in case processing. The first point was at release after arrest. Here, minority suspects were more likely than whites to be released. At the second key point, after a felony conviction, minority offenders were more likely than whites to be given longer sentences and to be put in prison instead of jail.⁵ In the area of post-sentencing treatment, significant racial differences were found in the length of sentence served in California and Texas.⁶ "In California prisons, blacks and Hispanics serve longer sentences than whites—largely, however, because of racial differences in court-imposed sentences."⁷ Additionally, the Study found no difference in annualized crime commission rates among white and minority criminals. There was no consistent, statistically significant racial difference in the probability of arrest, given

tors besides race that might affect the system's handling of minority offenders. *See* note 1 *supra* at vi.

4. The Study was conducted using data from the states of California, Texas and Michigan.

5. In California, Hispanics experienced an additional 6.5 months in sentences and blacks an additional 1.4 months. For Texas, Hispanics were given an additional 2 months in sentence, while blacks received an additional 3.7 months. For Michigan, the Hispanic sample was too small to be included in regression, but blacks were given an additional 7.2 months in sentences. The Hispanic figure for California and the black figure for Michigan were both statistically significant in regression analysis. *See* note 1 *supra* at 31-32.

6. *See* note 1 *supra* at vii-viii.

7. *See* note 1 *supra* at viii.

that an offender has committed a crime.⁸ In examining the differences in offender behavior, racial differences were strongest in prison behavior. For example, in Texas, blacks had more infractions; in California, whites did.⁹

A. *Familiar v. Unfamiliar*

No evidence was provided that would show judges are racist. But in conducting the necessary interviews the head criminologist on the research staff developed the belief that judges, like everyone else, relate more favorably to the familiar, and fear or become frustrated with the unfamiliar.¹⁰ This makes a great deal of sense since findings from other fields show that cultural distance creates a tendency for imagination and bias in judgments. Thus, "[t]he common tendency to mistake the behavioral patterns of a few for the character traits of an entire race may also be interfering with equitable sentencing."¹¹ Cross-cultural dealings are unavoidably affected by such perceptions:

These perceptions become the basis for expectations of persons of a certain race. It may be assumed that their values and expectations are different from the court's, and some on the bench may even subconsciously believe that imprisonment does not hurt 'them' as much, that for 'these' people it is an expected and even normal experience and that, in the final analysis, all 'they' understand is harsh sentencing.¹²

The findings raised questions and presented patterns which resulted in some important conclusions. One conclusion involved disparities in release rates:

Prior research indicates that prosecutors do have greater problems making minority cases 'stick' because victims often have difficulty identifying minority suspects. Moreover, minority victims and witnesses often refuse or fail to cooperate after an arrest is made. Some racial differences in release rates may also result from the fact that police more often arrest white suspects than minority suspects "on warrant." Since the evidentiary criteria for issuing warrants approximate those for filing charges, it seems reasonable that fewer whites than minorities would be released without charges.¹³

Another conclusion was that, all things being equal, minorities receive harsher sentences and serve longer in prison.¹⁴ Addi-

8. See note 1 *supra* at 43.

9. See note 1 *supra* at 83.

10. Petersilia, *Judges Need to Overrule Their Biases*, L.A. Times, July 8, 1983, Part II, at 7.

11. *Id.*

12. See note 10 *supra*.

13. See note 1 *supra* at ix.

14. See note 1 *supra* at 93.

tionally, the Study indicates that the racial differences in plea bargaining and jury trials explain the difference in length and type of sentence:¹⁵

Plea bargaining resolves a higher percentage of felony cases involving white defendants, whereas jury trials resolve a higher percentage of cases involving minorities. Although plea bargaining ensures conviction, it also virtually guarantees a reduced charge or a lighter sentence, or both; conviction by a jury usually results in more severe sentencing.¹⁶

In a different vein, the Study cites statistics showing that judges followed the sentencing recommendation made in the probation officer's pre-sentence investigation report (PSR) in eighty percent of all cases.¹⁷ These PSRs contain information which are assessed for indicators of recidivism.¹⁸ Of importance is the fact that blacks and Hispanics may have more such traits than whites (e.g., unemployment).¹⁹ Minorities received longer sentences than whites, but these sentences had different effects on the time finally served. For example, in California racial differences in sentence served corresponded roughly to the variations in court-imposed sentences.²⁰ California has a determinate sentencing policy, which explains the relation of sentence imposed to sentence served.²¹

Of particular significance was the suggestion that "recidivism indicators may not be so 'racially neutral' after all."²² In fact there is a clear indication that recidivism indicators more often work against minorities than for them.²³ These indicators would have to be valid and explain racial disparities in sentencing and time served in order for the system not to discriminate. The Study indicates otherwise; what the reader is left with is a clear indication of a criminal justice system which discriminates.

B. *Other Questions*

Rather than belabor the methodology and data in a fruitless

15. See note 1 *supra* at 32.

16. See note 1 *supra* at ix.

17. *Id.*

18. "Recidivism" is defined as repeated or habitual relapse into crime; the chronic tendency toward repetition of criminal or antisocial behavior patterns. THE AMERICAN COLLEGE DICTIONARY 1011 (1970).

19. See note 1 *supra* at 97.

20. See note 1 *supra* at 70-71.

21. California has a Determinate Sentencing Law, and there is no active parole board, except for life-timers. Although inmates may earn good-time credits for good behavior and program participation, these credits actually reduce sentences very little. The Rand Study provides data which shows that the disparities which do exist are greater for Hispanics.

22. See note 1 *supra* at 98.

23. See note 1 *supra* at 71.

search for something to criticize, a number of perspectives are offered on the entire undertaking. One goes to what the Rand Study could not do. What it did not, and in all probability could not, do was penetrate the sacred limits of discretion held by several officials at key points in the criminal justice system (e.g., the prosecutor's discretion at the plea bargaining stage). Without penetration of these limits, it is impossible to establish racial prejudice in the system. Thus the Study confines its conclusions to the "few points in the criminal justice system" where minorities are treated differently. The Study goes on to state that "[r]acial disparities seem to have developed because procedures were adopted without systematic attempts to find out whether they might affect different races differently."²⁴

This study confirms the suspicions created by the disparate arrest and imprisonment rates for Hispanics and other minorities. The statistics presented by the Study provide more than a suggestion of discrimination in the criminal justice system. Such discrimination is not necessarily found in the laws governing the system, but in the various levels administering the laws.

According to the Rand Study, the criminal justice system does not discriminate against minorities at most points. However, certain findings support the hypothesis that the system implicitly regards minorities differently from white offenders.²⁵ Controlling for the most important factors which influence sentencing and parole decisions,²⁶ the Study reveals that blacks and Hispanics are less likely to be given probation, more likely to receive prison sentences, more likely to receive longer sentences, and more likely to serve a longer time in prison.²⁷

In most states, probation officers, judges, and parole boards exercise discretion in sentencing and release decisions. The disparities documented in the Study indicate that the system's decisionmakers are responding to offenders in ways that result in *de facto* discrimination against minorities.²⁸

III. PLEA BARGAINING AND RACIAL DIFFERENCES

The Rand Study offers several possible explanations for the system's disparate treatment of minorities. One possibility is that

24. See note 1 *supra* at xii.

25. See note 1 *supra* at 93.

26. Multiple regression analyses with available data permitted the research staff to control simultaneously for current conviction crime type, prior criminal record, defendant's age, and defendant's current criminal status in order to look at the independent effect of race on the probability of receiving a prison sentence, once convicted.

27. See note 1 *supra* at 27-28.

28. See note 1 *supra* at 94.

the racial differences in length and type of sentence imposed reflect the racial differences in plea bargaining and jury trials found by the study.²⁹ Plea bargaining usually results in a reduced charge or lighter sentence, and in some cases both.³⁰ As noted in the Study, when defendants who do not plea bargain go to trial, they generally receive harsher sentences.³¹

If these differences account for some of the racial differences found in the length and type of sentence imposed, then the inquiry into possible racial bias at this point in the system requires closer scrutiny. Why is it that minority offenders plea bargain less and go to jury trials more often than white offenders? The Study offers a few speculations in this regard. First, the statistics indicate that white offenders may simply know more about the system, and how to make it work for them. Further, criminal justice officials may be aware of this situation.³² Minorities are less able than whites to make bail and more likely to have court-appointed lawyers. In such cases, a prosecutor may not be interested in plea bargaining with a defendant because the bargaining power of the minority offender is presumably impaired.³³

The plea bargain is a contract between a prosecutor and defendant in a case. In exchange for a guilty plea, the defendant receives a reduced charge and/or a lighter sentence. As with any kind of contractual negotiation, the resulting compromise is determined in large part by the relative bargaining power of the contracting parties. We may not be terribly concerned that criminal defendants bring very little bargaining strength to their dealings with the prosecutor's office. In fact, we may find this quite acceptable, at least if we assume that only guilty defendants plea bargain. In such cases, we would presumably want the prosecutor to

29. The Study found that 92% of white defendants were convicted by plea bargaining, compared with 85% for black and 87% for Hispanic defendants. It was also found that in Los Angeles County Superior Court, only 7% of whites were tried by jury, compared with 12% for blacks and 11% for Hispanics. *Id.* at 94.

30. See note 1 *supra* at 16.

31. As one study recently concluded:

The typical plea bargained case is much less likely to result in a state prison sentence, and is likely to receive a "much lighter" sentence at conviction than the typical case that goes to trial, and the differences in sentencing between jury trials and plea bargained cases cannot be "explained away" by looking at the nature of the crime or characteristics of the defendants in these cases.

California State Legislature, *Joint Committee for Revision of the Penal Code, Plea Bargaining*, 59 (1980).

32. See note 1 *supra* at 95.

33. See, e.g. Clarke and Koch, *The Influence of Income and Other Factors on Whether Criminal Defendants Go To Prison*, 11 LAW & SOC'Y REV. 57 (1976), where it is suggested that an indigent defendant's lesser opportunity for pre-trial release and greater likelihood of having a court appointed lawyer results in a greater chance of her going to prison, and also may affect her chances for plea bargaining.

exert as much control over plea bargaining as possible. At the same time, however, we most assuredly do not want a prosecutor's discretion to be boundless. We would not want certain classes of more sophisticated and sociopolitically powerful defendants being regarded as better candidates for plea bargaining than are less sophisticated defendants. The principal objection to such an arrangement would be that the penalty imposed for an offender's behavior would depend in large part on his or her status in society rather than on any objective assessment of personal culpability. Is it possible that this is what occurs in the criminal justice system? Minorities, in general, enter the criminal justice system with less "power" than do most whites. This power, or lack of it, is manifest in the opportunity that socioeconomic status affords one who enters the system.³⁴ This fact may result in prosecutors consistently offering minority defendants less attractive plea bargains than are offered to white defendants. Such actions create an increase in sentence predicated upon improper constitutional factors which may violate the guarantee of equal protection of the laws if unexplained.³⁵

The Rand Study did not control for plea bargaining in analyzing racial differences in sentence severity. The questions left open for future research are these: (1) Do prosecutors consistently offer less attractive plea bargains to minority defendants, or do minority defendants simply insist more on jury trials?; (2) Is there an overcharging of minorities, which places them at a disadvantage when plea bargaining is considered?; and, (3) What sociocultural factors exist which might encourage minorities to refuse plea bargaining? Considering the above analysis of plea bargains as private agreements between prosecutors and defendants, it seems doubtful that researchers could actually penetrate the limits of the plea bargaining process with much, if any, success. Plea bargaining is a purely discretionary alternative to trial, and as such it is difficult to uncover the attitudes and motives which underlie the actions of prosecutors.³⁶

IV. THE ROLE OF THE PSR WITHIN THE SYSTEM

Officials at various points in the criminal justice system are responsible for different aspects of a case. As the accused moves

34. *Id.*

35. See generally Comment, *Disparity and Discretion in Sentencing: A Proposal for Uniformity*, 25 U.C.L.A. L. REV. 323 (1977). See also Berger, *Equal Protection and Criminal Sentencing: Legal and Policy Considerations*, 71 NW. U.L. REV. 29 (1976); Note, *Equal Protection Applied to Sentencing*, 58 IOWA L. REV. 596 (1973).

36. For a study concerning the adjustment and adaptation to the plea bargaining process, see M. HEUMANN, *PLEA BARGAINING: THE EXPERIENCE OF PROSECUTORS, JUDGES, AND DEFENSE ATTORNEYS* (1978).

through the criminal justice system, information concerning the case is attached to a file and used by the officials in a variety of ways. Police and prosecutors generally concern themselves with arrests and conviction, respectively. Once a conviction has been obtained, judges concern themselves with sentencing decisions. In deciding whether probation, jail, or prison should be imposed, judges consider the crime the offender was convicted of in a prior record, as well as all personal and socioeconomic characteristics available.

In most counties, the source of information concerning an offender's personal and socioeconomic characteristics is the pre-sentence investigation report (PSR), prepared by a probation officer.³⁷ The PSR typically describes the subject's family background, marital status, education, employment history, past encounters with the law, gang affiliation, drug and alcohol abuse, as well as a sentence recommendation.³⁸ Since its recommendations are generally followed by judges and its characterization of the offender becomes the core of the parole board's case file, the PSR is often the key document in sentencing and parole decisions.

The Rand Study speculates that the influence of the PSR may help explain racial differences in sentencing and time served.³⁹ When compared with white offenders, blacks and Hispanics typically possess more of the personal and socioeconomic characteristics associated with recidivism. Minorities tend to score poorly in such areas as family stability and employment.⁴⁰ Thus the Study proposes that "[w]hen probation officers, judges, and parole boards use the PSR's indicators of recidivism as guides, they are often compelled to identify minorities as higher risks."⁴¹ The Study's findings on time served support this hypothesis.

If the Study's hypothesis is correct, then at least some of the observed racial disparities in sentencing and time served are due to the fact that the socioeconomic and other extra-legal indicators of recidivism employed by probation officers and parole boards tend to track race. While it would be desirable to eliminate all racial disparities in the system, it would not make sense to exclude valid and objective indicators of recidivism from consideration. If these indicators of recidivism, are indeed valid and objective, then they may only be a reflection of the larger racial problems of society. However, the Rand Study's findings suggest that these indica-

37. See, e.g., Cal. Rules of Ct., Rules 418, 419 (Deering 1983).

38. See, e.g., CAL. PENAL CODE § 1203.10 (West Supp 1984); Cal. Rules of Ct., Rule 419 (Deering 1983).

39. See note 1 *supra* at 96-97.

40. *Id.* at 96.

41. See note 1 *supra* at 97.

tors of recidivism may be less race neutral than once thought.⁴²

Statistics indicate that there is a much higher prevalence of crime among minorities.⁴³ This accounts for their equal representation with whites in the criminal population. There is, however, no evidence that minority recidivism rates are higher.⁴⁴ Thus, there is apparently no reason why minorities should consistently be viewed as presenting a greater risk of recidivism. According to the Study:

[L]arge racial differences in aggregate arrest rates must be attributed primarily to differences in involvement, and not to different patterns among those who do participate. Under these circumstances any empirically derived indicators of recidivism should target a roughly equal number of whites and minorities. In other words, even if recidivism among whites had different causes or correlates than recidivism among non-whites, they should at least balance one another. They should not consistently identify non-whites as more appropriate candidates for more severe treatment.⁴⁵

The Rand Study speculates that the reason why the system does not work as predicated may be due to the relative size and diversity of the base populations. The black portion of the criminal population draws from a much smaller and more homogeneous population, both socioeconomically and culturally. The white criminal population draws from a much larger and more diverse base. Therefore, the minority segment of the criminal population probably has more characteristics in common (e.g., unemployment, family instability, and other socioeconomic characteristics) than the white segment of the criminal population. Consequently, these characteristics may statistically overwhelm other characteristics that may more accurately predict the risk of recidivism for both white and minority offenders.⁴⁶

42. See note 1 *supra* at 98.

43. Fifty one percent of black males living in large cities are arrested at least once for an index offense during their lives, compared with only 14% for white males. Blumstein and Graddy, *Prevalence and Recidivism in Index Arrests: A Feedback Model Approach*, 16 LAW & SOC'Y REV. 265 (1982). Index offenses are murder, rape, robbery,, assault, burglary, larceny/theft, auto theft, and arson.

44. *Id.* While this study found a marked difference in the prevalence of crime between whites and non-whites (.14 for whites, .51 for non-whites), no comparable difference was found in the rates of recidivism among those who do become involved in crime.

45. See note 1 *supra* at 98.

46. See note 1 *supra* at 99. The Study's findings on criminal motivation and economic need appear to support this hypothesis. The findings imply that socioeconomic characteristics are more consistently related to crime among blacks than they are to crime among whites.

V. THE PSR IN CALIFORNIA

Prior to 1977, a system of indeterminate sentences was followed in California. In 1976, the Legislature enacted the Determinate Sentencing Act adopting a system of specification of three possible terms of imprisonment for each offense.⁴⁷ The Legislature expressly intended to ameliorate the wide disparities in sentences that often occurred under California's previously existing law.⁴⁸ In acting to reduce the disparity in sentencing, the Legislature chose to narrow the discretion granted to trial judges. For every crime, there is a prescribed sentence which can be enhanced or diminished from one to two years upon a finding of aggravating or mitigating circumstances.⁴⁹ The Legislature directed the Judicial Council to "promote uniformity" in sentencing by adoption of rules providing criteria for consideration by trial judges regarding imposition of upper or lower prison terms.⁵⁰ In 1977, the Judicial Council adopted sentencing rules for the superior courts.⁵¹ Trial courts must consider the criteria enumerated in the rules, but may also consider additional criteria as long as reasonably related to sentencing decisions and as long as it is stated on the record.⁵²

The determinate sentencing system in California limits the discretion of trial judges and delineates specific criteria to be used in sentencing decisions.⁵³ Nonetheless, the influence of the PSR remains. The Rules of Court promulgated by the Judicial Council call for the use of PSRs in all criminal cases.⁵⁴ Specifically, Rule 419(a)(6) expressly provides for inclusion of "[a]ny relevant facts concerning the defendant's social history including but not limited to those categories enumerated in Penal Code section 1203.10. . . ."⁵⁵ The PSR in California is basically the same document employed in a number of other states with respect to information concerning personal and socioeconomic characteristics. If accurate, it would seem that the suspicions voiced in the Rand Study concerning the introduction of de facto racial bias through the influence of PSRs in sentencing and parole decisions would apply to California's determinate sentencing system as well as to other more discretionary sentencing systems.

47. 1976 Cal. Stat., ch. 1139; CAL. PENAL CODE § 1170(a)(2) (West Supp. 1984).

48. CAL. PENAL CODE § 1170(a)(1) (West Supp. 1984).

49. CAL. PENAL CODE § 1170(b) (West Supp. 1984).

50. CAL. PENAL CODE § 1170.3(a) (West Supp. 1984).

51. See Cal. Rules of Ct., Rules 401-453 (Deering 1983).

52. Cal. Rules of Ct., Rules 408, 409 (Deering 1983).

53. See Cal. Rules of Ct., Rules 401-453 (Deering 1983).

54. *Id.* Rules 418, 419.

55. Cal. Rules of Ct., Rule 419(a)(6) (Deering 1983). The categories enumerated in Penal Code section 1203.10 include the usual list of factors (ie., family, education, employment, military service, etc.).

The determinate sentencing policy employed in California is a large step in the right direction. Requiring a trial judge to state specific findings of aggravating or mitigating circumstances in order to increase or decrease sentence length adds a healthy dose of accountability to the process of sentencing.⁵⁶ Nonetheless, under present California law, the influence of the PSR remains substantial. Hence there is a very real possibility that the implicit racial bias it creates distorts sentencing and parole decisions.

VI. SUMMARY

The Rand Study found that after controlling for seriousness of offense, prior record, and prison violence, the analysis still indicated that blacks and Hispanics are less likely to be given probation, more likely to receive prison sentences, more likely to get longer sentences, and more likely to serve a longer term in prison.⁵⁷ The Study offers several possible explanations for these observed racial disparities. One possibility is that racial differences in plea bargaining and jury trials might explain why minority offenders receive harsher sentences. Since the Study did not control for plea bargaining in analyzing racial differences in sentence severity, the questions left open for future research are these: (1) whether plea bargaining contributes to the observed differences; (2) whether prosecutors, in fact, consistently offer minority defendants less attractive plea bargains; (3) whether there is overcharging of minorities, which places them at a disadvantage when plea bargaining is considered; and, (4) whether sociocultural factors exist which might discourage plea bargaining. The nature of the plea bargain is such that research into individual prosecutor's motives and attitudes may prove extremely difficult. Any reform in the area of plea bargaining will undoubtedly have to include careful oversight of the plea bargaining process. If racial bias does enter the plea bargaining process, then a system of central monitoring of all plea bargaining negotiations will be needed to ensure uniformity within the system.

A second possible explanation for the racial disparities is that certain indicators of recidivism used in the typical PSR, specifically those indicators relating to socioeconomic status, inevitably track race. Since minority offenders generally fare poorly with respect to these indicators, they are more frequently, albeit mistakenly, identified as posing greater risks of recidivism. The socioeconomic and other extra-legal factors currently employed as indicators of recidivism in PSRs need to be subjected to careful

56. See Comment, *Disparity and Discretion in Sentencing: A Proposal for Uniformity*, 25 U.C.L.A. L. REV. 323 (1977).

57. See note 1 *supra* at 93.

scrutiny. Implicit racial bias may distort the objective assessment of recidivism risks, resulting in harsher treatment for minority offenders. Careful review of indicators of recidivism by the Legislature is warranted.

Additionally, the influence of the PSR in California should not be overlooked. Determinate sentencing has narrowed the discretion of trial judges. However, an interesting question remaining is whether probation officers have assumed too much of the decision-making process. The potential for systematic racial bias in the discretionary use of apparently race-neutral factors in PSRs remain a danger. The Legislature and the Judicial Council might consider whether their efforts toward uniformity in sentencing have gone far enough.⁵⁸

EFREN A. COMPEÁN AND RUBEN F. SANCHEZ

58. Cal. Penal Code § 1170 contains a provision for review of imprisonment terms by the Board of Prison Terms. The statute provides in pertinent part as follows:

Within one year after the commencement of the term of imprisonment, the Board of Prison Terms shall review the sentence to determine whether the sentence is disparate in comparison with the sentences imposed in similar cases. If the Board of Prison Terms determines that the sentence is disparate, the Board shall notify the judge, the district attorney, the defense attorney, the defendant, and the Judicial Council. The notification shall include a statement of the reasons for finding the sentence disparate.

Within 120 days of the receipt of this information, the sentencing court shall schedule a hearing and may recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant had not been sentenced previously, provided the new sentence is no greater than the initial sentence. In resentencing under this subdivision the court shall apply the sentencing rules of the Judicial Council and shall consider the information provided by the Board of Prison Terms.

CAL. PENAL CODE § 1170(f) (West Supp. 1984).

Whether this provision for review of possible disparate sentencing is sufficient to correct for implicit racial bias in the system is an open question. However, since the observed racial disparities are likely due to utilization of factors (indicators of recidivism) or practices (plea bargaining) that are generally considered race-neutral, the bias may go undetected even upon review.