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Sentencing the White-Collar Offender:  
A Replication

Final Report

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## Abstract

This report summarizes the results of a replication of the Wheeler, Weisburd, and Bode (1982) study on sentencing white-collar criminals. The replication was undertaken to determine if the findings from that study could be extended to a different population of offenders.

The results of the replication are mixed. Contrary to Wheeler et al. socioeconomic status had neither a statistically nor substantively significant effect on sentence outcomes in the replication analysis. Measures of the seriousness of the offense were positively associated with the probability of imprisonment and length of sentence. Measures of the defendant's criminal background, role in the offense, and attitude toward the offense had the same effects on length of sentence as they did in the Wheeler et al. study. Three variables that did not have significant effects in the original study were significant in the replication. Race and type of attorney influenced the probability of imprisonment, and source of conviction influenced the length of sentence of those incarcerated.

## FINAL REPORT

### SENTENCING THE WHITE-COLLAR OFFENDER: A REPLICATION

This report summarizes the results of a replication of the Wheeler et al. (1982) study on sentencing white-collar criminals. Several findings from that study have important theoretical and practical implications. First, socioeconomic status was positively correlated with the probability of going to prison and with the length of sentence of those incarcerated. Although sociologists long have debated whether social status is related to sentence severity, the finding that higher status defendants receive harsher sanctions for a given crime is unique to Wheeler et al. Second, the results suggest that failure to treat sentencing as a twofold process may obscure the impact of some variables on sentencing decisions. Judges focus on the seriousness of the offense when deciding whether to incarcerate. After the decision to incarcerate has been reached, however, judges give greater weight to social characteristics of the offender when deciding on length of sentence.

The Wheeler et al. study was based on a large sample of white-collar offenders, sophisticated statistical analysis techniques, and a complex model of the sentencing process. Nevertheless, the generalizability of the results can be questioned on two counts. The sample included only offenders sentenced between 1976 and 1978. During this period judges may have been influenced by a post-Watergate morality. Judges may have been sensitized to the crimes of the rich and to criticism about leniency towards white-collar offenders. Hence, they may have sentenced high status white-collar

offenders more severely than usual. In order to ensure a large and varied sample of white-collar crimes, the sample was drawn from districts located in major urban centers. Because these cities are centers of business and finance they probably are the locus of many large scale white-collar crimes. Due to the greater frequency of white-collar crimes in these districts, sentencing practices may differ from those found in smaller federal districts.

#### DESCRIPTION OF THE REPLICATION STUDY

The replication was conducted in a federal district court located in the Midwest. The district differs from those studied by Wheeler et al. in three ways. It is not located in a major urban center, such as Chicago or New York. It has a caseload that is about one-half the size of the smallest district studied by Wheeler et al. Finally, the time period covered by the replication extends from 1970 to 1980.

#### Cases

Between 1970 and 1980, approximately 222 individuals were sentenced for white-collar crimes in this district. We did not select a sample but used the entire population. Files were available for data collection for 189 of these individuals.<sup>1</sup> Six white-collar offenses were represented in the population: tax violations; postal and wire fraud; false claims and statements; embezzlement; lending and credit fraud; and employee theft.<sup>2</sup>

#### Variables

There are two dependent variables: the probability of imprisonment; and, the length of sentence of those incarcerated. The independent variables are divided into four groups: act-related; actor related; legal process; and, other. The act-related variables measure the seriousness of the crime in several ways. The maximum possible prison term to which the defendant could be sentenced measures the seriousness of the offense from the legal system's perspective. The amount of money involved in the offense, its complexity and sophistication, geographical spread, number of victims and type of victim were also used as measures of seriousness. The actor-related variables measure selected legal and social characteristics of the offender. The characteristics included are socioeconomic status, impeccability, criminal background, cooperation with authorities, remorse over the offense and role in the offense. The legal process variables are the statutory offense category for which the offender was convicted, the source of conviction (trial versus plea), and the nature of the counsel (private versus public or appointed counsel). Prior research has shown that these variables influence sentence outcomes. Finally, standard socio-demographic variables were included in the model: sex; age; and, race. All data were gathered from Pre-sentence Investigation Reports (PSIs).<sup>3</sup>

### Data Analysis

Following Wheeler et al. a two-step analysis was used. First, the probability of imprisonment was analyzed with logistic regression analysis. Second, the length of sentence of those incarcerated was analyzed using ordinary least squares regression

(OLS) analysis. Due to the large number of variables in the Wheeler et al. model and the relatively small number of cases, the analysis concentrated on the variables identified as having significant effects in the Wheeler et al. study. However, the variables that were not significant in the Wheeler et al. study were also examined.

#### RESULTS OF THE REPLICATION STUDY

##### Socioeconomic Status, Impeccability and Sentence Severity

The effect of socioeconomic status on sentence outcomes was substantively and statistically insignificant. Contrary to Wheeler et al. the probability of imprisonment was negatively associated with increases in socioeconomic status. The effect was, however, so small as to be negligible. Length of sentence was positively correlated with increases in socioeconomic status; the regression coefficient was approximately one-half the size of the coefficient found in the Wheeler et al. study. Given the lack of statistical significance and the small magnitude of the logistic and OLS regression coefficients, it appears that socioeconomic status has no effect on sentence severity in the study district.

The population of offenders and the values of judges as a function of jurisdictional context may account for our failure to replicate the Wheeler et al finding on socioeconomic status. It is largely the antitrust and securities and exchange offenders who predominate in the high socioeconomic status categories; and, it is largely more liberal urban judges who, moved by concerns for the under-privileged, sentence more harshly the high socioeconomic status white-collar offenders. There were no antitrust or

securities and exchange offenders in this study, and the district was not located in a large urban center.

Impeccability refers to social conduct. A number of items were combined to form an impeccability scale. The items measure various aspects of the offender's social conduct, such as marital and residential stability and participation in community affairs. In the Wheeler et al. study impeccability was negatively associated with the probability of imprisonment and length of sentence.

In the replication the association between impeccability and sentence severity was in the expected direction but was not statistically significant. Impeccability was negatively associated both with the probability of going to prison and the length of sentence of those incarcerated. The magnitudes of the logistic and OLS regression coefficients were similar to those reported by Wheeler et al. The lack of statistical significance makes interpretation of these findings difficult. However, it would appear that in this district offenders with a history of exemplary social conduct receive more lenient sentences than offenders whose social conduct is less exemplary.

#### Seriousness of the Crime: Money and Impact

The replication found that the seriousness of the crime is important at both stages of the sentencing process. The larger the amount of money involved in an offense the higher probability of imprisonment and the longer the sentence. Similarly, the greater the geographic spread of an offense the more likely imprisonment and the longer the sentence. Most offenses involved relatively small amounts of money and did not spread beyond the local community.



However, a few offenses had regional impacts or involved large amounts of money. For offenders involved in such offenses the probability of imprisonment was very high, and they tended to receive longer sentences than other offenders. These findings support the argument by Wheeler et al. that judges focus closely on the substantive seriousness of the offense when deciding on a sentence.

Seriousness of offense was also measured by calculating the maximum prison term that the defendant could have received. The greater the defendant's maximum exposure the higher the probability of imprisonment and the longer the sentence. The coefficients were not statistically significant, however. Although the lack of statistical significance reduces our confidence in these findings, we note that the results parallel those reported by Wheeler et al.

#### Defendant's Prior Criminality, Role in the Offense, and Remorse

The defendant's criminal background, role in the offense, and attitude toward the offense influence the type of sentence imposed by the judge. Having a prior conviction increases the offender's probability of being incarcerated. Those who act alone or who play a leading role in a multi-offender crime are more likely to go to prison than those who play only a minor role in an offense involving others. Finally, offenders who express remorse that is reported in the PSI receive shorter sentences than those who do not. These findings replicate those of Wheeler et al. Thus, greater confidence in the validity of these findings is justified.

It is not surprising that judges are more likely to imprison offenders who are ringleaders or who have prior convictions. These offenders have given clear indications of their criminality by their

behavior. That judges tend to impose shorter sentences on offenders who express remorse suggests that a negotiation process plays a role in determining what sentences are imposed. Through post-conviction behavior a defendant can influence how his character is assessed by the judge. The defendant who apologizes may be rewarded by the judge with a shorter sentence than otherwise would be imposed. In sum, the findings suggest that the judge's response to an offender is influenced by (1) the extent of the offender's criminal behavior and (2) the offender's post-conviction behavior; defendants who admit their transgressions and apologize are rewarded.

#### Other Variables

In the Wheeler et al. study race and type of counsel did not have significant effects on the probability of imprisonment, and the source of the defendant's conviction did not have a significant effect on length of sentence. In the replication analysis these variables are significant. Whites had a lower probability of imprisonment than nonwhites. Defendants who retained private counsel had a lower probability of imprisonment than defendants who used public or appointed counsel. Offenders who pled guilty received shorter sentences than those who were convicted after trials.

Among the three findings, the higher probability of imprisonment for nonwhites is unexpected and most interesting. Previous research on sentencing has indicated that after type of offense and offense seriousness are controlled nonwhites fare no worse than whites at sentencing. Because the present study focuses

only on sentencing outcomes, it is not possible to determine if the higher probability of imprisonment for nonwhites is the result of intentional discrimination. The pattern of discriminatory outcomes may be due to characteristics of either the offender or offense not included in the model.

The influence of type of attorney on the probability of imprisonment was unexpected. This variable was not significant in the Wheeler et al. study. In the replication, offenders who retained private counsel were significantly less likely to be incarcerated than those who used appointed or public counsel. Other research has found that if type of crime and prior record are controlled, type of attorney does not influence sentence severity. However, these studies have examined sentencing for ordinary crimes. Because they usually represent indigents charged with ordinary crimes, public or appointed attorneys may be as skilled as private attorneys in defending common criminal cases. Due to lack of experience, they may not be as adept in handling white-collar cases as attorneys who specialize in these types of offenses. White-collar offenders who can afford private counsel may hire attorneys who are highly skilled in defending white-collar cases. As a result they receive higher quality legal service.

#### IMPLICATIONS

This study has implications for the methodology of sentencing research. Sentencing should be viewed as a two stage process. The decision whether to incarcerate and the decision on length of

sentence are different. Collapsing these decisions in an arbitrary sentence severity scale may obscure the importance of some variables at different stages of the sentencing process, confusing our understanding of judicial behavior.

The replication analysis shows the importance of studying jurisdictions individually. Although many of the Wheeler et al. results are supported, there are significant differences in the findings from the two studies. The differences may be due to variations in jurisdictional contexts and offender populations. Researchers who use data aggregated over several jurisdictions also should study each jurisdiction separately. This would permit them to determine whether there are variations among districts that are masked when data are aggregated. In this manner, the importance of jurisdictional context can be established and the nature of its influence understood.

The results of this study may have implications for the work of the U.S. Sentencing Commission. Much of the variation in sentence outcomes is accounted for by the seriousness of the offense and the blameworthiness of the offender. How serious a white-collar offense is perceived to be is determined by more than the statutory penalty associated with it. For example, judges sentence more harshly if an offense involves a large amount of money or is spread over a large geographical area. Similarly, how blameworthy an offender is perceived to be is determined by more than the statutory offense of which he or she is convicted. Judges consider the offender's role in and attitude toward the offense when deciding how much punishment the offender deserves. Sentencing reforms that ignore how judges evaluate offenses may not be well received by the judicial

community; implementation of reforms may be resisted if they lead to outcomes that vary substantially from judges' conceptions of what is just or appropriate punishment for individual offenders. Reforms in sentencing policy should take into account how judges evaluate offenders and offenses.

It should be anticipated that reforms will not be implemented uniformly. Different jurisdictions have different populations of offenders and offenses. An offense that is unusual, and hence stands out, in one jurisdiction may be routine in another. Similarly, the attitudes of judges may vary as a function of jurisdictional context. These factors certainly influence sentencing practices. New policies intended to reform federal sentencing through guidelines or other means should be evaluated as to their effects both on overall levels of punishment and uniformity among districts. The use of guidelines may change the typical sentence imposed throughout the federal system for a given crime, without affecting variations in sentences among jurisdictions.

## Notes

1. Some files were not available because the offenders had transferred out of the district. When an offender transfers to another federal district before completing his sentence, his Presentence Investigation Report is sent to the new district.
2. No offenders were convicted of antitrust or securities and exchange violations during the study period. Only one offender was convicted for bribery. This case was not included in the study.
3. A complete description of the data collection procedures and operational definitions for all variables can be found in Benson (1986). For an explanation of the theoretical rationale behind the model see Wheeler et al. (1982).

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