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United States v. Booker and Federal Sentencing Outcomes: General, Extra-Legal, and Contextual Policy Effects

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ABSTRACT

Judicial discretion plays an important role in the sentencing process. Unrestrained discretion has the potential to lead to unwarranted disparity in sentencing outcomes. In an effort to constrain some of that discretion, the Federal Sentence Guidelines were implemented in 1987 so that judges were to consider just an offender's criminal history and the severity of the offense when determining sentences. In the 2005 Supreme Court case *United States v. Booker*, these guidelines were ruled unconstitutional and in violation of the 6th Amendment. This dissertation examines sentencing outcomes in the wake of this landmark decision. Using data from the U.S. Sentencing Commission, this dissertation examines the ways that extra-legal characteristics (e.g., race/ethnicity, gender, and age) may influence sentencing outcomes net of legally-relevant characteristics (criminal history and offense severity) both before and after the *Booker* decision. Moreover, this dissertation also examines the extent to which social context (e.g., political climate, community characteristics, and administrative variables) may influence sentencing outcomes. Finally, it examines how both individual-level and aggregate-level characteristics may interact to influence sentencing outcomes. Results indicate that the majority of the "action" occurs at the individual level, however,

aggregate-level characteristics contextualize the individual-level in important ways. Implications are discussed.

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Chapter 1: INTRODUCTION

The focal concerns and causal attribution perspectives (Albonetti, 1991; Harris, 2007; Steffensmeier et al., 1993) suggest that judges sentence criminal offenders based on three criteria: blameworthiness, protection to the community, and practical constraints and consequences. Judges rarely, however, have complete information on these criteria, so instead they take steps to reduce uncertainty. They do this by using perceptual shorthands, which link these focal concerns to offender-level characteristics, such as race/ethnicity, gender, and age. These shorthands are often based on judges' own perceptions, stereotypes, and biases, but are also influenced by local context. Building on this perspective, Kramer & Ulmer (2009) later developed a more comprehensive theory of focal concerns that incorporates community context more explicitly. They argue that societal attitudes, along with local correctional policies and resources act as a filter for focal concerns and, in turn, influence sentencing outcomes. Sentencing research, then, needs to account for these aggregate-level considerations as well as individual-level characteristics to more fully explain variation in sentencing outcomes. They find support for key aspects of their model using state-level data from Pennsylvania. Here I explore the degree to which their theoretical perspective can also apply to the Federal system. I also extend their work by examining how intersectionality, policy, and community context influence Federal sentencing outcomes.

Kramer & Ulmer's model suggests that focal concerns should play a more significant role in sentencing systems where guidelines and other policies are less stringent. Thus, the *United States v. Booker* decision provides an optimal time frame around which to test this framework at the Federal level. The *Booker* decision essentially

ruled that the Federal guidelines were in violation of the 6th Amendment and must be considered advisory rather than mandatory. This decision provides the opportunity to examine sentencing disparity from both a contextual lens (e.g., extra-legal variables at both the individual and aggregate levels) but also across types of sentencing systems (e.g., mandatory guidelines vs. advisory guidelines).

Researchers generally approach judicial discretion from the focal concerns perspective (Steffensmeier et. al, 1993; 1998). The perspective suggests that when judges sentence offenders, they take three characteristics into account: blameworthiness, protection of the community, and practical constraints and consequences. Blameworthiness generally refers to the level of accountability or culpability attributed to the offender. Protection of the community relates to how likely the offender is to recidivate. Finally, practical constraints can capture a lot of things, from administrative variables such as caseloads and courtroom workgroup relationships, to concerns about prison space, the health of the offender, and family ties left behind. According to this perspective, judges consider these criteria and use them to guide sentencing decisions. Numerous scholars have used the focal concerns perspective to examine sentencing outcomes and disparities (Demuth & Steffensmeier, 2004; Steffensmeier & Demuth, 2006; Steffensmeier et al., 1993; Steffensmeier et al., 1998).

The focal concerns perspective is also linked to the uncertainty avoidance and causal attribution models (see Albonetti, 1991; Harris, 2007). Judges use status characteristics in conjunction with legal criteria, such as offense severity and criminal history. While judges try to use focal concerns to guide sentencing decisions, the information that they have is generally not complete enough to make accurate evaluations

of blameworthiness, community protection, and practical constraints. In order to reduce this uncertainty, judges rely on patterned responses, or perceptual shorthands (Albonetti, 1991; Steffensmeier et al., 1998), which relate to things that judges know about, such as characteristics of the offender, (e.g., race/ethnicity, gender, and age).

To the extent that judges rely on extra-legal characteristics (e.g., race/ethnicity, gender, and age) to reach sentencing decisions, the issues of fairness, uniformity, and consistency come into question. These concerns were among the reasons for the implementation of the Federal Guidelines in the first place (Tonry, 1996).

Though these perspectives present extra-legal considerations as though judges apply them in a straightforward way, each with its own independent contribution to the sentencing decision, in practice, judges' application of extra-legal variables is not likely straight-forward. A number of studies have suggested that extra-legal variables are not independent (Doerner & Demuth, 2010; Steffensmeier et al., 1993; 1998). That is, it is not enough to simply look at race/ethnicity, gender, and age in isolation. These characteristics do not act additively – they act multiplicatively (McCall, 2005). Put simply, the level of identifiable disparity in sentencing outcomes may vary across not just through race/ethnicity, gender, and age, but across the intersections of these characteristics. For example, disparity in sentencing may look different depending on whether researchers look at white women, black women, Hispanic women, young Hispanic men, older white women, and so on (also see Franklin, 2013a; Franklin, 2013b; Freiburger & Hilinski, 2013; Pasko, 2002). While there is no shortage of research on disparity in sentencing outcomes, the extent to which studies have examined the joint roles of extra-legal characteristics and policy is much narrower. I intended to fill this gap

by incorporating an intersectional perspective (e.g., race/ethnicity, gender, and age) in the context of varying sentencing systems (mandatory and advisory guidelines).

Individual-level characteristics, such as those described above, are unlikely to be the only extra-legal factors that influence judicial discretion. Social context may also influence judicial discretion. These social context variables often appear at the aggregate-level and they might include things that judges don't actively think about, but that still affect the decision making process (although, some of them might be a little more explicit), such as local political climate, community characteristics, or even administrative variables. All of these contextual factors are linked to the practical constraints and consequences that Steffensmeier et al. (1993; 1998) discuss. Civic participation, racial and ethnic composition, labor force participation, and caseloads might all influence the way that judges make decisions about sentencing.

Perhaps most importantly, it seems reasonable that the individual-level extra-legal factors discussed earlier, and the contextual variables described above may interact. More specifically, in certain contextual environments, individual-level variables such as race/ethnicity may play a greater role in sentencing outcomes than they would in other contextual situations. For example, political climates could potentially condition individual-level factors, making them more or less important to sentencing decisions (Jacobs & Jackson, 2010; Helms & Costanza, 2010; Helms & Jacobs, 2002). Still, it seems most likely that individual-level factors pack the most "punch", at least as far as extra-legal variables go (Ulmer & Johnson, 2004). After all, sentences are handed down to individuals, not communities, so characteristics of the individual should naturally take on more importance.

In their examination of Pennsylvania State Sentencing Guidelines, Kramer and Ulmer (2009) propose a theoretical model that integrates these individual-level factors (e.g., focal concerns) with larger scale phenomena to explain sentencing decisions. They argue that societal factors, such as the politics surrounding criminal justice, and societal-level stratification influence responses to crime at more localized levels, such as state and county-levels. This relationship likely manifests through attitudes toward crime control and/or due process, and how punitive society generally is. Specifically, one might expect that where social inequality is greatest, so too will responses to crime take a more punitive form. These attitudes are filtered by localized politics and correctional resources. While less relevant to Federal level sentencing, correctional politics (e.g., Guidelines) and resources (e.g., caseloads and prison space) are certainly impactful. When courts are over-burdened with cases, and prisons do not have enough space for new (or returning) prisoners, the courts need to find ways to address these problems, which may influence whether and how they use status characteristics to assess blameworthiness or danger. Thus, policies, attitudes, and resources combine to influence decision-making. For instance, where resources are constrained, plea negotiations may become particularly appealing to lawyers and judges. They can (but not always) result in more lenient sentences for offenders who participate in them. Under conditions where resources are limited, focal concerns, which often reflect individual-level factors, but sometimes administrative or contextual factors as well, can play an especially important role. Judges may take focal concerns into consideration to reach sentencing decisions, as this helps relieve some of the strain of resource shortfall by allowing judges to work

through caseloads more quickly. These focal concerns may influence plea negotiates, which is one way to do that.

To put it more succinctly, Kramer and Ulmer (2009) present six propositions in their analysis of the Pennsylvania State System. They suggest that, first, sentencing outcomes, which include both sentencing severity and use of guidelines (e.g., departures), are likely to vary across community context. Second, these decisions are framed by assessments of defenders' blameworthiness, community protection needs, and practical constraints and consequences (or, focal concerns). Third, these focal concerns are often influenced by policy structures and attitudes, stereotypes, and biases. Fourth, the influence of social status characteristics (e.g., race/ethnicity, gender, age) is conditional and varies across combinations of characteristics. Fifth, the interpretation of focal concerns is influenced by the combination of culture, politics, and resources. Finally, and perhaps most importantly, the less that guidelines (or other policy initiatives) restrict discretion, the more focal concerns and perceptual shorthands can influence sentencing outcomes, sometimes resulting in unwarranted disparity (Kramer & Ulmer, 2009: 5-11).

While this theoretical model was applied at the state-level, it does not seem implausible that it would also apply at the Federal-level. Federal-level sentencing is susceptible to judicial discretion in the same way that state-level sentencing is. While the shape and nature of focal concerns may differ between the Federal- and state-levels, they most likely affect sentencing outcomes at each level, and they are influenced by some of the same (or at least similar) structural and contextual factors.

A final issue, and one that Kramer and Ulmer (2009) integrate into their theoretical model, is policy. Policy can take many forms, including but not limited to

Sentencing Guidelines systems. Many of the states, including Pennsylvania, as well as the Federal System were governed by such a Guidelines system for a number of years.

Prior to the 1980s, Federal judges responsible for sentencing criminal offenders had relatively unrestricted discretion available to them. They could freely decide not only whether offenders should be incarcerated, but also for how long they should be incarcerated. This represented an indeterminate sentencing system. In the 1980s, conservatives and liberals alike criticized the large amount of discretion available to judges, and in 1984, the Sentencing Reform Act was passed, placing constraints on judicial discretion. In 1987, Congress implemented the Federal Sentencing Guidelines, which altered sentencing so that judges were to account for only an offender's criminal history and the severity of the offense to determine a narrow range within which the offender could be sentenced. This shift represented the introduction of a determinate sentencing system at the Federal level.

In the 2005 *United States v. Booker* case, the Supreme Court ruled these Federal Guidelines unconstitutional, in violation of the 6th Amendment. This ruling, in effect, made the Federal Guidelines advisory rather than mandatory, potentially signaling a shift back toward indeterminate sentencing. I see this decision as a research opportunity to examine judicial discretion, and more importantly, the effect of policy and practice on sentencing outcomes. Moreover, *Booker* provides an opportunity to compare the influences of extra-legal variables on sentencing outcomes, before and after the decision. In some ways, *Booker* provides an opportunity for a "natural experiment" (Hofer, 2007).

The *Booker* decision introduced a number of empirical questions related to sentencing structures and outcomes. Key among them is the question of the effect

Booker would have on final sentencing outcomes. The Guidelines led to longer, more severe sentences (Tonry, 1996). Would *Booker* result in shorter, more lenient sentences, would it lead to even harsher sentences than under the determinate Guidelines system, or would it have no effect at all? Following *Booker* judges still had to calculate the sentence that the Guidelines would suggest, but they had more freedom to depart from those guidelines; however, if they did, the sentence would be subject to appellate review. Under post-*Booker* sentencing policies, it is possible for judges to consider a broad range of mitigating and aggravating circumstances and to sentence more leniently or harshly than the Guidelines advise. However, judges might try to avoid appellate review by continuing to sentence within the Guidelines, thereby rendering the changes brought on by *Booker* inconsequential.

Since *Booker*, a number of empirical studies have examined changes in Federal Sentencing outcomes (Hofer, 2007; Ulmer et al., 2011a; Ulmer et al., 2011b). Generally, these studies have focused on rather broad trends. For example, how much has the rate of departing from the guidelines changed post-*Booker* (Hofer, 2007)? Have there been changes to inter-district variation in sentencing practices post-*Booker* (Ulmer et al., 2011a)? Have levels of racial disparity in sentencing outcomes changed since the decision (Ulmer et al., 2011b)? Little is known about the more nuanced effects of extra-legal characteristics in the post-*Booker* era. For example, how do extra-legal characteristics such as race/ethnicity, gender, and age interact to influence sentencing outcomes before and after *Booker*? What role does social context (e.g., aggregate-level racial/ethnicity composition, levels of social disadvantage, and other practical constraints

and consequences such as administrative characteristics like caseload) play in sentencing outcomes, and how has it changed since the *Booker* decision?

These questions suggest that it may be insufficient to simply evaluate the effects of *Booker* in a general sense, since the effects may be indirect or conditional. For instance, *Booker* may have affected judicial decision making differently for offenders of different racial and ethnic groups. This is because with more discretion, judges have more flexibility to consider extra-legal factors such as blameworthiness, protection of the community, and practical constraints, which are often inferred through perceptual short-hands (see Steffensmeier, 1993; 1998). Thus, it is important to evaluate the impact of *Booker* across different groups of offenders. Not only are race and ethnicity important contingencies to examine, but so are gender and age since these also introduce a range of extra-legal considerations. For instance, did *Booker* have a differential effect across male and female offenders, or were the effects consistent? This is also not clear simply by looking at *Booker* in a strictly general sense.

Yet another line of empirical questioning centers around issues of social context. In the post-*Booker* era, would social context, such as political climate, levels of socio-economic disadvantage, and administrative and organizational-level factors influence sentencing outcomes more than they did in the pre-*Booker* period? It seems likely that once the constraints on judicial discretion were removed, or at the very least changed, that judges would begin taking mitigating factors into account that they could not in the past. Perhaps most importantly, would the extra-legal variables discussed above, which tap into Steffensmeier et al.'s (1993; 1998) focal concerns, interact with some of the contextual variables described above? Under such conditions, the influence of

race/ethnicity, gender, and age could vary depending on the nature of social context (e.g., political climate, racial/ethnicity composition, and so on). Thus, *Booker* provides an opportunity to examine a plethora of questions that have not been investigated in ways that have not been possible in the past.

Clearly, the *Booker* decision has left sentencing researchers with many unanswered questions, some general, and some nuanced. In this dissertation, I aim to shed light on some of these unanswered questions. In a broad sense, my research is guided by the following research question: What impact, if any, did the *Booker* decision have on Federal sentencing outcomes? One the one hand, perhaps judges used their expanded discretion to sentence offenders more punitively. On the other hand, judges may have used their discretion to account for circumstances surrounding offenses, sentencing more leniently, and focusing more on rehabilitation than retribution, incapacitation, and deterrence.

Importantly, I also intend to address the more nuanced questions. Did the *Booker* effect differ depending on the racial and ethnic backgrounds of offenders? Did its effect vary across gender? Did it vary across age? Did it vary across social context? These are all relatively unexplored questions that I intend to tackle in this research. Broadly, I argue that following *Booker,* judges had more discretion at their disposal, allowing them more flexibility to individualize sentences. That is, they were better able to take practical constraints, such as family circumstances under consideration and to mete out the appropriate sentences. In some cases, this might lead to harsher sentencing and in others to more lenient sentencing than would have been the case under mandatory guidelines. Moreover, how Booker affected sentencing outcomes likely varies across some of the

contingencies discussed above. Specifically, by examining these contingencies closely, researchers and policymakers both can understand the specific impact that policy decisions have on sentencing outcomes, which has consequences for uniformity and consistency in sentencing.

My research contributes to the literature on sentencing decisions and *Booker* in three key ways. First, I examine the non-independence of extra-legal variables, such as race/ethnicity, gender, and age. By modeling each of these characteristics as independent, research is likely to present an incomplete understanding of the way that these factors operate in practice. By looking closely at the intersections of these variables, this research can test for variation across groups that are masked in research that focuses solely on main effects. While previous research has examined these intersections (see Doerner & Demuth, 2004; Steffensmeier et al., 1993; 1998), my research will also integrate the role of policy, and examine how the influence of these extra-legal characteristics change across time period. This potential variation across time and sentencing structure will link back to the focal concerns and uncertainty avoidance perspectives. Most likely, judges will have more flexibility to use perceptual shorthands to reduce uncertainty when they have more discretion at their disposal, which is likely characteristic of the post-*Booker* era.

Second, this research examines the role of social context on sentencing outcomes, again through the focal concerns and uncertainty avoidance perspectives. Using Kramer and Ulmer's (2009) theoretical framework from the Pennsylvania State Sentencing Guidelines system as a roadmap, I examine how aggregate-level social variables penetrate the judicial decision-making nexus. While Kramer and Ulmer examined the

role of social variables at the county-level, I do so at the Federal district-level, which introduces both challenges and opportunities. In doing so, I examine how aggregate-level factors, such as political climate, racial composition, disadvantage, and administrative courtroom variables influence judicial decision-making through focal concerns. In this way, I assess whether and how the use of perceptual shorthands to reduce uncertainty varies across social context. The notion that social context can affect individual-level decisions is an important one, which research examining Federal sentencing outcomes has not fully addressed.

Finally, this research speaks to the often neglected role of policy and practice in the use of both individual-level extra-legal characteristics and social context in reaching sentencing decisions. Policy can often act as a filter for discretion in the criminal justice system, often displacing it from one actor to another (Engen et al., 2003). Thus, the changing nature of policy can have important implications for the use of discretion in sentencing. In this case, the Federal Sentencing Guidelines were designed to constrain judicial discretion. In the post-*Booker* era, where the Guidelines were made advisory rather than mandatory, discretion is likely to take a different form. The stringency of policy is something linked directly to discretion. In the world of advisory sentencing guidelines, judges most likely have the freedom to integrate more focal concerns and techniques for uncertainty avoidance into their decisions. However whether they actually do so is an empirical question that I address in this dissertation.

This question is important because it highlights the role of discretion in the criminal justice system (CJS). While the CJS holds an aura of legitimacy and objectivity, there is no question that discretion guides a variety of justice decisions. It is important to

know how that discretion works, what the consequences of that discretion are, and if needed, the most appropriate ways to alter the amount and shape of discretion available to decision makers. Moreover, one of the biggest concerns in the CJS is the amount of racial disparity in it – after all, one of the goals of the Sentencing Reform Act was to reduce the amount of disparity in the CJS, while simultaneously increasing the levels of consistency, uniformity, and predictability in sentencing outcomes. The present research is less interested in uniformity across sentencing districts (see Ulmer et al., 2011a; 2011b for more on this). Instead the focus is explicitly on the role of extra-legal variables and how both social context and policy can influence sentencing.

To reiterate, the central argument in this dissertation is that judges have more flexibility to integrate perceptual shorthands and causal attributions into decision-making when sentencing policies afford them more discretion. Specifically, in a system with advisory guidelines, judges will have greater ability to use shorthands that attempt to reduce levels of uncertainty about offenders' blameworthiness, likelihood of recidivism, and practical constraints and consequences. To more fully understand the nature of these perceptual shorthands, I also investigate the conditional nature of extra-legal characteristics, testing their interactive effects to illuminate how intersectionality frames sentencing decisions. Additionally, I examine the role that aggregate-level social variables play on these decisions through focal concerns and uncertainty avoidance, suggesting that social context has more room to creep into sentencing-decisions in a system less constrained by policy (e.g., *Booker*). Perhaps most importantly, I examine the possibility of an effect where social context conditions the influence of extra-legal demographic variables, such that individual characteristics will play a greater or lesser

role on sentencing outcomes depending on social environments. Put simply, in the post-*Booker* era, I expect to find greater use of judicial discretion to reduce uncertainty in sentencing through the use of perceptual shorthands. Most likely, this results in certain groups receiving sentences more punitive than others, particularly in the post-*Booker* era.

In the following chapters, I engage in a deep analysis of the history and consequences of both the United States Federal Sentencing Guidelines and the *United States v. Booker* (2005) decision on sentencing outcomes, focal concerns, and uncertainty avoidance. In the next chapter I present a review of the literature on both the theoretical perspectives, and the emergence and decline of the Federal Guidelines as well as how extra-legal variables (both individual and social textual) affect sentencing outcomes. I then present the data I use to test my arguments regarding judicial discretion, policy, and sentencing outcomes by examining first the role of discretion and policy with respect to the intersectional nature of extra-legal variables, followed by an analysis of the role of social context on sentencing outcomes, and a final analysis where I examine the interactions between the two. I then conclude this dissertation with a discussion about the role of discretion and policy in sentencing, how those conclusions speak to focal concerns, uncertainty avoidance, and sentencing more generally, and explore avenues for future research.

By drawing attention to potential disparities in sentencing outcomes, the current research may provide applications for adjusting policy to address those disparities. Moreover, it is likely that the degree to which society favors crime control over due process often manifests itself in correctional decisions, such as sentencing outcomes. If the fairness and equity of those decisions is called into question, then the aura of

legitimacy held by the criminal justice system may be jeopardized. In this way, the current research also speaks to the role of discretion in the criminal justice system, and whether and under what conditions it should be expanded, reduced, or redistributed.

Chapter 2: SENTENCING DISPARITY

Judicial Discretion and Determinate Sentencing

Criminal sentencing is an integral part of the criminal justice system process. Crimes need to carry appropriate punishments, but it is not always clear what those punishments should be, or the factors that should shape punishment decisions. Should punishments be based on solely legally-relevant variables, such as the offender's criminal history, and the offense that was committed? Or, should judges also account for the various circumstances surrounding an offense? There is much debate around this issue, and much of it centers on a single concept – judicial discretion, which refers to the amount of decision-making flexibility available to judges in the sentencing stage.

When judges have more discretion at their disposal, they are able to consider a multitude of factors, including legally-relevant criteria such as prior history of offending and the gravity of the offense, but also other extra-legal factors, such as the offender's education level, employment status, family ties, income, citizenship status, race, ethnicity, and gender. This level of discretion is generally linked to indeterminate sentencing systems, where judges are relatively free to prescribe terms of sentences, but parole boards ultimately decide when offenders can be released back into society.

In many contemporary sentencing systems, judicial discretion may be constrained. In such systems, judges are not free to consider these extra-legal variables. Instead, their focus is limited to very specific criteria, generally limited to offense severity and criminal history. These types of constraints on discretion are linked to determinate sentencing systems, where criminal sentences are determined by sentencing rules and policies rather than the decision-making discretion of individual judges. The purpose of determinate sentencing is to foster uniformity and consistency in sentencing.

Some argue, however, that this uniformity may compromise fairness and appropriate sanctioning (Tonry, 1996).

Judges are not the only courtroom actors who use discretion in the sentencing process. In some ways, prosecutorial discretion can be important as well. Prosecutors make the final decision regarding criminal charges and related mitigators or aggravators to the sentence. In a system where judges hold wide discretion (e.g., indeterminate sentencing), prosecutorial discretion has a more limited influence on sentencing outcomes. However, when judicial discretion is constrained, the impact of prosecutorial decisions is magnified because judges have less room to mitigate the decisions made by prosecutors (Bay, 2006). Thus, there is a finite degree of discretion in any sentencing system such that when judges lose discretion, it does not simply disappear, but instead shifts to prosecutors. If judicial discretion is expanded, then prosecutorial decisions do not wield the same strength, and in some ways, they lose discretion. This is called the hydraulic effect (see Engen et al., 2003).

Through the majority of the 20th century, federal judges operated under an indeterminate sentencing system. In this system, characterized by judicial discretion, judges were able to individualize sentencing to the characteristics of both the offense and the offenders. As the 1970s and 1980s approached, the indeterminate system came under fire on the grounds that the system was both too lenient (levied by conservatives) and the liberal critique that it was unfair to racial minorities (see Garland, 2001; Pratt, 2008; Tonry, 1996). These objections led to sentencing reform that coincided with the crime control movement of the early 1980s. All of this ultimately resulted in the Sentencing Reform Act of 1984, which attempted to introduce consistency, uniformity, and

appropriate severity to federal sentencing with the Federal Sentencing Guidelines. The Guidelines were a way to constrain judicial discretion by limiting judicial decision making to two factors – offense severity and criminal history. By constraining judicial power, discretion was shifted from judges to prosecutors, illustrating the hydraulic effect (Engen et al., 2003).

At the federal level, sentencing decisions followed the Federal Sentencing Guidelines through the 1990s and into the year 2000. By this time, however, the Guidelines system became the target of several challenges. In the year 2005, the *United States v. Booker* decision shifted the Guidelines from mandatory to advisory, after the Supreme Court ruled them in violation of the 6th Amendment (see Hofer, 2007; Kramer, 2009). This represents a substantial change, with significant implications for federal sentencing practices. The decision had the potential to shift discretion away from prosecutors and back to judges, and ultimately began a shift back toward indeterminate sentencing (Chiu, 2005). Under the post-*Booker* system, judges were to use the guidelines as a starting point from which they could then individualize sentencing, and in some cases, use extra-legal characteristics to guide their sentencing decisions.

The Development of Federal Sentencing Guidelines

The U.S. Federal Sentencing Guidelines were the result of a movement to reform sentencing practices in the United States during the 1970s and 1980s. For the majority of the 20th century, judges embraced a rehabilitative model of sentencing (see Garland, 2001; Pratt, 2008). According to this model, criminal offenders were in need of treatment, and punishment should serve as an intervention, with rehabilitation as the primary goal. Judges held tremendous discretion to craft a sentence that would best

fulfill the rehabilitative goals of the criminal justice system. This reflected an indeterminate sentencing system, because judges would use their discretion to inform the defendant of his/her maximum sentence, and the parole board would ultimately decide when the offender would be released. This model came under fire during the late 1960s, early 1970s, and especially the 1980s. By this time, both liberals and conservatives had lost faith in the indeterminate model. Conservatives argued that rehabilitation was ineffective, and that punishments needed to be more severe. Liberals, on the other hand, were fearful that the wide discretion afforded to judges resulted in disparate sentences, particularly on racial and ethnic grounds. Thus, both groups called for more uniformity and consistency to sentencing, while conservatives called for more severity.

The solution came in the form of the Sentencing Reform Act (1984) and the Federal Sentencing Guidelines, which took effect in 1987. These Guidelines were designed to constrain judicial discretion. The Guidelines instructed judges to sentence within a narrow range based on two factors: 1) the severity of offense and 2) the offender's criminal history. These two considerations would lead judges to a grid, and judges could sentence within the range that corresponds with a particular cell on the grid. Judges were not able to depart from those ranges except in rare circumstances, which were subject to appellate review. Moreover, because sentencing was based on relevant conduct[1] rather than offense-of-conviction, judges were instructed to engage in fact-finding exercises. If judges found that a preponderance of evidence suggested that offenders committed crimes that were uncharged by prosecutors, they were to sentence these offenders more severely. This was likely done to avoid charge bargaining and other

[1] Relevant conduct refers to what a judge determines actually happened, rather than what offense the defendant is charged with.

mechanisms for circumventing the Guidelines (see Tonry, 1996). For example, if a judge found that a defendant used a firearm in the commission of a crime, the judge was to raise that defendant's offense score. It is noteworthy that these adjustments were based on a preponderance of evidence standard (e.g., more likely that it happened than it did not), rather than the beyond a reasonable doubt standard that jury trials were subject to. While the Guidelines effectively constrained judicial discretion, and shifted a lot of it from judges to prosecutors, judges still held some discretion. The Guidelines represented a new era in sentencing, and it appeared that they were here to stay.

This process spelled out in the Guidelines, however, raised some questions. Most notably, should judges be able to take findings, other than those proved to a jury beyond a reasonable doubt, or those admitted by a defendant, and apply them in the sentencing stage? Previous cases have shown that there is a precedent for doing just that. In the rehabilitative era, judges were responsible for crafting a sentence appropriate to the goal of rehabilitating offenders. In doing so they often used information from outside of trial, such as pre-sentence reports, or other facts gleaned from a preponderance of evidence standard, to inform sentencing. This raised some challenges because according to the 6th Amendment, defendants had a constitutional right to trial by jury. In order to be convicted and punished for a crime, the facts must be presented to the jury, and the defendant must be found guilty beyond a reasonable doubt. However, during sentencing, judges used facts not vetted in trial. This issue was first addressed in *Williams v. New York* (1949), where the Supreme Court found that judges could indeed use extra-courtroom information to influence sentencing. The issue was re-visited over 25 years later when, in *McMillan v. Pennsylvania* (1986), a Pennsylvania judge used the

preponderance of evidence standard to apply a mandatory minimum firearm statute, which increased the defendant's sentence beyond the statutory maximum. The court upheld the decision, which in some ways set the stage for the relevant conduct provision in the Federal Guidelines (Berman, 2005).

The Guidelines system held steady throughout the 1990s, but came under fire by the year 2000. The first major challenge came in *Apprendi v. New Jersey* (2000). In this case, a sentencing judge applied a hate crime enhancement in order to increase an offender's sentence beyond the statutory Guidelines maximum – something that had been done consistently since the Guidelines were implemented in 1987. Enhancements generally add a level or two to the offender's offense score. This enhancement, per the Guidelines, was made based on a preponderance of evidence standard. The sentence was appealed, and ruled unconstitutional and in violation of the Due Process Clause in the 14th Amendment, which the court interpreted as prohibiting the increase of a sentence beyond the statutory maximum based on factual determination by a judge rather than a jury. Thus, according to the Constitution, in order to apply the enhancement, the facts must be found by a jury according to the beyond a reasonable doubt standard, not by a judge according to more relaxed preponderance of evidence standard. Despite this decision, the Guidelines still seemed to be in good standing, because *Apprendi* applied only to the sentencing system in New Jersey, not the Federal system (Frase, 2007).

The Guidelines received a sterner challenge four years later in *Washington v. Blakely* (2004). This case involved the Washington State Sentencing Guidelines, which operated in almost the exact same way as the Federal Guidelines. In this case, a sentencing judge enhanced a sentence because he found, based on preponderance of

evidence, that the defendant acted with "deliberate cruelty." The sentence was appealed and found unconstitutional, this time in violation of the 6th Amendment, which refers to the defendant's constitutional right to have a jury determine, beyond a reasonable doubt, all facts legally relevant to a sentence. The court ruled that sentences could not increase beyond the statutory maximum other than by the standard spelled out in the 6th Amendment. This decision was a much larger threat to the Federal Guidelines than *Apprendi* and potentially threatened the entire system, because while it still applied to a state-level system, the Washington State Guidelines were almost functionally indistinguishable from the Federal Guidelines.

If *Apprendi* had a small impact on the Guidelines, and *Blakely* had a larger one, the biggest challenge of all was still to come. Shortly after *Blakely*, *United States v. Booker* (2005) applied the *Blakely* ruling to the Federal Guidelines. In *Booker*, the Federal Guidelines were ruled unconstitutional, in violation of the 6th Amendment. This ruling resulted in a massive change to the structure of the Guidelines. Until this time, the Guidelines were mandatory, but in order to meet the requirements in the 6th Amendment, the Guidelines became advisory. Judges were still required to consider (e.g. calculate) the Guidelines, but they could then depart from them, with a justification. These departures were then subject to appellate review under a reasonableness standard. The question became – what is reasonable?

This question was addressed in three cases in 2007: *United States v. Rita*, *United States v. Gall*, and *United States v. Kimbrough*. *Rita* was the first test of the *Booker* remedy of making the Guidelines advisory and out-of-range departures subject to a reasonableness standard review. *Rita* clarified this standard by finding that sentences

within the Guidelines range should be considered reasonable. Essentially, the Guidelines range represented the default range for what is reasonable. This decision may have created a "gravitational pull" of sorts (Dillon, 2008) toward within-range sentences. Departures must be justified as exceptional cases featuring exceptional circumstances. To this point, there was no real sense of what those exceptional circumstances might be, or if out-of-range sentencing is ever appropriate. If *Booker* made the Guidelines advisory, but appellate review kept most, if not all, sentences in the Guidelines range, then it might be best to think of the Guidelines as technically advisory, but effectively mandatory. This is because in practice, it was still rare to see sentences outside of the Guidelines range.

Another 2007 case, *United States v. Gall,* gave more insight on what is reasonable and what is not. While *Rita* showed that within-range sentences are necessarily reasonable, *Gall* declared that out-of-range sentences are not necessarily unreasonable. That is, sentences outside of the Guidelines range are permissible in the post-*Booker* era. In *United States v. Kimbrough,* the Supreme Court found, once again, that judges could sentence outside of the Guidelines range and that those sentences could be deemed reasonable. Thus, these follow-ups to *Booker* show that while the within-range sentences are reasonable, out-of-range sentences can be reasonable too. Still, the criteria and conditions under which this is appropriate remain relatively unclear.

Booker & Sentencing Outcomes

The empirical research on *United States v. Booker* is fairly limited; however, it does address a number of key questions that demand further attention in the literature. Three studies in particular, Hofer (2007); Ulmer et al. (2011a); Ulmer et al. (2011b),

provide an entry into some of these empirical issues. Specifically, these studies, as well as the United States Sentencing Commission Report (2006), touch on the general impact of *Booker*, the influence of race/ethnicity on sentencing outcomes before and after *Booker*, the impact of *Booker* relative to other policy shifts over time, and the role of social context factors on sentencing outcomes before and after *Booker*. These issues are important because sentencing policy assumes that outcomes are based on legally relevant variables, such as the offense that was committed, and the record of the offender. In reality, other factors often come into play, not limited to those mentioned above. Thus, together, both legally relevant and extra-legal variables influence sentencing outcomes, so it is important that the literature focus on both types.

Each of these studies use data compiled by the United States Sentencing Commission (USSC). This is a rich data source, constructed annually, which contains a large pool of information on offenders sentenced to Federal offenses. The data contain not only information on legally relevant variables, such as whether the offender received a custodial sanction, the length of a potential sentence, the type of crime, and the number of charges filed against the offender, but they also contain information on extra-legal variables, such as race/ethnicity, gender, age, educational, citizenship status, and so on.

One of the key findings from the Sentencing Commission Report (2006) is that in the first couple of years following the *Booker* decision, the majority of federal cases still conformed to sentencing guidelines. That is, even though the mandatory guidelines were made advisory, judges still conformed to them more often than not. Specifically, the conformance rate was 85.9% (USSC, 2006: 192). This suggests that following the decision, the majority of cases were not sentenced outside of the Guidelines' advised

ranges, so if more discretion was available to judges, they weren't always using it. Other studies also produce interesting findings. For example, in terms of sentence length, beginning as early as 1991, Hofer (2007) finds a gradual rise in sentence severity over time, but a sudden decrease prior to *Booker* (most likely, resulting from the *Blakely* decision). Likewise, Ulmer et al. (2011a) also find a gradual rise in sentence length since the PROTECT Act was instituted in 2002. The PROTECT Act was implemented as way to reign in the use of downward departures, which resulted in, on average, more lenient sentences (see Friddle & Sands, 2004). After the *Booker* decision, however, those levels of severity returned to pre-*Blakely* levels. This suggests that both judges and prosecutors adapted to policy shifts: judges by potentially applying discretion more actively, and prosecutors by altering charging practices. Moreover, Ulmer et al. (2011a) find that even post-*Booker*, non-whites, males, and non-citizens are the most likely to be incarcerated. They also find that the magnitude of the effect of an offender's prior criminal record on sentencing outcomes declined after *Booker*. This is consistent with expectations, as one of the primary reasons that federal judges gave for distaste with the federal guidelines was mandatory over-reliance on criminal history (see Hofer, 2007). Thus, after *Booker,* criminal history was not as predictive of sentence severity, but it was still an important factor. Finally, Ulmer et al. (2011b) suggest that, in practice, criminal history actually counts against offenders twice – once as part of the presumptive sentence recommendation embedded in the Guidelines, and a second time by influencing judge's sentencing decisions with the guideline boundaries. If *Booker* made judges less reliant on the guidelines (see Hofer, 2007), then the decision would prevent this sort of double counting.

The Ulmer et al. (2011b) paper focuses explicitly on racial disparity with respect to the *Booker* decision. This is salient because one of the original purposes of the Federal Guidelines was to reduce unwarranted disparity in sentencing outcomes. Researchers have suggested that the opposite may have happened (see Tonry, 1996, for example). If *Booker* essentially reversed the Guidelines, then it is important to examine whether a shift toward more discretionary sentencing, at least on the judicial side, has been able to reduce such disparity. Ulmer et al. (2011a) do not find evidence of this. Their results suggest that race/ethnicity exerts influence over sentence length across time period, such that non-whites are subject to more severe sanctions both before and after *Booker*. However, their findings also suggest that with respect to custodial (incarceration) sanctions, much less disparity is evident. Moreover, they find no change in racial disparity in sentencing outcomes following the *Booker* or *Gall* decisions. Finally, they argue that racial disparity is linked to criminal history, and such disparity is reduced substantially when robust measures of criminal history are included in statistical models. In short, their results suggest that judicial discretion has a limited influence on sentencing outcomes and is particularly relevant with respect to non-custodial sanctions. They do not find evidence to support the hypothesis that shifts in discretion (through *Booker* and *Gall*) affect racial disparity in sentencing outcomes.

Aside from *Booker*, there are a variety of policy shifts since the implementation of the Federal Guidelines, which have led to changes in sentencing outcomes. Such shifts include not only Federal policy such as the PROTECT Act, *Booker* itself, and the *Gall* decision, but also state-level decisions that had an influence on Federal sentencing, such

as *Blakely*. In general, these other cases represent "fine-tuning", while the *Booker* decision had an abrupt, definitive effect on sentencing policy.

Some empirical research on the *Booker* decision (e.g., Ulmer et al., 2011a; Ulmer et al., 2011b) consider these policy shifts by partitioning the data into four time periods – 1) the period before the PROTECT Act was passed; 2) the time period after the PROTECT Act, but before *Booker;* 3) the period after *Booker,* but before *Gall,* and 4) the post-*Gall* period. This allows researchers to make comparisons across time period, without having these policy shifts confound the results. These studies tend to find general increases in sentence length over time (Hofer, 2007; Ulmer et al., 2011a; Ulmer et al., 2011b). However, the data do not clearly link these shifts to policy changes. Rather, it seems that sentencing may simply follow a trend toward more punitive sanctions over time with policy shifts, at best, slightly mitigating the rise in severity. The PROTECT Act essentially made non-government sponsored downward departures more difficult to come by, which can account for the longer mean sentence length (Friddle & Sands, 2004). Research indicates that most places show an extremely high compliance rate with the guidelines, even post-*Booker* and post-*Gall,* which helps explain those trends (Ulmer et al., 2011a; Ulmer et al., 2011b).

Finally, it is important to consider the role that social context plays in sentencing outcomes. Sentencing decisions are not made in isolation. Instead, they are the product of courtrooms as communities (see Johnson et al., 2008). Thus, it is crucial to account for aggregate-level characteristics to completely understand these individual-level sentencing outcomes. As such, Ulmer et al. (2011a) examine not only variation across time, but also across district. They find evidence of similarity, rather than difference,

across district following *Booker*. That is, sentencing practices across place do not seem any more divergent after *Booker* than they were before. Thus, expanding judicial discretion did not make sentencing outcomes appear any more or less uniform or consistent. This is likely due to the "gravitational pull" toward the Guideline sentences that occurs even post-*Booker*. Moreover, they find that districts with higher mean offense levels and higher judicial caseloads also tend to have higher rates of incarceration both before and after *Booker*. Notably, Ulmer et al. do not control for district characteristics, using district as a proxy for a range of characteristics that likely vary across district. Perhaps what is missing from these analyses is a consideration of more specific community characteristics such as community demographics (e.g. racial composition, aggregate income levels, and so on), which could speak to the ways that specific community characteristics influence sentencing outcomes, at both the individual and aggregate-levels. If more discretion truly is available to judges post-*Booker*, then these aggregate-level characteristics may exert an important influence on judicial sentencing decisions.

In sum, the limited research on the *Booker* decision has covered a lot of ground. These studies have produced insight with respect to general effects, race/ethnicity effects, the impact of policy shifts over time, and social context. As a whole, this body of work suggests that *Booker* has had limited impact on sentencing outcomes. However, despite the richness of the USSC data, it has some limitations. For example, data on offender's income is not very reliable. Moreover, the data covers a limited time frame (1987-Present). Still, the data are the richest source of federal sentencing information and the studies to date have not completely exhausted their analytic utility. It is possible that

despite a lack of evidence of a *Booker* effect in broad analyses, disaggregated analyses might show that *Booker* has some specific effects. To reiterate, *Booker* is the most important case to examine with respect to Federal Sentencing Guidelines. It was in the aftermath of *Booker* that the Guidelines were changed from mandatory to advisory, so this case represents the most logical starting point.

Focal Concerns

The focal concerns perspective (Steffensmeier et al., 1993; 1998) suggests that during sentencing, judges take three factors into consideration: the offender's blameworthiness, the offender's danger to the community, and finally practical constraints and consequences.

Blameworthiness refers to the offender's level of culpability and accountability. The more blameworthy the offender, the more deserving he/she is of punishment. An offender's blameworthiness is often linked to legally-relevant variables, such as the gravity of the offense and the offender's prior criminal history. The offender's perceived role in the offense, as well as mitigating factors, such as prior victimization could also influence the level of blameworthiness attributed to an offender.

The next focal concern, community protection, focuses on making predictions about future levels of offending. The more likely the offender is to recidivate, the more they are seen as a danger to the community. Assessments of danger to the community can include legally relevant factors, such as offense severity, criminal history, and indicators of the nature of the offense such as whether a weapon was used. On the other hand, these assessments can also include potentially mitigating or aggravating extra-legal

factors, such as substance abuse, education, employment, family history, and so on. The more likely an offender is to recidivate, the more likely judges are to sentence punitively.

A final focal concern is practical constraints and consequences. These can include a variety of things, such as characteristics of the offender, or organization variables, in the interest of maintaining relationships among courtroom actors (e.g., judges, prosecutors, public defenders, and so on). Specifically, practical constraints could refer to things like caseloads, local correctional resources, or at the individual-level, the offender's health, family ties, or other needs.

While this perspective sounds parsimonious and straightforward, in practice, these processes can get complicated. While the perspective suggests that judges evaluate these three criteria and punish offenders based on those assessments, judges rarely have access to complete information regarding blameworthiness, community protection, and practical constraints. Thus, they develop "perceptual shorthands" (Steffensmeier et al., 1998) to reduce some of this uncertainty. Often, these shorthands are linked to extra-legal characteristics, such as race/ethnicity, gender, and age. It is not uncommon for judges to base such shorthands on stereotypes and perceptions in society.

In essence, judges use these shorthands as a means to reach the most appropriate sentencing decisions. They generally attempt to meet the goals of deterring future crime, protecting society, and rehabilitating offenders. The use of race/ethnicity, gender, and age as shorthands reflect previous experience interacting with offenders and situations. In short, the shorthands become "patterned responses" (see Albonetti, 1991) based on what they have seen in the past. Use of these shorthands also helps process cases

efficiently to keep the justice system moving. To the extent that these responses become solidified, they are more likely to be replicated.

The causal attribution (Fontaine & Emily, 1978; Sims, 2003) and uncertainty avoidance (Albonetti, 1991) perspectives fall along the same lines as focal concerns. Causal attributions speak to the issue of predicting offenders' likelihood of recidivating, where judges have limited information for making these predictions. According to the causal attribution perspective, when behaviors are attributed to internal rather than external forces, offenders are deemed both more blameworthy and likely to recidivate. In this way, judges use these evaluations to evaluate offenders and assign a corresponding punishment (e.g., sentence) to them. Similarly, the uncertainty avoidance perspective suggests that judges operate under bounded rationality (Alboneti, 1991), suggesting that judges do not have sufficient information regarding blameworthiness, danger, or practical constraints. In turn, judges often use extra-legal characteristics to decrease uncertainty and reach a sentencing decision. Clearly, the focal concerns, causal attribution, and uncertainty avoidance perspectives are closely linked and can help us understand sentencing decisions.

As such, a large body of research has used a combination of these perspectives to understand judicial discretion and sentencing decisions. While much of the research finds that offense severity and criminal history are the most salient predictors of sentencing outcomes, extra-legal characteristics (e.g., perceptual shorthands) also influence sentencing decisions net of the legally-relevant characteristics. Specifically, Steffensmeier & Demuth (2006) find that race/ethnicity and gender both exert effects on sentencing outcomes above and beyond legally relevant characteristics such that men and

non-whites receive less favorable sentencing outcomes than other groups (see also Demuth & Steffensmeier, 2004). Moreover, Steffensmeier & Demuth (2006) find that Hispanic offenders are sentenced more harshly in both drug and non-drug offenses and conclude that this is because they lack the resources (e.g., adequate representation) to resist those sanctions, and also that growing non-white populations can be interpreted as threatening (Blalock, 1967; Ulmer & Johnson, 2004) and thus deserving of more stringent social controls. Steffensmeier et al. (1998) find that demographic characteristics, such as race, gender, and age affect sentencing outcomes both independently and jointly.

The majority of the studies discussed above treat odds of incarceration and sentence length as dependent variables, but other studies conceptualize sentencing outcomes differently, such as Harris (2009) who investigates juvenile transfer. For example, guided by the causal attribution perspective, Harris (2009) finds that juveniles who showed more planning, sophistication, intent, and danger were most likely to be transferred from the juvenile to adult system. In this way, decision-makers construct a story about offenders based on observable characteristics, and use those stories to guide the decision-making process. Moreover, Huebner & Bynum (2006) use the focal concerns perspective to understand parole release decisions for sex offenders. They find that parole officers weigh community protection even more seriously than blameworthiness, and racial minorities take longer to receive parole, but the relationship dissolves when robust measures of parole readiness and community protection are taken into consideration. This may reflect the differential goals of punishment across sections of the criminal justice system. Johnson (2003) argues that mode of conviction (e.g., plea

negotiations vs. going to trial) helps better understand uses of judicial discretion. Specifically, the author found evidence of extra-legal factors playing a larger role in trials than plea negotiations, most likely because offenders are punished for using courtroom resources (e.g., a strike against them in terms of practical constraints and consequences). Moreover, Kramer & Ulmer (2002) examine how focal concerns influence downward departures. Again, criminal history and offense severity exert the strongest influences over departure decisions, however, pleading guilty, gender, race, and courtroom context (e.g., size of the surrounding area) can also play a role. Each of these studies illustrates a link between courtroom decision making and attempts to reduce uncertainty at the sentencing stage through causal attributions and perceptual shorthands. I will use the remainder of this chapter to discuss the implications for these extra-legal characteristics (e.g., focal concerns) and policy.

Race/Ethnicity & Federal Sentencing

One of the catalysts to the Federal Sentencing Guidelines, and even state-level guidelines that often preceded them, was the notion of rampant racial and ethnic disparity in sentencing outcomes. More specifically much of the over-representation of racial minorities in the criminal justice system could not be explained by legally relevant variables (e.g., criminal history and offense severity), and were thus attributed to systemic bias reflected in uneven sentencing across race and ethnicity. Thus, the Guidelines were put into place in an attempt to introduce uniformity and consistency into sentencing. The general sentiment at the time that the Guidelines were developed was that judicial discretion was out of control, and if it were reigned in, much, if not all, of the disparity could be eliminated. In hindsight, it is much more difficult to eliminate

disparity than was anticipated by those leading the call for the Guidelines. Research suggests that when judicial discretion is constrained, prosecutorial discretion is expanded (see Engen et al., 2003). That is, when the importance of judicial decisions is reduced, the importance of prosecutorial decisions (such as which crimes to charge an offender with, and which aggravators to seek) increases.[2]

Many of the empirical studies of sentencing outcomes show that racial disparity is prominent. For instance, compared to whites, blacks and Hispanics are much more likely to receive incarceration. Many studies have found that race and ethnicity are directly linked to the decision to incarcerate (Albonetti, 1997; Franklin, 2013a; Franklin 2013b; Spohn & Cederbloom, 1991; Spohn et al., 1981; Spohn & Holleran, 2000; Wu & D'Angelo, 2014). Not only are racial and ethnic minorities more likely to receive incarceration as a sanction, but their sentences are typically more severe (longer) than those given to whites (Britt, 2009; Bushway & Piehl, 2007; Doerner & Demuth, 2010; Everett & Wojtkiewicz, 2002; Johnson & Betsinger, 2009; Spohn & Beichner, 2000, Steffensmeier et al., 1993; Steffensmeier et al., 1998).

While many studies find a direct link between race/ethnicity and sentence length, others find an indirect link. Some variables that indirectly explain the link between race and ethnicity and sentencing include stratification resources, such as education, and income (Albonetti et al., 1989), socioeconomic status, community ties, prior criminal record, and pre-trial release decisions (Brennan, 2006; Demuth 2003; Lizotte, 1978), and finally, race and ethnicity may influence how offense seriousness scores are calculated (Kautt, 2009).

[2] While the hydraulic effect and prosecutorial discretion are important elements of Federal sentencing systems, I lack the data in this study to adequately measure these concepts.

Another way that race and ethnicity can affect sentencing length is through downward departures. Downward departures are situations where judges can move offenders to a lower, more lenient cell on the sentencing grid. Most downward departures are subject to appellate review, thus they are relatively infrequent, however one type of departure is generally permitted – substantial assistance departures. These departures are usually given when an offender provides information that leads to the conviction of another offender (see Tonry, 1996). It is important to note that these departures are typically prosecutor-initiated, rather than judge-initiated. As one might expect, downward departures are most frequently issued to white offenders (Albonetti, 2002; Engen et al., 2003; Hartley, 2008; Johnson, 2003; Mustard, 2001). Thus, downward departures can at least partially explain some of the racial and ethnic disparity in sentencing outcomes.

Following this literature, I expect racial/ethnic status to play a role in sentencing decisions. More specifically, judges who make decisions based on incomplete information are likely to use extra-legal variables, such as race/ethnicity as shorthands to assess blameworthiness and danger (Steffensmeier et al., 1993; Steffensmeier et al., 1998). In general, the literature suggests that minorities are viewed as more dangerous and more blameworthy than whites (Steffensmeier et al., 1998). With respect to sentencing, this means that as discretion increases, so too should racial disparity in sentencing. This leads me to my first hypothesis:

Hypothesis 1: Black and Hispanic offenders will receive more severe sentences than white offenders.

In short, the Federal Guidelines System has not done much to change the perception that racial disparity exists in the criminal justice system. If anything, racial and ethnic disparity may have actually increased under the Guidelines. This is, in part, because discretion – one of the sources of disparity in the criminal justice system – was not eliminated, but merely shifted within the system. Another reason that disparity was not reduced is because the Guidelines may have simply codified existing practices (see Bushway & Piehl, 2007). There was also discretion imbedded within the Guidelines, which is something that is often overlooked. As long as some sort of discretion is present in sentencing systems, it is unlikely that racial and ethnicity disparity will ever be completely eliminated.

Race/Ethnicity & Sentencing Policy

The literature on race/ethnicity and sentencing suggests that even in a determinate system where extra-legal variables are not supposed to influence final sentencing decisions, race/ethnicity is still strongly correlated with sentencing outcomes. By constraining judicial discretion, the Guidelines intended to remove subjective criteria from the sentencing process and thus eliminate racial disparity. Constraining judicial discretion is insufficient to realize this goal, however, because judges are not the only discretionary actors in a sentencing system. When discretion at the sentencing stage is limited, it is necessarily expanded in other stages. For example, in this scenario, prosecutorial discretion at the charging stage is expanded, because judges do not have as much flexibility to adapt to charging decisions. Even if it were possible to limit both judicial and prosecutorial discretion at once, there is some degree of discretion imbedded within the determinate guidelines themselves. Still, if judges use race and ethnicity as markers for danger and blameworthiness (Steffensmeier et al., 1993; Steffensmeier et al.,

1998), then one might expect even more disparate sentences when judicial discretion is expanded, as *Booker* may have done. Thus, in the context of the *Booker* decision, I propose the following hypothesis:

Hypothesis 2: Race/ethnicity effects will be stronger in cases following the *Booker* decision because judges will have more access to discretion during that time period.

Gender and Sentencing

Gender is perhaps an even more robust correlate of sentencing outcomes than race/ethnicity. However, while the majority of empirical studies find that female offenders are treated more leniently than their male counterparts, others find that the effect of gender is null. While gender is linked to judicial assessments of blameworthiness and practicality, Steffensmeier et al. (1993) find that when these are equal, male and female offenders are likely to receive similar sentences. Thus, the gender effect may actually be an indirect one. Steury & Frank (1990) find a bivariate relationship between gender and sentence severity; however, when other controls are introduced into their models, they find few differences. There is also the possibility that gender effects vary across stages of the criminal justice process, such that males and females may receive equal treatment at the earliest stages (e.g., pre-disposition), but more disparity is introduced as they go deeper into the process (McDonald & Chesney-Lind, 2001). However, Farnworth & Teske (1995) find differential discretion at early stages. Their results suggest that females without prior records are treated the most leniently, and this operates through charge reductions. In fact, female offenders received more charge reductions than male offenders under similar circumstances. Finally, even if male and female offenders receive equal treatment, females may actually be at a

disadvantage, because such an outcome would not account for mitigating factors that are disproportionately relevant to female offenders, such as family and community ties, including single-parenting situations.

In terms of types of sentences, the literature shows that male offenders are more likely to be sentenced to custodial sanctions than female offenders (Armstrong, 1999). Male offenders are more likely to receive recommendations for formal processing (Bishop & Frazier, 1992), but that may vary by crime type. For example, Spohn (1999) finds that females are less likely to receive incarceration as long as they were not convicted of a drug offense.

In terms of sentence length, the bulk of empirical research finds that female offenders generally receive more lenient prison sentences (Curran, 1983; Griffin & Wooldredge, 2006; Moulds, 1980). Especially for more serious offenses, males tend to receive harsher sentences (Armstrong, 1999). The chivalry effect may be tied to information regarding criminal history, practical constraints, and pre-sentence report recommendations (Jeffries et al., 2003). In particular, some studies find that female offenders with dependent children receive more lenient sanctions as a function of family ties. Males are also less likely to receive downward departures than are females, and when they do, those departures tend to be smaller. While drug offenses may amplify the odds that females receive custodial rather than non-custodial sanctions, both drug and property offenses may result in leniency for female offenders, while violent offenses will not (Rodriguez et al, 2006). Finally, other studies have found that the mitigating effects of familial ties are stronger for female than male offenders (Daly, 1987). In short, for a

variety of reasons, it seems clear that females are both less likely to receive custodial sanctions than male offenders, and are sentenced less severely when they do.

Some literature suggests that females are actually treated more harshly, because when they offend, they have not only committed a legal offense, but they have also violated social gender norms (see Belknap, 2007). In a general sense, there is not a great deal of support for this hypothesis; however, if one looks at all stages in the criminal justice system, some evidence of this emerges. In particular, female offenders seem to receive more severe sanctions than males at the Juvenile Justice level. Carr et al. (2008) argues that once girls are in the Juvenile Justice system, they are subject to over-control relative to boys, which increases official response to female deviant behavior. Once these girls are labeled as troublesome, they are subject to greater formal social control. Policy initiatives, such as the Juvenile Justice and Delinquency Prevention Act contributed to this notion of relabeling female status offenders as more deserving of social control. For example, Feld (2009) argues that in the past, behaviors that may have been charged as status offenses are now being charged as criminal offenses. Finally, Tracy et al. (2009) find that at the Juvenile Justice level, females receive harsher sanctions and are committed to facilities at younger ages than boys are.

There is also evidence of this trend for older female offenders, but such evidence is generally tied to violation of social norms. For example, Bickle & Peterson (1991) found that females who lived alone were more likely to receive incarceration as a sanction. In a sense, since these females were not subject to informal social controls, formal agencies felt the need to compensate with formal social controls. Moreover, females who show a prolonged pattern of offending may be treated more harshly than

female offenders who did not display such patterns (Ball & Bostaph, 2009). Other studies find that females with dependent children are more likely to receive incarceration than those without them (Spohn, 1999), and this is especially true under determinate sentencing models (Koons-Witt, 2002). Finally, Figueria-McDonough (1985) found that males are more likely to receive sentence reductions through plea negotiations than females. In sum, female offenders who are shown to lack informal social controls, or when those controls are not effective, are more likely to receive severe sanctions at the sentencing stage.

The literature discussed above shows that in the same way judges may use race/ethnicity as an indicator of focal concerns, they may also use gender. In general, male offenders are treated as more blameworthy and dangerous than female offenders. Thus:

Hypothesis 3: Male offenders will receive more severe sentences than female offenders.

Gender & Sentencing Policy

The review of the literature provided earlier discusses the influence of gender on sentencing outcomes. A somewhat different question may involve how the impact of sentencing policy may vary across gender. That is, when judicial discretion is constrained, and sentencing systems shift from indeterminate to determinate models, how are female offenders affected? This may be an issue that is not considered by sentencing commissions.

On the surface, it may seem like a non-issue. After all, the point of determinate sentencing is to establish a system of more uniform, consistent, and fair sentencing outcomes. The end result, however, may be one that disproportionately disadvantages females. In a determinate system, judges are not supposed to consider extra-legal

variables, such as gender, childcare responsibilities, and community ties. However, these considerations may prove crucial for a complete evaluation of the impact of sentencing reform. For example, Raeder (1993) argues that ignoring such mitigating factors fosters unfair treatment toward female offenders. She further argues that any determinate guidelines system should include provisions to allow departures for single parenting situations. To disallow judges from making such exceptions, in her view, is unfair. It also yields collateral consequences, which are absorbed by the offender's children, who in most cases did nothing wrong. In the absence of such allowances, unfairness has essentially been codified into sentencing systems (Bushway & Piehl, 2007). In a sense, the question that remains is whether discretionary sentencing affords unfair benefits to female offenders, or whether determinate systems treat female offenders unfairly by not making such considerations. It seems likely that when the constraints of determinate sentencing are lifted, for example, through a decision like *Booker*, that females may benefit more than males in terms of sentencing outcomes. Little, if any, literature to date has addressed this issue. Given the role of policy in the wake of the *Booker* decision, I expect the following:

Hypothesis 4: Females will be treated with even greater leniency following the *Booker* decision because judges will have more flexibility to treat gender as a mitigating circumstance.

Age & Sentencing

A third demographic characteristic that may correlate with sentencing outcomes is the offender's age. Age is a fairly robust predictor of sentencing outcomes, in that younger offenders are both more likely to be incarcerated and likely to receive more

severe sentences than are older offenders. Few studies treat age as a key independent variable, but there are some worth discussing. For example, in one of the few studies using Federal sentencing data that focuses on age, Doerner & Demuth (2010) found that young defendants, on average, receive harsher sentences than older defendants, while controlling for legal factors. Moreover, using data from the Pennsylvania State Sentencing Commission, Steffensmeier et al. (1995) found that older offenders were less likely to be incarcerated, and if they were, likely to receive more lenient sentences. They also found that the relationship between age and sentencing was non-linear, in that the peak for sentence severity was about 21-27, with a decline after that. Finally, Champion (1987) found a trend of increasing leniency for sentencing of the elderly from 1970-1984, but the sanctions were more severe in Southern than Northern jurisdictions.

Again, judges use age as an indicator of blameworthiness and likelihood of re-offending, just as they use race/ethnicity and gender in the same way. Thus:

Hypothesis 5: Older offenders will be sentenced more leniently than younger offenders.

Age & Sentencing Policy

If the literature suggests that older offenders are generally treated with more lenience than younger defenders, what effect would determinate sentencing structures have on these older offenders? If judges do not have as much discretion, then they will be unable to take age and, in turn, practical constrains such as an offender's health concerns, and the ability for the prison facility to care for those persons. Conversely, under a determinate system, judges would be unable to treat offenders younger than 21 leniently, on the grounds that they may not have been fully culpable at that age (see Steffensmeier, 1995). Thus, under a determinate system, those offenders who do not fall between the 21-27 age range will likely be sentenced more harshly than they might in an

indeterminate system where judges have more discretion. Finally, in the post-*Booker* era, I expect to find the following:

Hypothesis 6: Age effects will be stronger following the *Booker* decision, where, on average, older offenders will be treated more leniently.

While the hypotheses discussed thus far make predictions about the influence of race/ethnicity, gender, and age separately, it is likely that they work together to influence sentencing outcomes. In the next section, I will discuss how these status characteristics could have multiplicative effects on sentencing outcomes.

The Intersections of Race/Ethnicity, Gender & Age

As the focal concerns, uncertainty avoidance, and causal attribution perspectives illustrate, race/ethnicity, gender, age, and other extra-legal characteristics influence sentencing outcomes above and beyond legally-relevant variables such as offense severity and criminal history. Perhaps more importantly, the effects of these extra-legal characteristics should be treated multiplicatively rather than additively. That is, it is not enough to examine race/ethnicity, gender, and age in isolation from one another, because these characteristics interact. For example, white men are likely to receive sentences that are different from black and Hispanic men and also ones that are different from white women. Moreover, younger white men are likely to receive sentences that are different from older white men, or older black men, or so on. It is important to embrace these intricacies when examining variation in sentencing decisions across race/ethnicity, gender, age, and other extra-legal factors.

The literature suggests that not all female offenders are treated alike. Moreover, in some cases, certain sub-groups of female offenders may not be treated any more

leniently than certain sub-groups of males. For example, some research indicates that black females are sentenced about as harshly as white males (Spohn, 1985; Steffensmeier & Demuth, 2006). Perhaps the most prominent study of sentencing disparity that takes gender and other key status dimensions into account is Steffensmeier et al.'s (1993; 1998) work that focused on gender, race, and age of offenders. In general, they found that young, black males are sentenced more harshly than any other group, but they also found differential sentencing of females across race and ethnicity, such that black females were sentenced more harshly than white females.

Other research also finds differential gender effects across race and ethnicity. Race and ethnicity have been linked to enhanced sentences for female offenders (Crawford, 2000), incarceration decisions and sentence length (Crew, 1991; Crow & Kunselman, 2009; Spohn, 2013), pre-trial release (Demuth & Steffensmeier, 2004), adjudication (Freiburger & Burke, 2011), and dispositions (Horowitz & Pottieger, 1991; Moore & Padavic, 2010) to the disadvantage of Hispanic and black females. Moreover, blacks are more likely than whites to receive further court processing at intake (Leiber & Mack, 2003), and black and Hispanic females are more likely than white females to receive jail sentences (Brennan, 2006). Finally, female offenders who fall into the lower socio-economic status are more likely to receive severe sanctions (Brennan, 2006; Kruttschnitt, 1981). Clearly, researchers should account for not only gender, but also other status dimensions in order to fully understand the complexities of gender and sentencing.

Another important dimension is age. Age and other characteristics (such as gender) may interact with each other to explain sentencing outcomes, so it is important to

treat them multiplicatively. For example, older white women are likely to have a different experience than young Hispanic women. Thus, instead of treating these characteristics additively, they should be treated as interactive. A number of studies have done this. Using data from Pennsylvania, Steffensmeier et al. (1993; 1998) find that the race/ethnicity-gender-age combination receiving the harshest penalties is young Hispanic males. A more recent examination of this at the Federal level found that while young Hispanic males have the highest odds of incarceration, young black males receive the longest sentences (Doerner & Demuth, 2010). Moreover, Steffensmeier and Motivans (2000) found that while older offenders are generally sentenced less harshly, the effect is stronger for males than for females. Taken together, this research suggests that it is important to look at these factors in conjunction. Thus, I predict the following:

Hypothesis 7: Non-white males will receive harsher sentences that other race/ethnicity-sex combinations.

Hypothesis 8: Young, non-white males will receive harsher sentences than other age-race/ethnicity-sex combinations.

Intersectionality & Sentencing Policy

In the same way that race/ethnicity, gender, and age interact to explain variation in sentencing outcomes in a general sense, they also interact to explain the role of policy. While a stringent policy will generally constrain judges from relying heavily on extra-legal effects to interpret focal concerns, a lax policy will give them more freedom to do so. Thus, I predict the following intersectional effects following the *Booker* decision:

Hypothesis 9: The effects of being a non-white male will be stronger following the *Booker* decision, such that non-white males will receive even more punitive sentences.

Hypothesis 10: The effects of being a young, non-white male will be stronger following the *Booker* decision, such that non-white males will receive even more punitive sentences.

Chapter 3: SOCIAL CONTEXT AND SENTENCING

Individual-level characteristics of offenders are not the only extra-legal variables that can influence sentencing outcomes. Although policy initiatives, such as the Federal Sentencing Guidelines are meant to introduce uniformity, consistency, and fairness into sentencing, the effects of those policies can vary across place. Specifically, one might anticipate district-level variation in the effects of both legal and extra-legal characteristics on sentencing outcomes.

In their study of Pennsylvania State Sentencing Guidelines, Kramer and Ulmer (2009) propose a theoretical model where they outline the factors that influence sentencing, both at the aggregate and individual levels. They argue that societal factors, such as criminal justice system politics and structural stratification patterns influence state- and county-level factors, including actual policies (e.g., guidelines systems, mandatory minimum policies, truth in sentencing) as well as community-level politics and correctional resources. These factors help shape courtroom communities and their associated cultures and norms. All of this filters down to the focal concerns which Steffensmeier et al. (1993; 1998) discuss. Finally, these focal concerns influence sentencing outcomes.

One of the key pillars of the focal concerns perspective is practical constraints and consequences (Steffensmeier et al., 1993; 1998). This concept captures a lot, including contextual variables (e.g., local community characteristics, demographics, correctional resources, and so on). Characteristics of the sentencing locality are important, not only because they might have direct influences on sentencing outcomes, but because they might also condition the effects of more proximate, individual-level characteristics on

sentencing decisions. These social context characteristics can be divided into three categories: political climate, community characteristics, and courtroom community.

Political Climate

Over time, political climate has influenced social control in important ways (for a rich discussion of this, see Garland, 2001). Broadly, research indicates that locales with more conservative political climates tend to utilize tighter social controls to constrain crime (Helms & Jacobs, 2002; Jacobs & Helms, 2001; Jacobs & Helms, 1999). These studies typically use measures of Republican party strength, generally measured as the proportion of votes going to the Republican candidate in the most recent Presidential election, to capture political climate. Clearly, there are other methods for measuring political climate, but this seems the most prevalent.

A conservative political climate generally represents a "law and order" approach to dealing with crime. More specifically, such a climate likely favors crime control over due process (Garland, 2001). That is, punishing potential criminals becomes paramount. Conversely, an approach that favors due process would allow for some offenders to go free, so long as those who are unjustly accused for crimes are not punished.

These conservative, Republican regimes are much more likely to dedicate resources to crime control, which may including expanding prison admissions, fortifying police forces, building new prisons, and potentially de-emphasizing intermediate sanctions. The movement toward determinate sentencing certainly represents a shift toward crime control (for more, see Chapter 2).

Under a more indeterminate system, Federal judges are likely to consider the surrounding political climate, and sentence accordingly.[3] In more conservative districts, judges may be less likely to engage in downward departures, even when the option is available to them. They may expect that appellate review would not proceed in a favorable way in such districts, and decide to conserve courtroom resources by not going through the process at all.

This notion of political climate has been used to examine numerous social control outcomes. Particularly at the sentencing stage, judicial decision-making is likely influenced by local political and social climates (Britt, 2000; Johnson et al., 2008). Specifically, research finds that conservative political climates are associated with expansions in prison admissions (Jacobs & Helms, 2001; Jacobs & Helms, 1996; Jacobs & Jackson, 2010) and spending on corrections (Jacobs & Helms, 1999; Jacobs & Jackson, 2010). Moreover, quite often, political context interacts with individual-level offender characteristics, such as race/ethnicity and gender, to explain variation in criminal justice outcomes (Helms & Constanza, 2010; Helms & Jacobs, 2000; Helms & Jacobs, 2002). For example, Helms and Jacobs (2002) found that African Americans and males tend to receive more punitive sanctions when they are sentenced in courts embedded within conservative political climates. Similarly, Keen and Jacobs (2009) found that political climate interacts with aggregate-level racial composition to explain disparity in prison admissions, particularly in Southern states. Taken together, this body

[3] Although Federal judges are appointed rather than elected, it is still reasonable to think that political climate could affect their sentencing decisions. While they don't have to worry about conforming to voters, they also do not want to cause disturbances with those who appoint them. Moreover, it is likely that the general political climate affects these decisions subconsciously rather than explicitly. That is, political climate may affect judicial decision making without judges even realizing it.

of research speaks to more punitive climates in contexts where Republican party strength is the most pronounced. Thus, with respect to political climate, I predict the following:

Hypothesis 11: Offenders sentenced in districts with a greater proportion of the population voting Republican, on average, receive harsher sanctions.

In the same way that sentencing outcomes vary across social context, I expect that the impact of policy on sentencing outcomes will also vary across social context. Judicial decision-making is extremely contingent on local cultural, social, and political influences. Thus, place will influence exactly how discretion affects sentencing across various jurisdictions. This has implications for both policy, such as the *Booker* decision, and other extra-legal variables. Taken together, this body of literature suggests that it is important to account for social context (including place) when interpreting variation in sentencing outcomes. Given the role of policy in sentencing outcomes, I predict that:

Hypothesis 12: Offenders sentenced in more politically conservative climates, on average, receive harsher sanctions following *Booker* than before.

Racial & Ethnic Threat

The influence of local context can extend beyond politics. A variety of studies also look at aggregate-level compositional variables to understand variation across social control outcomes. In general, these studies are guided by Blalock's (1967) minority-group threat hypothesis. Minority-group threat suggests that as minority groups accumulate size and access to resources, the dominant group feels threatened. In response to this threat, the dominant group acts to tighten social controls against the growing minority-group. This may include increasing police presence, using more coercive police action against members of these groups, or sentencing more harshly.

Blalock (1967) broadly conceptualizes threat in a number of ways (also see King, 2007; Tolnay et al., 1989a; Tolnay et al., 1989b). While the most straight-forward conceptualization of threat is the proportion of the group presenting the threat (often, but not always, minority-group members), this is not the only way to consider it. Another potential manifestation of threat is the accumulation of political power. This is at the core of Blalock's idea. The size of the minority population is not necessarily important on its own, but is important to the extent that it can threaten the status quo. That is, when the size of the population results in a shift of the distribution of political power, then the dominant group is more likely to respond. As such, more appropriate measure of threat may be some operationalization of political power, such as civic participation or non-white political representation, as evidenced by the presence or proportion of non-dominant group members holding political positions (see Jacobs, 1998 for an example). Thus, a simple measure of minority-group size may be less than sufficient to fully test Blalock's ideas.

Another type of threat may have more to do with economics than sheer presence or even accumulation of political power. Thus, some measure of access to resources is an important component of minority-group threat. With a limited amount of resources available, each group does what they can to maximize its potential to get them. Therefore, the success of one group could be interpreted as threat by another. This is more closely in line with a resource competition model of threat (Lyons, 2007; Olzak, 1992). Measures of this type of threat could include race/ethnicity-specific unemployment rates, income inequality, or some measure of disadvantage.

Again, while Blalock's perspective sounds straightforward, there are a couple of nuances that are often overlooked. First, Blalock suggests that the relationship between threat and social response is not necessarily linear. That is, the functional form of the response to threat depends both on the level of threat, and the context in which the threat occurs. The most general application of this is that responses are unlikely at both low and high levels of threat, but much more likely at the mid-range. It is not always this parsimonious, though, as there are certain contexts where social responses are triggered at very low levels of threat (defended neighborhoods), while others not triggered until extremely high levels (flight). Moreover, the nature of the response can vary across both threat level and context. I discuss some of these functional forms further later in the chapter (see also Lyons, 2007).

Finally, even though Blalock's ideas are often tested using cross-sectional data, he does not really imply that the level of threat at a particular moment in time triggers a response. Instead, he suggests that when levels of threat increase rapidly over a relatively short period of time (and not altogether different from Durkheim's (1897) arguments about social change and anomie, though, on a smaller scale), social response is more likely. Thus, cross-sectional approaches to minority-group threat are not necessarily in the spirit of Blalock's theoretical perspective.

In sum, minority-group threat is usually measured by the size of the non-white population in a given area.[4] According to Blalock, as the population grows, threat increases, which is met with tighter social controls against the members of the minority group. More comprehensive measures of threat might include quadratic terms, measures

[4] Though, it is often measured in a more sophisticated way using conditional indicators, such as minority size in conjunction with economic conditions, political threat, or other factors.

of unemployment or other economic indicators, measures of political power, such as civic participation or non-white political representation, or change in threat levels over time.

Studies that examine the threat perspective and sentencing outcomes have offered mixed results. Some studies support the link between threat and sentence severity. For example, Bontrager et al. (2005) found that black defendants are more likely to have adjudication withheld in places with higher property crimes rates and greater levels of concentrated disadvantage. Moreover, other studies find that income inequality (Carmichael, 2005) and racial composition (Weidner et al., 2005; Wooldredge, 2007) predict variation in sentencing outcomes. Wang & Mears (2010) found that increasing levels of threat increased the odds of receiving a prison sentence when baseline levels of threat were high, and Greenberg & West (2001) found evidence of elevated imprisonment rates in states with larger black populations.

Conversely, a number of studies do not fully support the threat perspective. For example, Britt (2000) finds that sanctions tend to be more severe for all offenders, not just minority-group offenders, in places (in this case, court jurisdictions) with large black populations. Racial threat (measured by black population size) did not appear to affect sentencing outcomes for habitual offenders (Crawford et al., 1998), for drug trafficking offenders (Kautt, 2002), or in large urban counties (Weidner et al, 2004). Finally, Feldmeyer & Ulmer (2011) found that black population did not affect the sentencing of black offenders, and that Hispanic defendants were actually sentenced more harshly in places with small Hispanic populations, and more leniently in places with the largest Hispanic populations. Finally, Myers and Talarico (1987) found that all offenders, not just African American ones, are sentenced more harshly in jurisdictions with larger

African American populations, which is inconsistent with Blalock's hypothesis, at least the most straightforward versions of it. In short, with respect to sentencing, some studies find support for the racial/ethnic threat perspective, while others do not, but even those that do not find support for threat do suggest variation in outcomes by place.

Perhaps one reason for the mixed findings is the way that threat is conceptualized. It is entirely possible that measuring threat simply as the size of the minority-population is overly simplistic. Other measures may include levels of civic participation, recent growth in the minority populations, or even minority-group organization. Most likely, population size offers a reasonable proxy for levels of threat, but including more sophisticated measures could help better illustrate the precise mechanisms at work.

Stults and Baumer (2007) extend racial threat to include whites' fear of crime, perceived economic threat, black political threat, and anti-black prejudice. After all, Blalock's hypothesis suggests that the tightening of social controls is triggered when the dominant group interprets threat impinging upon their position in the status quo. Thus, in order for social controls against the minority group to become enhanced, the dominant group must interpret threat. Therefore, perceptions of danger and economic threat seem important for understanding the dynamics at work. The authors find that whites' fear of crime and perceptions of economic threat help explain expansions in police force size. While this represents a fairly narrow application of the expanded hypothesis, it is reasonable to think that it could also be applied to other social control outcomes, such as sentencing.

Another potential explanation is that there are other manifestations of threat. Blalock predicts that social control increases exponentially with non-white population;

however there are other possibilities. Using the threat perspective to explain racially-motivated crime, Green et al. (1998) offer other possibilities: a power differential hypothesis, a random interaction hypothesis, a residual tipping point hypothesis, and a defended neighborhoods hypothesis. The power differential hypothesis suggests that as the population of the dominant group increases, the incidence of racially-motivated (and non-racially-motivated) crimes is higher. Under this explanation, the dominant group holds the majority of the power and they will use their leverage to keep it that way. The random interaction hypothesis suggests that incidence levels of racially motivated crime are low when the majority group occupies either a large proportion or a small proportion of the population, but the incidence levels are higher when population levels are largely equal. This may suggest that there is a certain point where minority-group size triggers specific responses, but those responses may dissipate if the minority-group population continues to grow. The residential tipping point hypothesis suggests, again, that responses against minority-group members are most likely when that group occupies a small proportion of the population, but those responses decline quickly as the population size for this group grows. This idea differs from the power threat hypothesis in that the decline in incidents is much more rapid here. Finally, the defended neighborhoods hypothesis suggests that responses depend on the speed of in-migration. That is, if population composition is changing rapidly, racially-motivated crimes are more likely. If it is not, then they are not as likely. Their results provide the strongest support for the defended neighborhoods hypothesis. While their data related to racially-motivated crimes, these hypothetical models could also help explain the dynamics of threat more generally. Given this body of research, I test the following hypothesis:

Hypothesis 13: Offenders sentenced in districts characterized by larger black population and greater levels of immigrant concentration are likely to receive harsher sentences, but the relationship will be non-linear.[5]

Again, I also want to see how the effect of these aggregate-level variables might vary across time, so I hypothesize that:

Hypothesis 14: Offenders sentenced in districts with larger non-white populations and greater levels of immigrant concentration receive harsher sanctions following *Booker* than before.

Female Labor Force Participation

In addition to racial composition, aggregate-level gender variables could affect sentencing outcomes as well. In a broad sense, factors such as female labor-force participation, and more generally, patriarchy, could have implications for CJS outcomes. Female labor-force participation indicates the proportion of women who are working. On the surface, higher levels of female labor-force participation could represent growing equality, but not necessarily. It is entirely possible that the bulk of female participants are working in low income positions, or at least those lower than similarly-skilled men. Thus, greater levels of participation in labor force may in some ways represent strides toward equality, but in other ways simply represent a different form of oppression. On the surface, greater representation in the labor force represents equality (even if it is not so), and with greater equality comes less chivalrous treatment toward women. Thus, women could become more vulnerable to sanction from the criminal justice system, where otherwise, gender would be more likely treated as a mitigating factor.

[5] While I cannot test for all of the possibilities discussed earlier, I can test for non-linearity. That is, one might expect that increasing levels of black population could produce punitive sentences, but once the population reaches a certain level, the effect could diminish. Later chapters also test for contextual effects.

While little research has explored criminal justice system outcomes linked to aggregate-level gender inequality explicitly, some research has examined the implications for crime. In particular, research finds that gender equality is associated with decreases in intimate partner violence (Reckdenwald & Parker, 2008; Xie et al., 2012). Moreover, gender equality has implications for female offending, however, the influences can vary by offense type (Parker & Reckdenwald, 2008; Reckdenwald & Parker, 2008), but may also be reflective of the social positions of both males and females (Hunnicutt & Broidy, 2004). Finally, structural variables may explain offending across gender, however, they are more salient for male than female offending (Schwartz, 2006; Steffensmeier & Hayne, 2000). Overall, this suggests that where females as a whole have more resources available to them, and where patriarchy is weaker, females often both behave and are treated more like men. Thus, I test the following hypothesis:

Hypothesis 15: Offenders sentenced in districts with high rates of female labor force participation will receive more punitive sentences.

I also expect that the influence of Female Labor Force Participation will shift following *Booker*:

Hypothesis 16: Offenders sentenced in districts with more female labor force participation receive more lenient sanctions following *Booker* than before.

Courtroom Communities & Administrative Factors

A final contextual consideration is the courtroom community. Numerous local trends influence the courtroom community including correctional resources, caseloads, and norms and behaviors across courtroom actors. Clearly, courtroom community

context is closely linked to the practical constraints and consequences outlined in the focal concerns perspective.

In a broad sense, courtroom personnel (e.g., judges, prosecutors, and defense attorneys) form courtroom workgroups (Eisenstein et al., 1988; Johnson, 2005; Kramer & Ulmer, 2008; Ulmer & Johnson, 2004). These workgroups develop cultural norms and goals and often work in conjunction to achieve them. Such norms include "going rates" for sentences (Eisenstein et al., 1988), as well as interests in courtroom efficiency (Dixon, 1995; Engen & Steen, 2000).

As such, one of the goals of the courtroom workgroup is to process cases quickly and efficiently in order to avoid a backlog of cases, thus local caseload is an important consideration. Clearly, those cases that do go to trial can generally expect a "trial penalty" (Engen & Steen, 2000), particularly in jurisdictions under heavy caseload pressure. Yet another way to process cases quickly and efficiently is to rely on the focal concerns discussed earlier. These may be especially prominent in contexts where cases must be processed rapidly, and thus, young, non-white males can generally expect to feel the brunt of these pressures. In short, courts form their own communities, and these communities have general goals and norms that can influence sentencing outcomes. Moreover, the courtroom community is not isolated from extra-legal variables and focal concerns. Thus, I predict the following:

Hypothesis 17: Offenders sentenced in districts with higher caseloads are likely to receive more lenient sanctions than those sentenced in districts with lower caseloads.

Finally, I expect the effect of caseload to differ following *Booker:*

Hypothesis 18: Offenders sentenced in districts with higher caseloads are likely to receive more lenient sanctions following *Booker*.

Cross-Level Interactions

I also expect that these contextual variables will interact with many of the individual-level factors discussed in Chapter 2. A large body of research has found support for the notion that social context interacts with individual-level variables, particularly race/ethnicity variables. Social context allows discretion to creep into the sentencing decision, and as it does so, it is likely that they will influence the effect that extra-legal variables have on sentencing outcomes. These contextual characteristics influence focal concerns through discretion and thus, it is likely that judges and prosecutors will use perceptual shorthands to reach the goals of not only the courtroom community, but the community at large.

Moreover, in the same way that I expect the influence of social context to vary across time period (e.g., pre- and post-*Booker),* I also expect the interaction between social context and race/ethnicity to vary across time period. Therefore, I propose:

Hypothesis 19: Non-white offenders sentenced in more politically conservative districts can expect particularly severe sentences relative to white offenders.

Hypothesis 20: Non-white offenders sentenced in politically conservative districts receive even more severe sentences following *Booker*.

Hypothesis 21: Non-white offenders sentenced in districts with larger non-white populations and more immigrant concentration can expect particularly severe sentences relative to white offenders.

Hypothesis 22: Non-white offenders sentenced in districts with greater levels of racial and ethnic threat receive even more severe sentences following *Booker*.

Hypothesis 23: Non-white offenders sentenced in districts with higher caseloads can expect particularly severe sentences relative to white offenders.

Hypothesis 24: Non-white offenders sentenced in districts with heavier caseloads receive even more severe sentences following *Booker*.

Hypothesis 25: Females sentenced in districts with more female labor force participation can expect particularly punitive sentences relative to male offenders.

Hypothesis 26: Female offenders sentenced in districts with more female labor-force participation receive even more punitive sanctions following *Booker.*

Following the literature, the majority of the cross-level interactions that I test are between race/ethnicity indicator at the individual-level, and social context variables (e.g., political, community, and administrative variables) at the aggregate level. Race/ethnicity is generally the greatest source of disparity in sentence outcomes, and this is also the place where social context is most likely to influence judicial decision-making. Moreover, this selection of cross-level interactions represents both a parsimonious and theoretically meaningful approach to exploring the interactions between individual-level, extra-legal variables, and aggregate-level contextual ones (see Feldmeyer & Ulmer, 2011, for example). I also examine the interaction between female status and female labor force participation, suggesting that as women approach equality (or at least, perceived equality) toward men, they are more likely to receive similar treatment. Thus, gender disparity may diminish in districts with greater female labor force participation.

In the same way that I expect that judges will have more flexibility to assess extra-legal characteristics at the case-level, I also expect that the role of social context, and its interaction with those case-level variables, will be expanded in the post-*Booker* era. This is simply a reflection of the expanded discretion allotted to judges when the Federal Guidelines shifted from mandatory to advisory. The following chapters will empirically test the hypotheses presented in Chapters 2 and Chapter 3. In Chapter 4, I will discuss both the data and the techniques that I use to test them.

Chapter 4: DATA AND METHODS

The present research draws on data from the Monitoring of Federal Criminal Sentences database from 1999-2009. These data are compiled by the United States Sentencing Commission (USSC) and include all federal cases from each of the 94 U. S. districts, making this dataset the most comprehensive available for Federal offenses and offenders[6]. These data include information on the sentence length, type of offense that was committed, legal variables, such as criminal history and severity of the offense, and extra-legal variables, such as race/ethnicity, age, gender, location (district), education, and a variety of others. Because these data tap into both legal and extra-legal characteristics of offenders and offenses, they are appropriate for this project. More specifically, these data allow me to investigate the importance of policy shifts (as a proxy for judicial discretion) in sentencing, and how it has changed since the 2005 *Booker* decision. These data also allow me to look at the impact of *Booker* across many of the contingencies discussed in the review of the literature, especially because I have merged them with Census data at the district-level. Measurement and descriptive statistics for the variables used in the analysis are displayed in Table 4.1.

I merge the USSC data with various contextual variables that I computed using the 2000 Census and 2000 election data. These variables are aggregated from the county-level to the district level. Counties are cleanly imbedded within much larger districts. I analyze data from 89 districts. No counties spill over into more than one district. In many cases, one district accounts for an entire state. No state contains more than four districts. In order to aggregate the data up to the district level, I calculated the district

[6] I include 89 of the 94 districts in my analyses. Following convention, I exclude districts such as Puerto Rico, Guam, and other U.S. Territories.

mean across all counties in the district. Undoubtedly, this will produce some degree of measurement error; however, this is the most appropriate way to match Census data to Federal court districts. Few studies have attempted to match Census characteristics to Federal districts to date.

The district-level is the smallest aggregate-level unit available to examine Federal sentencing outcomes. Federal cases are distributed across the districts. These districts encompass large geographical spaces, where a single district often captures an entire state. Some states may have up to four or five districts in the same state. There are no districts which extend coverage into two different states. Smaller geographical units, such as cities, and counties are embedded within districts, but specific data on dependent variables are not available at this level.

Dependent Variable

To capture sentencing outcomes, I follow the literature (Steffensmeier et al., 1993; Kramer & Ulmer, 2008; Spohn, 1999, for example) and examine them as two separate outcomes. The first dependent variable is the in/out decision – whether the offender was incarcerated. This variable is coded as "1" if the offender was incarcerated and "0" if he/she was not. The second dependent variable is the length of the sentence in months. The Monitoring of Federal Criminal Sentences database provides a final sentence length for each offender. A zero month prison sentence generally reflects probation or some other non-custodial sanction. Thus, data on sentence length tends to be highly skewed. To address this, I take the natural log of sentence length (see Steffensmeier et al., 1993; Steffensmeier et al., 1998). This adjusts for the non-normal distribution of the data.

Independent Variables

The key independent variable in this study is the timing of a case relative to the *United States v. Booker* decision, which represents a proxy for shifts in judicial discretion. Specifically, cases occurring prior to *Booker* (1999-2004) represent those sentenced under limited discretion, while those occurring post-*Booker* (2005-2009) represent cases sentenced under less restricted discretion. I treat the *Booker* variable as a grouping variable, where I compare effects for cases before the *Booker* decision to those after.[7]

Legal Variables

With respect to legally-relevant variables, I include measures that capture the magnitude of the offender's criminal history, the offense gravity (seriousness) score, whether the offense was a violent offense, whether the offense was a drug offense, whether the offense went to trial, and whether the offender was held in custody prior to trial. Criminal history is measured on a continuum from 1-6, with scores of 1 representing the least extensive criminal histories, and those with 6 representing the most extensive. For the violent offense variable, violent offenses are coded as "1," while other offenses are coded as 0. For the drug offense variable, drug offenses are coded as "1," while other offenses are coded as "0." The offense gravity score is a measure of the offense seriousness, accounting for all aggravating and mitigating factors, and it is calculated by the USSC and scores range from 1-53. For the trial variable, cases that went to trial were coded as "1" and "0" otherwise.

[7] While I discuss other cases, particularly at the state-level, in the literature review, I choose not to include them in my analyses. This is because these cases represent fine-tuning, more than explicit policy changes in application of the Federal Guidelines. Conversely, *Booker* represented a significant change (e.g., the Guidelines become advisory rather than mandatory. Some other scholars have chosen to partition the data across these decisions (Ulmer et al., 2011), while others simply treat *Booker* itself as a treatment variable (Nowacki, forthcoming). Given my hypotheses and estimation techniques, I follow the latter.

Extra-Legal Variables

I also analyze variation across race/ethnicity, sex, and age, both as main effects and interactions. For race/ethnicity, I constructed two dummy variables – one for non-Hispanic black offenders and one for Hispanic offenders. I also dummy-coded the offender's sex such that 1=female and 0=male. Finally, in the main effects model, I measure age in three categories: young (30 years old and younger), middle (31-49 years old) and older (50 or more years old). I treat the middle group as the reference category. For the race/ethnicity-sex combinations, I treat white males as the reference category, and code other combinations equal to 1 (e.g., for the white female variable, offenders who were both white and female were coded as 1). Finally, I construct race/ethnicity-sex-age variables as I do race/ethnicity-sex combinations, where the reference category is 31-49, white males. These age categories are similar to those that Steffensmeier et al. (1998) used to analyze intersectionality in sentencing outcomes.

In addition to these measures, I also control for a number of other extra-legal variables. These include level of education, citizenship status, and whether the defendant was detained prior to the trial. Education is a continuous variable measuring the offender's level of education. Scores on this variable range from 0-8, where 0 = no school 1; = elementary school; 2 = middle school; 3 = some high school; 4 = high school graduate; 5 = vocational school; 6 = some college; 7 = college graduate; 8 = post-graduate degree. Citizenship status is a dummy variable indicating whether the offender is a U. S. citizen (U. S. citizens coded as "1"). Pretrial custody is dummy-coded and scored as "1" if the offender is held prior to trial. These measures could potentially mitigate (or in some situations, aggravate) sentences, contributing to the focal concerns discussed earlier.

Social Context Variables

I also estimate three aggregate-level factors: political variables, community context, and administrative variables.[8] I also control for the natural log of the district-level violent crime rate in each model. I include four political variables: percent voting Republican, whether the district had a Republican governor, voter participation, and whether the district was a border district. Percent voting Republican is measured as the percentage of persons in a district who voted for the Republican candidate in the 2004 Presidential election. The Republican governor variable is dummy-coded as "1" if the district had a Republican governor in 2004. The voter participation variable is the total percentage of people who voted in the 2004 Presidential election.[9] Finally, the border district variable is coded as "1" if the district is adjacent to the Mexican border.

The community context variables include the following: percent black, immigrant concentration, disadvantage, white/black income inequality and white/Hispanic income inequality, and female labor force participation. Percent black is simply the proportion of blacks living in a district, and I also include a quadratic term for this variable, consistent with Blalock's hypothesis. Immigrant concentration is a principal component factor consisting of the following: percent Hispanic, percent speaking a language other than English at home, and percent foreign-born. Disadvantage is also a factor consisting of percent living below the poverty line, joblessness (population age 16 and older unemployed or not in the labor force), percentage of female-headed households, and lack

[8] There is some concern that many of the variables discussed in this section may be highly correlated, thus producing multi-collinearity problems. For the most part, the variables and variance inflation factors (VIFs) were not problematic, however, the combination of female labor force participation, disadvantage, and immigrant concentration did produce VIFs over the commonly-accepted threshold of 4.00. Thus, I do not include female labor force participation in the same models as disadvantage and immigrant concentration. Correlations and VIF scores are available by request.

[9] I use the 2004 election as a benchmark because it most closely represents the midpoint of my data, and it is temporally proximate to the *Booker* decision.

of professional role models (the compliment of persons 16 and older who are employed in professional and/or managerial positions). This factor follows Krivo & Peterson (1996). White/black income inequality is measured as the ratio between white median income and black median income, while white/Hispanic income inequality is the ratio between white median income and Hispanic median income. Finally, female labor force participation is measured as the percentage of females participating in the labor force, drawn from the 2000 Census.

Finally, I include five administrative district-level variables in my analyses including the mean district-level offense severity score, the mean district-level criminal history score, the percentage of violent cases, the percentage of drug cases, and the natural log of the number of cases within each district.

Analytic Strategy

This dissertation contains three results chapters: one comparing race/ethnicity-sex-age combinations, one that examines both case-level (level 1) and district-level (level 2) influences on sentencing outcomes, and one that examines cross-level interactions between level 1 and level 2 variables. The incarceration decision (e.g., in/out), given that it is a dichotomous variable, is estimated using logistic regression, while sentence length is estimated using ordinary least squares regression techniques. The analyses for social context variables utilize linear mixed modeling techniques, with individual, case-level variables at level 1 and social context variables at level 2 for the 89 districts. Linear mixed models are appropriate because they allow me to estimate measures at each level simultaneously. This technique also produces efficient standard errors. Moreover, this technique also controls for correlation between districts, and allows for random slopes

(West et al., 2007). In each chapter, the general strategy is to run models both before and after the *Booker* decision for each of the three dependent variables. I then discuss whether the effects differed across time periods by comparing coefficients using Paternoster et al.'s (1998) comparison of coefficients formula.[10] This equation reduces the bias produced when comparing coefficients across models.

In the first results chapter, I begin by examining the main effects of race/ethnicity, sex, and age on sentencing outcomes. This technique speaks to the effects of race/ethnicity, sex, and age on sentencing decisions, net of controls, such as criminal history and offense severity. In a second set of analyses, I examine the joint effects race/ethnicity and sex, and separately control for age. This will speak to differences in race/ethnicity-sex combinations, which may be masked by examining each characteristic independently. In the final set of analyses, I examine the joint effects of race/ethnicity, sex, and age together, which, again, speaks to the intersectional nature of these extra-legal characteristics, and potentially reveals masked variation across groups. For race/ethnicity, I include black and Hispanic offenders and treat whites as the reference category. In terms of sex, I treat males as the reference category. I treat age as a categorical variable, but when I examine the joint effects I create three categories: those 30 years of age or younger, those between 31 and 49 years of age, and those at least 50

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10 The formula for Paternoster et. al (1998)'s test for equality of regression coefficients is

$$z = \frac{b_1 - b_2}{\sqrt{SEb_1^2 + SEb_2^2}}$$

years of age. In these models I also control for other case-level variables, as well as the sentencing district in the interest of consistency.

In the second results chapter I leave level-1 variables as controls (although the race/ethnicity, sex, and age variables are treated as main effects, not jointly), but also include the district-level variables. I run separate models for each set of variables (e.g., political, community, and administrative) and an additional model where I include them all together. This strategy allows me to estimate the effects of aggregate-level, contextual variables, net of individual-level controls. I conduct these analyses pre- and post-*Booker* separately for each independent variable, which allows me to see if the effect sizes vary across time period.

In the final results chapter, I introduce cross-level interactions, focusing on the interaction between race/ethnicity at level-1 and certain district-level variables at level-2.[11] I include two cross-level interactions in each model. In the first model, I estimate a cross-level interaction between black offenders and district-level percent voting Republican as well as one for Hispanic offenders and percent Republican. In the second model, I include an interaction between black offenders and percentage of blacks in the district as well as one between Hispanic offenders and immigrant concentration scores at the district-level. Next, I include interactions between black offenders and caseload, as well as Hispanic offenders and caseload. Finally, I examine interactions between offender's sex and aggregate female labor force participation. I estimate the models pre- and post-*Booker*, and for each of the three dependent variables. These techniques allow me to estimate the extent to which race/ethnicity and gender effects are conditioned by

[11] I grand-mean center all of the non-standardized level-2 variables to assist with interpretation of the interaction terms.

social contextual variables. As in the previous social context chapter, I run models for each set of interactions. In all models, I also control for sentencing year by including a set of dummy variables (not shown in tables). This accounts for non-independence across sentencing year.

Chapter 5: RACE/ETHNICITY, SEX, AND AGE RESULTS

Results from the main effects models for race/ethnicity (Hypothesis 1), sex (Hypothesis 3), and age (Hypothesis 5) are presented in Table 5.1. Results offer support for the hypotheses that non-whites, males, and younger offenders receive more punitive sentencing outcomes than whites, females, and older offenders. More specifically, results yielded greater odds of incarceration for blacks (b = .176), Hispanics (b = .387), and younger offenders (b = .262). Conversely, they yielded lower odds of incarceration for females (b = -.242). Similarly, results from sentence length models suggest that blacks (b = .028) and Hispanics (b = .044) receive longer sentences than whites, females receive shorter sentences than males (b = -.234), and younger offenders receive longer sentences (b = .014). Again, these results provide support for Hypotheses 1, 3, and 5.

I am also interested in how sentencing practices have changed as a function of the *Booker* decision, so Hypotheses 2, 4, and 6 address whether extra-legal effects (e.g., race/ethnicity, sex, age) are stronger after the *Booker* decision. My hypotheses suggest that they will be, because *Booker* shifts discretionary power back to judges. Coefficient comparison tests to examine these hypotheses are presented in Table 5.4.

Specifically, Hypothesis 2 suggests that race/ethnicity effects will be stronger in the post-*Booker* era. Models in Table 5.4 provide strong, but not complete support for this hypothesis. While the odds of incarceration for blacks in the post-*Booker* era are not significantly different from those in the pre-*Booker* period (z = -.09)[12], the odds for Hispanic offenders are (z = -2.35) by about 22%. For sentence length, the effect sizes are

[12] These z-scores test the null hypothesis that there is no difference in effect sizes across time period. Scores greater than 1.96 or less than -1.96 suggest that the null hypothesis should be rejected, and there is indeed a statistically significant difference in effect sizes across time period.

stronger in the post-*Booker* period for both black offenders by about 2% (z = -6.00) and Hispanic offenders by about 4% (z = -6.56), providing support for Hypothesis 2.

Hypothesis 4 suggests that the sex effect will be stronger after the *Booker* decision. In terms of both odds of incarceration, this appears to be the case. While females yield odds of incarceration smaller than those yielded by males in the pre-*Booker* era, the difference is even greater after the *Booker* decision (z = .251). Conversely, Hypothesis 4 is not supported for the sentence length outcome, as the benefit enjoyed by female offenders relative to male offenders actually diminishes post-*Booker* (z = -2.03), although that difference is statistically significant, just not in the expected direction.

Hypothesis 6 posits that the age effect will be stronger after the *Booker* decision. This hypothesis receives weak support. For the incarceration decision, the difference in the effect sizes of the age variables are not at all statistically significant (z = 1.81 and 1.14 respectively). For the sentence length outcomes, young offenders are treated more punitively after *Booker* (z = -3.54), but there is not statistically significant difference for older offenders, thus Hypothesis 6 receives weak support.

Models in Tables 5.2 and 5.3 explore the interactive relationships between race/ethnicity, sex, age, and sentencing outcomes. Hypothesis 7 posits that non-white males will receive harsher sentences than other race/ethnicity-sex combinations, and net of controls, results provide support for that both in terms of the incarceration decision and sentencing length. Black males yield 28% greater odds of incarceration than white males (*b* = .249), and Hispanic males yield odds that are 71% greater (*b* = .534). Moreover, for sentencing length, the sentences given to black males are four percent longer than those given to white males (*b* = .039), and also four percent longer for Hispanic males (*b* =

.038). Interestingly, when it comes to sentence length, Hispanic females receive the harshest sanctions of all, as their sentences are, on average, 8% longer than those given to white males (*b* = .077). Thus, in terms of the incarceration decision, Hypothesis 4 receives support, but it is only partially supported for sentence length because of this finding regarding Hispanic females.

Similarly, Hypothesis 8 suggests that young, non-white males will receive more punitive sanctions than other race/ethnicity-sex-age combinations. In terms of the in/out decision, the hypothesis is supported, as young black males yield odds of incarceration 71% higher than the reference category (white males, 31-49), and young Hispanic males yield odds 85% higher (*b* = .614). Again, however, young Hispanic females receive the most punitive responses when it comes to sentencing, with sentences 12% longer than the reference category. Once again, the hypothesis is supported for the in/out decision, but not necessarily for the sentence length decision.

The remaining hypotheses examine whether multiplicative effects vary across time period and are presented in Tables 5.5 and 5.6. Hypothesis 9 suggests that the effect of being a non-white male will be stronger after the *Booker* decision. This hypothesis is not supported for the incarceration decision (z = -.89 and -.74), but it is supported for the sentence length decision, as black males (z = -5.30) and Hispanic males (z = -4.53) each receive more punitive sentences after *Booker* than they did before.

Finally, Hypothesis 10 suggests that the effect of being a young, non-white male will be stronger following the *Booker* decision. Results appear in Table 5.6. Once again, models predicting odds of incarceration did not support this hypothesis for young, black males (z = .17) or young, Hispanic males (z = -.20). Conversely, models estimating

sentence length were supportive of the hypothesis both for young, black males (z = -6.53) and young Hispanic males (z = -2.81). Thus, Hypothesis 10 is supported for the sentence length outcome, but not the incarceration decision outcome.

Discussion of Results

Taken together, these results are consistent with some of the prior literature on sentencing outcomes. For example, Steffensmeier et al. (1993; 1998) suggest that young, non-white males are seen as a "dangerous" class. Under conditions where judges have more flexibility to sentence as they see appropriate (e.g., the post-*Booker* era), outcomes are likely to reflect a penalty which is applied to those who fit this type. As noted before, since judges operate without complete information, they rely on patterned responses (perceptual shorthands) to create proximate measures of blameworthiness, danger and practical concerns (Albonetti, 1991; Steffensmeier et al., 1998). More often than not, these shorthands are to the detriment of young, non-white, male offenders, and this is amplified in the post-*Booker* period.

More specifically, these results seem to reflect some of what has been found in the prior research with respect to the *Booker* decision. For example, Ulmer et al. (2011a) and the 2010 United States Sentencing Commission report found that black male offenders are subject to greater disparity in sentencing outcomes post-*Booker,* at least relative to the PROTECT era (2002-2005). My results seem to reflect that as well, at least with respect to sentence length decision. However, like Ulmer et al., I did not find evidence of changes to odds of incarceration for black males in the post-*Booker* period. Taken together, the discretion awarded by the *Booker* decision seems to work to the

disadvantage of black male offenders, at least relative to the PROTECT era, but perhaps even more generally than that.

This study differs from previous research on *Booker* because it prioritizes the role of intersectionality on sentencing disparity. While previous research may examine disparity across district, this research shows that it is important to look across the various layers of extra-legal variables. As I have argued, it is not enough to look at race/ethnicity, gender, and age in an additive, independent way. Instead, these characteristics interact with each other, and if research ignores this, they will fail to uncover some of the nuances of how these characteristics may influence sentencing.

For example, one of the key findings in this chapter was that young, Hispanic females receive the most punitive sanctions of all. In some ways this is unexpected, given previous literature on sentencing outcomes (Steffensmeier et al., 1993; 1998). After all, female offenders are generally provided some degree chivalry at the sentencing stage. It seems that this chivalry does not extend across racial and ethnic groups. It is possible that Hispanic females are more likely to associate with Hispanic male drug offenders, and when given the option to trade information on their associates for a mitigated sentence, their loyalty to associates prevents them from doing so (see Pasko, 2002).[13] While my data lack the sophistication to explicitly speak on this possibility, this is certainly something to examine in the future. Additionally, the *Booker* decision, as well as decisions which followed (e.g., *Gall* and *Kimbrough*) focused explicitly on the sentences that African American offenders received for crack cocaine offenses, which makes Hispanic females less of a focus.

[13] After all, one of the most important avenues for downward departures in the pre-*Booker* era was 5K1 Substantial Assistance Departures, which provide for a mitigated sentence in exchange for information that could lead to the conviction of another offender.

To further understand the processes at work here, it is important that future research contain information that was not available in this study. In particular, it would prove useful to collect data on individual judges. It is reasonable to think that extra-legal characteristics (e.g., race/ethnicity, sex, age) may interact with extra-judicial characteristics (e.g., race/ethnicity, sex, and tenure of judges). Non-white judges could potentially be more sympathetic and/or supportive toward non-white offenders. This is something that has been shown in the policing literature, where African American officers are more supportive of African-American offenders in disadvantaged neighborhoods (see Brooks, 2010).

There were also differences across time period. In many cases, the effect sizes were stronger after the *Booker* decision, largely to the detriment of non-white offenders, male offenders, and younger offenders (Hypotheses 1-3). The *Booker* decision represents a moment in time where Federal guidelines were no longer mandatory. This allows judges to exercise more discretion, and in some way, seems that they apply more importance to perceptual shorthands in the post-*Booker* period by sentencing non-white, male, younger offenders more punitively than before.

In sum, it seems clear that extra-legal variables play a significant role in sentencing outcomes, and the role is enhanced in contexts where more discretion is available to judges. The extent to which these patterns are contextual is something that is not clear from the current literature. Thus, I will attempt to address this in the following results chapters.

Chapter 6: SOCIAL CONTEXT RESULTS

The results in this chapter test Hypotheses 11-18, which refer to social context effects. I begin by examining the proportion of the variation in sentencing outcomes that is explained at the district level. An intercept-only model is presented in Table 6.1. Using this model, I calculate an intra-class correlation (ICC), which illustrates the proportion of variation in the dependent variable (e.g., sentence length) explained by level 2 (e.g., district) without any other independent variables in the model. The ICC for the totality of cases is .16, suggesting that 16 percent of the variation in sentence length is explained at the district level. While this proportion is modest, it is more than has typically been found in the sentencing literature, where most of the variation in sentencing outcomes is attributed to individual or case-level predictors (see Feldmeyer & Ulmer, 2011; Kautt, 2002; Ulmer & Johnson, 2004). The ICC for pre-*Booker* sentences is also .16, while it is .18 for post-*Booker* sentences. This suggests that it is a worthwhile endeavor to examine level-2 units to understand variation in sentencing outcomes.

For the remainder of this chapter, I will test the hypotheses presented in Chapter 3. Results from district-level models are presented in Table 6.2. Hypotheses 11 suggests that offenders sentenced in more politically conservative climates, on average, receive more punitive sanctions. These results fail to provide support in terms of the in/out decision, where none of the political variables reach statistical significance, but they do provide some support for the sentence length outcomes. Specifically, offenders sentenced in districts with a greater Republican vote can expect longer sentences (b = .003). Conversely, offenders sentenced in districts with a larger proportion of the population voting can expect more lenient sanctions (b = -.005). Thus, these results

provide support for Hypothesis 11 in terms of sentence length, but not the incarceration decision.

I also predict that aggregate-level effects will vary across time period. Hypothesis 12 predicts that offenders sentenced in districts with more conservative political climates receive more punitive sanctions in the post-*Booker* period than they did before the decision. Tests for this hypothesis appear in Table 6.3. Regardless of sentencing outcome, none of the effect sizes of the political variables vary significantly across time period, as none of the z-scores reach statistical significance. This means that Hypothesis 12 is not supported.

Hypothesis 13 suggests that offenders sentenced in districts with larger black populations and greater levels of immigrant concentration are likely to receive harsher sentences. The only variable that achieved statistical significance in the in/out decision model was disadvantage, which most likely serves as an indirect indicator of economic threat. Still, the effect was such that offenders sentenced in districts with higher levels of disadvantage yielded greater odds of incarceration (b = .169). In terms of sentence length, only white/Hispanic income inequality reaches statistical significance (b = -.145) and the effect suggested that sentences were actually more lenient in districts with more income inequality. These results provide only weak support for Hypothesis 13.[14]

Hypothesis 14 suggests that offenders sentenced in districts with more racial and ethnic threat will receive harsher penalties after *Booker* than before. Results from this hypothesis are presented in Table 6.4. Results indicate that there is no statistically significant difference in effects across time period, so Hypothesis 14 is not supported.

[14] I also tested for a possible quadratic relationship for percent black. The quadratic term failed to reach statistical significance in any model, so the regression with the linear term is presented in the interest of simplicity.

Hypothesis 15 posits that offenders sentenced in districts with higher rates of female labor force participation receive more lenient sentences. Results indicate that female labor force participation did not influence sentencing outcomes in a meaningful way either for the in/out decision, or sentence length. Thus, Hypothesis 15 is not supported.

Hypothesis 16 predicts that offenders sentenced in districts with more female labor force participation will receive more lenient sanctions in the post-*Booker* period. Results from these hypothesis tests are presented in Table 6.4, and the z-scores do not yield a statistically significant difference across time period. Hypothesis 16 is not supported.

Finally, with respect to administrative variables, Hypothesis 17 suggests that offenders sentenced in districts with higher caseloads would receive more lenient sentences. None of the administrative variables, including caseload, were significant in the in/out model, and only district-mean offense severity (b = .019) and percentage of violent cases (b = -.016) were significant in the sentence length model. Hypothesis 17 does not receive support. So far, results indicate, as does the majority of previous research, that most of the "action" in sentencing outcomes occurs at level 1, not level 2.

Hypothesis 18 posits that offenders sentenced in districts with higher caseloads are likely to benefit from more leniency following *Booker*. Once again, none of these differences reach statistical significance, meaning that Hypothesis 18 is not supported (see Table 6.5). In sum, the hypotheses that suggest that the effects of social contextual variables vary across time period are all rejected.

Discussion of Results

Taken together, it appears that aggregate-level variables are not nearly as influential on sentencing outcomes as case-level factors, and their effects do not vary significantly across time period. This stands to reason, and one would hope that sentence outcomes would rely primarily on the behavior and characteristics of offenders. The factors at the forefront of both judicial and prosecutorial decision making are characteristics of the offender – race/ethnicity, age, criminal history, and so on. Aggregate-level factors are unlikely to factor directly into the decision-making process, so it is not all that surprising that the effects found here are weak or null. It seems that when *Booker* caused the Guidelines to shift from mandatory to advisory, the effect of aggregate-level contextual variables did not increase. These findings are not altogether different from those found in other studies of Federal sentencing outcomes that examine contextual effects (see Feldmeyer & Ulmer, 2011). Still, it is reasonable to think that social factors could, at the very least, contextualize some of those individual-level variables. However, analyzing contextual effects on Federal sentencing outcomes brings with it a number of limitations.

First and foremost is the unit of analysis problem. The unit of analysis for level 2, aggregate variables in this study is the Federal sentencing district. Unfortunately, many of the aggregate predictors that I used in this analysis do not lend themselves to such units. All of the variables drawn from the Census are taken at the county level and then aggregated up into districts. Since many of the districts cover large amounts of space, and sometimes an entire state, these variables are much less telling than they might be at a smaller unit of analysis, such as the tract-level. For example, a variable such as disadvantage is aggregated for the entire district. This means that concentrated levels of

disadvantage will be mitigated by areas of relatively low disadvantage to produce a middle ground. It might not make sense to assume that disadvantage that lives in a certain pocket of a district would affect sentencing outcomes throughout the entire district.

Second, one of the most important contextual effects may be inter-judicial disparity. While I am able to include data on offender-level data, I do not have any information on sentencing judges. To the extent that within-district variation might exist, a large proportion of it may be explained by characteristics of judges. Unfortunately, such information was not available to me for this study.

Finally, I am unable to account for a number of aggregate-level focal concerns, particularly those most closely related to practical constraints. I do not have information on things like prison space, resources for health care in prisons, and so on, and even with that information, it is not clear that it would be of much use at the district-level. These are the types of contextual variables that would seem to have a more explicit influence on sentencing outcomes, though.

In sum, it is clear that contextual variables have some effect on sentencing outcomes, but compared to individual-level variables, those effects are limited. Still, it is important to account for them to understand how they can influence the dynamics of other extra-legal factors. In the next chapter, I will more closely examine how contextual variables may condition the effects of individual-level variables by exploring cross-level interactions.

Chapter 7: CROSS-LEVEL INTERACTION RESULTS

In this chapter, I examine cross-level interactions. That is, I test whether the effects of certain case-level variables are conditional upon certain district-level variables. As in the previous analysis, I run models for all of the cases, as well as pre- and post-*Booker* models so that I can evaluate whether the effect sizes vary across time period. Case-level and district-level controls are included in all models. I examine two dependent variables: the in/out decision and sentence length.

My argument in this chapter is that social context variables condition the effects of race/ethnicity on sentencing outcomes. That is, an offender's race/ethnicity is likely to influence an offender's sentence based on social characteristics of the district where they were sentenced, which may include political climate, racial/ethnic composition, or administrative factors. These results are presented in Table 7.1.

Hypothesis 19 suggests that non-whites sentenced in more politically conservative districts can expect especially severe sentences relative to white offenders. To test this hypothesis, I use the measure of percent of the district voting Republican to capture political conservatism. Results indicate that for the in/out decision, Hispanic offenders yield greater odds of incarceration if they are sentenced in more conservative districts (b = .021), and the same is true for black offenders, where being sentenced in a highly conservative district seems to increase odds of incarceration (b = .184). In terms of sentence length, conservative districts decrease sentences for black offenders (b = -.003), but there is no statistically significant link for Hispanic offenders. Figure 7.1 shows that sentences are more punitive for blacks until the percent voting Republican reaches about

62%, which actually runs counter to Hypothesis 19.[15] After that point, non-black offenders are actually sentenced more harshly. Conversely, Figure 7.2 shows that sentences between Hispanics and non-Hispanics run largely parallel through the distribution of percent voting Republican, but starts to diverge (with Hispanic offenders receiving more punitive sentences) at the high end of the distribution. Hypothesis 19 is only weakly supported.

Hypothesis 20 compares effect sizes of the interaction term between political conservatism and race/ethnicity of the offender, suggesting that the effect of being non-white in a politically conservative district will produce especially severe sentences outcomes after *Booker*. Results are presented in Table 7.2. The z-scores for the comparisons for both the in/out decision and sentence length outcomes fail to reach statistical significance; therefore Hypothesis 20 is not supported.

Hypothesis 21 posits that non-white offenders sentenced in districts with larger non-white populations and more ethnic threat can expect particularly severe sentences relative to whites, where ethnic threat is measured with the immigrant concentration index. Models predicting odds of incarceration were not supportive of this hypothesis, and the interaction between black offenders and percent black failed to reach statistical significance, and the interaction between Hispanic offenders and immigrant concentration was significant, and showed that Hispanic offenders sentenced in districts were greater levels of ethnic threat are sentenced with more leniency (b = -.039). For sentence length, the interaction between black offenders and percent black (b = .001) is statistically

[15] Figures graph main effects and product terms and hold all other covariates, including the intercept, at 0.

significant and supports Hypothesis 21[16]. Likewise, Hispanic offenders sentenced in districts with higher levels of immigrant concentration receive less punitive sentences (*b* = .008, Figure 7.4), which is also supportive of Hypothesis 21. Figure 7.4 also shows that Hispanics and non-Hispanics alike are actually sentenced with more leniency where immigrant concentration is more prominent. Thus, Hypothesis 21 is supported for the sentence length outcome for black offenders in districts with a higher proportion of black residents, but not for Hispanics.

Hypothesis 22 suggests that non-white offenders sentenced in districts with greater levels of racial (percent black) and ethnic threat (immigrant concentration) receive even more severe sentences after *Booker*. Results are presented in Table 7.3. For the models estimating in/out decision, the only statistically significant difference across time period is for the interaction between Hispanic offenders and immigrant concentration ($z = 3.16$). For the sentence length models, the interaction between black offenders and percent black ($z = -2.77$) yielded a statistically significant difference, but the other interaction terms did not. Thus, Hypothesis 22 is partially supported for both outcomes.

Hypothesis 23 predicts that non-white offenders sentenced in districts with higher caseloads can expect more punitive sanctions. This was not the case for the in/out decision, as the interactions between black offenders and caseload and Hispanic offenders and caseload were both non-significant. Conversely, for sentence length, both the interaction between black offenders and caseload (*b* = .014, Figure 7.6) and Hispanic offenders and caseload (*b* = .030, Figure 7.7) were statistically significant. Somewhat

[16] While the interaction is statistically significant, the effect size is rather small, indicated by the graph in Figure 7.3.

surprisingly, as both Figures 7.6 and 7.7 indicate, non-Blacks and non-Hispanics (respectively) received less punitive sanctions, but sentences for everyone seemed to increase with caseload. Therefore, the data does not support Hypothesis 23 for the sentence length outcome or the incarceration decision.

Hypothesis 24 posits that non-white offenders sentenced in districts with heavier caseloads receive even more severe sentences following *Booker*. Results for this hypothesis are presented in Table 7.4. Results indicate that the interactions between black offenders and caseload are not statistically significant for either outcome, however, the interactions between Hispanic offenders and caseload are significant for both the in/out decision ($z = 3.35$) and sentence length ($z = 2.00$). Hypothesis 24 is supported for the interaction involving Hispanic, but not black offenders.

Hypothesis 25 posits that females sentenced in districts with more female labor force participation can expect particularly lenient sentences. Results are presented in Table 14 and they indicate that consistent to the hypothesis, odds of incarceration are greater for females sentenced in districts with higher rates of female labor force participation ($b = .040$). Conversely, the hypothesis is not supported for the sentence length outcome ($b = -.007$, Figure 7.5). Figure 7.5 indicates that sentences across the board are less punitive as female labor force participation increases, but also that the gender gap converges at high levels of female labor force participation. Thus, Hypothesis 22 receives support in terms of both odds of incarceration and sentence length.

Finally, Hypothesis 26 argues that female offenders sentenced in districts with more female labor force participation receive even more lenient sanctions following

Booker. Results are presented in Table 7.3. These results indicate that the interaction between female offenders and female labor force participation is not statistically significant for either the incarceration decision (z = .063) or the sentence length decision (z = -.044), thus Hypothesis 26 is not supported.

Discussion of Results

As discussed earlier, some of the results from this chapter ran counter to expectations. While I found that all sentences were more punitive in districts with higher levels of Republican vote, at the highest levels, black offenders received less punitive sanctions than other offenders. For Hispanics and non-Hispanics, the trends are similar (e.g., sentences are increasingly punitive with rising levels of Republican vote), with Hispanics receiving, on average, slightly more punitive sanctions. I expected that Hispanics would receive a harsher penalty in conservative districts.

The finding that black offenders would receive more lenient sanctions in particularly conservative districts runs quite counter to expectations and is something that deserves more attention. This finding could be a function of regional variation, where the size and form may vary across geographical location. While my analysis does control for sentencing district, it does not compare districts in the South to districts in the Northeast, or the West, or the Midwest. Perhaps analysis nuanced in this way could shed some light on this unexpected finding.

In terms of threat variables, I found that minority-group status for blacks but not Hispanics acted as an aggravator when paired with district-level threat variables, although the effect size was quite small. This is partially consistent with Blalock's predictions that social controls will tighten against members of threatening groups, especially as the

group numbers increase. Indeed, all offenders seem to receive more lenient sanctions in districts with higher scores on the immigrant concentration measure (Figure 7.4), suggesting that it may actually be a protective factor (see Sampson, 2006). More specifically, Sampson argues that the presence of immigrant population has a tendency to actually reduce crime. In the same way, such presence may also mitigate the severity of criminal sentences handed down to minority-group members. While my measures do not necessarily indicate growing population size, they do suggest that social controls are tighter where these populations are most concentrated.

Finally, the administrative variables acted as expected, where minority-group offenders sentenced in districts with heavier caseloads received more punitive sanctions (Figures 7.6 and 7.7). Across the board, offenders may expect more punitive sanctions in districts where caseload pressures are high. This is consistent with the focal concerns perspective, where practical constraints are a way to work through the workload. The focal concerns perspective would likely expect minority-group members to receive more punitive sanctions in over-worked districts, and as such racial/ethnic status would be treated as a proxy for blameworthiness and/or danger to the community. My results support this.

There are some limitations associated with the data. As discussed in the previous chapter, census variables are aggregated up to the district-level, which is an imperfect measure of things like political climate and threat. Such large aggregations of data tend to mask pockets of concentration. For example, political climate may vary across county, but when those counties are aggregated into a single unit, such variation is invisible.

Unfortunately, since Federal cases are handled at the district-level, there is not a clean solution to this unit of analysis problem.

Also problematic is the constraining race/ethnicity categories. It is generally not enough to lump all black, or especially all Hispanic offenders together. More inclusive categories (e.g., Haitian, Puerto Rican, Cuban, and so on) would likely be more telling, but at the same time, introduce added complexity to statistical models. Often, criminological research must choose between complexity and parsimony, and this research errs on the side of parsimony.

Taken together, the results from this chapter suggest the necessity in examining cross-level interactions. In each of the categories that I examined, district-level variables conditioned individual-level effects. While the effects did not necessarily vary across time period, it is still important to account for them, especially since such a result suggests some sort of gravitational pull toward the guidelines presumptive sentences.

Chapter 8: CONCLUSION

The goal of this dissertation was to, through the lens of the focal concerns perspective (Steffensmeier et al., 1993; 1998), understand the influence of extra-legal variables, at both the individual and aggregate levels, on sentencing outcomes, and how those influences may have varied as a function of policy shifts (e.g., *United States v. Booker*). I argue that it is not enough to examine effects in a straightforward way, because the influences are not straightforward. Instead, they are nuanced, and researchers have a responsibility to treat them that way. My research, like the research of Ulmer et al. (2011a) broadens the scope of focal concerns by incorporating individual- and aggregate-level extra-legal effects.

My dissertation research asks two broad questions: do extra-legal variables influence sentencing outcomes, and if so, does the influence vary as a function of the *Booker* decision? Overall, my results suggest that the answer to both questions is yes. In terms of individual-level extra-legal characteristics, both main effect and interactive models suggest that extra-legal variables influence sentencing outcomes, net of legally relevant variables such as criminal history and offense severity. More specifically, the data indicate that whites often receive more lenient sanctions than non-white offenders, females receive more lenient ones than male offenders, and older offenders enjoy more leniency than younger offenders. In terms of multiplicative effects, non-white males, on average, received more punitive sanctions than other race/ethnicity-sex combinations. Finally, in terms of race/ethnicity-sex-age combinations, young, non-white males often received sanctions that were among the harshest of any group, but there were some caveats. In general, these effects were amplified following the *Booker* decision, when judges presumably had more discretion relative to the pre-*Booker* period.

One particularly interesting finding is that young Hispanic females received the most punitive sanctions of any group, and this result persisted through rigorous examination.[17] It seems likely that drug offenses played a significant role in this finding, but it can also relate back to focal concerns. Hispanic female offenders are generally seen as loyal, and thus are less likely than black or white females to provide information (on other offenders) which could result in a mitigated sentence (see Pasko, 2002). Moreover, the types of drugs that Hispanic female offenders get involved with are likely to vary from those associated with other groups (e.g., crack cocaine for blacks). In essence, by resisting cooperation, judges may attribute more blameworthiness to young, Hispanic, female offenders and thus respond to them more punitively. Future research is necessary to better specify these processes, but the notion of loyalty seems entirely plausible.

More generally, the results seem to echo what has been argued in the literature: that non-white, young, males are at a disadvantage at the sentencing stage, and the disadvantage reaches beyond criminal history and offense severity (Doerner & Demuth, 2010; Steffensmeier, 1993; 1998). Future research should continue to explore the mechanisms where extra-legal disparity in sentences manifests itself, and how it can be addressed.

It is also important to understand changes in sentencing disparity over time. While my results suggest that the effects of extra-legal variables are amplified following *Booker*, other studies (e.g., Ulmer et al., 2011b) suggest that racial disparity has not increased as a function of *Booker* or decisions that follow (such as *Gall*). These

[17] For example, I ran models excluding immigration offenses, and even isolating to narcotics offenses, but the results did not seem to change.

divergent findings could reflect variation in scope of the data, but other factors could be at play as well. More research is needed to better understand the evolving role of discretion in sentencing disparity.

Therefore, in some of the ways discussed above, my research supports the focal concerns perspective. It seems clear that extra-legal variables (e.g., race/ethnicity, gender, age) have some effect on sentencing outcomes net of legally-relevant variables such of offense severity and criminal history. This becomes especially apparent when one examines these extra-legal characteristics at the intersections (e.g., race/ethnicity, gender, and age together rather than in isolation). Thus, the federal data examined here seems to support the focal concerns perspective.

Aggregate-level variables seem to carry a lot less punch, but still produced some interesting results. Although main effects of contextual variables on sentence outcomes were minimal, a few variables yielded interesting results. For example, offenders sentenced in districts with more support for Republican presidential candidates received slightly more punitive sentences than offenders sentenced in other districts. Moreover, sentences were, on average, longer for offenders sentenced in districts with high mean offense levels. Even where I did find effects, they rarely varied across time period (e.g., pre- and post-*Booker*). My study is not the first to produce few linkages between aggregate-level variables and individual-level sentencing outcomes (see Feldmeyer & Ulmer, 2011, for example). Therefore, as suggested by Kramer & Ulmer (2008), focal concerns at the individual level are, in some cases, influenced by aggregate-level characteristics, but the most direct effect occurs at the individual level.

Perhaps the cross-level interactions are even more interesting. It seems likely that contextual variables could condition the effects of individual-level variables, rather than exert direct effects over sentencing outcomes. Specifically, findings indicate that blacks could expect more punitive sanctions in more conservative districts, while no such interaction existed for Hispanics. Moreover, blacks are sentenced more harshly in districts with larger black populations, Hispanics offenders are sentenced with more leniency in districts with high levels of immigrant concentration, and while females are sentenced more harshly in districts with higher levels of female labor force participation, the gender gap is much larger in such districts than ones with lower levels of female labor force participation. Finally, black and Hispanic offenders are both sentenced more leniently in districts with higher caseloads.

Many of these findings conform to previous research. For example, the finding that African American offenders are sentenced more punitively in politically conservative environments is one that has been replicated across multiple studies (see Helms & Jacobs, 2002, for example). Moreover, the notion that blacks are punished more harshly in places with greater levels of minority group threat was first argued by Blalock (1967), but has been expanded since then. For example, Bontrager et al., (2005) find that black offenders are punished more severely in places with more threat and Wu & De'Angelo (2014) find that non-citizens are sentenced more harshly in districts with large non-citizen populations. Other studies find evidence of more punitive attitudes in general and not specifically limited to minority group members (Britt, 2000; Myers & Talarico, 1987; Stultz & Baumer, 2007). Future studies of Federal sentencing outcomes should incorporate threat in more innovative ways, whenever possible.

Conversely, I found evidence that Hispanic offenders (and all offenders, generally) were sentenced with more leniency in districts with higher levels of immigrant concentration. Research has suggested that immigration levels can actually serve as a protective factor, especially in the case of first generation immigrants (Sampson, 2006; Martinez et al., 2010). Future research should further explore this relationship with respect to a variety of social responses to crime.

Results also suggested more lenient sanctions for non-white offenders in districts with heavier caseloads. In such districts, non-white offenders may be encouraged by their attorneys to engage in plea negotiations, and are thus not subject to "trial penalties" (see Engen & Steen, 2000). Norms in such districts may also influence the sentencing of non-white offenders, establishing "going rates" that judges are unlikely to deviate from without good reason (Dixon, 1995). These findings may actually run counter to the focal concerns perspective, but make more sense in terms of courtroom communities (Eisenstein et al., 1988). Future research should more completely explore the role of courtroom communities on Federal sentencing outcomes.

This study was not without limitations. As is often an issue with archival data, the analysis was limited to variables available in the USSC database. It would have been interesting to have access to information pertaining to judges. Because that type of information was not available, I was not able to examine things like intra-district variation across judges, which could be very telling. Moreover, information about prosecutors and prosecutorial discretion could go a long way in illustrating concepts like the hydraulic affect, and the specific ways in which prosecutors may have adapted to changes in the structure of the Federal Guidelines over time. Finally, more information

about offenders, such as a more detailed measure of criminal history, and other extra-legal variables could say a lot about how discretion is or is not used in Federal Sentencing.

Another measurement issue is specific to the contextual analyses – the use of the district-level as a Level-2 measure. Districts are spatially large units which incorporate a number of counties and often an entire state. Thus, some of the traditional aggregate-level variables may not operate in the same way that might with a small unit of analysis. Concepts such as racial segregation, political climate, and even threat may take on a different meaning given the unit of analysis. Unfortunately, this seems to be an irreconcilable issue when working with Federal Sentencing given the nature of Federal Districts.

More specifically, my measures of racial and ethnic threat do not meet the level of sophistication that some other studies of minority-group that have. As mentioned earlier, some studies use measures such as civic participation, change over time, or race-specific arrest rates. I use a more simplistic measure of non-white population size, as well as a factor that includes language spoken at home, and percent foreign-born. These differences represent both methodological choices and data availability. Moreover, interpreting these measures at the district-level create some of the interpretation difficulties discussed earlier.

Moreover, I do not have measures of either the hydraulic effect or policy changes aside from *Booker*. The federal data do not contain many explicit measures of prosecutorial discretion. Therefore, I am careful to discuss the hydraulic effect and how the implementation and technical removal of the Federal Guidelines illustrates it, but did

not have a good way to actively measure it. Moreover, I do not control for some of the state-level decisions that led up to *Booker* for a number of reasons. First, they are state-level decisions and do not apply directly to federal-level decisions. Second, trying *Booker* as a grouping variable allows me to more clearly test the hypotheses that sentencing outcomes have changed following the landmark decision. I encourage interested researchers to more closely examine some of these decisions in future research.

Finally, the present research only looks directly at sentencing outcomes, and does not pay much attention to non-custodial sanctions. The processes, and nature of discretion, could vary substantially for these types of sentences. After all, it seems reasonable that discretion could play the greatest role for sanctions at the low-end of the sentencing distribution. Future research should take care in examining not only custodial, but also non-custodial sanctions.

In conclusion, this dissertation examines the influence of the *United States v. Booker* decision on sentencing outcomes. The preceding analyses produce evidence of variation across time period, but perhaps more important, they illustrate the notion of extra-legal variables exerting considerable influences over sentencing outcomes net of legally relevant characteristics such as criminal history and offense severity. Clearly, policy can act as a filter for discretion. This is illustrated through the notion that extra-legal variables, for the most part, played a more important role in explaining sentencing outcomes under advisory guidelines than they did under mandatory ones. Overall, it seems clear that judicial discretion (and moreover, discretion at large) plays a role in sentencing decisions, and it is something that should not be overlooked.

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TABLES

Table 4.1 Descriptive Statistics for Case-Level Variables (Level 1).

	Mean	Standard Deviation	Minimum	Maximum
Dependent Variables				
In/Out Decision	.51	.50	0	1
Sentence Length (Excluding Zero-Month Sentences)	54.38	74.02	1	470
Sentence Length (Including Zero-Month Sentences)	48.91	71.95	0	470
Independent Variables				
Black	.25	.43	0	1
Hispanic	.44	.50	0	1
Female	.14	.35	0	1
Age	34.48	10.74	16	103
Criminal History	2.41	1.71	1	6
Offense Severity	18.51	8.88	0	53
Trial	.042	.201	0	1
Violent Offense	.01	.10	0	1
Drug Offense	.38	.48	0	1
Detainment Status	.64	.48	0	1
Education	3.74	1.64	0	8
Citizenship Status	.61	.49	0	1

Table 4.2. Descriptive Statistics for District-Level Variables (Level 2).

	Mean	Standard Deviation	Minimum	Maximum
Political Variables				
Percent Republican	56.85	9.42	9.3	77.47
Republican Governor	.68	.46	0	1
Percent Voting	58.07	4.55	44.1	71.7
Border District	.42	.49	0	1
Economic Variables				
Percent Black	8.91	10.28	.15	60.01
Immigrant Concentration				
Percent Hispanic	17.11	16.51	.53	49.46
Percent Speaking Other than English Language at Home	18.15	13.76	1.80	46.71
Percent Foreign Born	8.12	7.48	.38	28.18
Disadvantage				
Percent Below Poverty Line	2.97	.95	1.21	5.67
Joblessness	31.24	3.10	22.67	40.57
Percent Female-Headed Households	16.32	3.7	9.18	41.20
Lack of Professional Role Models	72.58	3.86	54.94	79.17
White/Black Income Inequality	1.61	.28	1.06	2.78
White/Hispanic Income Inequality	1.33	.16	.97	2.35
Female Labor Force Participation	.449	.030	.385	.531
Administrative Variables				
Mean District-Level Offense Severity	18.48	2.17	14.18	23.48
Mean District-Level Criminal History	2.42	.28	1.67	3.08
Percent Violent Offenses	1.03	1.40	.16	15.03
Percent Drug Offenses	37.37	9.07	19.13	64.72
Caseload	18883.28	17589.59	934	53572
Control Variables				
Violent Crime Rate	906.82	1913.53	0	9091.14

Table 5.1 Multi-Level Regression Results for Race/Ethnicity, Sex, and Age. (N=674,328)

Variable	In/Out Decision	Sentence Length
Black	.176***	.028***
	(.025)	(.003)
Hispanic	.378***	.044***
	(.030)	(.003)
Female	-.242***	-.234***
	(.022)	(.003)
Age 30 or younger	.262***	.014***
	(.021)	(.002)
Age 50 or older	-.311***	-.049***
	(.033)	(.003)
Criminal	.659***	.169***
History	(.012)	(.007)
Offense	.150***	.118***
Severity	(.005)	(.001)
Trial	.519***	.247***
	(.074)	(.005)
Violent Offense	.108	.085***
	(.085)	(.010)
Drug Offense	.066*	-.055***
	(.031)	(.002)
Detainment Status	1.918***	.448***
	(.022)	(.003)
Education	-.066***	-.016***
	(.006)	(.001)
Citizenship Status	-1.499***	.011***
	(.027)	(.003)
Constant	-1.76***	.343***
	(.087)	(.015)

* p <.05; ** p <.01; *** p <.001

Table 5.2 Race/Ethnicity-Sex Multi-Level Regression Results (N = 674, 382)

Variable	In/Out Decision	Sentence Length
White Female	.033	-.221***
	(.031)	(.004)
Black Male	.249***	.039***
	(.029)	(.003)
Black Female	-.011	-.245***
	(.035)	(.005)
Hispanic Male	.534***	.038***
	(.032)	(.003)
Hispanic	-.121*	.077***
Female	(.047)	(.006)
Age 30 or younger	.254***	.014***
	(.020)	(.002)
Age 50 or older	-.312***	-.049***
	(.032)	(.003)
Criminal	.656***	.168***
History	(.011)	(.001)
Offense	.152***	.119***
Severity	(.005)	(.001)
Trial	.554***	.245***
	(.071)	(.005)
Violent Offense	.114	.077***
	(.082)	(.009)
Drug Offense	.090**	-.063***
	(.030)	(.002)
Detainment Status	1.930***	.453***
	(.021)	(.002)
Education	-.061***	-.016***
	(.006)	(.001)
Citizenship Status	-1.484***	.011***
	(.026)	(.003)
Constant	-1.881***	.333***
	(.085)	(.015)

* p <.05; ** p <.01; *** p <.001

Table 5.3 Race/Ethnicity-Sex-Age Multi-Level Regression Results (N = 674,382)

Variable	In/Out Decision	Sentencing Length
Young White Male	.157***	.011**
	(.036)	(.004)
Young Black Male	.538***	.084***
	(.041)	(.004)
Young Hispanic Male	.614***	.035***
	(.044)	(.004)
Young White Female	.286***	-.267***
	(.047)	(.007)
Young Black Female	.279***	-.275***
	(.047)	(.007)
Young Hispanic Female	-.176*	.109***
	(.068)	(.009)
Black Male, 31-49	.178***	.012**
	(.040)	(.004)
Hispanic Male, 31-49	.505***	.042***
	(.040)	(.004)
White Female, 31-49	.044	-.189***
	(.043)	(.006)
Black Female, 31-49	-.070	-.207***
	(.050)	(.007)
Hispanic Female, 31-49	-.101	.066***
	(.066)	(.009)
Older White Male	-.205***	-.044***
	(.045)	(.005)
Older Black Male	-.138	-.057***
	(.085)	(.009)
Older Hispanic Male	.253**	.050***
	(.091)	(.008)
Older White Female	-.522***	-.235***
	(.087)	(.011)
Older Black Female	-.530***	-.266***
	(.128)	(.017)
Older Hispanic Female	-.054	.073***
	(.169)	(.021)
Constant	-1.843***	.333***
	(.085)	(.015)

NOTE: Control Variables Not Shown
* p <.05; ** p <.01; *** p <.001

Table 5.4 Pre- and Post-*Booker* Comparison of Main Effect Multi-Level Regression Results.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
Black	.179***	.184***	-.09	.018***	.048***	-6.00***
	(.030)	(.045)		(.003)	(.004)	
Hispanic	.321***	.468***	-2.35**	.030***	.072***	-6.56***
	(.036)	(.051)		(.004)	(.005)	
Female	-.200***	-.317***	2.51**	-.238***	-.225***	-2.03*
	(.027)	(.038)		(.004)	(.005)	
Age 30 or younger	.291***	.210***	1.81	.008**	.023***	-3.54***
	(.025)	(.037)		(.003)	(.003)	
Age 50 or older	-.280***	-.359***	1.14	-.044***	-.054***	1.41
	(.041)	(.056)		(.005)	(.005)	
Criminal History	.657***	.672***		.170***	.167***	
	(.015)	(.021)		(.001)	(.001)	
Offense Severity	.158***	.127***		.118***	.118***	
	(.006)	(.008)		(.001)	(.001)	
Trial	.503***	.566***		.263***	.224***	
	(.092)	(.128)		(.006)	(.007)	
Violent Offense	.169	-.022		.115***	.039*	
	(.097)	(.176)		(.012)	(.015)	
Drug Offense	.088*	.113*		-.037***	-.080***	
	(.038)	(.057)		(.003)	(.004)	
Detainment Status	1.979***	1.828***		.434***	.471***	
	(.028)	(.037)		(.003)	(.004)	
Education	-.055***	-.090***		-.017***	-.012***	
	(.008)	(.011)		(.001)	(.001)	
Citizenship Status	-1.390***	-.1703***		.009*	.016***	
	(.034)	(.047)		(.004)	(.004)	
Constant	-1.935***	-1.359***		.389***	.295***	
	(.110)	(.123)		(.016)	(.017)	

NOTE: Control Variables Not Shown
* p <.05; ** p <.01; *** p <.001

Table 5.5 Pre- and Post-*Booker* Comparison of Race/Ethnicity-Sex Multi-Level Regression Results.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
White Female	.078*	.054	.36	-.226***	-.213***	-1.51
	(.038)	(.055)		(.005)	(.007)	
Black Male	.237***	.292***	-.89	.028***	.058***	-5.30***
	(.036)	(.050)		(.004)	(.004)	
Black Female	.080	-.178**	3.41***	-.244***	-.242***	-.2
	(.042)	(.063)		(.006)	(.008)	
Hispanic	.516***	.565***	-.74	.029***	.058***	-4.53***
Male	(.040)	(.053)		(.004)	(.005)	
Hispanic Female	-.252***	.095	-3.50***	.060***	.105***	-3.74***
	(.061)	(.078)		(.008)	(.009)	
Age 30 or younger	.278***	.217***		.007**	.023***	
	(.025)	(.035)		(.003)	(.003)	
Age 50 or older	-.271***	-.371***		-.042***	-.057***	
	(.040)	(.052)		(.005)	(.005)	
Criminal History	.658***	.662***		.170***	.167***	
	(.014)	(.019)		(.001)	(.001)	
Offense Severity	.160***	.132***		.119***	.119***	
	(.006)	(.008)		(.001)	(.001)	
Trial	.51***	.636***		.261***	.225***	
	(.090)	(.119)		(.006)	(.007)	
Violent Offense	.166	.010		.108***	.034*	
	(.096)	(.162)		(.012)	(.014)	
Drug Offense	.093*	.161**		-.042***	-.089***	
	(.038)	(.053)		(.003)	(.003)	
Detainment Status	1.981***	1.863***		.438***	.476***	
	(.027)	(.035)		(.003)	(.004)	
Education	-.049***	-.083***		-.017***	-.014***	
	(.008)	(.010)		(.001)	(.001)	
Citizenship Status	-1.376***	-1.678***		.010**	.014**	
	(.033)	(.044)		(.004)	(.004)	
Constant	-2.075***	-1.501***		.374***	.298***	
	(.107)	(.117)		(.016)	(.017)	

* p <.05; ** p <.01; *** p <.001

Table 5.6 Comparison of Pre- and Post-*Booker* Multi-Level Regression Results of Race/Ethnicity-Sex-Age Regression Results.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
Young White Male	.189***	.111	1.00	.005	.018**	-.166
	(.044)	(.064)		(.005)	(.006)	
Young Black Male	.553***	.538***	.17	.065***	.116***	-6.53***
	(.049)	(.073)		(.005)	(.006)	
Young Hispanic Male	.607***	.626***	-.20	.029***	.051***	-2.81***
	(.054)	(.076)		(.005)	(.006)	
Young White Female	.348***	.161	1.83	-.289***	-.232***	-4.01***
	(.057)	(.085)		(.009)	(.011)	
Young Black Female	.383***	.052	3.15***	-.286***	-.252***	-2.26*
	(.056)	(.089)		(.009)	(.012)	
Young Hispanic	-.267**	.008	-1.92	.107***	.113***	-.33
Female	(.086)	(.115)		(.012)	(.014)	
Black Male, 31-49	.169**	.214**	-.53	.001	.032***	-3.97***
	(.050)	(.068)		(.005)	(.006)	
Hispanic Male, 31-49	.468***	.554***	-1.02	.030***	.064***	-4.35***
	(.051)	(.067)		(.005)	(.006)	
White Female, 31-49	.101	-.062	1.79	-.192***	-.185***	-.61
	(.053)	(.074)		(.007)	(.009)	
Black Female, 31-49	.039	-.232**	2.59***	-.200***	-.215***	1.06
	(.061)	(.085)		(.009)	(.011)	
Hispanic Female, 31-	-.268**	.148	-3.02***	.047***	.096***	-2.87***
49	(.087)	(.107)		(.011)	(.013)	
Older White Male	-.133*	-.344***	2.23*	-.037***	-.051***	1.52
	(.055)	(.077)		(.006)	(.007)	
Older Black Male	-.141	-.113	-.16	-.057***	-.053***	-.23
	(.110)	(.132)		(.012)	(.013)	
Older Hispanic Male	.105	.492**	-2.06*	.033**	.080***	-2.89***
	(.118)	(.146)		(.011)	(.012)	
Older White Female	-.439***	-.617***	.98	-.203***	-.275***	3.18***
	(.111)	(.144)		(.015)	(.017)	
Older Black Female	-.412*	-.651**	.89	-.235***	-.301***	.194
	(.160)	(.215)		(.023)	(.025)	
Older Hispanic	-.277	.201	-1.39	-.004	.180***	-4.48***
Female	(.236)	(.251)		(.028)	(.030)	
Constant	-2.028***	-1.474***		.374***	.298***	
	(.107)	(.118)		(.016)	(.017)	

* p <.05; ** p <.01; *** p <.001

Table 6.1 Intercept-Only Models for District Effects.

	In/Out Decision			Sentence Length		
	All Cases	**Pre-*Booker***	**Post-*Booker***	**All Cases**	**Pre-*Booker***	**Post-*Booker***
Intercept	.564***	.589***	.595***	.132***	.134***	.143***
	(.044)	(.047)	(.051)	(.010)	(.010)	(.011)
Residual				.693***	.707***	.669***
				(.001)	(.001)	(.001)

* p <.05; ** p <.01; *** p <.001

Table 6.2 Multi-Level Regression Models for District-Level Variables.

	In/Out Decision			Sentencing Length		
	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Political Variables						
Percent Voting Republican	-.008			.003*		
	(.007)			(.002)		
Republican Governor	-.037			-.012		
	(.112)			(.024)		
Percent Voting	-.012			-.005*		
	(.011)			(.002)		
Border District	.245			.018		
	(.153)			(.034)		
Community Variables						
Percent Black		-.003			-.001	
		(.007)			(.001)	
Immigrant Concentration		.134			-.026	
		(.078)			(.015)	
Disadvantage Index		.169*			.023	
		(.070)			(.015)	
White/Black Income		.059			.021	
Inequality		(.210)			(.044)	
White/Hispanic Income		-.429			-.145**	
Inequality		(.258)			(.055)	
Female Labor Force		6.800			-.213	
Participation		(3.485)			(.735)	
Administrative Variables						
District-Mean Offense			-.010			.019*
Severity			(.037)			(.008)
District-Mean Criminal			.176			.004
History Score			(.240)			(.051)
Percent Violent Cases			-.008			-.016*
			(.034)			(.007)
Percent Drug Cases			.010			-.001
			(.008)			(.002)
Caseload (ln)			.129			.012
			(.078)			(.017)
Control Variables						
Violent Crime Rate (ln)	-.186***	-.154**	-.155**	-.033**	-.026*	-.054***
	(.048)	(.059)	(.055)	(.010)	(.012)	(.012)
Intercept	.473***	.457***	.474***	.106***	.099***	.104***
	(.040)	(.039)	(.040)	(.008)	(.008)	(.008)
Residual				.694***	.694***	.694***
				(.001)	(.001)	(.001)

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 6.3 Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Political Variables.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
Percent	-.003	-.016	1.15	.003	.004*	-.35
Republican	(.008)	(.008)		(.002)	(.002)	
Republican	-.038	-.031	-.03	-.006	-.020	.38
Governor	(.120)	(.128)		(.025)	(.027)	
Percent Voting	-.007	-.024	.96	-.006*	-.004	-.47
	(.012)	(.013)		(.003)	(.003)	
Border District	.242	.231	.05	.021	.013	.16
	(.163)	(.172)		(.035)	(.037)	
Violent Crime	-.173**	-.204***		-.035**	-.031**	
Rate	(.051)	(.054)		(.011)	(.012)	
Intercept	.500***	.516***		.109***	.116***	
	(.043)	(.048)		(.009)	(.009)	
Residual				.710***	.667***	
				(.001)	(.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 6.4. Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Community Variables.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
Percent Black	-.006	.001	-.66	-.001	-.001	.00
	(.007)	(.008)		(.001)	(.002)	
Immigrant	.114	.179*	-.61	-.024	-.031	.32
Concentration	(.072)	(.079)		(.015)	(.016)	
Disadvantage	.189*	.150	.36	.020	.030	-.44
Index	(.073)	(.081)		(.015)	(.017)	
White/Black	.136	-.135	.82	.020	.026	-.09
Income Inequality	(.22)	(.248)		(.045)	(.050)	
White/Hispanic	-.442	-.341	-.27	-.153**	-.124*	-.35
Income Inequality	(.272)	(.248)		(.056)	(.062)	
Female Labor	6.904	6.458	.08	-.379	.142	-.46
Force Participation	(3.673)	(4.117)		(.757)	(.834)	
Intercept	.476***	.510***		.102***	.112***	
	(.042)	(.059)		(.008)	(.009)	
Residual				.710***	.667***	
				(.001)	(.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 6.5 Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Administrative Variables.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Variable						
District-Mean Offense Severity	-.007 (.039)	-.016 (.043)	.16	.019* (.008)	.018* (.009)	.08
District-Mean Criminal History	.198 (.253)	.125 (.281)	.19	-.014 (.053)	.035 (.057)	-.63
Percent Violent Offenses	-.003 (.036)	-.010 (.039)	.13	-.018* (.008)	-.014 (.008)	-.35
Percent Drug Offenses	.009 (.009)	.013 (.009)	-.31	-.002 (.002)	-.002 (.002)	.00
Total Cases (ln)	.150 (.083)	.096 (.093)	.43	.011 (.012)	.013 (.019)	-.89
Violent Crime Rate (ln)	-.165** (.058)	-.126* (.064)		-.055*** (.012)	-.054*** (.013)	
Intercept	.496*** (.043)	.534*** (.050)		.107*** (.009)	.116*** (.009)	
Residual				.710*** (.001)	.667*** (.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 7.1 Multi-Level Regression Models for Cross-Level Interactions.

	In/Out Decision			Sentence Length		
	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Level-1 Variables						
Black	.184***	.182***	.784*	.183***	.027***	-.094**
	(.026)	(.028)	(.307)	(.017)	(.003)	(.031)
Hispanic	.406***	.410***	.471	.023	.042***	-.233***
	(.032)	(.032)	(.263)	(.015)	(.003)	(.025)
Female		-.241***			-.240***	
		(.023)			(.003)	
Level-2 Variables						
Percent Republican	-.010***			.004***		
	(.007)			(.002)		
Percent Black		.004			.001	
		(.011)			(.002)	
Immigrant		.101			-.027*	
Concentration		(.066)			(.014)	
Female Labor		.023			-.009	
Force Participation		(.019)			(.004)	
Caseload (ln)			.147			-.002
			(.079)			(.017)
Political Variables						
Black x Percent	-.009**			-.003***		
Republican	(.003)			(.0003)		
Hispanic x Percent	.021***			.0004		
Republican	(.003)			(.0003)		
Community Variables						
Black x Percent		.001			.001***	
Black		(.002)			(.0002)	
Hispanic x		-.039*			.008***	
Immigrant		(.018)			(.002)	
Concentration						
Female x Female		040***			-.007***	
Labor Force		(.008)			(.001)	
Participation						
Administrative Variables						
Black x Caseload			-.067			.014***
			(.034)			(.003)
Hispanic x			-.008			.030***
Caseload			(.028)			(.003)
Intercept	.477***	.457***	.474***	.106***	.098**	.103***
	(.041)	(.039)	(.040)	(.008)	(.008)	(.008)
Residual				.694***	.694***	.694***
				(.001)	(.001)	(.001)

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 7.2 Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Political Cross-Level Interactions.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Level-1 Variables						
Black	.193***	.182***		.021***	.052***	
	(.032)	(.049)		(.004)	(.004)	
Hispanic	.352***	.496***		.032***	.067**	
	(.039)	(.041)		(.004)	(.005)	
Level-2 Variables						
Percent	-.004	-.020*		.003*	.005**	
Republican	(.008)	(.009)		(.002)	(.002)	
Interaction Terms						
Black x Percent	-.010**	-.008	-.30	-.003***	-.003***	.00
Republican	(.003)	(.006)		(.0004)	(.0005)	
Hispanic x	.020***	.022***	-.31	.0003	-.0002	1.00
Percent	(.004)	(.005)		(.0003)	(.0004)	
Republican						
Intercept	.503***	.518***		.109***	.116***	
	(.004)	(.048)		(.009)	(.009)	
Residual				.710***	.667***	
				(.001)	(.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 7.3. Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Community Cross-Level Interactions.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Level-1 Variables						
Black	.184**	.184**		.018***	.045***	
	(.033)	(.052)		(.004)	(.005)	
Hispanic	.334***	.502***		.029***	.067***	
	(.040)	(.056)		(.004)	(.005)	
Level-2 Variables						
Percent Black	-.007	.021		-.001	-.001	
	(.007)	(.013)		(.002)	(.003)	
Immigrant	.106	.187*		-.024	-.036*	
Concentration	(.072)	(.076)		(.014)	(.015)	
Female Labor	-.028	-.026		-.009*	-.008	
Force Participation	(.020)	(.023)		(.004)	(.005)	
Interaction Terms						
Black x Percent	.002	-.001	.67	.001**	.002***	-2.77**
Black	(.002)	(.004)		(.0003)	(.0003)	
Hispanic x	.023	-.117***	3.16***	.010	.009***	.27
Immigrant	(.030)	(.033)		(.002)	(.003)	
Concentration						
Female x Female	042***	.032*	.63	-.007***	-.006***	-.44
Labor Force	(.009)	(.013)		(.001)	(.002)	
Participation						
Intercept	.484***	.529***		.101***	.110***	
	(.042)	(.050)		(.008)	(.009)	
Residual				.710***	.667***	
				(.001)	(.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

Table 7.4 Comparison of Pre- and Post-*Booker* Multi-Level Regression Results for Administrative Cross-Level Interactions.

	In/Out Decision			Sentence Length		
	Pre-*Booker* (N=398,780)	**Post-*Booker* (N=275,602)**	**Z-Score**	**Pre-*Booker* (N=398,780)**	**Post-*Booker* (N=275,602)**	**Z-Score**
Level-1 Variables						
Black	.525	1.584**		-.073	-.147**	
	(.370)	(.558)		(.039)	(.050)	
Hispanic	-.371	1.678***		-.301***	-.166***	
	(.329)	(.457)		(.033)	(.039)	
Level-2 Variables						
Caseload (ln)	.138	.176		-.003	-.003	
	(.084)	(.097)		(.017)	(.019)	
Interaction Terms						
Black x	-.037	-.158*	1.61	.010*	.022***	-1.66
Caseload	(.041)	(.063)		(.004)	(.006)	
Hispanic x	.075*	-.127**	3.35***	.035***	.025***	2.00*
Caseload	(.035)	(.049)		(.003)	(.004)	
Intercept	.493***	.541***		.106***	.115***	
	(.043)	(.050)		(.008)	(.009)	
Residual				.709***	.667***	
				(.001)	(.001)	

* p <.05; ** p <.01; *** p <.001

NOTE: Analysis also controls for all Level-1 Variables (not shown)

NOTE: In/Out Decision is modeled using logistic mixed model regression, while Sentence Length is modeled using linear mixed models.

FIGURES

Figure 7.1. Interaction between Black Offender and Percent Voting Republican.

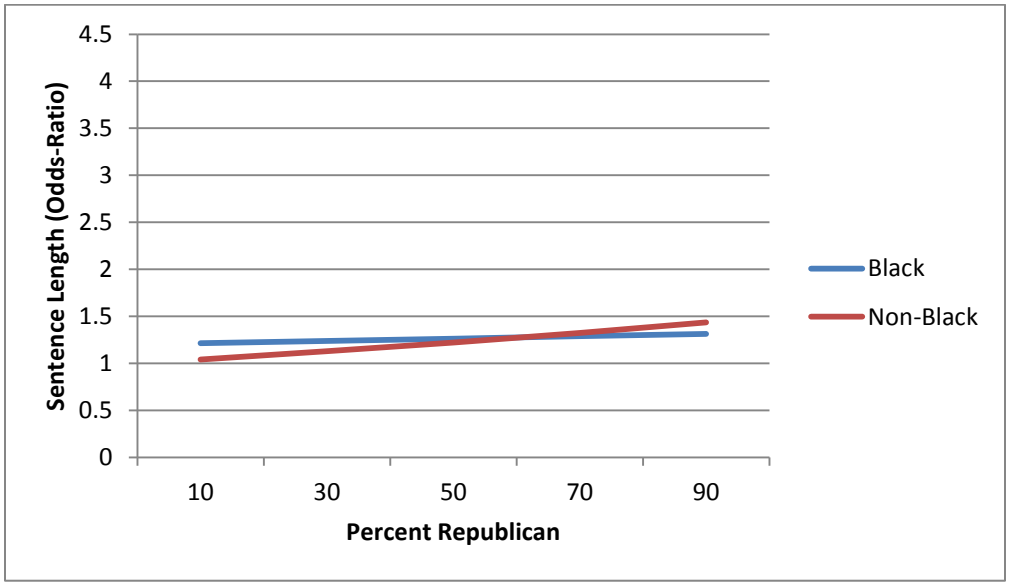

Figure 7.2. Interaction between Hispanic Offender and Percent Voting Republican.

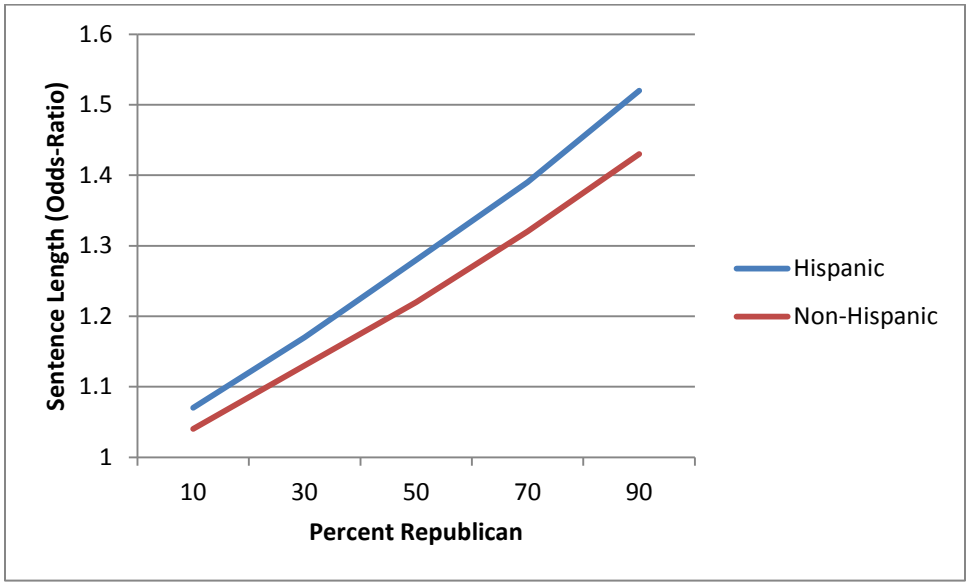

Figure 7.3. Interaction between Black Offender and Percent Black.

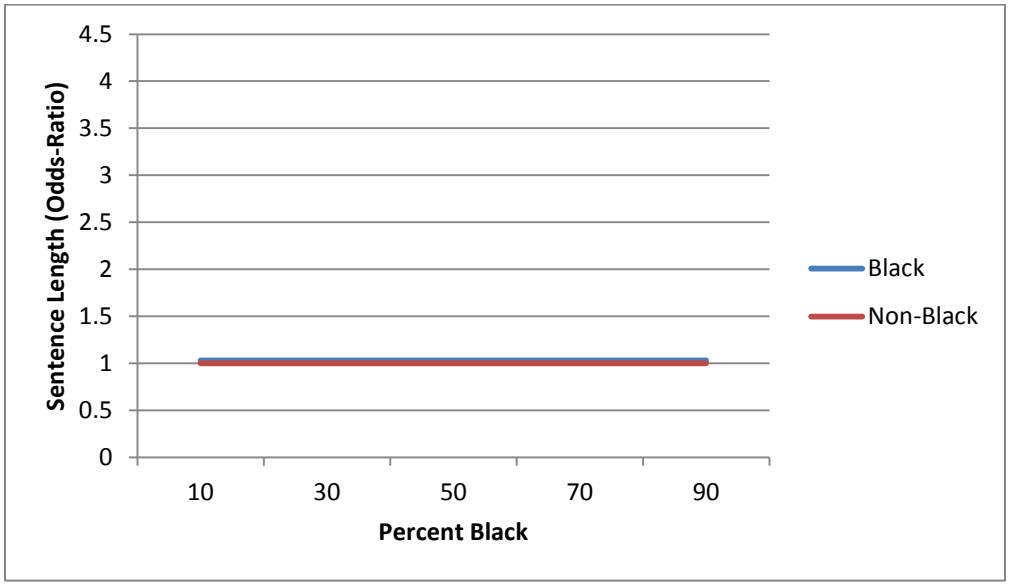

Figure 7.4. Interaction between Hispanic Offender and Immigrant Concentration.

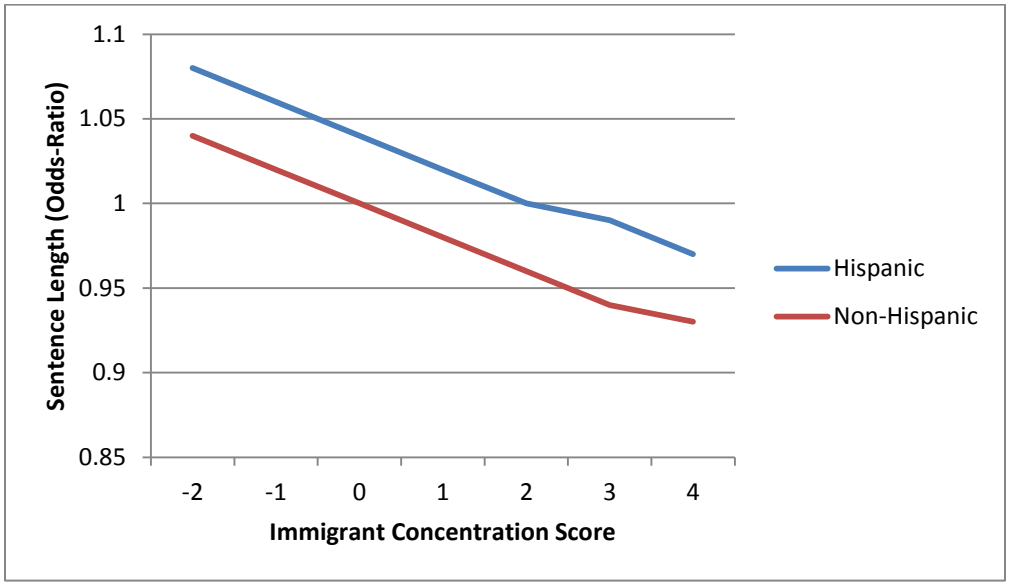

Figure 7.5. Interaction between Female Offenders and Female Labor Force Participation.

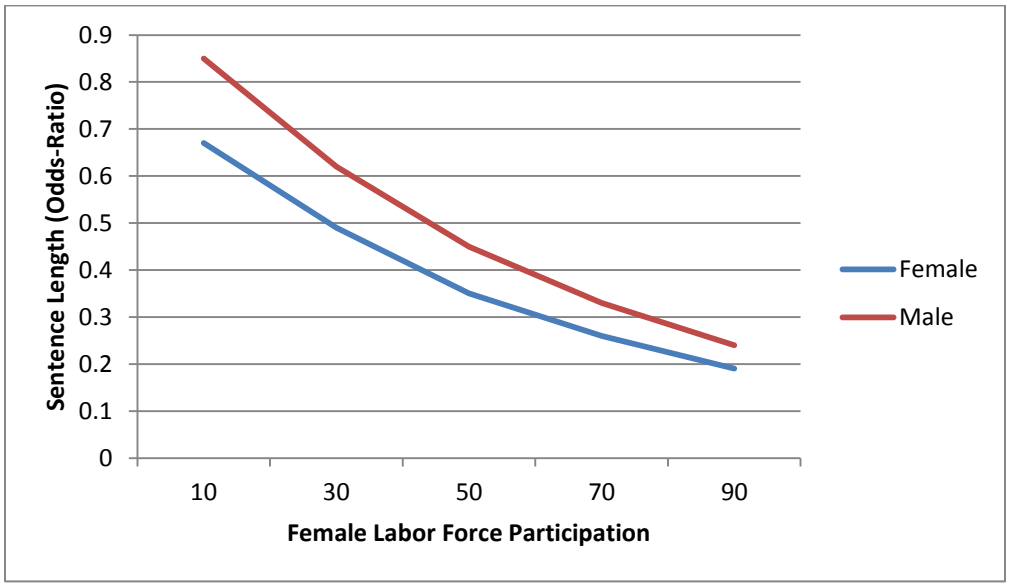

Figure 7.6. Interaction between Black Offenders and Caseload.

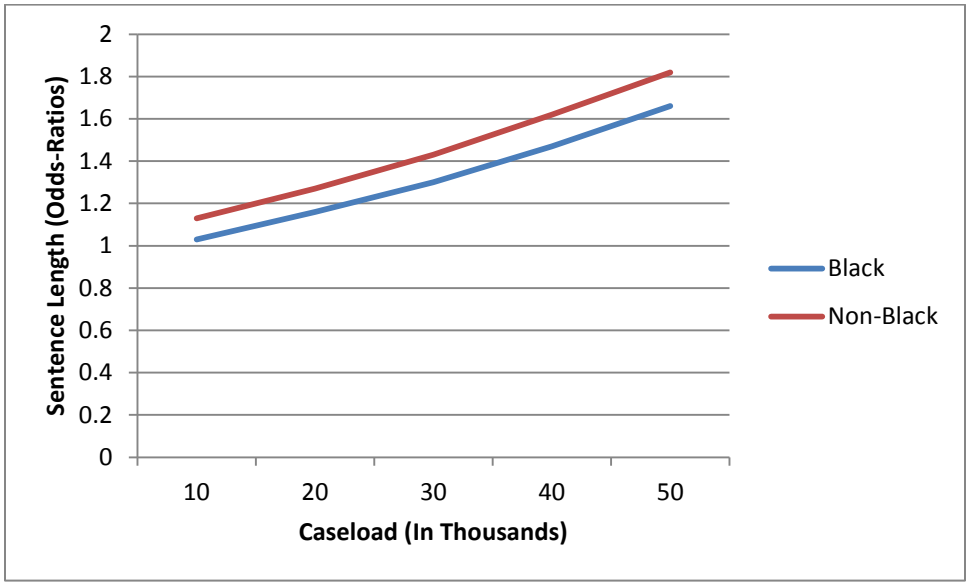

Figure 7.7. Interaction between Hispanic offenders and Caseload.