Sentencing Asian Offenders in State Courts: The Influence of a Prevalent Stereotype

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Abstract

A significant body of literature has developed to explain the controversial issue of sentencing disparity among various racial/ethnic groups. According to the focal concerns perspective, judges may rely on race-based stereotypes, among other factors, in reaching sentencing outcomes. This contention has received support by the empirical literature when examining sentencing differences that emerge between similarly situated White, Black, and Hispanic offenders. Unfortunately, very little research has addressed the relative treatment of Asian offenders to determine whether stereotypes that commonly target these individuals—particularly the "model minority" stereotype—emerge as a potential extralegal factor in judicial sentencing decisions. To address this shortcoming, the current study employs a large sample of offenders processed by state courts to examine the sentencing of Asians relative to White, Black, and Hispanic offenders. Findings are consistent with a focal concerns/model minority perspective and indicate that Asians are, in fact, treated *more leniently* than other racial/ethnic groups at the incarceration decision. This extralegal disparity, however, does not emerge during the sentence length decision. Implications for theory, policy, and future research are discussed.

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Keywords

The examination of racial and ethnic disparity in the processing of offenders through the criminal justice system has become a particularly salient issue, garnering substantial attention from both researchers and policy makers. As noted by Spohn (2000), critics have leveled charges of racial discrimination at virtually all stages of the criminal justice system. Even so, it is the highly visible sentencing decisions that often attract the most stringent criticisms. Consequently, researchers have dedicated considerable effort to discover the causes and correlates of sentencing disparity, and many have indicated that race unduly affects sentencing outcomes, either directly, indirectly, or through interactions with other extralegal factors (e.g., Steffensmeier, Ulmer, & Kramer, 1998).

The vast majority of this research has focused on the explanation of disparity arising between Black and White offenders. Although important, this leaves a considerable and obvious shortcoming in the literature—one that was pointed out more than a decade ago by Sampson and Lauristen (1997) who criticized that "despite the volume of previous research on race and ethnic comparisons, we know very little about criminal justice processing other than for blacks and whites" (p. 364). In a more recent review of the sentencing literature, Spohn (2000) reiterated this very same critique, indicating that very little was known about the relative treatment of Hispanic, Asian, and Native Americans. Some researchers have taken note of the multiracial and multiethnic nature of the United States population and have investigated sentencing differences between Black, White, *and* Hispanic offenders (e.g., Albonetti, 1997; Bushway & Piehl, 2001; Demuth & Steffensmeier, 2004; S. Welch, Gruhl, & Spohn, 1984). This has served as an important advancement and furthers our understanding of how race and ethnicity influence judicial decision making.

Despite these inroads, the examination of other groups, particularly Asians, has remained nearly absent from the empirical literature. This is particularly important considering that the Asian population in the United States has recently been on the rise and even outpaced the growth of all but the Hispanic population between 2005 and 2006 (U.S. Census Bureau, 2007). Thus, to help address this important shortcoming, the current study employs data collected by the State Court Processing Statistics (SCPS) program to examine the sentencing of Black, White, Hispanic, and Asian felony offenders processed through several large urban courts in the United States. Operating from a focal concerns perspective and its allowance for race-based stereotypes to influence sentencing decisions (discussed in the following section), the primary hypothesis of

the current study is that Black, Hispanic, *and* Asian offenders will be treated *differently* than White offenders, net of important legal factors. Whereas negative stereotypes are predicted to result in more punitive treatment for Blacks and Hispanics relative to Whites, Asians are predicted to receive more lenient treatment due to a prevalent stereotype that identifies these minorities as educationally and economically successful individuals who generally stay out of trouble (Ho & Jackson, 2001; Maddux, Galinsky, Cuddy, & Polifroni, 2008; Wong, Lai, Nagasawa, & Lin, 1998).

Focal Concerns and the Model Minority

To explain how judges reach important sentencing decisions, focal concerns theory was first developed by Steffensmeier (1980), and later expanded upon by Steffensmeier and his colleagues (e.g., Steffensmeier & Demuth, 2001; Steffensmeier et al., 1998; Ulmer, 1997). According to this analytical framework, judicial sentencing decisions are shaped by three key factors or *focal concerns*: (a) the blameworthiness of the offender, (b) the protection of the community, and (c) the practical constraints and consequences faced by courts and correctional facilities. Judges presented with these rather pressing focal concerns rarely have sufficient information to make a thoroughly informed or purely rational decision when deciding the appropriate punishment for offenders. Instead, as Albonetti (1991, 1997) has persuasively argued, judges are forced to make decisions based on a bounded rationality where complete information is nearly always unavailable. To deal with a high volume of cases in light of the relative uncertainty concerning the future behavior of offenders, judges develop a perceptual shorthand that can quickly be applied to each case (Steffensmeier et al., 1998). In the end, assessments of how deserving an offender is of punishment (blameworthiness) and how likely they are to reoffend (influencing the need for community protection) are based on a variety factors, including the offender's level of participation in the crime, their past victimization experiences, the seriousness of the current crime, and the extent of their prior criminal history (see Johnson, 2003). Of particular importance, focal concerns theory also suggests that this perceptual shorthand is not only based on legal case factors, but also on a variety of stereotypes, including prevalent *race-based* stereotypes that identify different groups as more or less crime prone and dangerous (Johnson, 2003; Ulmer, 1997).

Research has indicated that Blacks and Hispanics are both frequent targets of negative stereotyping, receiving labels such as aggressive, violent, and crime-prone individuals (Steffensmeier & Demuth, 2001; K. Welch, 2007). Sigelman and Tuch (1996) reported that Whites are more likely to characterize Blacks,

than other racial/ethnic groups, as likely to commit crime, abuse drugs, and engage in violence. According to Quillian and Pager (2001), perceptions of neighborhood crime are positively associated with the proportion of young, African American male residents in the neighborhood, even after the actual crime rate and other important neighborhood factors are controlled. Findings such as this indicate that stereotypes about African Americans directly influence how individuals assess crime problems. Moreover, some researchers suggest that Hispanics might be viewed as even more culturally dissimilar and threatening than Blacks, in part due to recent immigration and migration within the United States, the poverty, unemployment, and failing educational systems within Hispanic communities, and the association of Hispanics and criminality in popular media (Anderson, 1995; Steffensmeier & Demuth, 2001). In the end, it is argued that negative stereotypes targeting these minority groups will lead to harsher treatment within the criminal justice system, generally, and particularly during the sentencing stage when judges are forced to make *bounded* decisions regarding appropriate punishments.

Unlike Black and Hispanic offenders, Asians are spared the stereotype of being criminally prone and dangerous individuals. Much to the contrary, Asians are frequently viewed as "model minorities" (Ho & Jackson, 2001; Maddux et al., 2008; Wong et al., 1998). Researchers examining the content of this stereotype have noted a variety of traits that are commonly associated with Asian minorities, including the following: hard working, disciplined, mathematical, intelligent, ambitious, and skillful (Cuddy, Fiske, & Glick, 2007; Ho & Jackson, 2001; Yee, 1992). In an analysis of survey respondents, Wong et al. (1998) reported that Whites viewed Asians as more prepared for education, more highly motivated, and more likely to have greater career success than themselves. This same view was shared by Black, Hispanic, and Native American respondents, demonstrating that the stereotype of the "model minority" was widely shared across racial/ethnic groups. Moreover, Maddux et al. (2008) correctly points out that this stereotype has a long-standing history in American society. In an early study of racial stereotypes (Katz & Braly, 1933), it was discovered that Japanese Americans were viewed as a particularly intelligent and hard-working group.

Perceptions of the "model minority" are in part backed by recent empirical data. According to 2008 estimates, Asians earned a higher median income than any other racial or ethnic group in the United States. Moreover, the poverty rate for Asians is lower than any other racial or ethnic minority group (DeNavas-Walt, Proctor, & Smith, 2009). Asians also stand out with regard to educational attainment and are more likely to earn a bachelor's or advanced degree than Whites, Blacks, and Hispanics (Crissey, 2009). They also tend to be underrepresented in

deviant behavior as adolescents (e.g., Jang, 2002) and in the commission of crime as adults, a fact that likely insulates Asians from the criminal stereotypes that plague both Black and Hispanic citizens. This series of facts, taken together with the reinforcement of the "model minority" stereotype by popular media (see Osajima, 1988 for a discussion), has a powerful ability to shape public perceptions. Thus, it is very possible that judges will rely on this stereotype when making assessments about the blameworthiness and dangerousness of offenders, ultimately resulting in more lenient treatment for Asians as compared with other racial/ethnic groups, including Whites.

It is also very possible that assessments of dangerousness or threat to the community will be mediated by the "model minority" stereotype to the degree that judges view Asian offenders as needing less formal social control than other offenders. Black's (1976) work has suggested that the use of formal social control (e.g., incarceration) is dependent on whether or not those in authority perceive sufficient informal social controls to be in place. Essentially, it is argued that the law operates in such a fashion to provide formal social control where informal social control cannot be relied on. If Asian offenders are viewed as being more well connected to society, as the "model minority" stereotype suggests, then they may be viewed as less threatening, and ultimately in need of less intrusive formal social control.

Prior Empirical Research

To date, there are very few studies that examine the treatment of Asians at the judicial sentencing stage. This is likely the case for two primary reasons: (a) historical issues of racial tension have drawn the majority of researchers to examine the relative treatment of African American and White offenders in the criminal justice system while paying less attention to other racial/ethnic groups and (b) most offender samples include too few Asians for a meaningful analysis. The latter concern leads most researchers to delete Asians from their analytic sample or simply include them along with Native Americans as an "other" category (e.g., Mustard, 2001). Three recent studies of sentencing disparity have, however, incorporated Asians into their sample in a meaningful way (Everett & Wojtkiewicz, 2002; Johnson & Betsinger, 2009; Rodriguez, 2003).

In the first study, Everett and Wojtkiewicz (2002) examined the presence of racial/ethnic bias in the federal sentencing process. Under the federal sentencing guidelines, judicial discretion was essentially limited to a relatively narrow sentence *range* that was directly linked to the offender's criminal history and offense seriousness scores. As a result, the researchers used a rather unique measure of disparity that captured the quartile of the allowable sentence range

for which the offender's sentence fell. Using ordered logistic regression, it was then possible to determine whether race or ethnicity influenced the selected sentence quartile. The researchers found that Blacks, Hispanics, and Native Americans all received harsher sentences than similarly situated Whites. Asians, on the other hand, were treated no differently than their White counterparts.

Although Everett and Wojtkiewicz's (2002) analysis was methodologically unique and very insightful, their study has left some important issues unaddressed. First, these researchers examined sentencing disparity in the federal courts when the federal sentencing guidelines were still mandatory (as opposed to advisory) in nature. As a result, their findings have little bearing on the processing of Asian offenders in either state courts or jurisdictions without sentencing guidelines where judges have significantly more discretion. Second, Everett and Wojtkiewicz examined disparity as it related to sentence length, but did not address potential disparity in the initial incarceration decision (frequently referred to as the "in/out" decision). This is also important as studies of sentencing generally find that undue racial disparity is more likely to arise at the in/out decision as compared with the decision regarding sentence length (see Spohn, 2000). Finally, Everett and Wojtkiewicz's analysis did not focus explicitly on the processing of Asian offenders and as a result, their study did not offer a theoretical framework that differentiated the treatment of Asians from other minority groups.

Rodriguez (2003) reported similar findings in a second study of sentencing outcomes that examined the effect of prior "strikes" on the sentences of felony offenders under Washington State's guidelines. Using a large representative sample, it was discovered that compared with Whites, Asians were treated no differently. Taken together with Everett and Wojtkiewicz's (2002) analysis, initial evidence suggests that Asians are treated very similar to Whites at the sentence *length* decision in jurisdictions with sentencing guidelines. Although insightful, this still leaves an important gap in what is known about their relative treatment in nonguidelines jurisdictions and during the initial decision to incarcerate where more disparity is typically noted by prior research.

Finally, Johnson and Betsinger (2009) conducted a more comprehensive analysis of the sentencing of Asian offenders in the federal courts. Their analysis was grounded in existing theoretical frameworks (conflict theory, consensus theory, and focal concerns/organizational attribution) and examined the effects of race/ethnicity on three outcomes: (a) federal guidelines departures, (b) incarceration, and (c) sentence length. The findings regarding guidelines departures were mixed in that, Asian offenders were *more* likely to receive substantial assistance departures as compared with White, Black, and Hispanic offenders, but *less* likely to receive other types of downward departures as compared with

White and Hispanic offenders. With regard to the in/out decision, Asian offenders were less likely to be incarcerated when compared with White, Black, and Hispanic offenders. Finally, Johnson and Betsinger's analysis of sentence length revealed few meaningful differences among racial/ethnic categories with the only contrast being that White offenders received slightly shorter sentences (4% shorter on average). In the end, these researchers concluded that "[i]n the aggregate, Asian offenders often, although not always, are treated similarly to or even more leniently than their white counterparts, and they are often sentenced to less severe punishments than Black and Hispanic offenders" (Johnson & Betsinger, 2009, p. 1079).

Johnson and Betsinger's (2009) analysis addressed two of the most significant shortcomings of the prior research; namely, the lack of a theoretical framework to guide expectations about the processing of Asian offenders and the limited focus on the sentence length decision. Despite the substantial contribution made by these researchers, the empirical research that has examined the relative sentencing of Asian offenders is clearly in its infancy. The current study attempts to further this emerging body of knowledge by examining, for the first time, the treatment of Asian offenders in nonguidelines jurisdictions where judicial discretion is far less regulated. This is particularly important since patterns of disparity may be more pronounced in such settings. In addition, the majority of our current knowledge is limited to the sentencing of Asian offenders in federal courts, but far less is known about how Asians are sentenced in state courts—in fact, none of the existing studies have examined the incarceration decision in this setting. To this end, the present analysis examines both the incarceration of, and sentencing length for, Asian offenders in several state courts located in large urban jurisdictions. By doing so, important gaps in the literature are addressed.

Data and Methods

To test the primary hypothesis that Asian offenders are afforded more lenient treatment than offenders belonging to other racial/ethnic groups, the current study relies on data from the SCPS program collected between 1996 and 2004. The SCPS data were collected biannually by the Bureau of Justice Statistics and provide detailed data on the sentencing of offenders arrested for felonies in the nation's 75 largest jurisdictions (U.S. Department of Justice, 2006). Since the current study focuses on the processing of Asian offenders, the sample is limited to seven jurisdictions,[1] where a large enough number of Asians were convicted and sentenced by the criminal courts to allow for a meaningful analysis. Because of the regional nature of the Asian population, it was not possible

to identify jurisdictions with sufficient numbers of both Asians and Native Americans, thus Native Americans were excluded from the analysis. This resulted in a sample of 9,384 offenders of which 25% were White, 25% were Black, 44% were Hispanic, and 6% were Asian.[2]

Dependent Measures

The majority of prior research recognizes that sentencing outcomes are generally composed of two stages where the judge must first decide whether to incarcerate the offender and then, if incarceration is chosen, they must make a second decision regarding the length of sentence (see Demuth & Steffensmeier, 2004; Spohn, 2000). Consequently, the current study examines two separate dependent measures. The *incarceration decision*, frequently referred to as the in/out decision, is a dichotomous measure that captures whether the offender received a jail or prison sentence (coded 1) as compared with a probation sentence (coded 0). The *sentence length decision* is captured as a continuous measure of the number of months for which the offender was incarcerated. Similar to other researchers (e.g., Demuth & Steffensmeier, 2004; Fearn, 2005) the sentence length measure in the current study is naturally logged to correct for a skewed distribution.

Offender Demographics

The SCPS data provide information on the race/ethnicity, age, and gender of each criminal offender.[3] *Race/ethnicity* is operationalized as a series of four dummy variables (coded 1 = *yes*; 0 = *no*) that capture whether or not the offender is White, Black, Hispanic, or Asian. For the purpose of analysis, the White category serves as the reference group. *Age* is a continuous measure that captures the offender's age in years.[4] Finally, *gender* is a dichotomous measure that captures whether the offender is male (coded 1) or female (coded 0).

Offense and Criminal History Characteristics

The SCPS data also contain relevant information about the criminal offense and the offender's criminal history, which are the primary legal factors to be considered during judicial sentencing decisions. O*ffense seriousness* is measured as a series of 12 dummy variables (coded 1 = *yes*; 0 = *no*) that identifies the most serious charge type for which the defendant was convicted. These include violent offenses[5] (rape, robbery, assault, other), property offenses (burglary, theft, auto-theft, other), drug offenses (drug sales, other), public order offenses, and

misdemeanor offenses. An additional measure, *multiple charges*, was also included in the analysis to account for whether the offender was arrested on more than one criminal charge (coded 1 = *yes*; 0 = *no*).

Following the lead of other researchers using the SCPS data (see Demuth & Steffensmeier, 2004), criminal history is measured in several different ways. First a *criminal history score* is created by summing four dummy variables (coded 1 = *yes*; 0 = *no*) that capture whether the offender has been arrested for a felony, been convicted of a felony, received a jail sentence, or received a prison sentence. A factor analysis indicated that each of these measures loaded on a single underlying structure and the results of a reliability analysis indicated sufficient internal consistency (Cronbach's α = .794). The final measure ranged from 0 to 4, with higher numbers indicating a more extensive record of criminal activity. Criminal history is also captured through a measure of *criminal justice status*, which indicates if the defendant was in custody or on probation, parole, or pretrial release at the time of the arrest for their current offense (coded 1 = *yes*; 0 = *no*). The last measure of criminal history, *prior FTA*, identifies whether the offender had a history of failing to appear (FTA) for prior court dispositions (coded 1 = *yes*; 0 = *no*).

Case Characteristics

Measures related to offense seriousness and prior criminal history are of primary importance for understanding sentencing outcomes, but other case-related factors may also play a role. Thus, three additional dummy measures (coded 1 = *yes*; 0 = *no*) are included in the analysis. *Detained* captures whether or not the offender was held in pretrial detention pending the case disposition. Researchers have demonstrated that pretrial detention increases the likelihood of incarceration and is correlated with longer sentences (see Spohn, 2009 for a discussion). *Private attorney* captures whether or not the offender retained private defense counsel as opposed to assigned counsel or a public defender. These first two measures represent extralegal factors that should not influence the incarceration or sentence length decision in the absence of undue disparity. Moreover, these measures may also represent rough indicators of social class since those who are financially more well off should be less likely to be detained and more likely to secure a private attorney. To the extent that this occurs, the inclusion of these measures will allow the current study to determine whether, and the degree to which, proximal measures of social class mediate the effect of race/ethnicity on the sentencing outcome measures. This is particularly important since it will help to determine whether potential racial/ethnic differences are race- versus class-based. Considering that Asians tend to be more well off than other

racial/ethnic groups, parsing out class effects is especially meaningful. Finally, *guilty plea* identifies whether or not the case was disposed through a plea as opposed to a jury or bench trial, accounting for what researchers frequently refer to as a "trial penalty" (see Ulmer & Johnson, 2004).

Analytic Strategy

Since the primary purpose of the current research is to examine the treatment of Asians relative to Whites, Blacks, and Hispanics, the analysis begins by examining descriptive statistics for offense and case-related variables within and across racial/ethnic categories. At the next stage of analysis, multivariate models are estimated to determine the net effects of race/ethnicity on the in/out and sentence length decisions.[6] These models are estimated in stages where the offender's demographic characteristics are included, followed by measures of offense seriousness and criminal history, and important case characteristics, respectively. This approach allows for an initial baseline estimation of racial/ethnic disparity for the purpose of identifying whether or not the remaining factors are able to fully account for any differential treatment across the racial/ethnic categories. It also allows for interesting comparisons to be made, such as whether or not offense seriousness explains disparity equally well for Asians as it does for Blacks and Hispanics.

Results

Table 1 reports the distribution of offense and case-related measures across racial/ethnic categories as well as for the total sample. Descriptive statistics for the two sentencing outcomes are also reported. Overall, approximately 84% of the sample was incarcerated with offenders receiving an average sentence length of 15.5 months. An examination of these outcomes by race/ethnicity indicates that Asian offenders were the least likely to be incarcerated, followed by White, Black, and Hispanic offenders, respectively. With regard to sentence length, Asian offenders received shorter sentences than Blacks and Hispanics, but longer sentences than Whites.

When examining the distribution of offense types within the full sample, it is evident that the most prevalent type of felony conviction was for drug offenses, followed by property offenses, violent offenses, and public order offenses, respectively. This pattern holds true for each racial/ethnic subsample, except for Asians who were much more likely to be convicted of property crimes (40.6%) as compared with drug crimes (24.8%). When examining the type of offense *across* racial categories, Asians were less likely to be convicted

Table 1. Percentage of Offense and Case Characteristics Within Racial/Ethnic Groups

	White	Black	Hispanic	Asian	Total
Sentence outcomes					
Incarcerated	80.0	83.6	87.9	75.9	84.1
Sentence length (mean months)	11.8	17.4	16.5	16.1	15.5
Offense characteristics					
Violent	10.8	12.8	17.7	16.3	14.6
Rape	0.6	0.4	0.4	1.4	0.5
Robbery	2.1	4.6	4.4	2.0	3.7
Assault	4.6	5.3	8.5	8.2	6.7
Other	3.5	2.5	4.4	4.8	3.7
Property	30.3	28.5	25.5	40.6	28.4
Burglary	9.6	8.0	7.2	10.6	8.2
Theft	7.2	10.4	5.7	10.6	7.5
Auto theft	4.1	2.4	5.8	9.0	4.8
Other	9.4	7.7	6.9	10.3	7.9
Drug	40.4	38.9	37.8	24.8	37.9
Sales	11.4	17.4	17.2	14.7	15.6
Other	28.9	21.4	20.6	10.1	22.3
Public order	7.2	7.5	8.7	5.3	7.8
Misdemeanor	11.4	12.4	12.9	10.3	11.2
Multiple charges	70.5	59.5	67.7	69.3	66.5
Case characteristics					
Criminal history score (mean)	2.0	2.3	1.8	1.5	2.0
Criminal justice status	49.9	50.0	44.9	43.4	47.3
Prior FTA (failing to appear)	39.6	51.5	37.9	36.0	41.5
Detained	56.1	66.4	67.7	46.5	63.1
Private attorney	23.3	14.0	17.6	25.0	18.7
Guilty plea	98.4	97.6	98.0	98.0	98.0
N	2,437	2,272	4,111	564	9,384

of either drug-related crimes or public order crimes as compared with Blacks, Whites, and Hispanics. On the other hand, Asians were more likely than other racial/ethnic groups to be convicted of property crimes. This observation remains true for each of the different types of property crime, including burglary, theft, auto theft, and other types of property offenses. Asians were also more frequently convicted of violent offenses when compared with Black and White offenders, but not Hispanic offenders.

Other case-related characteristics, which may in part account for a smaller proportion of Asians receiving a jail or prison sentence, indicate that across racial/ethnic groups Asians had the lowest criminal history score and were the least likely to have an active criminal justice status or prior FTAs. It should be noted that the lower criminal history scores possessed by Asians could be, in part, explained by citizenship status. Demuth (2002) pointed out that noncitizens tend to have lower criminal history scores and that this was possibly the result of incomplete prior record information available to the courts for these offenders. Unfortunately, the current data does not contain information about citizenship, but it should be noted that this factor, along with the "model minority" stereotype, may contribute to the leniency afforded Asians. Looking beyond criminal history, Asians were also the least likely to be detained during the pretrial phase and the most likely to retain private defense counsel.

Table 2 presents the findings from the multivariate logistic regression models testing the relative effects of race/ethnicity on the incarceration decision.[7] Model 1 serves as a baseline model, including only offenders' demographic characteristics.[8] This provides for an initial assessment of disparity among racial/ethnic groups and allows for subsequent models to identify if and how offense, criminal history, and case characteristics influence disparity. The results from Model 1 demonstrate that compared with White offenders, both Blacks and Hispanics are significantly more likely to be incarcerated. The opposite is true for Asians who are significantly *less* likely to be incarcerated than Whites. This initial finding is consistent with predictions stemming from focal concerns theory and the potential influence of racial/ethnic stereotypes, but this pattern must hold true once important offense and case characteristics are controlled before support for this perspective can be confirmed. In addition, the coefficients for age and gender are significant, indicating that both older and female offenders were less likely to be incarcerated than their younger and male counterparts.

Model 2 incorporates the offense and criminal history measures in addition to the offenders' demographic characteristics. Since the measure for offense seriousness is operationalized as a series of 12 dummy variables (with misdemeanor convictions serving as the reference category), their coefficients are not presented in tabular form. Their effects, however, were significant and in the expected direction with the odds of incarceration being highest for serious crimes (e.g., rape, robbery) and considerably lower for less serious crimes (e.g., theft, other property crimes). In addition, offenders charged with multiple offenses were more likely to be incarcerated than those charged with a single offense.

Of particular interest is whether or not the racial/ethnic disparity noted in Model 1 is in part explained by the offense characteristics and criminal history of the defendants. Once these important factors are included in the model, it

Table 2. The Effect of Race/Ethnicity on the Incarceration Decision ($N = 9,384$)

	Model 1			Model 2			Model 3		
	b	SE	Exp(b)	b	SE	Exp(b)	b	SE	Exp(b)
Offender characteristics									
White (reference)	—	—		—	—		—	—	
Black	.290*	.085	1.336	.140	.091	1.150	.038	.093	1.039
Hispanic	.505*	.075	1.657	.491*	.080	1.634	.386*	.081	1.471
Asian	−.268*	.130	0.765	−.306*	.138	0.736	−.292*	.140	0.746
Male	.577*	.071	1.781	.375*	.077	1.455	.270*	.079	1.310
Age	−.013*	.003	0.987	−.013*	.003	0.987	−.012*	.003	0.988
Offense and criminal history characteristics									
Block of 12 offense dummies				—	—		—	—	
Multiple charges				.277*	.066	1.319	.243*	.068	1.275
Criminal history score				.264*	.027	1.302	.170*	.028	1.185
Criminal justice status				.271*	.072	1.311	.151*	.073	1.163
Prior FTA (failing to appear)				.228*	.073	1.256	.231*	.075	1.260
Case characteristics									
Detained							1.035*	.071	2.815
Private attorney							−0.014	.081	0.986
Guilty plea							−0.209	.278	0.811
R^2	.10			.236			.271		

Note: Each model also includes a series of dummy variables that identify the county where the case was disposed.
*$p < .05$.

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can be seen that the Black coefficient is no longer significant. This indicates that the initial observed disparity between Black and White offenders is accounted for by legal factors that are expected to influence sentencing decisions. Unfortunately, when examining the Hispanic and Asian coefficients, evidence of disparity remains present. The Hispanic coefficient, however, is smaller in magnitude, indicating that some of the Hispanic/White disparity is explained by the seriousness of the offense committed and the offenders' prior criminal history. It is important to note that the opposite is true for Asians; once the offense and criminal history characteristics are introduced into the model, the magnitude of the Asian coefficient increases from −.268 to −.306. This indicates that when offense seriousness and criminal history are held constant, Asians are even *less* likely to be incarcerated than White offenders. Such a finding is somewhat surprising since Asian offenders tend to commit less serious crimes and have less serious criminal records, suggesting that some of the leniency afforded these offenders could be due simply to the different nature of their offending. This is clearly not the case, however, as Asian offenders who are similarly situated to White offenders (with regard to offense and criminal history measures), are treated with even more leniency and appear to be given the benefit of the doubt with regard to the incarceration decision.

Model 3 presents the results of the full model, where the effects of offenders' demographic characteristics, offense and criminal history characteristics, and important case characteristics are all simultaneously estimated. Findings here indicate that offenders with a higher criminal history score and an active criminal justice status were significantly more likely to be incarcerated than offenders with a lower criminal history score and a nonactive criminal justice status. Likewise, offenders who had a record of prior FTAs were also more likely to be incarcerated than those with no such record. When examining the effects of the added case characteristics, it is evident that offenders who were detained pretrial were significantly more likely to be incarcerated whereas those who retained private counsel and those who pled guilty were treated no differently than their counterparts.

Of particular interest to the current study is whether the additional case characteristics moderate the effects of race/ethnicity, either in part or in full. As can be seen in Table 2, the magnitude of the Hispanic coefficient is smaller, but it remains statistically significant—the odds of incarceration were approximately 1.5 times higher for Hispanics as compared with similarly situated Whites. The magnitude of the Asian coefficient is also smaller than that presented in the second model but still remains statistically significant and larger in magnitude than the coefficient presented in the baseline model. This indicates that even after important offense and case factors are controlled, Asians were still

less likely to be incarcerated than Whites, Blacks, or Hispanics. Specifically, the odds of incarceration were 1.35 times higher for White offenders, 1.56 times higher for Black offenders, and 2.21 times higher for Hispanic offenders as compared with Asians. This more lenient treatment afforded to Asians during the in/out decision, net of important legal and case factors, provides even stronger evidence for the hypothesis that Asians are treated less harshly as a result of the model minority stereotype and its influence on judicial focal concerns.

Moreover, two of the case characteristics—private attorney and detained—served as potential proxy measures for social class. Though the measure for private attorney was not significant, the detention measure was statistically significant, and more importantly, accounted for the mediated effects of the Hispanic and Asian coefficients.[9] The evidence is somewhat mixed given the null effect of the private attorney measure, however, to the extent that detention is associated with socioeconomic status (offenders are frequently detained because they cannot make bail), it appears that there is some basis to suggest that social class may, in part, explain some of the racial and ethnic differences uncovered in Model 2.

Table 3 presents the findings from a similar series of three ordinary least squares regression models examining the sentence length decision. Model 1 or the baseline model indicates that racial/ethnic disparity is present. Similar to the in/out decision, Blacks and Hispanics received significantly longer sentences than Whites. Asians, on the other hand, received shorter sentences than Whites, though less confidence can be placed in this finding since statistical significance of the coefficient meets a less rigorous cutoff point ($p < .10$). This initial pattern is also consistent with the primary hypothesis guiding the analysis, though it should be noted that the differences in sentence length are relatively small. Black and Hispanic offenders received sentences that were approximately 7.7% and 3.8% longer than Whites, respectively. Asian offenders received sentences that were approximately 2.1% shorter than White offenders. The coefficients for age and gender are also significant, indicating that males and younger offenders received longer sentences as compared with female and older offenders.

Model 2 includes the offense characteristics as well as the measures for prior criminal history. With the exception of prior FTAs, all the measures are statistically significant and in the expected direction. As with the earlier in/out decision, more serious offenses led to lengthier sentences as did being charged with multiple counts. Moreover, offenders with a more extensive prior criminal history and those who had an active criminal justice status at the time of arrest received longer sentences. The effects of these measures on the coefficients for race/ethnicity are also noteworthy and generally consistent for each group. The Black, Hispanic, and Asian coefficients are each smaller in magnitude and the

Table 3. The Effect of Race/Ethnicity on the Sentence Length Decision ($N = 7,891$)

	Model 1			Model 2			Model 3		
	b	SE	Exp(b)	b	SE	Exp(b)	b	SE	Exp(b)
Offender characteristics									
White (reference)	—	—		—	—		—	—	
Black	.074*	.055	1.077	.018	.047	1.018	.000	.045	1.000
Hispanic	.037*	.047	1.038	.036*	.040	1.036	.012	.039	1.012
Asian	−.021†	.095	0.979	−.006	.046	0.994	−.001	.077	0.999
Male	.125*	.050	1.133	.067*	.044	1.069	.045*	.042	1.046
Age	.025*	.002	1.025	−.034*	.002	0.967	−.031*	.002	0.969
Offense and criminal history characteristics									
Block of 12 offense dummies				—	—		—	—	
Multiple charges				.042*	.034	1.043	.033*	.032	1.033
Criminal history score				.335*	.013	1.398	.272*	.013	1.313
Criminal justice status				.047*	.035	1.048	.021*	.033	1.021
Prior FTA (failing to appear)				−.017	.035	0.983	−.015	.033	0.985
Case characteristics									
Detained							.258*	.035	1.294
Private attorney							.029*	.041	1.029
Guilty plea							−.095*	.103	0.909
R^2	.08			.33			.40		

Note: Each model also includes a series of dummy variables that identify the county where the case was disposed.
†$p < .10$. *$p < .05$.

effect of being Black or Asian is no longer statistically significant. Thus, once legal measures are controlled much of the racial/ethnic disparity disappears. It should be noted, however, that even after controlling for legal factors, Hispanics are still sentenced more harshly than any other racial group, indicating the presence of undue disparity.

The inclusion of important case characteristics in Model 3 demonstrates a similar pattern in that each of the racial/ethnic coefficients, once again, shrink in magnitude. Once these factors are controlled, there is no remaining disparity in sentence length between any of the groups, as the Hispanic coefficient is no longer statistically significant. To determine which, if any, of the case characteristics were solely responsible for mediating the effect of the Hispanic coefficient, each of the three measures was entered into the third model separately. Similar to the results reported for the incarceration decision, the measure of pretrial detention was discovered to be the driving factor in mediating the effect of being Hispanic. Once again, to the degree that detention captures socioeconomic status, it is possible that social class is responsible for explaining the disparity between Whites and Hispanics noted in Model 2. Such a conclusion, however, is less straightforward since the measure for private attorney also served as a potential proxy for social class, yet its effects were in the opposite direction from that which would be expected from a class-based argument for explaining differential treatment.

Discussion

Currently, no prior research has examined the incarceration decision for Asian offenders in state courts (the initial focus has been on federal courts) and only three studies have examined the length of sentences imposed on these individuals. Moreover, no prior study has examined the sentencing of Asian offenders in nonguidelines jurisdictions. To address these considerable shortcomings, the current study used the focal concerns framework in conjunction with the "model minority" stereotype to examine the sentencing of Asians in a large sample of felony offenders adjudicated in state courts. Consistent with predictions based on this framework, Asians were treated with more leniency than Whites, Blacks, and Hispanics during the incarceration decision, even after controlling for important offense, criminal history, and case characteristics. This represents an important finding in the literature and demonstrates that the leniency afforded Asian offenders during the incarceration decision generalizes beyond that of the federal courts.

The focal concerns/model minority perspective also predicted that Asians would be treated more leniently than other racial/ethnic groups at the sentence length decision. As the findings indicated, there was less support for this

hypothesis. After controlling for important legal factors, Asians were only treated slightly more leniently than Hispanics and were treated no differently than Whites and Blacks. Even so, this should not be taken necessarily as evidence of an inaccurate framework. Instead, it is very possible that stereotypes (whether favorable or unfavorable to the offender) simply influence judicial focal concerns at the earlier in/out decision more so than during the sentence length decision. During the former, judges are making a decision with immediate implications for community safety (since the offender could simply be released on probation), and as a result, may be more apt to consider all available information when making this decision, *including* that information provided by prevalent stereotypes. Spohn's (2000) review of the sentencing literature supports this contention; after summarizing the findings of 32 studies of sentencing in state courts during the 1980s and 1990s, it was discovered that about half of the race estimates (55.5% for Blacks and 41.7%for Hispanics) were significant for the incarceration decision, whereas less than one-quarter of the race estimates were significant for the sentence length decision. This pattern was not limited to the research examined by Spohn (2000), but also emerged in an earlier review of 38 sentencing studies examined by Chiricos and Crawford (1995).

In addition to providing support for the focal concerns/model minority perspective, the general findings of this study have several implications for both future research and practice. First, when considering the nature of disparate treatment between offenders of various racial/ethnic backgrounds, it would appear that the largest gap may not always be between Whites and minorities. Instead, the largest gap in treatment may very well appear between the treatments of different minority groups themselves. In the current study, for example, the odds of incarceration for Hispanics were 1.47 times higher than for Whites. When compared with Asians, however, the odds of incarceration for Hispanics increased by 50%, which considerably widens the overall degree of sentencing disparity among offenders of different races and ethnicities. This is particularly important since sentencing reforms aim to eliminate undue sentencing disparity among offenders of *all* races and ethnicities, not just that between Whites and Blacks or Whites and Hispanics.

Second, when examining the relative importance of legal factors for explaining sentencing disparity, it is evident that their effects play a race/ethnicity-dependent role. More specifically, the disparity that was evident between Whites and Blacks as well as Whites and Hispanics either shrunk or became nonexistent once important legal factors were controlled. Thus, much of the differential treatment between these individuals (though not all in the case of Hispanic offenders) was explained by factors such as differential involvement in particular crime types or different criminal history records. For Asian offenders, however,

this does not appear to be the case—controlling for legal factors did not reduce the observed disparity at the incarceration decision. Put differently, "leveling the playing field" and comparing similarly situated White, Black, and Hispanic offenders reduces or eliminates the initial disparity observed between these groups, but does nothing to reduce the initial disparity observed for Asian offenders. This finding suggests that the source of disparate treatment for Asians may be primarily due to extralegal sources of influence such as the model minority stereotype.

Third, although the current study offers new and important insights about the processing of Asian offenders in state courts, it is not without limitations, one of which is the relatively small sample of Asian offenders available for analysis. As discussed previously, sentencing researchers tend to neglect the study of such populations due to the limited amount of data available for analysis. This fact not only limits the number of studies that examine smaller minority populations, but it also limits the kinds of inquiries that can be addressed. For example, it was not analytically feasible to estimate interaction effects between factors such as age, race, and gender due to the distribution of the small sample of Asians across the counties included for analysis. This is important considering that previous research (e.g., Steffensmeier et al., 1998) has noted the value of estimating interactions to more fully understand the effects of race on sentencing. Moreover, it was also not possible to break down the sample according to crime type or subgroups of crime types to determine if the observed patterns were universal or limited to particular types of offenses.

Along these lines, the current study was limited in that it was unable to examine whether the "model minority" stereotype benefits certain subgroups of Asian offenders more or less than others. It is very possible, for example, that Southeast Asian offenders are racialized in different ways than Korean or Japanese offenders in the United States, ultimately leading to variation in treatment. Researchers have even identified negative stereotypes, such as the "perpetual foreigner," (see Lee, 1996; Wu, 2002 for a discussion) that might apply more so to certain Asian ethnic groups as compared with others. Examining these nuances is an important task for future research and will provide a much more thorough understanding of how race and ethnicity influence the sentencing process. Ultimately, it is important to understand how Asians are treated as compared with Whites, Blacks, and Hispanics, but also how they are treated across their differing ethnic groups.

Fourth, researchers should continue to examine whether the patterns of disparity discovered here translate to other contexts, such as smaller courts or those located in southern jurisdictions. Of equal if not more importance, researchers should also examine how Asian offenders are treated with regard to decisions

that are often made out of the public's eye, such as charging and plea bargaining. Both these areas of research receive much less attention than more visible sentencing decisions, but remain critical for understanding the processing of offenders. Even so, no research to date has examined the treatment of Asian offenders during these stages, leaving an important gap in the literature that needs considerable attention.

Fifth, future research is needed to better determine the extent to which racial/ethnic differences in sentencing may actually be attributed to class differences. The current study employed two variables that were proximal measures of social class and revealed at least some evidence that class may account for a portion of the racial/ethnic disparity observed during the sentencing of offenders—whether or not offenders were detained during the pretrial process was discovered to mediate the effects of race and ethnicity. The measures used in the present study, however, were very limited and presented mixed findings; thus, future research is much needed to incorporate quality measures of class to better disentangle class- versus race-based differences in sentencing.

Finally, with regard to practice, policy makers must be made aware that researchers continue to uncover undue racial and ethnic disparity in the sentencing of criminal offenders, despite the fact that decades have passed since modern sentencing reforms began to take shape. In an impartial criminal justice system, decisions should not unfairly disadvantage offenders solely because they are part of a stereotyped "dangerous" or "threatening" minority group any more than these decisions should favor or afford leniency to offenders who belong to a minority group that has been stereotyped as the "model minority." In the end, continued efforts to eliminate unjustified disparate treatment, especially that which is linked to individuals' race or ethnicity, remain important to changes in future practice.

Declaration of Conflicting Interests

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Notes

1. The sample includes offenders from the following counties within the states of California, Hawaii, and New York: Alameda, Los Angeles, Orange, San Diego, Santa Clara, Honolulu, and Queens. Of particular interest is whether the overall

findings from the analysis can be applied equally to each of the three states from which cases were drawn. Because of the small number of Asian offenders in the current sample, answering this question becomes a statistical challenge. Analyses indicate that when the sample is restricted to offenders from California, the findings are similar to that of the full sample. The small sample of Asian offenders, however, prevented separate analyses within Hawaii and New York.

2. Similar to other researchers who have analyzed the SCPS data (e.g., Demuth & Steffensmeier, 2004), rather than simply deleting cases listwise, which results in a substantial reduction of cases available for analysis, missing values are replaced using multiple imputation. This advanced technique replaces missing values using a Monte Carlo method of estimation (see Little & Rubin, 1987; Schafer, 1997). This approach is also more meaningful than listwise deletion since it enhances the ability to make unbiased inferences, whereas case deletion can introduce bias in the absence of data that is missing completely at random.

3. It should be noted that the SCPS data suffer from a shortcoming in that, unlike the widely available federal sentencing data, information concerning educational attainment and citizenship status are not available. The absence of these measures represents a limitation to the current study, particularly since level of education plays into the "model minority" stereotype.

4. An age-squared measure was also considered for inclusion, but initial analyses indicated nonsignificant effects. Thus the study only includes a linear measure of age.

5. Defendants convicted of murder were excluded from analysis since there was no variation in the outcome; all offenders, despite race or ethnicity, received an incarceration sentence.

6. Studies that examine the in/out and sentence length decision typically calculate and include a hazard rate in the sentence length model to correct for sample selection bias. A recent study by Bushway, Johnson, and Slocum (2007) has demonstrated that the hazard rate is *rarely* used correctly by researchers, with a frequent and substantial problem being the omitted use of exclusion restrictions in the selection model (i.e., predictors of the in/out decision that are not used in the prediction of sentence length). In the absence of useful exclusion restrictions that hazard rate frequently introduces substantial multicolinearity into the models and creates estimates that are *less* accurate than those uncorrected for selection bias. Since the current study was unable to employ theoretically sound exclusion restrictions and the hazard rate introduced serious multicolinearity, the advice of Stolzenberg and Relles (1990) is followed, and uncorrected estimates are presented in the models.

7. To ensure that multicolinearity was not problematic among the models, several diagnostic tests were run. Variance inflation factors were all well below 4 and values for the condition index ranged from .37 to .97, indicating that multicolinearity was not an issue.

8. Similar to other researchers using multijurisdictional data (e.g., Demuth & Stephensmeier, 2004), all the models presented here also include measures for county to account for differential processing/laws from jurisdiction to jurisdiction. The year of case disposition was also considered for inclusion as a control in each model, however, this introduced substantial multicolinearity to the models. Unfortunately, the year of data collection is highly correlated with the county since data were only collected from certain counties (rather than all) during each year of data collection. Since jurisdictional differences are likely more substantial than year to year differences, it was deemed more important to include the measure for county rather than year of case disposition.
9. Model 3 presents the simultaneous effects of the case measures; however, to be sure that the detention measure was the driving force behind the mediated race and ethnicity coefficients, detained was entered into the equation separately. These results provided confirmation that detained was, in fact, responsible for the mediated race and ethnicity effects.

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