

PYGMALION IN THE COURTROOM: THE IMPACT OF COURT-LEVEL RACIAL  
THREAT ON CRIMINAL JUSTICE DECISION MAKING

by

TRAVIS W. LINNEMANN

B.S., Emporia State University, 1997

A THESIS

submitted in partial fulfillment of the requirements for the degree

MASTER OF ARTS

Department of Sociology, Anthropology and Social Work  
College of Arts and Sciences

KANSAS STATE UNIVERSITY  
Manhattan, Kansas

2006

Approved by:

Major Professor  
L. Susan Williams

## **Abstract**

Building upon macrostructural “social threat” (Blalock, 1967) research, the current study develops a theoretical model of judicial decision-making processes that focuses upon racial threats perceived within individual court contexts and the corresponding effects on individual sentencing outcomes. This model recognizes that in the absence of a true-measure of a defendant’s threat to the community (likelihood to re-offend) judicial decision makers often rely upon stereotypical generalizations regarding offender populations to render decisions. Although actors develop biases and stereotypes through interactions with society in general, the most relevant knowledge affecting sentencing decisions is perceptions gained through the course of work. Similar to the influential “Pygmalion in the Classroom” study, biases and stereotypes regarding the criminality of groups of criminal defendants are pervasive in contemporary society, undoubtedly influencing sentencing outcomes. Therefore, the most meaningful measurement of threat, as it pertains to sentencing, is the contextual composition of court caseloads. Using data from the Bureau of Justice Statistics-State Court Processing Statistics (SCPS) program, this study examines court-contextual or caseload level threats and the interaction between courtroom context and individual offense/offender characteristics and the corresponding impact on sentencing outcomes. Findings demonstrate that courts of high minority defendant volume apply more punitive sanctions to (increased sentence length and odds of incarceration) to all defendants within this context, while black defendants receive the greatest sanctions. These findings support assertions regarding the impact of threatening populations within courtroom contexts.

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## **Acknowledgements**

I offer my utmost gratitude to Dr. L. Susan Williams for her time, suggestions and unwavering support and encouragement through the course of this work, and throughout graduate study. I also thank Dr. Ryan Spohn and Dr. Michelle Bemiller for their thoughtful suggestions and assistance throughout this process.



## **Dedication**

This work is dedicated to my family, Becky, Eva and my mother Judy, for support and encouragement. Without them, none of this is possible.

# **CHAPTER 1 - Introduction**

## **The Social Significance of Punishment**

“How can the life of such a man, be in the palm of some fools hand? To see him obviously framed, couldn’t help but make me feel ashamed to live in a land where justice is a game.” Protesting the crooked trial, conviction, and imprisonment of Ruben “Hurricane” Carter, singer Bob Dylan questioned the morality of our criminal justice practices. Dylan’s words and the forum in which they appear underscore the pervasiveness of a moral crisis that has been the tenor of American thought for nearly a century. More than a century before Dylan, Dostoevsky claimed, “the degree of civilization in a society can be judged by entering its prisons.” The author’s statement serves as yet another example of what is learned by observing a society’s treatment of those labeled deviant.

Currently, nowhere is imprisonment a better barometer of social life than in the United States. The U.S incarcerates a larger portion of its population than any other country in the world. In 2004, the average daily incarceration rate was just over two million people a day. In other words, for every 100,000 U.S. citizens, 726 of them made a jail or prison their home (BJS 2005; BJS 2005). Statistics that are more recent indicate this trend is continuing upward. The most recent prison and jail census released by the Bureau of Justice Statistics show that from midyear 2004 to midyear 2005, the number of inmates in custody in local jails rose by 4.7% in State and Federal prison by 1.6% (BJS 2006), an alarming increase in only a year. Considering the enormous scope of our criminal justice systems, the manner and method that we deliver criminal sanctions stand as undeniable topics for those concerned with the promotion of social justice and equality. For this reason, criminal justice outcomes often remain the best opportunity to capture a society’s values on race, gender, and class. With this in mind, the current study examines the influence of racial group conflict and perceived threats posed by groups of criminal defendants on individual sentencing outcomes.

Understanding the utility of incarceration practices as social indicators, one is left to wonder even more about the state of our prisons and our prisoners. Upon entering any jail, prison, detention center, or correctional facility, even the most casual observer cannot ignore

what confronts them. Visitors are greeted by faces that are, more often than not, young, black (minority) and male.

Although racial minorities account for a growing yet still relatively small portion of the United States population, they account for the largest portion of the incarcerated. In 2004, there were 3,218 black males sentenced to prison per 100,000 in the population as compared to 1,220 Hispanic and 463 white males per 100,000 respectively (BJS 2005). This means that we jail blacks and Hispanics at a rate of nearly five times that of whites. The crisis of racial disproportionality in punishment is most prominent for young minorities in the teens and twenties. The Bureau of Justice Statistics reports that at midyear 2005, an estimated 12% of black males and 3.7% of Hispanic males in their late twenties, as compared to 1.7% of white males, were in prison or jail during the same time (BJS 2006).

Even though the crime drop observed at the tail end of the last decade signals a leveling off from the late 1980s violence, the public concern over the threat of minority crime has not waned. Citing the war on drugs as the most recent example in the United States history of racially biased punishment practices, Tonry notes:

Urban black Americans have borne the brunt of the War on Drugs. They have been arrested, prosecuted, convicted, and imprisoned at increasing rates since the early 1980's, and grossly out of proportion to their numbers in the general population and among drug users. By every standard, the war has been harder on blacks than whites (Tonry 1995, p.105).

On a radio talk show in late 2005, Dr. William J. Bennett, former education secretary and drug czar for two Republican administrations, asserted "But I do know that it's true that if you wanted to reduce crime you could – if that were your sole purpose, you could abort every black baby in this country, and your crime rate would go down." Statements such as Dr. Bennett's betray the shameful beliefs held by a large portion of contemporary society -- beliefs that still hold young, poor minorities responsible for the balance of serious crime in America. These beliefs are constructed seemingly oblivious to larger social factors that influence all actors to criminal behavior.

In *Thinking about Crime* (2004), Tonry describes how statements such as Bennett's point to a larger social problem. Tonry insists that contemporary society is shaped by the fear of crime and the threat of predatory criminals. As evidence of this growing alarm and the corresponding

consequences, Tonry notes the emergence of what he calls a “risk society” arguing that:

the insecurities and the social isolation of our time have made us preoccupied with uncertainty, danger, and risk. Modern crime control and penal policies accordingly are concerned above all to identify, quantify, and reduce risk or the perception of risk. Insecurity is so profound and pervasive that traditional concerns about fairness, justice, and equality have become unaffordable luxuries (Tonry 2004, p.23).

When coupled with American consensus regarding the propensity of young black males to crime, Tonry’s conception of the “risk society” further illustrates the current state of affairs. As fear and alarm are woven into the fabric of everyday life, stereotypical views held by society regarding the tendency of minorities to crime are further cemented into day-to-day realities. It is a new social reality attributing violence and the scourge of drugs and drug related crimes to minority populations, a reality that directly contributes to racially disparate sentencing outcomes and other injustices(Crawford, Chiricos et al. 1998).

In 1968, noted Harvard Professor Robert Rosenthal published *Pygmalion in the Classroom: Teacher Expectation and Pupils’ Intellectual Performance*. Rosenthal’s work examined the impact of teacher expectations on subsequent academic and social outcomes. Rosenthal found that when teachers expect students to perform well and exhibit intellectual growth, they do. Likewise, when teachers do not possess such expectations, performance and growth are not encouraged. The absence of positive expectations not only fails to encourage desired outcomes but also may actually manifest as discouragement in a variety of ways. Rosenthal's unique findings lead him and many others to acknowledge the importance expectations in predicting future behaviors and performance.

The importance of expectations in other social realms is observable as well. Considering the latent and manifest costs of felony conviction and the corresponding punishment costs, it is hard to deny the possibility of a Pygmalion effect in criminal sanctioning. As defendants penetrate further into the criminal justice system, the “criminal” label attached to them becomes more and more proper in the eyes of legal authority. Likewise, as biases and stereotypes regarding minorities and crime prevail in society-at-large, they undoubtedly converge with even greater force in arenas where questions of criminal risk and public safety are pondered. Recalling Tonry’s concept of a “risk society” and the associated fear of minority crime that exploded throughout the last two decades it is an undeniable fact that minority defendants enter the courts at a marked disadvantage. The heightened alarm and fear of minority crime so evident

in contemporary America and risk reducing “get tough” criminal justice policy are all the components necessary to create a self-fulfilling prophecy for countless minority defendants.

The overwhelming racial disparity in our jails and prisons should not surprise us. Often argued, if not accepted, the actual function of imprisonment is to cordon the socially desired from the undesired, rather than the criminal from the compliant. Elliot Currie (1998) affirms this assertion stating, “We have too often used the justice system as little more than a dumping ground, a repository for the casualties of the depriving and the volatile social order” (Currie 1998). How could we expect prisons to serve any different function than our neighborhoods, churches, and schools? Sadly, as Dostoevsky observed long ago, and as evidenced by current prison demographics, our punishment practices offer a bleak prognosis of our values on race and class relations.

Very few argue the necessity of prison. Even the most ardent penal reformer can accept its core function. The question those charged with the advancement of legal and correctional policy must continue to ask is, how can we condone a dysfunctional system that produces such inequitable outcomes for the socially disadvantaged? From this point, if we are indeed intolerant of the current state of affairs, our pursuit then becomes to understand the hidden social mechanisms that usher soul after soul through prison house doors.

### ***Consensus and Conflict***

The sociological literatures are littered with competing research findings in the study of correctional legislation, control practices, and case processing outcomes. This ever-expanding literature examines the function of all variety of courts and jurisdictions and employs a variety of methodological resources. As findings vary, so too do the opinions regarding the origins and effectiveness of current tactics. However diverse the theoretical approaches may be, those that have obtained ascendancy share a strong foundation of traditional sociological thought. Largely, the crime and punishment literatures rest upon either consensus or conflict traditions, owing their origins to Durkheim and Marx, respectively.

The consensus perspective asserts that responses to crime and deviance reflect the presence of an undercurrent of normative morality. For proponents of this perspective, current legal and penal practices are the manifestation of shared values and conventions that are the lynch pin of all social life. Observing that all communities produce deviance, Durkheim concludes that deviance promotes social solidarity, providing an opposing group that gives the

normative group its identity. Regardless of utility, consensus-based orientations fail to adequately explain the role of social class, economic, or political power in formation or maintenance of social consensus.

Although the Durkheimian tradition is a foundation of sociological theory, consensus-based approaches remain deficient in the examination of disparity in criminal justice outcomes. If we accept that inequitable outcomes for races or classes of people naturally result from social consensus, then we must also accept a naturally occurring trait that enhances a group's tendency toward crime and delinquency or a shared belief that subordinate classes need punishment. This slippery slope leads to theories of biological determinism in the explanation of crime and delinquency, often with frightening implications. This is not to say that consensus base theory have no place in study of crime and deviance or sentencing for that matter. This approach however is not idyllic for the specific examination of disparities in punishment that break on race, gender and class lines. Rejecting consensus-based theory and recognizing that punishments carry a variety of overt and covert meanings and purposes, Garland advises, "despite all attempts to make punishment a rational, impassive, utilitarian process, it continues to be marked by the punitive sentiments and emotive reactions that are at the root of society's response to crime"(Garland 1991). In this passage, Garland reveals the dark heart of criminal punishment. Our system serves to reaffirm our own morality by imposing pain on those we have deemed immoral. When a system such as this becomes an instrument of retribution rather than restoration, corruption, injustice, and conflict are sure to ensue.

Assuming inequality exists in every facet of social life, most scholars of inequality agree that the most useful explanatory framework of inequitable justice outcomes is conflict theory. In general terms, conflict theory holds that social control manifests from efforts of the powerful to control the actions of groups threatening their interests. The workings of the criminal justice system represent a method of control through which economic and ideological/political spheres of conflict operate(Chambliss and Seidman 1971). From an ideological-political standpoint, criminal justice functions to maintain ruling class hegemony via legal authority. Implicit to the conflict orientation is the unequal distribution of legal power, which corresponds to the uneven distribution of power or wealth in a society (Turk 1969). Specifying the interplay in the dynamics of race and legal power, Turk theorizes that cultural differences exacerbate already contemptuous power relationships between racial groups. Contempt and fear arising from these

relationships and the corresponding use of state control is useful in the explanation of the observed inequality in criminal justice outcomes.

Traditional Marxist critique pays greater attention to the political economy of punishment, stressing the link between imprisonment and fluctuations in the labor market. Perhaps the most influential work of this vein is the 1939 manuscript of Rusche and Kirchheimer *Punishment and Social Structure*. The authors provide a historical narrative of punishment practices and the corresponding economic forces that shape them. Reflecting the soul of conflict theory, Rusche insists that “the criminal law and the daily work of the criminal courts are directed almost exclusively against those people whose class background, poverty, neglected education, or demoralization drove them to crime” (Rusche & Kirschheimer 1939, p.11).

Contemporary scholarship continues to chase the blurred lines of race and class and the corresponding influences on criminal sanctioning. In *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (2004) author Jeffery Reiman develops a broad framework that defines the true nature of criminal justice processes as he sees it. Reiman proffers what he calls pyrrhic defeat theory to explain why our society expends vast resources in the effort to control or eliminate crime. Reiman argues that regardless of how consistent our crime control efforts are, they almost certainly end in failure. Inherent failures, Reiman asserts, are the true purpose of the criminal justice system, a purpose that favors dominant classes and the powerful by reproducing exploitative class relationships. In agreement with Tonry and others, Reiman cites persistently high levels of crime and the resulting fear of potential crime as necessary diversions, allowing elites (who are not seen as being part of the crime problem) to carry on in the business of exploiting lower classes. This is a particularly compelling argument, given the moral panic surrounding gang violence of the previous decade and the current fear of rogue sexual predators currently proffered by policy makers and the news media.

Regardless of its true nature, Reiman ultimately asserts that when a system fails to accomplish equality of protection and punishment, the system itself is criminal and the biased use of power in the form of police, courts, and prisons is no less than the State-sanctioned use of violence against its citizenry. He summarizes his assertions in the following indictment of American criminal justice.

A criminal justice system that functions like ours—that imposes its penalties on the poor and not equally on all who threaten society, that does not protect us against threats to our lives and possessions equal to or graver than those presently defined as “crimes,” and that fails even to do those things that could better protect us against the crimes of the poor—is

*morally no better than the criminality it claims to fight* (Reiman 2004, p.188).

The literatures discussed previously are useful in understanding the general position and function of justice systems in contemporary society. To understand variance in individual case processing outcomes, we examine theories regarding the influence of macrostructural processes on individual outcomes. The literature focusing on racial disparity in criminal justice systems generally uses theories of racial group relations as a starting point. Many of the theories used as foundation rely upon themes of class antagonism inherent to conflict criminology. Blalock's (1967) *Toward a Theory of Minority Group Interaction* offers a unique perspective of racial group interaction that remains a starting point for much of the contemporary macro-level sentencing research. Researchers utilizing the "racial threat" approach attempt to connect macro-level forms of social control to the potency of threatening populations. In this respect, almost every incarnation of social control and tactics, from crime control legislation to police force size, are indiscriminate attempts to control threatening populations. The variance in economic, political, and social threats produced by subordinate classes can then help account for large-scale inequities in criminal justice outcomes.

### ***The Current Study***

The current research seeks to enhance contemporary scholarship by developing a model of judicial decision making built upon macrostructural "racial threat" research by defining the mechanisms of threat that exert influence on decision making processes at the local or court level. Although biases and stereotypes are influenced by interactions with society, the most relevant knowledge affecting the judicial decision making process will be derived from the experience and perceptions of actors during the course of their work. Therefore, the most meaningful measurement of the impact of social threats is obtained within the individual court context. Using data from the Bureau of Justice Statistics-State Court Processing Statistics (SCPS) program, this study examines court-contextual or caseload level threats and the interaction between courtroom context and individual offense/offender characteristics and the corresponding impact on sentencing outcomes.

In a manner similar to that of Tittle and Curran's (1988) research on juvenile justice processing, I investigate the presence of county-level variation in racial threat and the corresponding effects on state felony court, case-processing outcomes. I rely upon three distinct bodies of literature to develop a theoretical model of court-level threat. The literatures that I use



to support my assertions are all distinct variants of conflict theory that focus on a particular aspect of social interaction (Tittle and Curran 1988).

The first body of literature focuses on racial group interaction and the conflict resulting from competition between groups. Similar to Blalock's approach, Blumer's (1958) sense of group position offers a complementary explanation of the dynamics of opposing racial groups and how feelings of in-group superiority lead to heightened inter-group animosity and tension. Bobo and Kluegel's (Bobo and Kluegel 1993; Bobo and Hutchings 1996) realistic conflict theory extends Blumer's theory of competition and threat by specifying between real and perceived threats to dominant social order. These literatures illustrate how threatening populations elicit forms of informal or formal social control from authorities.

The second body of resources is macro-level research that builds upon Blalock's (1967) assertions. Influenced strongly by the work of Blalock, Allen Liska and colleagues have produced a considerable body of work using the power-threat conflict framework of social control (Liska 1992; Liska 1993). The literature assumes that threat manifests in many forms and produces formal control that results in activities of criminal justice, mental health, and welfare systems (Liska and Chamlin 1984; Liska 1992; Liska 1993). Research of this vein continues to build upon the basic precepts of racial threat theory.

The final component of this approach is literatures proffering explanations of variance in individual judicial decision-making contingent on racial stereotypes. The salient component of this research is that in the absence of accurate predictors of criminal risk, decision makers rely on stereotypical assessments to conduct business in the quickest and most efficient manner possible. Research by Albonetti (1991), Steffensmeier (1993), and others assume that decision makers operate in an environment of uncertainty, equipped with little or no substantive information regarding an offenders actual threat to the community. Operating from these deficits, actors rely upon experience and subjective assessments to render the best decision possible. This arrangement inevitably leads to processes founded upon erroneous information and historical biases that subsequently lead to disparate case processing outcomes (Albonetti 1991; Steffensmeier, Kramer et al. 1993; Albonetti 1997; Steffensmeier, Ulmer et al. 1998; Steffensmeier and Demuth 2000).

Beginning within this general framework, I present a theoretical model integrating the major components of racial threat and racial stereotyping theories of judicial decision-making. However, I diverge from traditional macro-level racial threat theories to examine the impact of

aggregate threats posed by specific offenders or offenses at the local (docket) level. Presuming that judges define themselves as the legally and morally superior order charged with protection of their communities, they either will be cognizant formally or informally of the volume of offenders of a specific race processed locally. In the same manner, authorities will recognize the presence of any abnormally large volume of offense types and will respond to protect the community accordingly. As decision-makers recognize rising representations of offenders or offenses as threats, feelings of oppositional group dichotomy are exacerbated. This transaction occurs at the local level, in a manner similar to what Blalock (1967) proposed occurs between large populations. Therefore, in accordance with the findings of previous research, the outcome for members of threatening classes will be harsher, resulting in a higher rate of disparity in courts with a higher rate of minorities or other threatening populations.

Chapter 2 provides a review of the literature in the three primary bodies of thought relevant to this study. This includes a discussion of the race/group conflict, racial threat and social control, and stereotyping literatures. Chapter 3 describes the data as well as the research design, variable construction, methodology, and analytical strategy chosen to test the hypotheses of this study. Chapter 4 reports the major findings of the analysis as they relate to the stated hypotheses. Finally, chapter 5 discusses study limitations and possible policy implications, as well as directions for future research.

## **CHAPTER 2 - Literature Review**

As discussed previously, punishment practices are, and will continue to be, a window into the heart of society's core values. Even as punishment persists as a pulse of social values, a single orientation is not offered accounting for the diversity of outcomes across populations. Academics and politicians make arguments citing any combination of demographic, social, political, economic, or ideological reasons for variations in punishment. Perhaps there is not a panacea applicable to each case in each court to explain why some are treated differently than others. As the search for a remedy to such social injustices persists, scholars inevitably return to conflict theories as a foundation of their thought. Although, the forbearers of what would become conflict theory (Marx and Engels) did not provide an explicit treatise on the legal exploitation of the powerless, it did not take long for those who followed to do just that.

To examine the inequalities present in the criminal justice system in a holistic manner, I build the current theoretical approach upon sociological theories of racial group interaction. The theories included are largely dependent on the idea of class antagonism, which is the core of conflict theory. As posited by conflict theorists, legal sanctions represent a mechanism of control when the dominant hegemony is challenged or when culturally dissimilar groups threaten powerful groups. (Jacobs 1979) Therefore, theories of racial conflict offer an important starting point for any examination of racial inequality and provide insight to how dominant and subordinate racial classes interact and compete with each other on a variety of social landscapes.

Another body of literature providing the core for this theoretical approach focuses upon the application of racial group interaction and conflict theory to examine the emergence, function, and efficiency of varied forms of formal and informal social control. Primarily, the studies identify varying forms of racial, social, and political threat, and the social control outcomes that result from them. This literature is important as it provides the theoretical transition from general theories of racial interaction to the actual mechanisms of social control and behaviors of dominant groups.

The final component of the research literature that informs the current study examines the impact of racial stereotyping processes on individual judicial decision-making

processes. Proponents of these theories argue that macrostructural influences as described in the first two bodies of literature, converge at the individual level to influence individual case processing outcomes. The processes are the product of history, experience, beliefs, and biases held by judicial authorities, beliefs that are largely contingent on interactions with the social world.

Prior to beginning a review of the three literature groups described above, I review the findings of contemporary sentencing research. Although much of the contemporary scholarship relies upon some of the aforementioned components, none integrates them in a manner similar to the current research. Therefore, it is important to include general findings of the research on race and other extralegal influences of sentencing outcomes.

### **Race, Inequality and Sentencing**

Research on the treatment of minorities by criminal justice systems inevitably finds evidence of harsher sanctions for members of minority groups. For the most part, disparity in case processing outcomes is explained by any combination of the following theories. First, control efforts or harsher sanctions befall minority populations in part because they lack the resources to resist the label and processing efforts of authorities. Additionally, the behavior of subordinate groups threatens the moral and conventional position of elites or presents an economic or political threat to the powerful (Blalock 1967; Helms and Jacobs 2002). Finally, some research suggests that cultural dissimilarities possessed by minorities helps to identify them as unpredictable or dangerous (Turk 1969; Chiricos and Waldo 1975; Tittle and Curran 1988; Sampson and Laub 1993). This approach is supported by a broad body of literature finding interaction between race and ethnicity and offender characteristics of age, gender, and employment status. Chiricos and Waldo (1975) and later Chiricos and Bales (1991) find significant evidence that race interacts with age, gender, and employment status to predict harsher sanctions for minority offenders. Chiricos and Bales (1991) find that unemployment affects the sentencing penalties paid to the greatest degree by males, young black males, and those convicted of violent crimes. Referring to Spitzer's (1975) comments regarding "social dynamite," the authors assert that the combination of unemployment, youth, and black status "may be the most explosive component" of all (Spitzer, 1975 p.79). Corresponding research by Steffensmeier, Ulmer, and Kramer (1998) and Spohn and Delone (1998) provide similar findings, predicting harsher sanctions for what has been defined as those found culturally

inferior.

Several works document interaction effects between the race of the offender and the type of crime. In a manner similar to that described by Tonry, authors Crawford, Chiricos, and Kleck (1998) seek to explicate the current embodiment of crime in what they consider the “black face of crime” and its impact on sentencing. By examining variance in the determination process and use of Florida’s “habitual offender” policy, the authors illustrate underlying mechanisms that define minority offenders as more threatening and higher risk than their similarly situated white counterparts. The authors find that this policy is particularly more important for black defendants brought before courts for drug crimes and for black defendants who have allegedly victimized whites. In support of the racial threat thesis, the authors find more significant race effects in social contexts of low percent black, racial income inequality, and drug and violent crime arrest rates. The findings of the study lead the authors to conclude that racial disproportionality in sentencing is influenced by social context. In terms of context, race effects may be most pronounced in relatively crime free and racially homogenous (white) environments.

Another body of research examines race effects situated within environment of systematic variation. Research literature of this nature focuses more on systematic biases, either created or in some cases alleviated by legislation and policy. Albonetti’s (1997) examination of offenders subject to Federal Guidelines finds evidence of a direct relationship between race and sentence severity. Albonetti examines the extent to which race and ethnicity and the manner in which the guilty pleas and sentencing departures contribute to sentencing disparity in a sample of drug offenders in Federal Court 1991-1992. Albonetti finds that disparity in her sample is related not only to race, but also to gender, educational level, citizenship status, and whether or not the defendant provided substantial assistance to authorities or arrived at disposition through a guilty plea. Albonetti concludes that sentencing guidelines have not eliminated sentencing disparity connected to extra-legal characteristics and may contribute to further disparity by providing an impotent measure to address the weight of extra-legal characteristics in sentencing. Particularly, Albonetti’s research indicates that departures awarded because of substantial assistance or acceptance of responsibility through a plea of guilty also contribute to sentencing disparity (Albonetti 1997). Albonetti reports that whites receive a 23% reduction in the probability of incarceration, whereas blacks and Hispanics receive 13% and 14% reductions respectively. This leads her to conclude, “...findings strongly suggest that the mechanism by which the federal guidelines permit the exercise of discretion operates to the disadvantage of

minority defendants” (Albonetti 1997 p. 818).

Ulmer and Kramer (1997) conducted a similar study of effects under state sentencing guidelines in Pennsylvania. The pair refutes claims that guidelines represent a substantive measure that will produce a Weberian sense of formal rationality in criminal sentencing. The authors assert that guideline systems are fouled by their placement within “networks of collective and individual actors with varying degrees of discretion within organizational context” (p. 384). The authors examine data (1985-1991) from state courts provided by the Pennsylvania Commission on Sentencing to measure sentencing guideline efficacy in reducing racial disparity in sentencing in adjudicatory processes. The findings indicate that not only are blacks sentenced more harshly than whites are but also other factors have an additive effect on outcomes. Black offenders and those who chose to go to trial had a higher likelihood of incarceration than whites and those who pled guilty. Specific examination of defendants who chose to go to trial rather than enter a guilty plea points to additional racial disparity. Ulmer and Kramer find that blacks found guilty at trial demonstrate increased odds of incarceration compared to whites. The findings of this research indicate the presence of latent mechanisms of punishment employed in cases where minorities do cooperate or accept blame for their crimes. In cases where minority offenders do not accept blame, they appear more threatening and less amenable to rehabilitation relative to similarly situated white defendants (Albonetti 1997; Ulmer and Kramer 1997).

Some researchers attempt to account for sentencing disparity by examining cases of interracial crime. In accordance with conflict theory, researchers predict harsher sanctions for minority offenders who victimize whites. To test this assumption, Walsh (1987) uses the adjudicatory process in sexual assault cases to examine differences in sentencing between black and white defendants and black and white victims. In a general model comparing incarceration penalties between blacks and whites, Walsh finds little evidence to support the notion that blacks receive harsher sentences than whites for sexual assault. When victim race-specific models are introduced, the findings vary. Walsh finds significantly harsher penalties in cases in which blacks victimized whites. This finding is amplified by additional findings indicating more lenient sanctions imposed in cases in which sexual assault was black on black. Findings prompt Walsh to assert that a state of “differential leniency” occurs in the sentencing of blacks, which is largely contingent on the race of the victim (Walsh 1987).

In a similar study, Spohn and Spears (1996) examine offender characteristics as well as victim characteristics. The authors find the strongest effects for black on white crimes.

However, sentencing outcomes appear to reflect the relative threat of the black offender and the harm inflicted to the community. They find that black offenders who victimize whites (stranger/not stranger) and blacks who victimize black strangers receive harsher sanctions than blacks who victimize blacks known to them (Spohn and Spears 1996). These findings reflect the relative disregard of the black community, supporting Liska and Chamlin's (1984) benign neglect hypothesis, which asserts that the impact of racial threat is diffused in areas of high minority concentration and segregation. The reoccurring finding of disadvantage for minority offenders is shared by the predominance of the academic literature examining sentencing variation over the last thirty years. Therefore, the question remains, to what degree do inequitable outcomes remain, and with what legal and extra-legal variables does race interact to contribute to sentencing outcomes?

### **Race, Group Interaction and Conflict**

General theories of racial group interaction are often starting points in the effort to examine the activities of social control bodies. The two most prominent theories are offered by Blalock (1967) and Blumer (1958), illustrating how the potential for group competition and the threat arising from it can draw punitive responses from elites. Blalock's (1967) *Toward a Theory of Minority Group Relations* remains an important contribution to the study of racial conflict in social life. Blalock asserts that varied forms of threat elicit different types of control from the state apparatus. Blalock asserts that the powerful are motivated to discriminate by two forms of perceived threats, economic and political (competition and power). Both types of threats hinge on the size of non-white populations and are confounded by the manner in which they are exerted. In general terms, as threatening populations increase in strength, volume, and levels of mobilization, so do state responses to such threat. Blalock specifies percent of minority or non-whites within an environment as the measurement strategy of what he considers threat.

Blalock's approach has particular strength in that it can be applied to political, economic and criminal justice research questions (Liska 1992; Liska 1993; Parker, Stults et al. 2005; Steen, Engen et al. 2005). Another unique attribute of this theory is that it specifies two distinct methods of state controls: coercive and placative (beneficial) controls. Coercive controls span the wide variety of formal legal functions from arrest to incarceration. Coercive controls are described as the ability to control populations through forceful action and can be measured by size of police force, extent of crime control legislation, size of agency budgets, and arrest or

patrolling practices.

Placative or economic controls are resources of social service programs and welfare mechanisms, intended to appease or placate threatening populations (Blalock 1967). Although the majority of research using Blalock's theory as a foundation is confined to coercive controls and the function of criminal justice systems, some work has found support for Blalock's assertions about placative controls as well. The first major work examining the impact of placative forms of social control is Piven and Cloward's (1971) *Regulating the Poor: The Functions of Public Welfare*. This work connected the expansion of welfare and public assistance systems in the 1960s with the racially charged civil unrest and urban rioting during that period. The assertions of Blalock and later Piven and Cloward have found some empirical support in additional studies at the national level (Isaac & Kelly, 1981; Jennings, 1983).

Herbert Blumer's (1958) sense of group position model offers a complementary approach to Blalock's thesis. For Blumer, racial hostility and competition culminate in widely held historical judgments regarding the rightful place of dominant and subordinate groups in society. This approach brings a broader based historical context to discussions of race relations and does not rely simply upon inter-group hostility arising from material conditions or physical presence (Blumer 1958).

Blumer establishes four components that are central to his thesis. Blumer's theory is first built upon a strong belief of in-group superiority or ethnocentrism. Blumer maintains that in-group members view other groups as fundamentally different from themselves. Such beliefs naturally produce stereotypical attitudes regarding the characteristics of "those people" (other group members). In-group members possess natural claims to certain rights and privileges that cannot or should not be shared with members of other groups. Finally, group position is perhaps the most complementary to Blalock's thesis. Blumer asserts that in-group members are threatened by the belief that out-group members feel entitled to resources, rights, and privileges that are possessed by the in-group. Blumer's assertions support Blalock's notion that dominant groups respond to differing threats from subordinate groups on social, political, and economic landscapes (Blumer 1958).

When viewed through a racial lens, Blumer's conceptual synthesis of ethnocentrism, group stereotypes, belief in ascribed group status, and perceived threat offers a unique perspective on group interaction. Blumer further asserts that components are most evident in the transactions between group leaders or officials (courtroom actors) in the effort to produce and



maintain social and political power (conflict). Therefore Blumer's theory should not be reduced simply to individual feelings of group identity or prejudice (Blumer 1958).

In the tradition of Blumer's (1958) work and general conflict theory, Lawrence Bobo presents his theory of *realistic conflict theory* (Bobo and Kluegel 1993; Bobo and Hutchings 1996). To test his assertions, Bobo points to the widespread opposition or "race-targeted" (such as affirmative action) policy as an indicator of new, divergent forms of prejudice and racial competition (Bobo and Kluegel 1993). Bobo argues that whites support the notion of equality based on sameness, rather than race-specific measures to relieve inequality, because of the perceived threat of race-targeted measures. Bobo explains opposition to race-targeted policy as support for realistic conflict theory. First, he asserts that whites (dominants) are unlikely to support policies from which they do not directly benefit. Second, Bobo points to the contradiction between race-targeted policies and the idea of American meritocracy, which holds that wealth and power are awarded if an individual works hard enough. Finally, Bobo examines the possibility of the emergence of new attitudes of racial prejudice arising in *response* to phenomenon such as race-targeted policy.

Bobo finds support for his theory asserting that opposition to race-targeting efforts are rooted in feelings of group self interest, and in feelings regarding the nature of racial inequality. According to Bobo, group self interest is fueled more by economic motives and less by simple racial prejudice (Bobo and Kluegel 1993).

Identifying the clear compatibility of Blalock and Blumer's theories Quillian (Quillian 1995; Quillian 1996) expands on both theorists' observations to develop a theory of prejudice toward outgroups based on collective threat. Departing from Blumer somewhat, Quillian recognizes that racial prejudice and stereotyping are "largely a collective phenomenon in which individual attitudes are crucially affected by intergroup relations"(Quillian 1995).

Quillian asserts that collective threat is contingent on the numerical size of subordinate populations and economic considerations. These two components are nearly identical to assertions made by Blalock and general conflict theory. Quillian builds his theoretical framework with four specific components blending aspects of both Blalock's and Blumer's theories with products of conflict theory. First, he asserts that racial prejudice emerges from real feelings of fear arising from threats posed by minorities to the economic and political authority of whites. Second, Quillian concurs with Blalock's assertions that threat will vary with the size of threatening populations. Third, Quillian again agrees with Blalock that racial antagonism will

be most pronounced in environments of economic depression. This occurs to a greater degree in more precarious economic situations because of the naturally occurring competition that arises when neither group's economic circumstances are secure. Finally, Quillian posits that specific individual-level characteristics predict those who are most likely to develop prejudicial attitudes or act on them. Quillian states that the more the dominant group is threatened (in economic, political or legal spheres), then the stronger the association between some specific tag and prejudicial attitudes. This final component is important because it corresponds with the assertions of other theorists (Tittle and Curran 1988; Sampson and Laub 1993; Steffensmeier, Kramer et al. 1993; Steffensmeier, Ulmer et al. 1998; Steffensmeier and Demuth 2000) and the current research regarding the contextual nature of threats and effects on criminal justice outcomes.

### **Racial Threat and Social Control**

Influenced by the work of Blalock, many scholars have expanded upon the threat hypothesis as the theoretical basis for examination of macro and microstructural variants of social control. Perhaps no scholar has been more prolific in producing literature utilizing Blalock's assertions than Allen Liska. Liska and colleagues have produced a considerable body of work using Blalock's core assertions to examine formations of social control spanning a wide variety of formal state action (Liska, Lawrence et al. 1981; Liska and Chamlin 1984; Myers 1990; Liska 1992; Liska 1993). Understanding that manifestations of social control can take many forms, Liska uses this orientation to address the activities of social bodies not only within criminal justice systems but within the mental health and welfare fields as well (Liska and Chamlin 1984; Liska 1992; Liska 1993). In Liska's (1992) edited volume, *Social Threat and Social Control* the racial threat thesis is used to examine a wide variety of social phenomenon, further punctuating the efficacy of this perspective in social research. Topics addressed in the book include southern lynching, police use of deadly force, official crime reports, police force size, imprisonment rates, and expansion of mental health, criminal justice, and welfare systems.

Throughout various works, Liska and others outline the distinct causal processes of crime control among macro-social units. Liska and Chamlin offer their explanation of these causal processes of crime control within the conflict framework. According to the authors, the power/threat hypothesis holds that:

non-whites have a substantially higher arrest rate than whites because, relative to whites,

because they are less able to resist arrest and because authorities share common stereotypes linking them with crime. Therefore, as percentage of nonwhites increases, the total arrest rate of a city should increase (Liska and Chamlin, 1984, p.384).

In a similar manner, the authors explain that the threat hypothesis holds that a high percentage of non-whites produces “an emergent property, ‘perceived threat of crime’ which increases arrest rates through increasing pressure on police to control crime (Liska and Chamlin, 1984 p.384-385).” Within this relationship, also deemed “symbolic threat” by other researchers (Sampson and Laub, 1993), arrests and other indicators of social control will rise based on the potential of minority crime. This atmosphere produces heightened social control for all subordinates, regardless of race, because of the increased capacity of social control (such as police force size and court infrastructure).

Chamlin and Liska offer a final caveat to explain the inverse relationship between non-white population size and non-white arrests rates (Liska, Lawrence et al. 1981; Liska and Chamlin 1984; Liska 1992). Where research findings documented an inverse relationship between non-white population size and the size of social control bodies and activity the authors propose an atmosphere of “benign neglect” exists, which produces these outcomes. They assert that benign neglect occurs in areas of high non-white populations due to changing attitudes towards non-white offenders and victims. In environments with a high non-white presence, intraracial crime will increase, and victims will be less likely to report it because of inherent mistrust of legal authorities. Further, authorities may allocate fewer resources to areas with higher volumes of racial minorities, due to the compartmentalized and black on black nature of crime brought forth by pronounced racial segregation. The benign neglect relationship is heightened in racially segregated communities, which gives authorities a greater ability to ignore what is going on in the ghetto. Liska and Chamlin report the following regarding the benign neglect hypothesis.

Spitzer (1975) argues that the segregation of problematic groups into urban ghettos functions as a vehicle of social control, thereby reducing the need for a large crime control apparatus; and Liska et al’s (1981) research shows a substantial inverse relationship between racial segregation and police size per capita in major U.S. cities. Extending this thesis to the actual volume of crime control is quite straightforward because the threat and benign-neglect hypothesis make the same prediction: an increase in the segregation of problematic populations (nonwhites) decreases the arrest rate. However, the hypotheses assume that different causal processes underlie the effect. The threat hypothesis suggests that, by reducing the threat of crime perceived by authorities, the segregation of nonwhites reduces the pressure on police to control crime, thereby

decreasing the arrest rate, especially that of nonwhites. The benign neglect hypothesis suggests that, by increasing the ratio of intra to inter-racial crime for nonwhite offenders, the segregation of nonwhites decreases the pressure on police to control crime, thereby decreasing the arrest rates, especially that of nonwhites (Liska and Chamlin 1984).

Previous work by Liska and others (Liska, Lawrence et al. 1981; Liska and Chamlin 1984; Liska 1992; Liska 1993) and more recent scholarship (Parker, Stults et al. 2005) find at least partial support for the benign neglect hypothesis. In earlier empirical works by Liska and Chamlin (1984), the authors test the relationship between racial/economic composition of macro-social units and arrest rates. While controlling for various components of threat (racial and economic), the authors test the relationships between arrest rates for person and property crimes with other macro-structural variables. The authors also predict that police force size (the capacity for social control) will have a mediating effect between racial/economic composition and arrest rates.

Findings suggest that income inequality, segregation, percentage nonwhite, and reported crime rates have a positive relationship with aggregate crime rates. The authors note that, consistent with conflict theory, economic inequality has a stronger relationship with property crime arrest rates than person crime arrest rates. This is not surprising as previous theorists have suggested that economic disadvantage of the poor will correspond with behavior that can be connected with efforts to combat this disadvantage (Turk 1969). The authors find inconsistent support for their hypothesis regarding the relative size of police forces and arrest rates. The authors conclude that this may be a result of the growing body of administrative staff within large police forces. Regardless of the explanations proposed, the authors are careful to note that the “observed effect of racial/economic composition of arrest rates is not mediated by police force size”(Liska and Chamlin 1984).

In a unique county-level study using distinct measures of political, economic, and black crime threats, authors Eitle, D’Alessio and Stolzenberg (2002) find support for the latter form of racial threat and corresponding effects on social control. Although they fail to find a connection between political or economic forms of threat on arrest rates the authors find that in environments with high rates of black on white crime, blacks have a substantially higher likelihood of being arrested by police. This leads the authors to propose that there is strong evidence that black on white crime is a significant predictor of black arrest rates, while arguments for political and economic threats appear less compelling.

Several other studies have used the threat hypothesis to examine a wide variety of social control dependent variables. In a manner reminiscent of Rusche and Kirchheimer (1939), Myers (1990) applies the (economic) threat hypothesis to examine the use of non-lethal social control in post-civil war Georgia (1874-1936). Myers posits that as the economic playing field between southern blacks and whites leveled following the civil war, and the use of lynching and executions declined, whites relied more heavily on non-lethal social control to suppress black competition. Using time series analysis, Myers finds some support for her predictions. She finds that as measures of racial inequality decreased, racial disparity in incarceration increased (Myers 1990).

Echoing some of the general assertions of Rusche and Kirschheimer, Myers finds that as the demand for agrarian labor increased over time due to a larger cotton harvest, the black incarceration rate also increased accordingly. One surprising, yet salient finding of Myers's research is that incarceration rates for whites appear to be intrinsically linked to their economic prosperity during this time as well. Myers states, "The relative decline in the fortunes of whites appeared to increase their vulnerability to incarceration, and relative improvements in the fortunes of blacks reduced their vulnerability to incarceration" (Myers 1990, p.648). This supports Myers's assertion that the blurring of economically defined class lines leads to "the erosion of (the) caste solidarity they engendered" (Myers 1990, p.648). Although general findings of Myers' research do not provide clear empirical support for each of her predictions, the rigorous, longitudinal examination of the economic factors influencing variation in non-lethal social control does provide substantial support for the merits of the economic threat framework (Myers 1990).

Smith and Holmes (2003) investigate the relationship between aggregate levels of civil rights criminal complaints (threat) and the corresponding level of police brutality complaints made by the populous. Utilizing the Department of Justice Police Brutality Study, Smith and Holmes examine 114 U.S. cities with a population over 150,000. As predicted, the authors' findings suggest that percent Black and percent Hispanic are positively associated with police brutality. This relationship is particularly pronounced in southwestern states where the authors theorize that racial opposition may be particularly strong because of issues related to immigration. However, the study fails to produce support for measures of majority/minority income inequality (economic disadvantage and threat). A relationship between crime rates and police brutality is also not found by the researchers. The researchers conclude that within cities

with a high degree of racial segregation, intraracial crime threatens neither the police, nor the community at large (Smith and Holmes 2003). This final finding corresponds with the benign neglect hypothesis as proffered by Liska and Chamlin (Liska and Chamlin 1984; Liska 1992; Liska 1993).

The findings of Smith and Holmes support a previous study conducted by Holmes (2000) again examining excessive use of force by police. Holmes' previous research, alleging higher rates of police brutality in large cities with equally large and poor minority populations, corresponds with the recent follow up conducted by Smith and Holmes. This study was also one of the first to examine treatment of Hispanic populations in the Southwest from a racial threat orientation (Holmes 2000).

As demonstrated by the very brief review of the literatures linking threatening populations to corresponding manifestations of social control, this theory provides a powerful examination of methods of formal social control. The general assumption of this theory regarding the relationship between threatening populations and social control is very important to the current research.

Next, I will briefly discuss three studies that apply the general tenets of the threat hypothesis at macro-level and use it to examine variation in court processing at the local level. Although the following studies examine juvenile justice decision making, rather than criminal justice processes, the theoretical models presented are quite strong and remain important to current research, warranting further attention.

Examining 31 juvenile courts in Florida, Tittle and Curran (1988) conclude that differential case processing outcomes are not a persistent phenomenon across all environments. Rather, observed disparities in criminal justice outcomes are contingent on whether the individual is a member of an aggregate (group) which poses a threat to authorities and that threats are largely contingent on latent stereotypes held by juvenile justice decision makers regarding minority populations. Through this mechanism, stereotypes of minority youth as aggressive, hypersexual, and undisciplined manifest as harsher outcomes -- harsher outcomes that are often levied in the name of public safety and conservative policy decisions. Tittle and Curran find that race effects are strongest for drug and sex offenses in jurisdictions that have a large non-white population, supporting their argument that non-white youth charged with specific offense may symbolize qualities that incite fear in legal authorities (Tittle and Curran 1988).

In a manner similar to that of Tittle and Curran, Sampson and Laub (1993) provide an examination of the macro level variation between courts as they relate to individual structural characteristics and the social environments in which they function. Using an approach that melds racial threat and formal social control, theories of urban inequality, and what amounts to fear of crime research, the authors examine juvenile justice case processing variation in macro-structural contexts. The authors note that in environments in which authorities perceive themselves as responding to social ills unduly associated with minority communities, such as gang violence and drug trafficking, these social characteristics are symbolically associated with minority youth. As Tittle and Curran (1998) state, the threats are symbolic, as they are more a matter of perception than actual characteristics possessed by all individuals associated with an aggregate.

Sampson and Laub find that symbolic threats can elicit punitive responses from legal authorities that directly contribute to racially disparate case processing outcomes. The authors assert that in environments of heightened disadvantage, poverty, and racial inequality, an increased likelihood of juvenile justice involvement would occur for minority youth. This relationship is particularly well defined for pre-trial confinement in secure facilities. In regards to home removal, the authors find out-of-home placements are disproportionately applied to African American youth adjudicated for property and drug offenses. The findings prompt Sampson and Laub (1993) to conclude that African American males receive harsher sanctions, due in part to the symbolic threat they pose to middle and upper class authorities.

Leiber's (2003) exploration of case processing outcomes in four Iowa counties offers several findings pertinent to the current research. Drawing from official court data, Leiber observes that extra-legal, race, and familial factors influence case processing at all points within juvenile court. Findings reveal that race effects are present in all four counties and cannot be accounted for exclusively by offense characteristics and relevant legal factors. The exact influence of race on juvenile justice decisions varies by county context that differ in tradition, history, and theoretical orientation of the local juvenile court work groups. Leiber finds that minority youths in the wealthiest and most crime-free county were more likely to be referred for additional court processing than similarly situated white youth. This finding lends partial support to macro level race and control theories as proposed by Sampson and Laub (1993).

Although the general assertions of racial threat theory were, at least initially, applied to the function of macrostructural social control, the previous research effectively links group threat

and group membership to individual processing outcomes. This is crucial for the current research as its assertions rely upon the effects of group membership on individual sentencing outcomes of incarceration decisions and sentence length. It is through the interplay of macro- and micro-structural contexts that stereotyping of individual criminal defendants affects sentencing outcomes.

### **Pygmalion in the Courtroom**

In a manner similar to that observed in the Pygmalion study, stereotypes and biases regarding the criminal virility of groups of defendants exert influence on criminal justice processing. Without an accurate measure to predict risk of individual criminal actors, judicial decision makers develop subjective proxies of risk management largely built upon experience and personal ideology. These ideologies carry the subjective taint of personal biases and stereotypes which cannot produce equitable outcomes across all groups of defendants.

Several theories examine how actors tap into racial stereotypes and use them as tools during criminal justice case processing. These theories assert that actors develop subjective and unofficial assessments regarding the dangerousness and inherent criminality of criminal defendants. These assessments are generally linked to experience and are rooted in cultural and racial biases (Steen, Engen et al. 2005). Albonetti's "bounded rationality" and Steffensmeier and colleagues' "focal concerns" are the dominant theories of the racial stereotyping approaches to the study of criminal justice processing.

Albonetti (1991) asserts that decision makers are hindered by time and information constraints that force them to utilize incomplete evaluations of an offender's potential to re-offend. In the effort to avoid the uncertainty of providing the correct dispositional decisions, actors develop "patterned responses" that are applied to achieve the best combination of punishment and treatment feasible based on limited information. The perspective dubbed "bounded rationality" argues that courtroom actors levy decisions based largely on data formed from experience, habit, and social structure. However, by relying on presuppositions drawn from offender characteristics such as race, gender and class the resulting decision carries the stigma of "stereotypes, prejudices and highly particularized views of present stimuli." (Albonetti 1991) The author encapsulates her assertions by stating that

the uncertainty surrounding sentencing decisions arises from the inability to accurately predict future criminal behavior. Using defendant characteristics, circumstances of the



crime and (previous) case processing outcomes, judges assess the defendant's disposition toward future criminal activity. Attributions of a stable and enduring disposition are expected to increase sentence severity. These attributions proved a basis for arriving at a rational decision in a domain of responsibility characterized by uncertainty (Albonetti 1991).

Darrell Steffensmeier and colleagues champion their "focal concerns" theory of judicial decision making, which was first articulated by Steffensmeier. Numerous researchers examining case processing outcomes have since used this theoretical orientation. However, its application seems to be generally confined to criminal (adult) court matters. Focal concerns rests upon three core assumptions that decision makers are subject to or concerned with. Steffensmeier proposes that judicial actors base their decisions largely on assessments of the blameworthiness of the offender and the degree of harm caused, in addition to the actor's duty to protect the community, the organizational constraints of the working environment, and practical consequences sentencing decisions.

Proponents of this theory assert that blameworthiness is a focal concern that exerts itself to some degree across most jurisdictions. The authors insist that blameworthiness consists of actors' assessment of the offender's culpability and the desire to have the punishment correspond with the crime. Included in this component of the theory is the need for judges to exact some measure of punishment to balance the wrong done to the victim and community, which is closely associated with "just deserts" retributive legal theory.

Blameworthiness as a focal concern is grounded in law that assumes a linear relationship between severity of crime and punishment. However, the authors are clear to note that other factors contribute to the unofficial assessment of the offender's blameworthiness and the perceived degree of harm to the victim or the community. Blameworthiness and degree of harm interact with biographical factors such as criminal history or prior personal victimization. While criminal history has a positive relationship with sentence length, factors such as childhood victimization may mitigate sentencing outcomes. Other circumstances such as the offender's role in a crime (i.e. organizer, instigator, or ride along) can influence sentencing outcomes. All of these factors have been shown to exert influence upon the decision making process and contribute to sentencing variation (Steffensmeier, Kramer et al. 1993; Steffensmeier, Ulmer et al. 1998; Steffensmeier and Demuth 2000).

The relationship between offense and legal assessments of blameworthiness has become

increasingly more evident, with more jurisdictions relying on determinate sentencing and mandatory minimums for specific types of offenses and criminal histories. In courts with standard penalties associated with offenses based on severity or to offenders based on criminal history decision makers, more aptly attach meaning (culpability) to crimes based on these standard penalties.

Research by Tonry and Coffee (1987) suggest that further constraining courts discretionary practices in the form of sentencing guidelines may serve to shift the potential for disparity from sentencing and place it in the hands of prosecutors at the charging stage. Tonry and Coffee proffer a theory of “hydraulic displacement” in which actors will attempt to circumvent the formal rationality of guidelines by exercising discretion in areas not formally controlled by rigid policy (Tonry and Coffee 1987).

It is also important to recognize sentencing guideline as formalized mechanisms used to weight prior criminal involvement, and presenting offenses in a manner that largely reflect factors such as perceived harm to the community and the role played by the offender in a crime (aggravated circumstances). Although considerable attention is given to aggravating offense circumstances, formalized policy has not been instituted by any jurisdiction that assigns mitigating weights to biographical circumstances such as childhood abuse as mentioned previously.

The second component of focal concerns that authors identify is the manner in which judicial actors respond to their perceived responsibility to protect the community. Steffensmeier and Demuth explain that protection of the community “focuses more on the need to incapacitate the offender or to deter (future) would-be offenders” (Steffensmeier 2000 p.709).

Similar to Albonetti’s uncertainty avoidance, Steffensmeier *et al.* assert that judicial actors are confronted by the task of protecting the community from offenders with little information about the true threat posed by these individuals. Actors are often left to their assumptions regarding an offender’s likelihood to recidivate, which are largely based upon experiences and subjective assessments. Operating in an environment with little ability accurately predict recidivism leads to decisions levied in the attempt to reduce risk. Decision-making processes such as these, which are contingent on history, incomplete or subjective assessments lead to inequitable, unjust for those subjected to them.

Finally, the authors argue that decisions are made by actors that are hindered by practical *organizational constraints and practical consequences*. This component recognizes

environmental factors unique to states, jurisdictions, and courts that are formal and informal influences on the judicial decision making process. Practical constraints can encompass a wide variety of contextual considerations, including the notoriety of the case, available bed space and offender characteristics (sentencing an elderly offender to prison).

Included here is the judges' assessment of an offender's ability to "do time," the costs incurred to the system for incarceration relative to the crime committed, and the disruption of family systems (sending a parent to prison). A relatively new phenomenon of private placement resources (i.e. insurance and other private resources for treatment) is found to exert influence on decision-making processes, although no study at the time of this writing has attempted to quantify to what extent.

The theorists assume a complex interplay between the three focal concerns components, summarizing that all of these factors assert themselves to varying degrees across jurisdictions and cases. When confronted with limited information, actors concentrate on focal concerns and operate with "perceptual shorthand" that forces them to make decisions based on experience and intuition. When faced with perceptual shorthand, judges are likely to rely on the defendant's gender, race, social class, or other indicators as proxies of risk (Kramer and Steffensmeier 1993; Steffensmeier, Kramer et al. 1993; Steffensmeier, Ulmer et al. 1998; Steffensmeier and Demuth 2000).

In perhaps the broadest application of focal concerns theory (examining the interaction between race, age, gender) Steffensmeier, Ulmer, and Kramer examine sentencing disparity using four years of Pennsylvania State Court sentencing data. The authors find that harsher sanctions befall the young black male demographic more so than any other. They also find that race effects are most influential in sentencing of younger males rather than older. Finally, the authors surmise that age is a stronger predictor of harsher outcomes for males than females.

Findings of the analysis asserting harsher sanctions for young black males support several components of focal concerns theory. Primarily, young black males are viewed as virile, potent criminal offenders with a high propensity to re-offend. To support this notion, the authors cite concurrent qualitative data which proposes that "the criminal records of young black males were often defined as qualitatively more serious and indicative of future crime risk compared to other types of offenders"(Steffensmeier, Ulmer et al. 1998). This finding corresponds with the blameworthiness (criminal culpability) and protection of the community component of focal concerns. An additional caveat found in the qualitative research corresponds with the

organizational constraints and practical consequences component of focal concerns. The authors report that some judges were reluctant to send white offenders to state prisons for fear that the whites would be victimized by black inmates. This concern, as voiced by the judges, reflects their unofficial assessments of an offender “to do time.” However, because these assessments often vary by age, race, and gender statuses, inequitable outcomes follow.

The authors also find that the influence of race on sentencing is contextualized by age for males, but not for females. Although age predicts harsher outcomes for young black defendants, these findings do not appear consistently across gender dichotomies. The authors find that black women consistently receive harsher sanctions than white women regardless of age. Although gender is a salient predictor of involvement in crime and harsher sanctions in the balance of criminal justice research, the difference between black and white female offenders supports the author’s theoretical predictions. These outcomes, according to the authors, result from judges’ assessments of offenders’ culpability and ability to do time. Generally, men (minorities and younger offenders) are considered more threatening and therefore culpable. Findings of harsher outcomes for black women compared to white, regardless of age, support assertions regarding the culpability of black offenders compared to white.

A more recent test of focal concerns theory by Demuth and Steffensmeier (2004) considers the effects of Hispanic status in the analysis of racial disparity in criminal justice processing. This study is important to the current research because the authors acknowledge the compatibility of focal concerns theory with macro-structural racial threat theory as described earlier. To my knowledge, this is the first instance that originators and major proponents of the theory (Steffensmeier and colleagues) have implied a complementary relationship between theories. The authors predict that Hispanics will receive harsher sanctions for a number of reasons related to focal concerns and racial threat. Demuth and Steffensmeier assert that:

Hispanics in the United States share many of the same social disadvantages as blacks (e.g., poverty, unemployment, crime) in addition to problems surrounding language and citizenship. In addition, there is a long tradition of prejudice against Hispanics (as well as other recent immigrant groups) in the United States and immigration in recent years has generated considerable controversy over Hispanics as potential social, economic, and criminal threat (Mata, 1998). And, the “war on drugs” is intimately connected with race and ethnicity, stereotypes associated with drug trafficking and gang violence are often attached to Hispanic males (Musto, 1987).(Demuth and Steffensmeier 2004)

Relying upon four waves of State Court Processing Statistics data, the pair specifically

tests Hispanic-black-white sentencing differences of felony defendants in large urban courts. Demuth and Steffensmeier find case processing outcomes of Hispanics most closely resemble that of outcomes for blacks. The authors provide an extension of the literature by specifically comparing race and ethnicity effects on sentencing outcomes. They estimate that errors in measurement occurring when Hispanics are included in white populations effectively “water down” race effects. When accounting for Hispanic populations separately, race effects for Blacks become more pronounced.

The authors also find within the minority dichotomy (blacks vs. Hispanics) that blacks receive harsher outcomes for property offenses and Hispanics receive harsher sentences for drug related crimes. These findings are consistent with focal concerns and racial threat theories on a number of levels. The authors assert that Hispanics will be less able to resist formal processing and the imposition of legal sanctions because of cultural and language barriers and because of a lack of resource and power. Hispanic defendants may be deemed more blameworthy because of cultural dissimilarity and because of the growing concern that Hispanics present an economic and criminal threat to white populations. Finally, findings suggest that Hispanics are sanctioned harsher for drug related activities because of their association with large-scale trafficking and “mule” activities. The findings of this and other focal concerns research are closely aligned with research conducted by Tittle and Curran (1988), Sampson and Laub (1993), and Leiber (2003), connecting the contextual nature of threats to individual assessments of offenders during the decision making process.

Despite the overwhelming evidence of various social characteristics that exert influence on sentencing outcomes, no single concept captures the invisible, sometimes invidious, force that can turn a particular context into something for which it was never intended. Robert Merton (1957) called this a “false definition of the situation,” which, nevertheless, makes the false assumption manifest itself. Like Rosenthal’s study of classroom expectations, it is the thesis of this study that the courtroom holds an invisible force that captures a mix of fear, stereotyping, and perceived threat that evokes strong reactions in the form of sentencing disparity.

### ***Organizational Perspectives-Courts as Communities***

Although the organizational approach to sentencing is not directly applicable to this theoretical framework, some of its components beg mentioning. The courtroom community approach asserts that variance in people processing outcomes observable between courts is

attributable to the size and location of the processing body. The most important piece of organizational sentencing theory as it applies to the current study is the concept of courts as social worlds. Ulmer (1997) describes courts as individual units of analysis lodged within the context of varying social, political, and legal structures. The varying makeup of these social worlds is dictated by the individual interactions occurring between actors, which are shaped in varying degrees by larger social contexts. Eisenstein and Jacobs (1977) describe the process of forming and reforming the normative structure in their discussion of courtroom workgroups:

The courtroom workgroups, through their ongoing interactions among major participants, develop norms and expectations about sentences that constrain all the participants in an individual case. No defendant is sentenced out of context with the norm. Workgroup members continuously compared defendants and cases with others that had been processed in that courtroom. Thus, the [informal] social organization in which courtroom participants operated limited the scope of arbitrary action as much as the law itself (Eisenstein and Jacob 1977, p.286).

From this point, the authors develop the idea of the “going rate” which describes the normative response to offender behavior that encapsulates all legal and extra-legal characteristics. In environments such as these, individuals become a conglomeration of subjective assessments regarding the nature of presenting behavior, blameworthiness, and culpability that are tempered by “what has always been done here.” Within this conceptualization, the judicial process becomes a transaction, negotiated within the context of historical arrangements, rather than adjudicated on an individual basis. Emerson (1983) offers another note-worthy caveat of organization theory applicable to this study in *Holistic Effects in Social Control Decision Making*. Emerson argues that it is not only the size of a court’s caseload that contributes to normative realities, but also the type of cases processed within. He argues:

...under a variety of circumstances, the individual case is not the sole or even the most important unit for categorizing and disposing of cases. Particular cases are in fact processed not independently of others but in ways that take into account the implications of other cases for the present one, and vice versa. These wider, holistic concerns and influences are an important organizationally based factor that shapes decision outcomes (Emerson, 1983 pp. 425-426).

Emerson’s assertions complement my predictions regarding caseload composition and the contextual nature of courts. However, I diverge from the aforementioned theorists who find that within larger courts; penalties will be less severe arguing that as the contextual nature of courts change to include a greater degree of threat, sentences will become more severe.

Regardless of the diversity of the research findings and subsequent efforts to address disproportionality in sentencing, the phenomenon continues to represent evidence of the unwavering injustice pervasive across all planes of American social life. Because inequitable justice outcomes should be treated as indicators of larger social inequalities, research on the subject should consider the influence of macrostructural characteristics on sentencing while also considering individual level characteristics. Although much of the research literatures control for macrostructural influences on sentencing, a relatively smaller number of studies have examined the impact of court-level influences on sentencing outcomes. Even fewer have considered mechanisms of threats operating within individual court environments.

The current research melds the general tenets of social threat with Blumer's theory of group position and applies them to local (county) level courtroom environments. This model posits that as judicial actors are presented with growing volumes of specific offenses or offenders, an oppositional identity, or group position (us against them) dichotomy (Blumer, 1958), becomes more pronounced. Authorities who acknowledge themselves as legally and perhaps morally superior will identify emerging subcategories of offenders as threats to dominant hegemony. In this context, such offenders become symbolic threats to the existing social order. As symbolic threats enhance the oppositional relationship between subjects and authorities, judicial decision makers will more readily rely on unofficial assessments of blameworthiness and inherent criminality process criminal matters (all of these people are the same). Offender blameworthiness and the court's duty toward community protection will be enhanced, as judges perceive docket-level threats from either emergent racial groups or growing volumes of specific offense types.

I develop a conceptual model to illustrate the workings of this theory that reflects the major components of the research literature as described previously. The first component depicts the most salient findings of the sentencing literature defining the relationship between individual offense and offender characteristics and sentencing outcomes. As findings of the literature suggest, this model also assumes a direct relationship between presenting offense, criminal history and extra-legal variables and the dependent variables of in/out incarcerations decision and sentence length. These variables are illustrated by related but separate relationships, as neither of the variables will exert the same influence on sentencing outcomes.

Next, in concurrence with the macrostructural racial threat and social control research, I

include state level controls similar to what has appeared in the literature. Because the focus of this research is the court context, I merely include control variables reflecting general state economic viability, political affiliation, and criminal justice policy. Although, these variables are not central to the hypotheses, it is important to include them, given findings of previous research asserting macrostructural influences on patterns of social control.

The third component of the model represents the relationship between court-level threats and sentencing outcomes, as well as interaction effects between aggregate caseload threats and individual offense characteristics. In a manner similar to Blalock (1967), this model assumes a direct relationship between threatening populations at the court or docket level and sentence length and incarceration decisions. The model illustrates that as court (docket) level threatening populations grow in volume (minority, drug, and violent), the oppositional dichotomy between authorities and offenders will grow accordingly. As authorities levy sanctions in response to perceived social ills, the association of individual offender characteristics with local threat aggregates results in harsher sentencing outcomes for members of the aggregate. The model also assumes an interaction effect between the volume of threatening populations (offense and offenders) and the sanctions imposed on members of aggregate threatening populations in terms of either racial affiliation or offense descriptors.

Within the confines of the defined theoretical model, the following hypotheses are examined to investigate the presence and relative influence of racial threat at the court level:

**H<sub>1</sub> Individual offense and criminal history will have the strongest predictive relationship with sentence decisions.**

**H<sub>1a</sub> Controlling for individual level legal descriptors, extra-legal characteristics race, gender, and age will mediate the relationship between legal descriptors and sentencing outcomes.**

As previous studies have discussed, individual offender and offense characteristics represent the most consistent predictor of individual sentencing variation. Therefore, it is important to begin this study with consideration of all individual characteristics defined as salient predictors of sentencing variation in the empirical literature. Individual level characteristics include offense type and severity as well as measures of individual criminal history. Accordingly extra-legal offender characteristics race, gender, and age will exert a mediating effect between offense and criminal history variables and sentencing outcomes.



The crux of this research focuses upon the impact of threatening populations measured at the court level or county level. Therefore, this study tests the following hypotheses regarding court level racial threat:

**H<sub>2</sub> Controlling for legal and extra-legal descriptors, defendants in court contexts of higher minority caseload volume will face increased odds of receiving an incarceration sentence than similarly situated defendants in court contexts of lesser minority caseload volume.**

**H<sub>2a</sub> Controlling for legal and extra-legal descriptors, black defendants in court contexts of higher minority caseload volume will face increased odds of receiving an incarceration sentence than similarly situated black defendants in court contexts of lesser minority caseload volume.**

**H<sub>3</sub> Controlling for legal and extra-legal descriptors, defendants in court contexts of higher minority caseload volume will receive sentences of greater length than similarly situated defendants in courts of lesser minority caseload volume.**

**H<sub>4</sub> Controlling for legal and extra-legal descriptors, black defendants in court contexts of higher minority caseload volume will receive sentences of greater length than similarly situated black defendants in courts of lesser minority caseload volume.**

. Considering the findings of macrostructural racial threat research, this research posits that in environments of pronounced racial threats at the local level, sentencing outcomes will be more severe for members of threatening populations (offenders and offenses). Recognizing the importance of organizational and ideological influences unique to individual jurisdictions, I include variables representing the volume of particular offenders, and offenses present within a county. In accordance with recent research examining court-level sentence variance, I assert the most meaningful predictor of variation of individual outcomes is the relative presence of threats as measured by aggregate court-level populations.

The final group of hypotheses reflects the findings of the research literature indicating interaction effects between races, gender, offense type, and sentencing outcomes. I limit the research to two offense categories found by the research to represent the most significant source of criminal threat according to findings of the literature. Violent and drug trafficking offenses will interact with offender race in courts with relatively high volumes of minority offenders and violent and drug sale offenses. The interaction between race, offense category and court level context will predict harsher sanctions for members or threatening populations.

**H<sub>5</sub> Controlling for legal and extra-legal descriptors, court contexts of higher minority caseload volume will predict harsher sanctions (incarceration and sentence length) for drug trafficking offenses than court contexts of lesser minority caseload volume.**

**H<sub>6</sub> Controlling for legal and extra-legal descriptors, court contexts of higher minority caseload volume will predict harsher sanctions (incarceration and sentence length) for violent offenses than court contexts of lesser minority caseload volume.**

**H<sub>7</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) than court contexts of lesser violent crime caseload volume**

**H<sub>7a</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) for black defendants than court contexts of lesser violent crime caseload volume.**

**H<sub>8</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) for drug offenses than court contexts of lesser violent crime caseload volume.**

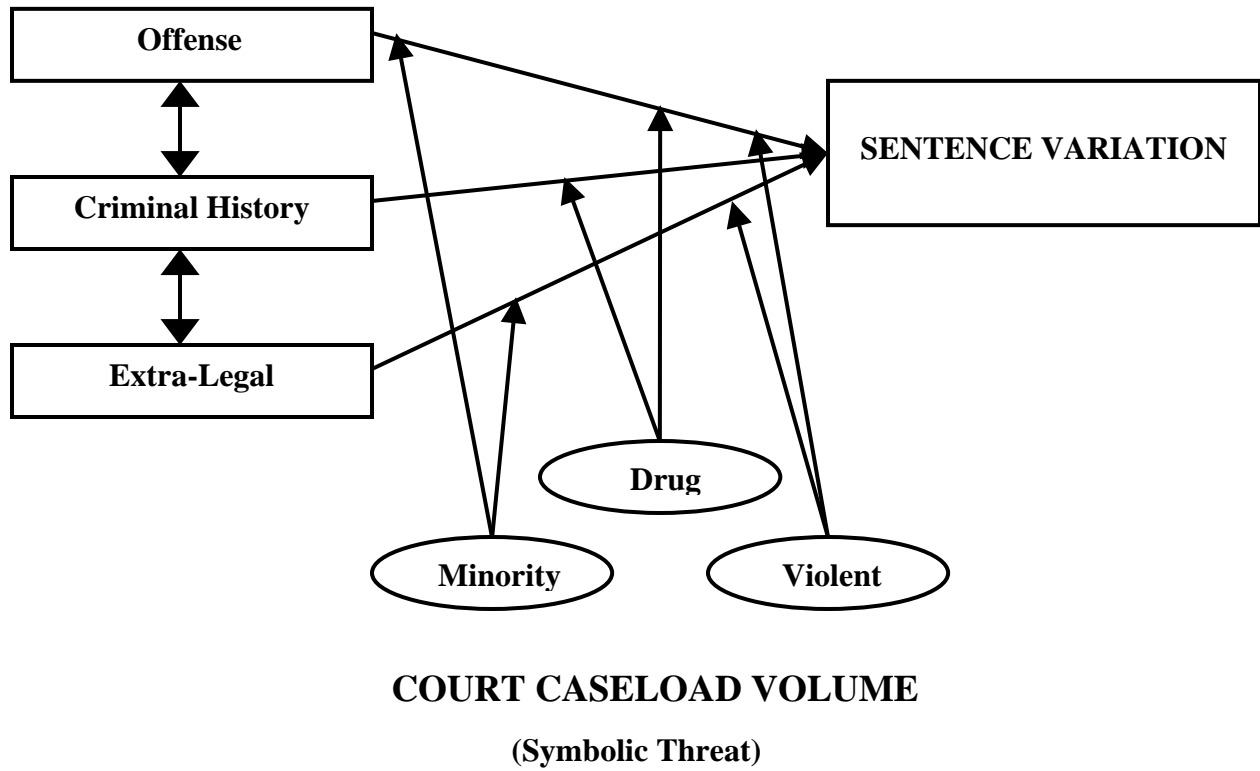
**H<sub>9</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) for black defendants than court contexts of lesser drug crime caseload volume.**

**H<sub>9a</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) than court contexts of lesser drug crime caseload volume.**

**H<sub>10</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) violent offenses than court contexts of lesser drug crime caseload volume.**

**H<sub>11</sub> Controlling for individual and court-level predictors socio-political characteristics at the county and state level will exert added influence on sentencing decisions.**

**Figure 2-1 Theoretical Model of Judicial Decision Making Processes**



## CHAPTER 3 - Data and Method

For this study, I rely upon data from the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics (BJS). BJS provides an addition to this very large data set in two-year increments beginning in 1990. Due to the size of the data set (approximately 15,000 cases per wave) I chose to limit the analysis to years 1998, 2000, 2002. Limiting analysis in such a manner helps to address power issues created by estimating models with such an enormous number of cases ( $N > 100,000$ ). Although limited, the final three installments still contain over 45,000 cases. The data are collected from a snapshot of all cases processed in participating jurisdictions on May 20, of each study year. Once identified, cases are monitored for one calendar year thereafter to collect all relevant case-level dispositional information. If a matter is not resolved during that time, the case is included but coded with the appropriate value depending on what information is available. Cases that have not reached conclusion minimally indicate pending as the sentencing outcome. The data include a variety of demographic and criminal history variables as well as pretrial processing, adjudication, and sentencing outcomes. The sample is felony defendants in state courts (not municipal or federal) of the nation's 75 most populous counties, spanning 24 states and the District of Columbia. Once delineated the final three installments include 23 states and 60 counties therein.

Although the data contain a wealth of variables useful in modeling variation in case processing outcomes, I choose to focus on sentencing disparity, particularly disparities observable across extra-legal categories. Therefore, the model dependent variables represent decisions made by courts to incarcerate individuals in jails and prisons (in/out incarceration decision) and the variation in sentence length/severity. Ordinary Least Squares (OLS) regression is the chosen method to estimate models for sentence length, while binary logistic regression estimates models for the dichotomous in/out incarceration variable.

### **Dependent variable(s):**

The first dependent variable is a dichotomous *incarceration variable*, indicating whether a defendant is sentenced to jail/prison. The original data set contained a variable indicating whether the most serious sentence was "any incarceration" including categories of incarceration, probation/diversion, other, pending and system missing. This variable is coded incarceration 1,

with all other dispositions including probation, diversion, or others as the reference category, missing values are excluded from analysis.

The second dependent variable used to model variation in dispositional outcomes is *sentence length*. The original data file included three variables for sentence length. The first indicated jail sentence length, the second the minimum prison term imposed, and the third the maximum prison term imposed. To create a continuous measure of all incarceration terms, missing data and cases that were not applicable (did not receive jail or prison) are excluded. I compute the length variable by combining all three variables and extracting the maximum value of any of these categories on each case. The resulting variable contains a considerable range in months (0-1441) and a standard deviation of 72.834. The variable is collapsed by grouping months together in 12-month increments beginning at 0 and .01 months. This convention is applied to all sentences, establishing the high end of the range as 480 months or more. It is theoretically relevant to use 480 months as the highest category because contemporary practices in many states dictate a “hard 40” (or 480 months) as the equivalent of a life sentence. The resulting variable ranges 1-41 (years) and has a standard deviation of 4.45. Although collapsing the months variable in this manner begins to address some evident methodological problems it is still necessary to address the negative skew (zero values) of the length variable. Logging the variable reduces the likelihood of misestimated standard errors and estimation bias by normalizing the skewed distribution. Normalizing the skewness of the variable is accomplished by recoding the length variable to equal the natural logarithm of the maximum months of incarceration imposed.<sup>1</sup>

## **Independent variables:**

### ***Legal Variables***

In sentencing research legal variables measuring the *committing offenses*, as well as variables reflecting the subject’s previous behavior, should be the most salient and significant predictors of dispositional outcomes. To estimate the effects of presenting behaviors on

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<sup>1</sup> Logging the length variable reduces the skewness from 5.64 to 1.97, the standard deviation from 4.45 to .574 and the kurtosis from 39.76 to 4.18. The log transformation allows for expression of sentence length in terms of proportional increases in length associated with a unit increase in the explanatory variable of interest by normalizing the skewed nature of the variable.

sentencing outcomes, a variety of variables indicating the type and severity of the arrest and conviction offense are included.

Acknowledging the assertions of Crawford, Chiricos, and Kleck (1998) regarding the racial typification of crime, which attributes violent and drug related crimes to young black males (or visa versa), offense descriptors are limited individual offense descriptors to violent crimes, drug sale, and drug possession conviction categories. A categorical variable for violent behaviors that includes convictions for crimes of murder, rape, robbery, assault, weapons offenses, and other person offenses is created to represent behaviors that reflect the threat of physical violence and harm. This variable accounts for 9.8 of all conviction offenses in the data set. The remaining two conviction variables indicate two distinct categories of drug involvement; drug sale or trafficking and drug possession. It is theoretically important to differentiate between the two types of offenses, as variation in dispositional outcomes will be observable between racial categories for the different drug offending behaviors. The drug sale variable accounts for 8.6 of all offenses in the data, likewise simple possession accounts for 10.3 of all offenses in the data set. While still a felony, the possession variable is unique as it represents a sophisticated form of drug offending behavior as felony possession of drugs indicates possession of narcotics such as cocaine, or heroin (rather than first possession of marijuana, which is a misdemeanor). Combined, the three offense descriptor variables account for 28.7 of all convictions in the data set. The remaining offenses include other non-person felonies such as forgery, burglary, theft, traffic felonies, and other violations of public order that are not of a person nature.

The *total number of charges* filed at arrest is shown to exert influence over sentence outcomes. Arresting officers often choose to include additional charges based on their perception of the severity of an individual's behavior. During the arrest process, the officer's perception of the severity of the offense may result in the officer including as many charges as possible in the initial complaint that is forwarded to the prosecutor. Likewise, the number of charges at arrest is often used as a lever by State authorities when negotiating a plea. The number of charges in effect becomes bargaining capital, some of which can be offered a concession during pre-trial negotiations. Therefore, as an additional measure of crime severity, total number of arresting charges is included. This variable is simply a continuous measure of total number of charges at arrest.

*Criminal history* is measured in two ways. First, four continuous arrest and

imprisonment variables create a forty-point scale of prior criminal justice involvement. Variables representing the total number of <sup>2</sup>prior felony arrest history, prior felony conviction history, prior jail commitment, and prior prison commitments are included. These variables create a criminal history score ranging from lowest (0) to highest (40) that yields a Cronbach alpha reliability score of .810. Next, as an indicator of criminal culpability a dummy variable indicating if the defendant has an open or pending case or active post-dispositional supervision at the time of arrest is included. Often, a multiple offender's behavior is considered escalating if they offend at a greater rate than the court can process them. The *active case at arrest* controls for aggravating effects created by escalating behaviors.

The final legal variable of interest is the *method of case processing*. Theoretically, I am concerned with how judicial actors respond to the variety of social threats presented to them. Focal concerns theory asserts that the manner in which defendants receive a sentence will influence sentence severity and length. Assuming defendants that willingly accept a sentence through plea rather than contesting a sentence through trial will appear more remorseful of their crime, be more amenable to treatment, and therefore less blameworthy to authorities, the plea variable should be associated with less severe sanctions. To control for effects of the manner in which the adjudication process occurs a dummy variable for plea agreement is included; trial serves as the reference category.

### ***Extra Legal Variables***

Extra-legal variables are offender characteristics that do not indicate the nature presenting or previous behaviors or any other indicator of legal processing. The effects of gender criminal sanctioning is measured by a dummy variable coded male=1, with females as the excluded category. Defendant race is represented by three individual dummy variables estimating variance between minority and white defendants. Black and Hispanic categories are separate dummies, with a third minority category combining all other non-white racial categories (Native American, Asian, Hawaiian-Pacific Islander, Other). These categories are mutually exclusive, as any combination of white or Black-Hispanic will appear in the Hispanic category. Although the size of the data set provides a sufficient number of cases in each category, the black category

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<sup>2</sup>Are continuous variables with scores ranging from 0 (no incidents) 1-9 and 10 (10 incidents or more)

contains the largest number of cases among all racial groups. *Age* of the defendant is included as a continuous variable.<sup>3 4 5</sup>

## *Contextual Variables*

### *Court Context*

To empirically test theoretical assertions regarding the contextual variance effecting sentencing that is contingent on populations of defendants as well as total volume of specific offenses processed within a jurisdiction, I construct three variables reflecting caseload context. The variable most central to this argument is the volume of minority offenders present within a given jurisdiction. This variable is constructed by measuring the total number of minority defendants arrested in each county (years 1990-2002). The percent of minority defendants presented to courts in each county are calculated by dividing total number minority defendants by total number of defendants. Each value is then recoded to the corresponding county code in the data set. This procedure provides a more accurate estimate of minorities processed within a jurisdiction by including all data overtime, rather than a sample of a few years.<sup>6</sup>

To investigate the findings of previous research suggesting that race effects in sentencing are mediated by the type of offense, I create *caseload variables by offense type*. Theoretically, I predict harsher sanctions in jurisdictions with higher rates of violent and drug crimes. The rates of these offenses should correspond to some degree with the perceptions authorities regarding

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<sup>3</sup> Race frequencies are as follows: White non-Hispanic N=12,488; Black non-Hispanic N=18,040; Hispanic any race N=10,044, Other non-white N=941, Missing Values N=4,558.

<sup>4</sup> An *Age squared* component included to address the findings of previous research that indicates a nonlinear relationship with sentence severity and age Demuth, S. (2003). "Racial and Ethnic Differences In Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees." *Criminology* 41(3): 873-905.

. Several models were constructed including Age and Age<sup>2</sup>. The Age<sup>2</sup> component was insignificant in most models in did not have a substantial effect on other model variables, therefore it was excluded.

<sup>5</sup> To control for changes in latent constructs over time dummy variables for *sentencing year* in two-year increments for 1998-2002 are included with 1998 as the excluded category. In the same manner as year, dummy variables for each state are included with California serves as the reference category. Regression models were created including these controls, however they did not substantially improve model fit, and were subsequently excluded from the analysis.

<sup>6</sup> Some counties are have fewer than 100 cases in the smaller data set and would need to be excluded. Developing caseload context variables from the full data set allows all counties to be included in the analysis. Caseload percentages were calculated using 98-02 data, and compared. Although some variance is observed the data do not differ significantly.



the “social ills” that plague their community. I predict that in environments associated with the highest volume of violent and drug crime defendants who commit brought before the court as a violent offender, a drug offender, or of minority status will receive harsher sanctions. Offense caseload variables are constructed in the same manner as the minority caseload variable: by dividing the total number of drug sale or violent crimes by all crimes processed. In this manner, the caseload level variables measure the percent drug and percent violent offenses present in each jurisdiction.

### ***Interaction Effects***

Several studies have examined the interaction between social context and defendant characteristics and the corresponding effects on criminal sanctioning (Steffensmeier, et al, 1998, Helms and Jacobs, 2002). Because interactions between court context, offense, and offender characteristics are central to this study, three interaction terms are included to estimate the interaction effects between court context and black defendant status. The effect of the court caseload context on individual race status is measured by multiplying each of the three-caseload volume variables (minority, violent, drug) by a dummy scored 1 for black defendants. This results in three interaction terms, one for each caseload variable multiplied by the black dummy variable.

### ***State Level Contextual Variables***

Finally, a limited number of state level contextual variables are included to control for social, political, and economic realities that may influence sentencing outcomes. First, a continuous measure of families in poverty is included that is obtained from 2000 census data. This variable is important because of the high correlation between minority status and poverty and is used in some manner by a number of theorists examining economic influences of punishment. Next, I include a dummy variable to control for states that have sentencing guideline systems. Although sentencing guidelines is a legal variable, in this research it is used to control for criminal justice context between states, rather than variance at the individual level.<sup>7</sup> Finally, to control for political context, I create a dummy variable indicating whether a study state was Republican majority. In the same manner that the sentencing guideline variable

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<sup>7</sup> Ten of twenty-three states in this study have sentencing guidelines in place during years of data collection.

was constructed, states that are Republican majority (red states) are recoded 1, with Democratic majority states serving as the reference category.<sup>8</sup>

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<sup>8</sup> Twelve of twenty-three states in this study are considered Republican majority as published by the US Census 2000. The Pearson's  $r$  correlation between the Red State and State Sentencing Guideline variables is  $-.095^{***}$ .



**Table 3-1: Descriptive Statistics of Model Variables (Sentence Length)**

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	<b>N</b>	<b>Mean</b>	<b>S.D.</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Dependent Variables</b>					
Sentence Length (collapsed)	15,689	2.68	4.66	1	41
<b>Legal Characteristics</b>					
Conviction-Violent	2,924	.186		0	1
Conviction-Sale	2,358	.150		0	1
Conviction-Possession	2,583	.164		0	1
Criminal History		11.03	9.65	0	40
Total Charges at Arrest		2.33	1.66	1	8
Active Case at Arrest	6,644	.423		0	1
Plea	14,573	.928		0	1
<b>Extra-Legal Characteristics</b>					
Male	13,271	.845		0	1
Age		31		13	84
Black	6,300	.401		0	1
Hispanic	4,339	.276		0	1
Other	394	.025		0	1
<b>Court Context</b>					
Caseload % Minority		69.13	14.08	29	95
Caseload % Drug		36.58	9.19	16	59
Caseload % Violent		26.34	6.20	14	43
<b>State Context</b>					
Sentencing Guidelines	2,218	.141		0	1
Red State	5,394	.348		0	1
% Families in Poverty		10.19	1.67	1	13.90

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**Table 3-2: Descriptive Statistics for Model Variables (Incarceration Decision)**

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	<b>N</b>	<b>Mean</b>	<b>S.D.</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Dependent Variables</b>	36,249				
Incarceration	15,495	.495	4.66	0	1
<b>Legal Characteristics</b>					
Conviction-Violent	3,608	.099		0	1
Conviction-Sale	3,057	.084		0	1
Conviction-Possession	3,851	.106		0	1
Criminal History		8.73	.308	0	40
Total Charges at Arrest		2.27	1.64	1	8
Active Case at Arrest	12,119	.334		0	1
Plea	19,816	.546		0	1
<b>Extra-Legal Characteristics</b>					
Male	29,660	.818		0	1
Age		30.7		13	87
Black	15,668	.432		0	1
Hispanic	8,793	.242		0	1
Other	814	.023		0	1
<b>Court Context</b>					
Caseload % Minority		70.2	15.2	29	95
Caseload % Drug		35.66	9.77	16	59
Caseload % Violent		27.64	7.19	14	43
<b>State Context</b>					
Sentencing Guidelines	6,732	.185		0	1
Red State	15,075	.415		0	1
% Families in Poverty		10.05	1.84	5.80	13.90

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### *Analytical Strategy*

Logistic and ordinary least squares (OLS) regression model the effects of offense and offender characteristics on in/out incarceration decisions and sentence length. Eight general models (4 OLS, 4 Logistic) are produced examining the impact on respective sentencing outcomes with the introduction of separate blocks of legal, extra-legal, court-contextual, and interaction effects variables.

Next, to examine the variance of sentencing decisions across court contexts based on the caseload volume variables, several models are produced by dichotomizing the data based on caseload makeup. The three-caseload volume variables are dichotomized at the median, which allows for modeling of dependent variables in low and high caseload volume contexts. Although the minority caseload volume variable is negatively skewed, and the drug and violent caseload variables are slightly positively skewed, applying a power transformation to the variables or transforming the variables to the natural logarithm did not improve model fit or stability. Therefore, the variables are included in the format discussed previously in this chapter.

Cutting the data at the median provides the most conservative method of model estimation by including all cases available for analysis. Selecting cases one or two standard deviations from the mean focusing analysis on the tails of the data is also a suitable method of model estimation. However, this method focuses on the most extreme cases of the data, and may produce less generalizable results than those produced by estimating models using the entire data set. Therefore the data are dichotomized at the median allowing for general model construction. Z scores are also calculated to determine if model groups vary in a statistically significant manner.<sup>9</sup>

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<sup>9</sup> For a full discussion of the use of Z scores for comparisons of regression coefficients between groups see: Brame, Paternoster et. al (1998) *Testing for the Equality of Maximum-Likelihood Regression Coefficients Between Two Independent Equations* The Journal of Quantitative Criminology 14 (3) 245-261

## CHAPTER 4 - Findings

### Ordinary least squares (OLS) regression modeling sentence length variation

#### *Legal, Extra-Legal, Court Context and Interaction Terms*

Table 4-1 contains four sentence length models controlling for a variety of legal, extra-legal variables found consistently throughout the sentencing literature. In model 1, the first three variables are dummies for the conviction crime categories violent, drug sale, and drug possession. *In this and subsequent sentence length models, the coefficients will be interpreted in percent change because the dependent variable is the natural log of the sentence length.* Of the offense descriptors, the violent crime variable is the strongest predictor of sentence length, indicating a 42% increase in sentence length when compared to other felonies ( $b=.424$ ). This is the relationship expected regardless of court context, as violent crimes are associated with the harshest penalties. Drug sale convictions are also a significant predictor of sentence length, indicating nearly a 25% increase in sentence length when compared to other felonies ( $b=.245$ ). The final conviction variable of interest is drug possession, the first (and subsequent) model indicates a weak negative relationship ( $b=-.013$ ) between prison sentence length and possession. Again, this is somewhat expected assuming penalties are least for drug possession when compared to drug sale or acts of violence. This model indicates a dramatic difference in sentence length between drug sale and possession, illustrating that those convicted of felony possession are sentenced to sentences slightly less than those convicted of other non-person felonies.

The defendant's mode of conviction is a dichotomous plea variable indicating if conviction is reached via plea with trial as the omitted category. While controlling for offense and criminal history descriptors we find plea to be the best predictor of sentence length in the model. The coefficient of  $-.531$  indicates while controlling for legal and extra-legal criteria, defendants who reach disposition through plea receive a 53% reduction in sentence length than those who go to trial. The final three variables included in model 1 represent measures of criminal history, crime severity, and court involvement at the time of arrest. Recall that the criminal history variable is a combination of four measures of prior criminal justice involvement

(number of arrests, number of convictions, number of jail and prison terms). The coefficient of .078 indicates that each previous criminal justice contact event (arrest, conviction, jail, or prison term) increases the length of the incarceration sentence by .08%. Interestingly, mode of conviction appears to predict variance in sentence length at over twice the rate of a person's prior behaviors.

The final two variables address the defendant's status at the time of arrest. First, the total number of charges variable indicates the severity of the acts that brought the defendant into custody. The total number of charges may simply indicate the severity of the behavior, but may also reflect attitudes of arresting officers and could certainly vary based on the perceived seriousness of the offense, or characteristics such as the defendant's race, age, or gender. Additionally, the number of charges is considered during the adjudication process and often serves as capital for prosecutors when attempting to leverage a guilty plea. The total charges coefficient indicates a .03% increase in sentence length with one additional charge at arrest. Finally, this model finds a relationship between pending or active cases at arrest and sentence length similar to criminal history and sentence length. The analysis indicates an increase of .08% in sentence length for defendants who have active or pending criminal justice status at the time of a new arrest. Although the coefficients are somewhat small, both measures of severity and culpability are useful in the examination of sentence length variation.

Table 4-1, model 2, reports results of OLS regression with the addition of prime extra-legal control variables. Neither the direction nor strength of the offense and criminal history variables is altered significantly in this model with the addition of extra-legal descriptors to warrant additional discussion of their relationships. According to this model, males receive longer sentences than females at a rate of .07%. The age variable indicates that each one-unit increase in age is associated with .001 decrease in sentence length. Again, this coefficient is small; however the direction of the relationship lends support for the assertions of focal concerns theory stating judicial actors contemplate a defendants "ability to do time" which results in shorter sentences for older offenders. The final three variables in this model are dummy variables for racial minority categories. Of the three race variables, only blacks receive longer sentences ( $b=.021$ ) than sentences received by whites. Hispanics and other minorities receive shorter sentences than whites at rates of  $-.02$  and  $-.07$  respectively. With the exception of the findings for Hispanics, this model supports the assertions of H1, predicting that offense and criminal history descriptors will have the strongest predictive relationship with sentence



decisions. Model 2 also finds only minimal support for the assertions of H1 (a) predicting that extra-legal characteristics race, gender, and age will mediate the relationship between legal descriptors and sentencing outcomes.<sup>10</sup>

Model 3, of table 4-1 reports results of an OLS regression for the variables included in models 1 and 2, with the addition of three variables reflecting court-caseload context. The variables are continuous measures of volumes of minority defendants, drug crimes, and violent crimes processed by a jurisdiction. The percentages are calculated by dividing the total number of minority defendants, drug arrests, or violent crime arrests by the total number of cases processed by a jurisdiction. Minority caseload volume possesses a small, yet significant and positive relationship with sentence length. Although small, this initial finding supports the assertions of H2 that minority caseload volume will predict harsher sanctions for defendants in courts of higher minority caseload volume. The negative relationship of the drug and violent caseload volume variables contradicts the assertions of H7 and H9, which predict longer sentences for defendants in courts of relatively high volumes of drug and violent crimes.<sup>11</sup>

Finally, model 4 reports results of OLS regression with the addition of three interaction terms measuring effects between court-context and black defendants. The primary interaction term of interest (caseload minority\*black) is insignificant in this model. This is a surprising finding and may be the result of having multiple interaction terms that include blacks in one model (the black dummy variable falls out of significance also). However, this model does find that blacks face longer sentences in courts with higher drug offense caseload. This finding supports previous predictions that blacks will face harsher sentences in courts that process a relatively high volume of drug crimes. The final interaction indicates that blacks receive slightly shorter sentences in courts that process a relatively high volume of drug offenses. This finding contradicts the predicted relationship between minority status and violent offense caseload.

Overall, the findings contained in Table 4-1 yield consistent results regarding the relationship between legal criteria and sentence length. At least initially, it is encouraging to find that current and previous behavior appears to be the strongest predictors of criminal sanctioning.

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<sup>10</sup> With the addition of extra-legal descriptors model strength improved from  $R^2$  .185 to .189. The change in F between models is 47.875  $p < .001$ .

<sup>11</sup> With the addition of caseload variables model strength improves from  $R^2$  .189-.194. The change in F between models is 120.094  $p < .001$

The strength and direction of the plea variable, however, paints a somewhat disheartening picture of the adjudication process. One would hope that mode of conviction would not influence sentencing outcomes as much as it apparently does. However, the results for this variable may indicate just how powerful the “going rate” concept may be within people processing organizations.

Table 4-1: OLS regression for sentence length w/caseload volume and interaction effects

	1	2	3	4
<b>Variables</b>				
<b>Legal Characteristics</b>				
Conviction-Violent	.424*** (.288)	.414*** (.283)	.423*** (.287)	.422*** (.287)
Conviction-Sale	.245*** (.153)	.240*** (.150)	.252*** (.157)	.250*** (.156)
Conviction-Possession	-.013* (-.009)	-.014* (-.009)	-.005 (-.003)	-.005 (-.003)
Criminal History	.078*** (.143)	.076*** (.138)	.076*** (.138)	.076*** (.138)
Total Charges at Arrest	.033*** (.095)	.033*** (.096)	.035*** (.101)	.036*** (.104)
Active Case at Arrest	.079*** (.068)	.078*** (.067)	.084*** (.072)	.084*** (.072)
Plea	.531*** (-.238)	-.525*** (-.236)	-.524*** (-.235)	-.522*** (-.234)
<b>Extra-Legal Characteristics</b>				
Male		.072*** (.045)	.072*** (.045)	.072*** (.046)
Age		.001*** (-.014)	.001*** (-.015)	.001*** (-.013)
Black		.021*** (.018)	.018*** (.016)	.019 (-.016)
Hispanic		-.023*** (-.018)	-.010 (-.008)	-.004 (-.003)
Other		-.074*** (-.019)	-.070*** (-.018)	-.061*** (-.016)
<b>Court Context</b>				
Caseload % Minority			.001*** (.026)	.001*** (.026)
Caseload % Drug			-.006*** (-.095)	-.008*** (-.120)
Caseload % Violent			-.007*** (-.080)	-.005*** (-.083)
<b>Interaction Effects</b>				
Caseload % Minority*Black				.000 (.031)
Caseload % Drug*Black				.003*** (.111)
Caseload % Violent*Black				-.004*** (-.109)
N=15,689				
Model Significance	.000	.000	.000	.000
R <sub>2</sub>	.185	.189	.194	.196
F	1855.910	1107.002	915.898	773.311
F Change (Significance)		47.875***	123.094**	48.869***
*p<.05 **p<.01 ***p<.001 unstandardized coefficient (standard error)				

### ***Minority Defendant Caseload Volume***

To examine variation in sentencing decisions contingent on court caseload composition several models are estimated based on court caseload variance. Table 4-2 reports two OLS regressions for sentence length variation based on minority caseload volume. The samples are constructed by dichotomizing the variable at the median, leaving approximately 50% of cases in each group. For both models, all of the legal variables are significant at least  $p < .05$ . From this point forth when examining models constructed by court context, Z scores are calculated to allow for regression coefficients to be compared between independent regression equations (Brame, Paternoster et al. 1998).

Again, we find that the offense descriptors are some of the strongest predictors of sentence length in both models. However, there is a substantial difference in violent crime and drug sale conviction categories between the two models. In contexts of high minority volume, defendants are subject to a 48% increase in sentence length for violent crime convictions compared to defendants in low minority volume contexts who are subject to a 37% increase. A similar disparity is observed for defendants convicted of drug sales. In the high volume context, drug sale is associated with a 28% increase in sentence length, whereas in the low context drug sale increases sentence length by 21%. Additionally, drug possession is associated with a slight increase in sentence length in high volume contexts, and a slightly greater decrease in courts that process fewer minority defendants. The findings of the conviction variables in this model support the notion that, at least in part, defendants are punished more harshly in contexts of greater minority representation and therefore greater minority threat.

Criminal history and active charges at arrest have a slightly larger effect on sentence length in the low volume context, which could indicate that actors place greater emphasis on this category of legal criteria when processing defendants. The plea variable is strong, and predicts a 50% reduction in sentence length compared to trial in both contexts. The extra-legal variables exert differing effects or have a differential impact on sentence length between court contexts. In the high volume context, males more so than females, the young more so than the old, and black and Hispanics more so than whites, are associated with sentences of greater length. In the low volume context, we find a weaker association between males and fail to find a significant association with age and sentence length. Furthermore, according to this model, Hispanics and other minorities actually receive shorter sentences than whites in the low minority context

(blacks insignificant). Drug and violent caseload volume results are consistent with previous models yielding small, negative relationships with sentence length.

Overall, the findings of Table 4-2 provide strong support of H3 and H3a, which predict longer sentences for blacks compared to whites, and harsher punishments in general (larger offense coefficients) in context of relatively high minority volume. This model also suggests that males and the young are punished more severely in relatively high minority defendant volume contexts. Interpreted together, this model indicates that as minority volumes increase, young, black and Hispanic males receive the greatest penalties. The high volume context also indicates an association between the volumes of minority defendants in a jurisdiction and the penalties associated with drug and violent crime. This may indicate that as minority volume increases, so too does the “going rate” for these types of offenses.<sup>12</sup>

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<sup>12</sup> R<sup>2</sup> is greater in high volume context .172 and .223 respectively.

**Table 4-2: OLS regression for sentence length by courtroom context (% minority defendant volume)**

Variables	Low Minority Volume				High Minority Volume				
		b	S.E.	B	b	S.E.	B		
<b>Legal Characteristics</b>									
Violent		.368	.008	.254 ***	.475	.008	.319	***	
Drug Sale	X	.207	.010	.123 ***	.287	.009	.187	***	
Drug Possess	X	-.036	.009	-.024 ***	.017	.009	.011	*	
Criminal History	X	.083	.004	.145 ***	.071	.003	.133	***	
Total Charges at Arrest	X	.025	.002	.072 ***	.042	.002	.120	***	
Active Case at Arrest		.109	.007	.094 ***	.058	.006	.050	***	
Plea		-.518	.012	-.231 ***	-.525	.012	-.236	***	
<b>Extra-legal Characteristics</b>									
Male	X	.056	.008	.037 ***	.090	.009	.054	***	
Age	X	.000	.000	.007	-.002	.000	-.028	***	
Black	X	.000	.007	.000	.065	.008	.057	***	
Hispanic	X	-.037	.008	-.028 ***	.039	.009	.031	***	
Other	X	-.120	.021	-.032	-.003	.021	-.001		
<b>Court Context</b>									
Drug Offense Volume	X	-.004	.000	-.065 ***	-.006	.000	-.104		
Violent Offense Volume	X	-.009	.001	-.086 ***	-.006	.001	-.077	***	
				R <sup>2</sup> = .172					R <sup>2</sup> = .223
				Model p<.000					Model p<.000
				N= 8,000					N=7,689

\*p<.05 \*\*p<.01 \*\*\*p<.001 X= Z Value>1.96

### ***Drug Offense Caseload Volume***

Table 4-3. presents results of OLS regression for models dichotomized at the median for the drug offense caseload in the same manner as the minority volume model discussed previously. The coefficients for the offense categories contradict the predicted relationship based on court context. In this model, we find longer sentences associated with offense categories in the low drug crime context. A finding of particular interest is the negative relationship with drug possession and sentence length in the high volume context. As this theory predicts, we expect to find the harshest sanctions for drug offenders in the high volume context; however this is not the case. This finding may support Eisenstein and Jacob's (1977) court community approach, indicating that a new normative value is placed on the perception of less severe drug crimes in court contexts that process the most drug crimes. The negative relationship may manifest in the possession category more so than in the sale category due to the latent effects of mandatory minimums and other determinant processes often intended solely for drug sale crimes.

The block of extra-legal variables offer some support for H9, which predicts harsher sanctions for black defendants in contexts of relatively high drug offense caseload volume. In the high drug volume context, males and blacks are associated with harsher punishment and longer sentences. Although males are associated with harsher punishment in the low volume context, a smaller coefficient indicates that they are not punished to the same degree. Furthermore, the low context model indicates that blacks and Hispanic actually receive shorter sentences than whites in courts that process a relatively lower volume of drug offenses. The finding indicating the difference in how young, minority males are processed which can be partially attributed to court caseload composition. I argue that this is evidence of the latent stereotypes associating young minority males with drug related crimes and violence; stereotypes which contributes to sentencing disparity.

**Table 4-3: OLS regression for sentence length by courtroom context (% drug offense volume)**

Variables		Low Drug Offense Volume			High Drug Offense Volume				
		b	S.E.	B	b	S.E.	B		
<b>Legal Characteristics</b>									
Violent	X	.480	.010	.310	***	.380	.007	.269	***
Drug Sale		.260	.011	.146	***	.237	.008	.160	***
Drug Possess	X	.036	.012	.019	**	-.030	.007	-.022	*
Criminal History		.058	.004	.096	***	.086	.003	.169	***
Total Charges at Arrest		.042	.002	.110	***	.033	.002	.102	***
Active Case at Arrest		.086	.008	.068	***	.076	.006	.069	***
Plea	X	-.491	.013	-.233	***	-.555	.011	-.236	***
<b>Extra-legal Characteristics</b>									
Male		.050	.010	.029	***	.087	.007	.057	***
Age		.001	.000	-.009		-.001	.000	-.016	**
Black	X	.028	.009	-.023	**	.062	.007	.055	***
Hispanic	X	-.028	.012	-.017	*	.011	.007	.009	
Other		.034	.030	.007		-.088	.017	-.026	***
<b>Court Context</b>									
Minority Volume		.000	.000	.013		.000	.000	.011	*
Violent Offense Volume	X	-.008	.001	-.082	***	-.002	.001	-.015	**
				R <sup>2</sup> =.185				R <sup>2</sup> = .203	
				Model p<.000				Model p<.000	
				N= 6,251				N=9,438	

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96



### ***Violent Offense Caseload Volume***

Table 4-4 presents results for the final OLS model comparing court contexts based on caseload volumes. This table contains two models dichotomized at the median of the violent offense caseload volume variable. The split models were constructed in the same manner described in the previous two models. As with the results for offense coefficients in the drug volume model, we find that although offense descriptors are strong in both models, offenses are associated with longer sentences in the low volume model. This result is contrary to the assertions of H7, which predicts harsher sanctions for crimes in court contexts of relatively high violent offense caseload volume. Likewise, criminal history, severity, and culpability indicators have essentially the same effects in both models, and are consistent with the effects observed in previous models. The most obvious difference in the models variables is plea. Plea has a much larger negative effect in court contexts of high violent crime volume. This relationship can be explained by assuming that as violent (therefore serious crime) rises, so too will the penalties associated with them. As penalties rise, so too will the effect of plea on sentence length. Defendants facing long prison terms for serious crimes will have the most to risk by going to trial, and will therefore essentially have the most to gain (relative to others) by accepting a plea.

The block of extra-legal variables suggests that blacks may in fact be punished more severely in low volume contexts. Regardless of that, in high volume contexts, race appears not to be significantly associated with increased sentence lengths. This is somewhat understandable, as the least amount of discretion will be present in violent crimes; therefore race exerts less of an influence over sentence length in high volume contexts. Overall, the findings contained in Table 4-4, fail to support any of the assertions in H7, H7a or H8.

**Table 4-4: OLS regression for sentence length by courtroom context (% violent offense caseload)**

Variables		Low Violent Offense Volume			High Violent Offense Volume				
		<b>b</b>	<b>S.E.</b>	<b>B</b>	<b>B</b>	<b>S.E.</b>	<b>B</b>		
<b>Legal Characteristics</b>									
Violent	X	.468	.009	.289	***	.392	.008	.287	***
Drug Sale	X	.266	.010	.157	***	.237	.008	.156	***
Drug Possess	X	-.037	.008	-.025	**	.038	.009	.023	***
Criminal History		.073	.003	.130	***	.077	.003	.143	***
Total Charges at Arrest		.028	.002	.079	***	.041	.002	.119	***
Active Case at Arrest		.092	.007	.078	***	.075	.006	.066	***
Plea	X	-.448	.012	-.197	***	-.595	.012	-.273	***
<b>Extra-legal Characteristics</b>									
Male		.071	.009	.045	***	.076	.008	.048	***
Age		-.001	.000	-.002		-.001	.000	-.022	***
Black	X	.052	.008	.043	***	-.015	.008	-.013	
Hispanic	X	-.042	.009	-.030	***	.011	.008	.010	
Other	X	-.121	.020	-.034	***	.016	.022	.004	
<b>Court Context</b>									
Minority Volume		.000	.000	-.007		.001	.000	.036	***
Drug Offense Volume	X	-.006	.000	-.113	***	-.001	.001	-.009	
			R <sup>2</sup> =.196 Model p<.000 N=7,555			R <sup>2</sup> = .211 Model p<.000 N=8,134			

**\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z>1.96**

### ***Legal, Extra-Legal, Court Context, and State Context***

Table 4-5 presents results for OLS regression that includes the same group of legal, extra-legal, and court contextual variables with the addition of variables controlling for state context. Table 4-5 is presented in a format that allows us to estimate the effects of the additional state contextual variables by displaying regression models with and without them. In the first model, we again find a strong relationship between conviction offense and sentence length. Violent and drug sale crimes are associated with a 42% and 25% increase compared to non-person felonies respectively. The variable representing drug possession in this model remains negative, but does not reach an appropriate p. value to be considered statistically significant. The variables representing criminal history, total charges at arrest (severity) and active case at arrest (culpability) yield coefficients consistent with findings of previous models. Those who have an active case at the time of arrest face sentences of roughly 8% longer than those who do not have criminal justice involvement at arrest. The criminal history variable indicates that each one-unit movement in criminal history score results in approximately an 8% increase in sentence length. Total charges at arrest again is associated with sentence length, increasing the dependent variable by 3.5% for each charge at arrest. The final legal variable, plea, again has a strong negative relationship with sentence length in this model, reducing sentences by 52%, compared to those who reach adjudication through trial.

The extra-legal variables are consistent with findings of previous models, with males and blacks receiving sentences of increased length when compared to females and whites. Age is again negatively associated with sentence length; however, although significant, the coefficient is very small. The remaining race variables are associated with shorter sentences (although the Hispanic category fails to reach the appropriate p. value) while members of the other racial minorities category receive sentences 7% shorter than whites. The caseload variables again yield a small positive relationship between minority volume and sentence length. Findings repeat the small negative relationships between drug and violent offense volume and sentence length.

Next, I add three variables reflecting relevant state contexts that could alter the manner in which sentences are rendered. First, I include a control for state sentencing guidelines. This is a

dummy variable coded 1 for states with guidelines, and 0 for states without.<sup>13</sup> The next state-level variable represents state political party affiliation. The Red State variable indicates whether the state is considered Republican majority.<sup>14</sup> The final state-level contextual variable is a continuous measurement of the percentage of families living at or below the poverty level, which is derived from 2000 Census data.

With the addition of the state level contextual controls, we find very little, if any change in model coefficients for legal variables. The most notable change is a reduction in the strength of the plea variable by 2% with the introduction of the state level controls. This is most likely attributable to the introduction of the sentencing guidelines variable that would reduce the power of the plea negotiation processes in courts where sentences are structured.

Within the extra-legal group, again we find very little change in coefficient size, strength, and direction with the exception of the black defendant variable. While predicting sentences of nearly 2% longer length than whites in the previous model, the variable falls out of significance and loses strength with the introduction of the state-level contexts. This is important because all three variables (determinant sentencing, conservative state environment, and state level poverty) can contribute to racially disparate sentencing outcomes. The caseload variables exhibit little or no change with the introduction of state level controls.

All three of the state-level contextual variables have a strong, statistically significant relationship with sentence length. The first variable entered in the model is the dummy for state sentencing guidelines. Although, sentencing guidelines are intended to standardize sentencing decisions and therefore reduce disparity in punishment, we find that guidelines in this model are associated with a .13% increase in sentence length, when compared to states without guidelines in place. This finding does not speak to reduction for sentences by racial category; this only addresses sentence length in general terms. Therefore, this finding may indicate that overall, sentencing guidelines reduce discretion and produce longer sentences for all categories of offenses and offenders. Next, the red state dummy indicates that defendants' sentences in politically conservative states face sentences nearly 11% longer than their counterparts in other states. This finding is not surprising given the association between conservative political

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<sup>13</sup> Ten of twenty-three study states in this study have sentencing guidelines in place during study years.

<sup>14</sup> Nine of twenty-three study states in this study are considered republican majority. 39.3% of the study cases are associated with red states.

ideology and attitudes towards law and order. Finally, to examine the effects of court context, while controlling for state level influences, three tables are presented containing models for caseload context constructed in the same convention described previously.

**Table 4-5: OLS regression for sentence length w/caseload volume and state variables (B)**

Variables	SENTENCE LENGTH			
	1		2	
<b>Legal Characteristics</b>				
Conviction-Violent	.423	***	.424	***
	(.287)		(.288)	
Conviction-Sale	.252	***	.251	***
	(.157)		(.157)	
Conviction-Possession	-.005		-.011	
	(-.003)		(-.007)	
Criminal History	.076	***	.07	***
	(.138)		(.140)	
Total Charges at Arrest	.035	***	.037	***
	(.101)		(.107)	
Active Case at Arrest	.084	***	.091	***
	(.072)		(.078)	
Plea	-.524	***	-.500	***
	(-.235)		(-.227)	
<b>Extra-Legal Characteristics</b>				
Male	.072	***	.065	***
	(.045)		(.041)	
Age	.001	**	-.001	**
	(-.012)		(-.011)	
Black	.018	**	.003	
	(.016)		(.003)	
Hispanic	-.010		-.004	
	(-.008)		(-.003)	
Other	-.070	***	-.047	**
	(-.018)		(-.012)	
<b>Court Context</b>				
Caseload % Minority	.001	***	.002	***
	(.026)		(.050)	
Caseload % Drug	-.006	***	-.002	***
	(-.095)		(-.035)	
Caseload % Violent	-.007	***	-.005	***
	(-.080)		(-.059)	
<b>State Context</b>				
Sentencing Guidelines (Dummy)			.128	***
			(.077)	
Red State (Dummy)			.106	***
			(.089)	
% Families in Poverty			.005	***
			(.014)	
N	15,689		15,689	
Model Significance	.000		.000	
R <sub>2</sub>	.194		.202	
F	915.898		803.852	
<b>F Change (Significance)</b>			112.046	***

\*p<.05 \*\*p<.01 \*\*\*p<.001

### ***Minority Offender Caseload and State Context***

Table 4-6, reports the results of two OLS regressions conducted for court contexts of low and high minority volume. First, we find that offense conviction categories in the high minority volume model are significantly larger than the coefficients in the low volume model. This is a consistent finding throughout the analysis, when examining minority caseload context. All previous models have yielded harsher sanctions for defendants in courts of relatively high minority volume. Consistent with previous models, we find that criminal history and active criminal justice status at arrest are associated with longer sentences in the low minority volume context. This is further support for previous findings, indicating that actors in low volume contexts place greater emphasis on this legal category than do actors in high minority volume. The effects of plea between models are similar across context, which is consistent with models conducted previously.

The extra-legal variables again offer support for the main hypothesis of this study, which asserts that all defendants, particularly black defendants, will receive harsher sanctions in court contexts of relatively high minority defendant volumes. The extra-legal variables in the high volume model illustrate that young, minority males receive sentences of greater length than other defendants. When examining both models, males are associated with a 9% increase in sentence length compared to females, while males receive sentences of 5% longer in the relatively low minority caseload context. The age variable is again small, but predicts a negative relationship with age, or harsher sanctions for the young. Finally, blacks and Hispanics receive sentences of nearly 6% longer than their white counterparts, whereas in the low volume context, blacks receive shorter sentences than whites at a rate of nearly 3%. Both drug and violent caseload variables predict shorter sentences across contexts. Although the coefficients are small, this also has been a consistent finding in previous models.

Lastly, we examine effects of state level influences by caseload context. A tremendous difference is observed in the sentencing guideline variable across low and high contexts. In the low context, sentencing guidelines predict sentences 18% larger than in states without guidelines in place. This is interesting and may indicate that within caseloads of lower minority threat, relatively shorter sentences are applied. However, with the introduction of guidelines, the low volume context applies sentences of nearly 20% greater length. Ultimately, this finding indicates that courts of low minority context may address criminal sanctioning in a less formal manner,

making the effects of determinate sentencing appear greater. In the high volume context, the effect of guidelines is dramatically reduced, when compared to the low volume model, and the full model described in Table 4-6. While punishments remain high, sentencing guidelines have less of an effect. This finding simply means that regardless of sentencing guidelines high minority contexts apply harsher punishments when compared to low volume contexts. The red state dummy also points to variance across context that is contingent on political environment. The red state variable is associated with a 13% increase in sentence length in the high minority volume context, while it is shown to predict sentences of only 7% longer in low minority caseload contexts.

This finding is important as it indicates that in conservative environments, racial threat has a greater affect on criminal sanctioning than in contexts of lower racial threat. This finding supports the general assertions of H11, predicting that socio-political characteristics at the county and state level will exert added influence on sentencing decisions. In this case, conservatism at the state level consistently predicts harsher sanctions relative the level of racial threat present at the court level. The final variable of interest in this model is the percent of families at or below poverty measure. Again, variance between caseload contexts is observed; however, the directions of the relationships appear to be contradictory. According to the data, in high minority caseload contexts, the percent of families at or below poverty reduces sentences length, whereas in low volume contexts poverty predicts increased sentence lengths. This may indicate that racially heterogeneous courts, poverty is more widespread and therefore predicts shorter sentences due to its impact across racial categories.

Overall, the results of this model are consistent with findings of previous models, while adding state level contextual controls. Finding relatively the same relationships between model variables while controlling for state context adds to the merit of this argument, predicting harsher sanctions for defendants and black defendants in particular in courts of relatively high minority threat.<sup>15</sup>

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<sup>15</sup> R<sup>2</sup> by context: low context =.192 high context =.239.



**Table 4-6: OLS regression for sentence length by courtroom context (% minority defendant volume) w/state variables**

Variables		b	<u>Low Minority Volume</u>			<u>High Minority Volume</u>		
			S.E.	B		B	S.E.	B
<b>Legal Characteristics</b>								
Violent	X	.361	.008	.249 ***		.484	.008	.325 ***
Drug Sale		.216	.010	.128 ***		.286	.009	.186 ***
Drug Possess	X	-.039	.009	-.025 ***		.013	.009	.008
Criminal History	X	.088	.004	.153 ***		.072	.003	.135 ***
Total Charges at Arrest		.033	.002	.096 ***		.040	.002	.115 ***
Active Case at Arrest	X	.108	.007	.093 ***		.068	.006	.058 ***
Plea		-.492	.012	-.220 ***		-.504	.012	-.227 ***
<b>Extra-legal Characteristics</b>								
Male		.051	.008	.033 ***		.086	.009	.052 ***
Age		.000	.000	.006		-.002	.000	-.028 ***
Black	X	-.025	.007	-.021 ***		.053	.008	.046 ***
Hispanic	X	-.014	.008	-.011		.058	.009	.046 ***
Other	X	-.099	.021	-.026 ***		.023	.021	.006
<b>Court Context</b>								
Drug Offense Volume		-.002	.000	-.033 ***		-.001	.001	-.014
Violent Offense Volume		-.004	.001	-.039 ***		-.003	.001	-.038 ***
<b>State Context</b>								
Sentencing Guidelines (Dummy)		.183	.009	.125 ***		.043	.013	.022 ***
Red State (Dummy)	X	.066	.007	.058 ***		.125	.010	.098 ***
% Families in Poverty	X	.044	.002	.117 ***		-.021	.002	-.064 ***
			R <sup>2</sup> =.193 Model p<.000 N=8,000			R <sup>2</sup> = .228 Model p<.000 N= 7,659		

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96

### *Drug Offense Caseload and State Context*

Table 4-7, reports two models (low and high) constructed by dichotomizing the drug offense caseload volume variable at the median in the same fashion as previously described. Findings of this table are consistent with the findings reported in Table 4-3. The legal criteria are largely the same strength and direction with the introduction of state level variables as they were without. We continue to find harsher sanctions for drug offenses in low drug volume contexts, which contradict previously supported hypotheses.

However, with the introduction of the three state level controls, change is observed across extra-legal categories. Blacks continue to be associated with harsher sanctions relative to the volume of drug offenses processed by the jurisdiction, however, with the introduction of state context controls, the effect of black status decreases (6% to 2%). This suggests that the reduction in sentence length associated with blacks is at least partially attributable to determinate sentencing, political conservatism, and poverty. No significant changes are observed in the remaining extra-legal variables with the introduction of state controls.

The caseload minority variable, although still quite small, has the strongest relationship with sentence length, while controlling for state context, found in any model. This may indicate that minority caseload is most meaningful in environments in poor politically conservative environments. The violent offense caseload variable retains a negative relationship with sentence length, again pointing to different normative realities based on the volume of violent offense processed by a jurisdiction (as more violent offenses are processed they appear less severe).

The state sentencing guidelines and political majority variable again have a strong significant relationship with sentence length in the high volume context. In courts that process a relatively high volume of drug offenders sentencing guidelines are associated with a 35% increase in sentence length, compared to states in those contexts without guidelines. This finding indicates that the effect of determinate sentencing is greater relative to the volume of drug offenders processed. This finding supports H11, and is further evidence of social control activities intended to constrain drug-offending activity. The red state variable also predicts longer sentences in the high drug-offense caseload volume. In high drug-offense volume contexts, politically conservative states render sentences 21% longer than liberal states in the same caseload context. This finding is not surprising, as aggressive drug-control policy is

analogous with conservative political ideology locally and nationally. In addition, when coupled with the reduction of the black variable coefficient, this finding compliments the assertions of Tonry and others who assert the war on drugs is a war that crosses racial and class boundaries.

<sup>16</sup>

Although, we find that in high drug-offense volume contexts we find that convictions are associated with sentences of shorter length, other findings support the assertions of the hypotheses. First, black defendants continue to receive harsher sanctions in higher drug crime contexts. Secondly, effects of sentencing guidelines are dramatically more severe in high volume contexts. This is important as it illustrates the variance in punishment costs of sentencing guidelines across contexts. Finally, political conservatism predicts harsher sanctions that are contingent on the make-up of the court's caseload. Political conservatism has a strong effect on sentence length in contexts that process a relatively high volume of drug offense and no effect in courts of low drug case volume.

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<sup>16</sup> R<sup>2</sup> by context: low =.185 high context=.239

**Table 4-7: OLS regression for sentence length by courtroom context (% drug offense volume) w/state variables**

Variables		<u>Low Drug Offense Volume</u>			<u>High Drug Offense Volume</u>				
		<b>b</b>	<b>S.E.</b>	<b>B</b>	<b>b</b>	<b>S.E.</b>	<b>B</b>		
<b>Legal Characteristics</b>									
Violent	X	.482	.010	.311 ***	.379	.007	.268 ***		
Drug Sale		.259	.012	.145 ***	.240	.007	.162 ***		
Drug Possess	X	.037	.012	.019 **	-.032	.007	-.024 ***		
Criminal History	X	.059	.004	.097 ***	.090	.003	.177 ***		
Total Charges at Arrest		.040	.002	.105 ***	.042	.002	.129 ***		
Active Case at Arrest		.087	.008	.069 ***	.090	.006	.082 ***		
Plea		-.490	.013	-.233 ***	-.513	.011	-.218 ***		
<b>Extra-legal Characteristics</b>									
Male	X	.049	.010	.029 ***	.073	.007	.048 ***		
Age		-.000	.000	-.008	-.001	.000	-.015 **		
Black	X	-.029	.009	-.024 *	.022	.007	.020 **		
Hispanic	X	-.025	.012	-.014 *	.030	.007	.026 ***		
Other	X	.028	.030	.006 **	-.065	.016	-.019 ***		
<b>Court Context</b>									
Minority Volume	X	.001	.000	.015 *	.004	.000	.092 ***		
Violent Offense Volume	X	-.008	.001	-.082	-.004	.001	-.036 ***		
<b>State Context</b>									
Sentencing Guidelines (Dummy)	X	.005	.010	.004 **	.346	.013	.131 ***		
Red State (Dummy)	X	.000	.009	.000 ***	.212	.008	.163 ***		
% Families in Poverty	X	-.007	.002	-.020 *	.000	.002	.000		
				R <sup>2</sup> =.185					
				Model p<.000					
				N=6,251					
					R <sup>2</sup> = .239				
					Model p<.000				
					N=9,438				

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96

### ***Violent Offense Caseload and State Context***

Table 4-8 displays the final two models in this study, examining sentencing length variation. This table and the models within are identical in construction the two previously discussed, however this table examines variance in sentence length based on the volume of violent offenses processed by a jurisdiction. The findings for conviction categories resemble that of the drug volume model examined previously, in that they display longer sentences for violent and drug sale convictions in the low volume model. The findings of this and the drug volume models seem to support the general tenets of court communities theory, which predicts negative relationships between crime frequency and punishment. (as crimes increase, penalties decrease because they seem less severe). Although this contradicts many of my initial assertions, it may actually strengthen my argument regarding the aggravating effects of high minority caseload volume and punishment costs (as all models found harsher sanctions in relatively high minority caseload volume). The criminal history, severity, and culpability variables remain static, predicting approximately the same increase in sentence length in this model as they have in the previously discussed models, regardless of controls.

The extra-legal variables provide some of the same findings as well. First, we again find that males receive slightly longer sentences in the high volume context than they do in the low volume context. Age again has a small yet negative relationship in high volume contexts, but a small positive relationship in low contexts. This may indicate that youth is more important in high violent crime contexts than it is in other contexts. The racial categories, which we have found to be associated with harsher punishments in high volume contexts, now appear insignificant in the high volume contexts. Black, however, predicts longer sentences in low volume contexts. This finding demonstrates parallels to the phenomenon of harsher penalties for violent crimes in the lower context, meaning that in some way, black status and offense types interact to produce harsher sanctions in low volume contexts. The caseload variables have essentially the same effect that they have had throughout the previous models.

Finally, the state level variables exert influence in low volume contexts rather than high volume contexts as we have found in previous models. Both sentencing guidelines and red state status predict an increase of 25% and 23% respectively in low volume contexts. This is surprising considering the predictions associating harsher sanctions with determinate sentencing and conservative political ideology in contexts of high violent offense caseload volume.

Overall, the findings of the models in this table are counterintuitive to the previous assertions predicting a more punitive approach to punishment in courts that process higher volumes of violent crimes. However, this model may be evidence of an effect reducing the influence of extra-legal factors in criminal sentencing of more serious crimes. Because violent crimes are subject to the harshest penalties, with or without sentencing guidelines, less discretion will also be associated with violent crimes when compared to other offenses. Therefore, much of the variance that could be expected when processing these crimes is eliminated because of the relative severity. This notion is supported by the insignificance of the guidelines variable in the high context model, as well as the smaller  $R^2$ , indicating less variance is accounted by the model.

**Table 4-8: OLS regression for sentence length by courtroom context (% violent offense volume) w/state variables**

Variables	<u>Low Violent Offense Volume</u>				<u>High Violent Offense Volume</u>				
		<b>b</b>	<b>S.E.</b>	<b>B</b>		<b>b</b>	<b>S.E.</b>	<b>B</b>	
<b>Legal Characteristics</b>									
Violent	X	.465	.009	.287 ***		.388	.008	.284 ***	
Drug Sale	X	.272	.010	.161 ***		.239	.008	.157 ***	
Drug Possess	X	-.039	.008	-.027 ***		.038	.009	.023 ***	
Criminal History		.070	.003	.126 ***		.077	.003	.144 ***	
Total Charges at Arrest		.036	.002	.102 ***		.042	.002	.123 ***	
Active Case at Arrest		.102	.007	.086 ***		.073	.006	.064 ***	
Plea		-.410	.012	-.180 ***		-.600	.012	-.276 ***	
<b>Extra-legal Characteristics</b>									
Male		.060	.008	.038 ***		.078	.008	.049 ***	
Age		.000	.000	.001 ***		-.001	.000	-.022 ***	
Black	X	.020	.008	.017 **		-.014	.008	-.012	
Hispanic		-.013	.009	-.009		.009	.008	.008	
Other		-.087	.020	-.024 ***		.037	.022	.009	
<b>Court Context</b>									
Minority Volume		.002	.000	.050 ***		.002	.000	.038 ***	
Drug Offense Volume		.000	.000	.005		-.002	.001	-.024 **	
<b>State Context</b>									
Sentencing Guidelines (Dummy)	X	.247	.011	.144 ***		.002	.011	.001	
Red State (Dummy)	X	.231	.008	.196 ***		-.022	.008	-.018 **	
% Families in Poverty	X	.016	.006	.019 *		.038	.006	.037 ***	
				$R^2 = .225$					$R^2 = .213$
				Model $p < .000$					Model $p < .000$
				N=7,555					N=8,134

\* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$  X=Z Value>1.96

Next, we examine a series of models estimating the effect of a variety of predictor variables on the odds of incarceration. The ensuing models are constructed, organized and contain the same independent variables as all of the OLS models discussed previously. However, we now focus on the binary dependent variable for incarcerated (in) or not incarcerated (out), therefore we rely upon logistic regression analysis to estimate the models.

## **Binary logistic regression modeling variation in incarceration decisions**

### ***Legal, Extra-Legal, Court Context, and Interaction Terms***

Table 4-9 reports results of logistic regression analysis modeling the log odds of receiving an incarceration sentence (N=36, 249). The models in this table contain the same predictors as the OLS models reported in Table 4-1. Generally, the findings of model 1 support the findings of the corresponding models found in Table 4-1 estimating sentence length variation, in direction, size, and strength. Of the offense descriptors, the violent crimes variable proves to be the strongest predictor among offense variables with an OR= 4.068. Likewise, as found in the OLS models, Drug Sale (OR=2.199) and Drug Possession (OR=-.954) predict incarceration in decreasing magnitude respectively. Again, as found in the OLS models, simple drug possession has a negative and relatively weak relationship with incarceration. Criminal history is a potent predictor of incarceration as the data indicate that odds of incarceration increase 1.70 times for every one-unit change in criminal history score. I find small effects of the number of charges on the odds of incarceration (OR=1.037), but find that odds of incarceration increase by 62% for offenders that have active, open or pending case(s) at the time of arrest. Finally, the plea variable changes directional relationship when considering odds of incarceration vs. sentence length. It remains the most consistent predictor of incarceration as it did in the sentence length models in the models examined previously. This model indicates that those reaching disposition through a plea rather than trial face odds of incarceration nearly 54 times greater than that of defendants who reach disposition by trial or other means. Although, the directional relationships change between the models, findings do not contradict theory. It is permissible to assume that those who plea to an offense during case processing increase the likelihood that they will go to prison, however it is also often a stipulation of the plea that recommendations for reduced sentences are adopted by the court, therefore explaining the negative relationship with plea and sentence length in the OLS models. The findings of model 1



support the predictions of H1 asserting that individual offense and criminal history descriptors will have the strongest predictive relationship with sentence decisions (odds of incarceration).

Model 2, reports the addition of a block of extra-legal descriptors to the variables contained in model 1. Briefly, we find nearly the same relationships for the offense and criminal history variables in model 2, as reported previously in model 1. The coefficients in this model retain roughly the same strength and directional relationship as found in model 1. Slight changes in the offense and criminal history coefficients indicate that extra-legal descriptors may mediate the relationship between offense and criminal history and incarceration. However, none of the coefficients change substantially enough to warrant further discussion. Of the extra-legal descriptors in this model, all are statistically significant ( $p < .001$ ); however they do not exert the same influence over the odds of incarceration as offense and criminal history variables do. The male variable indicates males are 1.24 times more likely to be incarcerated than females. The coefficient for age has a negative relationship with incarceration, indicating that for every year in age a defendant's odds of incarceration are .997 that of a person one year younger, a very small difference. This finding lends weak support to assertions of focal concerns theory regarding an offender's ability to do time. The race categories in this model all predict a greater likelihood of incarceration for minorities as compared to whites. The model indicates that Hispanics face the greatest odds of incarceration (OR= 1.536) of minority groups when compared to whites. The other minority category yields the next strongest relationship indicating that its members are 40% more likely to be incarcerated than whites. Finally, this model indicates that blacks face odds of incarceration 9.4% greater than do white defendants. The findings of model 2 support the assertions of H1 predicting that offense and criminal history descriptors will have the strongest predictive relationship with sentence decisions. Model 2 also supports the assertions of H1a predicting that extra-legal characteristics race, gender, and age will mediate the relationship between legal descriptors and sentencing outcomes.

Model 3, table 4-9 reports the addition of the three caseload volume variables reflecting the percent of the cases processed which are minority defendants, are drug related, or are violent crimes<sup>17</sup>. The addition of these variables does not substantially alter the strength or directional

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<sup>17</sup> Minority caseload volume (Mean 70.25%, S.D.=15.27, Min/Max=29%-95%) Drug crime caseload volume (Mean 35.66%, S.D. 9.77, Min/Max 16%-59%) Violent crime caseload volume (Mean 27.64, S.D. 7.19, Min/Max 14%-43%)

relationship of any of the variables previously discussed in models 1& 2. The analysis indicates a significant, yet minuscule positive relationship between minority caseload size and the likelihood of incarceration OR=1.003. The drug and violent caseload variables have a comparable relationship with incarceration decreasing the odds of a jail or prison sentence by .011 and .047 respectively. Although the coefficient is small, the minority caseload variable predicts incarceration sentences for defendants in court contexts of higher minority defendant volume. This finding lends weak support to the assertions of H2 that minority caseload volume will predict harsher sanctions for defendants in courts of higher minority caseload volume compared to defendants in lower minority caseload volume contexts. The negative relationship of the drug and violent caseload volume variables contradicts the assertions of H7 and H9 that predict increased odds of incarceration in courts that process relatively higher volumes of drug and violent crimes.

Finally, model 4 reports results of logistic regression with the addition of three interaction terms measuring effects between court-context and black defendants. The primary term of interest (caseload minority\*black) is significant in this model as the drug caseload\* black term. However, both variables predict a decrease in odds of incarceration for blacks in both contexts. The odds ratio for black changes dramatically with the introduction of the interaction terms, indicating the influence of black is greater with while controlling for caseload.

**Table 4-9: Logistic regression for odds of incarceration w/caseload context variables and interaction effects.**

	1	2	3	4
<b>Variables</b>				
<b>Legal Characteristics</b>				
Conviction-Violent	4.068*** 1.403 (.030)	3.875*** 1.355 (.030)	3.983*** 1.382(.030)	3.996*** 1.385(.030)
Conviction-Sale	2.199*** .788 (.028)	.2.106*** .754(.028)	.2.162*** .771(.028)	2.193*** .785(.028)
Conviction-Possession	-.954* -.047(.023)	-.962 -.039(.023)	-.918*** -.086(.023)	-.910*** -.094(.023)
Criminal History	1.707*** .535(.010)	1.731*** .548(.010)	1.743*** .556(.011)	1.741*** .554(.011)
Total Charges at Arrest	1.037*** .037(.005)	1.038*** .037(.005)	1.058*** .056(.005)	1.058*** .057(.005)
Active Case at Arrest	1.622*** .483(.063)	1.594*** .466(.019)	1.616*** .480(.019)	1.632*** .484(.019)
Plea	53.450** 3.979(.023)	54.477*** 3.998(.023)	53.058*** 3.971(.024)	52.905*** 3.969(.024)
<b>Extra-Legal Characteristics</b>				
Male		1.243*** .217(.021)	1.273*** .241(.021)	1.276*** .244(.021)
Age		-.997*** -.003(.001)	-.997*** -.003(.001)	-.997*** -.003(.001)
Black		1.094*** .090 (.020)	1.155*** .144(.021)	5.787*** 1.756(.140)
Other		1.400*** .337(.058)	1.339*** .292(.058)	1.262*** .233(.058)
Hispanic		1.536*** .429(.023)	1.632*** .490(.024)	1.494*** .401(.024)
<b>Court Context</b>				
Caseload % Minority			1.003*** .003(.001)	1.008*** .008(.001)
Caseload % Drug			-.989*** -.001(.001)	0.999 -.001(.002)
Caseload % Violent			-.953*** -.048(.002)	0.955*** -.046(.002)
<b>Interaction Effects</b>				
Caseload % Minority*Black				-.989** -.012(.001)
Caseload % Drug*Black				-.981*** -.019(.002)
Caseload % Violent*Black				-.995 -.005(.003)
<b>N=36,249</b>				
<b>Model Chi-Square</b>	84538.956***	85132.028***	86141.442***	.86405.496***
<b>Cox &amp; Snell R Square</b>	.473	.476	.480	.481
<b>-2 Log Likelihood</b>	95558.617	94965.545	93956.130	93692.077

\*p<.05 \*\*p<.01 \*\*\*p<.001

OR coefficient (S.E.)

### ***Minority Defendant Caseload Volume***

Table 4-10 reports results of logistic regression analysis for incarceration by minority defendant caseload context that is conducted following the same convention as the OLS models discussed previously. Again, we find substantially higher odds for incarceration for all offense categories in contexts of higher minority caseload volume. In high minority contexts, prison sentences for those charged with drug possession are 26% higher compared with other non-person felonies, whereas, in low volume contexts, drug possession is associated with decreased odds of incarceration.

This finding is evidence of enhanced social control efforts for drug offenders in courts that process relatively high volumes of minority offenders and support for the assertions of H2, predicting increased odds of incarceration for defendants in courts of higher minority defendant volume. We also find that measures of criminal history and case status have about the same effect on incarceration as that observed on sentence length in the previous model. Consistent with previous models, plea is the strongest predictor of incarceration in both models.

Although the odds ratios found in both models are significant and quite large, the larger effect is found in the higher minority volume context indicating the likelihood of incarceration is 64% greater for those who plea, rather than going to trial. This relationship is greater than the odds ratio of 44.38 found in lower minority volume contexts model. This finding indicates that in courts of higher minority volume guilty pleas result in defendants incarcerated in prison or jail 20% more often than do pleas in courts processing a lesser volume of minority defendants. The greater odds of incarceration associated with plea in courts of higher minority volume may be a latent indicator of punitive “law and order” sentencing practices or evidence of heightened social control efforts where minorities are more visible.

In both models, male is associated with increased odds of incarceration; however the greater odds appear in high minority volume contexts. Although, the difference is moderate (OR=1.23 vs. 1.37), this finding indicates that male defendants receive greater odds of incarceration in courts of higher minority defendant volume. Consistent with previous models, age has a negative relationship with incarceration, which has been a consistent finding throughout the analysis.

The race variables in this table present an interesting finding; black offenders in low

volume contexts have greater odds of incarceration (22%) than they do in high volume contexts. This is an interesting because it is the first time that black has predicted harsher sanctions when placed in context of minority caseload volume. This relationship holds true for Hispanic and other minority defendants as low volume contexts predict increased odds of incarceration for minorities than in courts of higher minority context. When compared to the findings of the sentence length models, it suggests that, although minorities possess slightly lower odds of incarceration in high minority caseload contexts, once incarcerated they face sentences of consistently greater length.

The caseload variables in low volume contexts indicate that as drug offenses rise, so too do the odds of incarceration. However, in the high volume model, drug and violent crime caseload variables indicate a reduction in the odds of incarceration. The caseload variables are consistent with the finding of previous analysis, providing further support of the negative relationship between the offense caseload variables and punishment.

Overall, these models support the notion that defendants are punished more severely or face increased odds of incarceration in court contexts of higher minority caseload volume and racial threat. However, for the first time, the racial categories fail to predict harsher sanctions in the high volume context, which fails to support the general concepts of this study. Otherwise, the overall indications of the model support the assertions of the hypotheses.

**Table 4-10: Logistic regression for odds of incarceration by court context (% minority defendant volume)**

Variables	<u>Low Minority Volume</u>				<u>High Minority Volume</u>				
		<b>B</b>	<b>S.E.</b>	<b>OR</b>		<b>B</b>	<b>S.E.</b>	<b>OR</b>	
<b>Legal Characteristics</b>									
Violent	X	1.090	.039	2.974 ***		1.740	.048	5.700 ***	
Drug Sale	X	.659	.041	1.932 ***		.906	.039	2.475 ***	
Drug Possess	X	-.408	.031	.665 ***		.238	.036	1.269 ***	
Criminal History		.547	.015	1.727 ***		.521	.015	1.684 ***	
Total Charges at Arrest		.066	.007	1.068 ***		.058	.008	1.059 ***	
Active Case at Arrest		.420	.026	1.522 ***		.623	.028	1.865 ***	
Plea	X	3.793	.034	44.386 ***		4.169	.033	64.621 ***	
<b>Extra-legal Characteristics</b>									
Male	X	.210	.029	1.233 ***		.313	.033	1.368 ***	
Age	X	-.001	.001	.999		-.003	.001	0.997 *	
Black	X	.201	.027	1.222 ***		.008	.033	1.008	
Hispanic		.483	.031	1.621 ***		.401	.038	1.493 ***	
Other		.275	.079	1.317 ***		.112	.088	1.118	
<b>Court Context</b>									
Drug Offense Volume	X	.025	.002	1.025 ***		-.043	.002	.958 ***	
Violent Offense Volume	X	-.003	.002	.997		-.084	.002	.920 ***	
				Cox & Snell R <sup>2</sup> =.439					Cox & Snell R <sup>2</sup> = .520
				Model Chi-square P<.000					Model Chi-square P<.000
				N=17,336					N=18,913

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96

### *Drug Offense Caseload Volume*

Table 4-11, reports logistic regressions dichotomized by drug offense caseload volume. Violent and drug sale conviction categories are essentially identical to the findings of the corresponding model for sentence length. This model indicates that violent offenders in low volume contexts face slightly higher odds of incarceration in low volume contexts (4.14 vs. 3.78). Those convicted of drug sale in high volume contexts face odds of incarceration nearly 15% less than do defendants in low volume contexts. Additionally, conviction for drug possession is associated with a 28% decrease in odds of incarceration in high volume contexts, while those convicted of drug possession in low volume contexts face odds of incarceration 35% greater than those convicted of other non-person felonies. The finding for drug offense convictions may indicate a more punitive or hard-line approach to prosecuting drug traffickers in courts of low drug offense volume.

Criminal history and total charges exert roughly the same influence on the odds of incarceration in both caseload contexts. While the effects of active case status is nearly 10% greater in low volume court contexts, which again may be an indicator of a more conservative dispositional process in low volume courts.

The extra-legal variables provide similar findings as well. Males are associated with slightly greater odds of incarceration in high volume contexts. Age is significant in both contexts again predicting increased odds of incarceration for the young. Consistent with the minority caseload volume, all three racial categories predict slightly greater odds of incarceration in low volume contexts than in high volume contexts. Minority caseload volume predicts increased odds of incarceration in low volume contexts to a very small degree (.5%), while predicting nearly the same degree in reduced odds of incarceration high volume contexts (.3%). The effects of the violent crime caseload variable is nearly identical in both contexts reducing odds of incarceration by 4%.

**Table 4-11: Logistic regression for odds of incarceration by court context (% drug offense volume)**

Variables	<u>Low Drug Offense Volume</u>				<u>High Drug Offense Volume</u>			
		<b>B</b>	<b>S.E.</b>	<b>OR</b>		<b>B</b>	<b>S.E.</b>	<b>OR</b>
<b>Legal Characteristics</b>								
Violent		1.421	.043	4.142 ***		1.331	.042	3.786 ***
Drug Sale		.778	.043	2.177 ***		.733	.038	2.082 ***
Drug Possess	X	.307	.041	1.359 ***		-.319	.029	.727 ***
Criminal History		.558	.016	1.747 ***		.560	.014	1.751 ***
Total Charges at Arrest	X	.035	.008	1.036 ***		.066	.007	1.069 ***
Active Case at Arrest	X	.530	.029	1.698 ***		.451	.025	1.569 ***
Plea	X	3.793	.034	44.374 ***		4.146	.033	63.201 ***
<b>Extra-legal Characteristics</b>								
Male	X	.190	.033	1.209 ***		.292	.028	1.339 ***
Age		-.003	.001	.997 *		-.003	.001	.997 **
Black	X	.187	.029	1.205 ***		.104	.029	1.109 ***
Hispanic		.453	.042	1.573 ***		.481	.030	1.618 ***
Other	X	-.113	.098	.893		.448	.074	1.566 ***
<b>Court Context</b>								
Minority Volume	X	.005	.001	1.005 ***		-.003	.001	.997 **
Violent Offense Volume		-.044	.002	.957 ***		-.042	.002	.959 ***
Cox & Snell R <sup>2</sup> = .461 Model Chi-square P<.000 N=16,128				Cox & Snell R <sup>2</sup> = .487 Model Chi-square P<.000 N=20,021				

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96



### *Violent Offense Caseload Volume*

Table 4-12, presents the final two models split by caseload volume in this series. As with the drug volume models, the violent offense models indicate increased odds of incarceration are faced for defendants in low volume contexts (OR=4.06 vs. 3.99). Drug sales are associated with a nearly a 20% increase in the odds of incarceration in high volume contexts. Drug possession again is associated with decreased odds of incarceration in high volume contexts, and is not significant in the low volume model. Criminal history and total number of charges possess a greater influence over the odds of incarceration for individuals in low volume contexts, while active case status is associated with a 22% increase in the relative odds of incarceration in the high volume model. Plea is nearly identical in both contextual models. This is an unusual finding, as plea has had the stronger effect on sentencing outcomes in high volume contexts throughout the analysis. This may indicate that the effects of violent crime normalize the influence of plea on the odds of incarceration between contexts, because of the seriousness and lack of dispositional discretion associated with violent offenses as discussed previously.

The extra-legal variables indicate that males in high volume contexts possess slightly greater (4%) odds of incarceration than females, when compared to their counterparts in low volume contexts. Age is also a significant predictor of harsher increased odds of incarceration for younger defendants in high volume contexts. The race variables indicate that minority offenders in caseloads of low violent offense volume face increased odds of incarceration. Although minorities are more likely to be incarcerated than whites in the high volume model as well, we find much greater odds of incarceration relative to whites in the low volume model. These findings, coupled with the larger odds ratio for violent crime, indicate that in contexts of relatively low violent crime, minorities and those who commit violent acts are punished more severely than whites and non-person felony offenders.

The caseload variables oppose one another across contexts, where minority caseload volume increases the odds of incarceration in low volume contexts; it reduces odds of incarceration in high volume contexts to nearly the same degree. Likewise, in low volume contexts violent crime caseload volume slightly reduces the odds of incarceration, whereas it is associated with a slight increase in relative odds of incarceration in high volume contexts.

Overall, this model suggests that actors in courts that process relatively low levels of

violent crimes respond more severely to violent offenders and minorities. This finding is contrary to the assertions of the hypotheses predicting harsher sanctions for defendants in high volume contexts.



### ***Legal, Extra-Legal, Court Context, and State Context***

The following four tables present findings of logistic regression analysis with the addition of three state contextual variables in the same order, format and construction as the OLS models described earlier in the chapter. Table 4-13 displays two logistic regression models for the in/out incarceration decision. The first model includes legal, extra-legal, and court context variables that as described and examined in the previous models of this manner. The second model contains the same variables with the addition of the sentencing guideline, red state, and percent families in poverty variables. For a discussion of model 1, please refer to the discussion of Table 4-5, described earlier in the chapter. With the addition of state variables in model 2, very few changes in variable strength or direction are observed. As with the OLS models, the relationship between plea and the dependent variable is altered with the introduction of the three state variables. The strength of the plea variable is reduced, presumably because of the introduction of the sentencing guideline variable. In jurisdictions that employ sentencing guidelines judges have less discretion in sentencing options, therefore, since much of the sentencing decision has already been decided, the luster of accepting a plea is diminished. This relationship holds true in this model, as evidenced by the 2.34 reduction in the odds ratio for the plea between models.

The extra-legal variables change slightly in model 2. The odds of incarceration for males increase 5% with the introduction of the state variables. Model 2 also indicates with the introduction of state level controls blacks face increased odds of incarceration of 12% compared to white defendants. While males and blacks face increased odds, Hispanics and other minorities receive decreased odds of incarceration of 20% and 18% respectively. The increased odds of incarceration for males and blacks may be further of systematic biases that specifically affect these categories of offenders more so than others. The caseload variables in this model suggest as caseload volume increases, odds of incarceration decrease, which is consistent with the findings of Table 4-5. Finally, the state contextual variables all indicate a significant relationship with incarceration. States with sentencing guidelines are associated with a 48% decrease in the odds of incarceration than states without guidelines. Recall that in the models for sentence length that sentencing guidelines were associated with an increase in sentence length when compared to states without them. Therefore, when considering both models, sentencing guidelines appear to reduce the odds of incarceration, but once guideline criteria are met, they produce longer sentences.

The political context variable is also associated with a reduction in the relative odds of incarceration. This is a particularly surprising finding considering the previous findings of this study and the research literature linking conservative political ideology to harsher criminal sanctions. Nevertheless, according to these data, defendants in red states face a 49% decrease in the relative odds of receiving an incarceration sentence. Finally, percent families in poverty at the state level is associated with an increase in the relative odds of incarceration.

Overall, the change in model variables fits the predictions of the theory and corresponds with previous findings by reducing the strength of the plea variable and increasing the relative odds of incarceration for blacks. However, the results for the red states dummy is particularly confounding when considering the findings of the OLS regression models for sentence length.

**Table 4-13: Logistic regression for odds of incarceration with caseload and state variables**

Variables	Odds of Incarceration			
	1		2	
<b>Legal Characteristics</b>				
Conviction-Violent	3.989	***	3.930	***
	(1.382)		(1.369)	
Conviction-Sale	2.162	***	2.187	***
	(.771)		(.782)	
Conviction-Possession	.918	***	.927	**
	(-.086)		(-.076)	
Criminal History	1.743	***	1.734	***
	(.556)		(.550)	
Total Charges at Arrest	1.058	***	1.066	***
	(.056)		(.064)	
Active Case at Arrest	1.616	***	1.538	***
	(.480)		(.430)	
Plea	53.059	***	50.735	***
	(3.971)		(3.927)	
<b>Extra-Legal Characteristics</b>				
Male	1.273	***	1.322	***
	(.241)		(.279)	
Age	.997	*	.996	***
	(-.003)		(-.004)	
Black	1.155	***	1.275	***
	(.144)		(.243)	
Hispanic	1.632	***	1.434	***
	(.490)		(.361)	
Other	1.339	***	1.164	***
	(.292)		(.152)	
<b>Court Context</b>				
Caseload % Minority	.1003	***	.998	***
	(.003)		(-.002)	
Caseload % Drug	.989	***	.963	***
	(-.011)		(-.038)	
Caseload % Violent	.953	***	.941	***
	(-.048)		(-.061)	
<b>State Context</b>				
Sentencing Guidelines (Dummy)			.524	***
			(-.647)	
Red State (Dummy)			.503	***
			(-.688)	
% Families in Poverty			1.104	***
			(.099)	
N=	36,249		36,249	
Model Chi-Square	.000		.000	
Cox & Snell R <sub>2</sub>	.480		.486	
-2 Log Likelihood	93956.130		92353.692	

\*p<.05 \*\*p<.01 \*\*\*p<.001

(coefficient)

### *Minority Defendant Caseload and State Context*

Table 4-14, presents findings of two logistic regression models constructed by dichotomizing the minority caseload volume variable at the median. Findings here do not vary significantly from findings contained in Table 4-10. Violent and drug sale categories still predict increased odds of incarceration sentences in the high volume model at rates of 2.6 times and .74 times respectively. Although still prominent, the odds ratios have reduced in strength when compared to Table 4-10, which can undoubtedly be attributed to sentencing guidelines variable. This also holds true for plea, while though still strong, loses some explanatory power in this model (OR reduction of roughly 3.2). The remaining variables in this model are relatively unchanged with the introduction of state controls. While both models predict increased odds of incarceration for males, the high volume model indicates a greater likelihood for males based on caseload context. Likewise, while both models predict greater odds of incarceration for Blacks, the low volume contexts yields the greatest odds of incarceration for blacks and Hispanics.

Finally, the sentencing guidelines and red state variables predict reduced odds of incarceration in both court contexts. The sentencing guideline variable, however, has a smaller effect on the odds of incarceration than is shown in low minority volume contexts. This indicates that in high volume contexts, processes exist which mitigate the effects of sentencing guidelines, when compared to low volume contexts. This relationship holds true when considering the red state variable. Although this variable is associated with reduced odds of incarceration in both contexts, the effect is greater in the low volume, indicating that, at least in part, the relative odds of incarceration is greater in high minority volume contexts.

In general, while controlling for state context, we continue to find that offense variables increase the relative odds of incarceration and sentence of greater length in high minority caseload volume contexts. This finding has been salient across all models in this study.

**Table 4-14: Logistic regression for odds of incarceration by court context (% minority defendant volume) w/state variables**

Variables	<u>Low Minority Volume</u>				<u>High Minority Volume</u>				
		B	S.E.	OR		B	S.E.	OR	
<b>Legal Characteristics</b>									
Violent	X	1.085	.039	2.961 ***		1.713	.047	5.546 ***	
Drug Sale	X	.605	.042	1.832 ***		.945	.040	2.572 ***	
Drug Possess	X	-.402	.032	.669 ***		.270	.037	1.310 ***	
Criminal History		.549	.015	1.732 ***		.520	.015	1.683 ***	
Total Charges at Arrest		.063	.008	1.065 ***		.076	.008	1.079 ***	
Active Case at Arrest		.376	.027	1.457 ***		.567	.028	1.762 ***	
Plea	X	3.753	.035	42.654 ***		4.110	.033	60.919 ***	
<b>Extra-legal Characteristics</b>									
Male		.257	.029	1.293 ***		.332	.033	1.394 ***	
Age		-.002	.001	.998		-.003	.001	.997 *	
Black	X	.295	.028	1.344 ***		.070	.034	1.073 *	
Hispanic		.299	.033	1.349 ***		.280	.038	1.324 ***	
Other		.153	.080	1.165		-.043	.089	.958	
<b>Court Context</b>									
Drug Offense Volume	X	.001	.002	1.001		-.071	.002	.932 ***	
Violent Offense Volume	X	-.020	.003	.980 ***		-.101	.002	.904 ***	
<b>State Context</b>									
Sentencing Guidelines (Dummy)	X	-.546	.032	.579 ***		-.297	.051	.743 **	
Red State (Dummy)	X	-.763	.025	.466 ***		-.614	.041	.541 ***	
% Families in Poverty	X	.089	.008	1.093 ***		.145	.008	1.156 ***	
				Cox & Snell R <sup>2</sup> =.451					Cox & Snell R <sup>2</sup> = .523
				Model Chi-square P<.000					Model Chi-square P<.000
				N=17,336					N=18,913

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96



### *Drug Offense Caseload and State Context*

Table 4-15 reports of logistic regressions for model variables dichotomized by drug offense caseload volume. There is little change in model variables, with the introduction of the state contextual variables. As with the previous model, the most prominent change is found in the odds ratios of the plea variable. This model illustrates a reduction of 3.9 in the relative odds of incarceration associated with plea in the high volume context, contradicted by an increase of .490 in the odds ratio for plea in the low volume model. This indicates that sentencing guidelines have a greater normalizing impact on the odds of incarceration in contexts of high drug offense volume.

The extra-legal variables produce several findings of interest. Males face greater odds of incarceration than females in contexts of high drug volume, a finding which has appeared throughout the examination of the incarceration decision. The OR of .995 in the high volume context compared to the OR of .997 in the low volume model indicates that younger offenders face slightly greater odds of incarceration in contexts of high drug offense volume. (While blacks and Hispanics face greater odds of incarceration than whites across models). Blacks and other minorities face a greater likelihood of receiving an incarceration sentence than whites in contexts of high drug offense volumes as well. Interpreted together, this model supports the notion that harsher sanctions will befall young, minority males in contexts of high drug offense volume. The relationship between incarceration and the caseload volume variables remains relatively unchanged with the addition of state level controls.

Sentencing guidelines have a smaller effect in reducing the relative odds of incarceration in the high volume model. This finding is consistent with the previous model, suggesting that in contexts where minority or drug crime threat is high, determinate sentencing means less. The counterintuitive relationship between the red state variable and the odds of incarceration continues in this model, perhaps to its greatest degree. The odds ratio of .222 in the high volume model implies a 78% reduction in the relative odds of incarceration in courts of high drug offense volume. This relationship appears in the low volume model as evidenced by an odds ratio of .833 for the red states variable indicating a 27% reduction in the relative odds of incarceration in courts of high drug offense volume. Finally, the percent families in poverty variable increases the relative odds of incarceration in high drug offense volumes contexts by 39%, while poverty has small negative relationship with incarceration in low volume contexts.

This indicates that in contexts of high drug crime, poverty increases the relative odds of incarceration.

In general, the findings suggesting increased odds of incarceration for young male minority offenders support the assertions of H3a, predicting harsher sanctions for black offenders in contexts marked by courts that process higher volumes of drug offenses. However, the smaller odds ratios for offense descriptors fails to support assertions of H3, suggesting harsher sanctions based on legal criteria.

**Table 4-15: Logistic regression for odds of incarceration by court context (% drug offense volume) w/state variables**

Variables	<u>Low Drug Offense Volume</u>				<u>High Drug Offense Volume</u>				
		B	S.E.	OR		B	S.E.	OR	
<b>Legal Characteristics</b>									
Violent	X	1.435	.043	4.199 ***		1.338	.043	3.810 ***	
Drug Sale	X	.848	.044	2.336 ***		.719	.039	2.052 ***	
Drug Possess		.286	.041	1.331 ***		-.284	.030	.752 ***	
Criminal History		.530	.016	1.700 ***		.557	.014	1.746 ***	
Total Charges at Arrest		.064	.008	1.067 ***		.079	.007	1.082 ***	
Active Case at Arrest	X	.546	.029	1.727 ***		.386	.026	1.472 ***	
Plea		3.804	.034	44.864 ***		4.081	.033	59.233 ***	
<b>Extra-legal Characteristics</b>									
Male	X	.209	.033	1.232 ***		.353	.029	1.424 ***	
Age	X	-.003	.001	.997 *		-.005	.001	.995 ***	
Black	X	.231	.030	1.259 ***		.339	.031	1.403 ***	
Hispanic		.345	.043	1.412 ***		.307	.031	1.359 ***	
Other	X	-.226	.101	.798 *		.209	.075	1.232 **	
<b>Court Context</b>									
Minority Volume	X	.001	.001	1.001		-.024	.001	.976 ***	
Violent Offense Volume	X	-.044	.002	.957 ***		-.015	.002	.985 ***	
<b>State Context</b>									
Sentencing Guidelines (Dummy)	X	-.761	.033	.467 ***		-.154	.052	.857 ***	
Red State (Dummy)	X	-.182	.031	.833 ***		-1.506	.034	.222 ***	
% Families in Poverty	X	-.041	.008	.960 ***		.326	.009	1.385 ***	
				Cox & Snell R <sup>2</sup> =.466		Cox & Snell R <sup>2</sup> = .502			
				Model Chi-square P<.000		Model Chi-square P<.000			
				N=16,128		N=20,121			

\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96

### *Violent Offense Caseload and State Context*

Table 4-16, is the presents findings of logistic regression analysis in the same convention as Table 4-12 with the introduction of three state variables that are examined previously. The findings of this model change very little in strength or direction with the introduction of state level controls. Because of this, I will limit my discussion of this model to the outcomes for only the additional variables. As with previous models, the effects of sentencing guidelines and conservative political climate reduce the relative odds of incarceration across both models. However, these effects are less substantial in high violent offense contexts. As with previous models, this suggests that in contexts of high volumes of minorities, drug, or violent offenses, the mitigating effects of these variables have less of an effect. In other words, the context in which the sentences are carried out matters. Poverty appears to have a smaller effect on the odds of incarceration in high volume contexts, suggesting that poverty increases the odds of incarceration in contexts where violent offense volume is relatively low.

**Table 4-16: Logistic regression for odds of incarceration by court context (% violent offense volume) w/state variables.**

Variables	<u>Low Violent Offense Volume</u>				<u>High Violent Offense Volume</u>			
	B	S.E.	OR		B	S.E.	OR	
<b>Legal Characteristics</b>								
Violent	1.432	.050	4.187	***	1.365	.038	3.916	***
Drug Sale	.736	.045	2.088	***	.796	.037	2.217	***
Drug Possess	-.092	.033	.912	**	-.043	.034	.958	
Criminal History	X .616	.016	1.851	***	.494	.014	1.639	***
Total Charges at Arrest	.081	.008	1.084	***	.034	.007	1.034	***
Active Case at Arrest	X .398	.029	1.490	***	.473	.026	1.605	***
Plea	3.994	.035	54.294	***	3.970	.033	53.002	***
<b>Extra-legal Characteristics</b>								
Male	.248	.031	1.282	***	.274	.030	1.316	***
Age	-.002	.001	.998		-.004	.001	.996	***
Black	X .294	.031	1.342	***	.121	.029	1.129	***
Hispanic	.447	.037	1.564	***	.364	.033	1.439	***
Other	X .372	.081	1.451	*	.083	.087	1.087	
<b>Court Context</b>								
Minority Volume	X .005	.001	1.005		-.016	.001	.984	***
Drug Offense Volume	X -.037	.002	.963	***	.000	.003	1.000	
<b>State Context</b>								
Sentencing Guidelines (Dummy)	X -.667	.040	.513	***	-.441	.038	.644	***
Red State (Dummy)	X -.864	.034	.422	***	-.589	.029	.555	***
% Families in Poverty	X .169	.008	1.185	***	.034	.009	1.034	***
Cox & Snell R <sup>2</sup> =.485 Model Chi-square P<.000 N=15,961				Cox & Snell R <sup>2</sup> = .483 Model Chi-square P<.000 N=20,288				

**\*p<.05 \*\*p<.01 \*\*\*p<.001 X=Z Value>1.96**

## CHAPTER 5 - Summary and Conclusions

The findings detailed in Chapter 4 indicate support for the theoretical approach as I have framed it. The strongest findings suggest that relatively large volumes of minority defendants has a greater impact on sentencing outcomes than what is observed by relatively large volumes of drug or violent offenses. This is particularly important as it suggests that the racial status of groups of people has a greater impact than the sum of their behavior. In this chapter, I present a general summary of research findings as well as policy implications and directions for future research. First, however, I will review the theoretical genesis of the research.

This study embarked on perhaps the ambitious aim, to dispel some of the mystery surrounding an all too real phenomenon -- the overwhelming disparity in punishment and imprisonment observed in our nation's criminal justice system. I regard this goal as an ambitious one because a singular contributing factor -- one that will allow authorities to put an end to the shameful legacy of racial sentencing disparity -- may never be identified. In reality, disparity in sentencing practices is just one of many powerful indicators that hint to the health of our society. As this problem continues to indicate larger underlying dysfunction, sentencing disparity itself is undoubtedly the culmination of numerous latent and manifest social, educational, political, economic, and historical injustices still carried out daily in our social lives. Therefore, the aim here becomes less about understanding sentencing disparity from a holistic overview, but rather uncovering some of the mechanisms in the decision making process which have not yet been discussed.

Beginning with a review of the research literature, I observe that much of the previous and current sentencing scholarship is influenced, at least to some degree, by conflict theory. More specifically, many theorists seeking some end to this question begin their journey at the same place. Blalock's (1967) *Toward a Theory of Minority Group Relations* offers a theoretical starting point from which many studies of racial disparity in criminal sentencing and social control practices have been built. As I noted earlier, Blalock's theory offers particular strength to the study of criminal justice and social control activities, in that it can be applied to a variety of political, economic, and criminal justice research questions (Liska 1992; Liska 1993; Parker, Stults et al. 2005; Steen, Engen et al. 2005).

Briefly, Blalock's theory asserts that varying degrees and forms of minority group threat elicit varying degrees and types of social control responses from authorities. Blalock asserts that the powerful are motivated to discriminate by two forms of perceived threats; economic and political (competition and power) legal controls are often a response to a combination of economic and political threats. Generally, however, as threatening populations increase in strength, volume, and levels of mobilization, so do formal state responses. Blalock specifies the actual representation of minorities or non-whites within an environment as the measurement strategy for racial threat.

Using Blalock as a starting point, I apply his general schema to examine processes occurring within individual courts or jurisdictions. While much empirical support for the racial threat thesis is offered, very few have applied this framework to examine functions of mid-level structural bodies, such as courts.

I theorize that while bodies of racial minorities influence the decision making process, for this to occur the influence must also occur at the individual level. This leads me to the examination of theories that explore the influence of racial stereotypes at the individual level, and how biases and stereotypes lead to disparate case processing outcomes. Steffensmeier and colleagues' *Focal Concerns* and Albonetti's *Bounded Rationality* are arguably the two most prominent theories of judicial decision making proffered by scholars today. Essentially, the theories argue that judicial actors can never have, and will never have, an infallible method of predicting risk to aid the sentencing process. Inevitably, judges base decisions on knowledge rooted in experiences that are shaped by culture and history. Therefore, in the absence of a true measure of predicting an offender's future behavior and threat to the community, judges develop proxies of risk in order to render decisions in the most efficient manner possible. These proxies not only include what the offender has done (offense and criminal history) but are also coupled with presuppositions regarding the risk associated with offenders based their race, class, and gender. By relying on presuppositions drawn from offender characteristics such as race, gender, and class, the resulting decisions carry the stigma of "stereotypes, prejudices and highly particularized views of present stimuli" (Albonetti 1991).

The synthesis of macrostructural threat and individual level sentencing theories inform the theoretical approach of this study. This model posits that as judicial actors are presented with growing manifestations of threat at the court level, either through bodies of minority offenders or specific types of offenses, an oppositional identity, or a group position, is enhanced (good vs.

bad, criminal vs. law abiding) (Blumer, 1958). Authorities identify emergent categories of offenders as threats to dominant hegemony and respond to protect the interests of the community (law-abiding citizens). In this context, minority offenders and specific types of crimes associated with minority populations (drugs and violence) become symbolic threats to the existing social order. As the volume of threats observed in the court context increases, judicial decision makers will more readily rely on unofficial assessments of blameworthiness and inherent criminality of population members when rendering sentencing decisions. By examining courts in the context of levels of threatening populations, new information is gained regarding the causes and correlates of sentencing disparity between races and classes of people.

When formally stating the study hypotheses, I begin by acknowledging that in general terms offense and criminal history variables should be the best predictors of individual sentencing outcomes. This is where any study of criminal justice processing should begin. This is not to say that sentencing variance does not occur that is attributable to extra-legal descriptors. This is simply a general prediction based on the findings of previous sentencing research, as well as a prediction that what we all hope matters (a person's behavior) still does. I also do not ignore the fact that variance occurs in arresting offenses and charging decisions by race, which certainly contributes to variance in case processing outcomes. However, for the purpose of this study, I focus only on variance in sentencing outcomes.

### ***Key Findings***

I now discuss the key findings of the analysis. In general terms, I predicted that in court contexts marked by relatively high volumes of minority defendants and drug or violent offenses, punishment costs (odds of incarceration and sentence length) will be the greatest. In addition, I predicted that in high threat environments the greatest penalties will be paid by members of threatening populations, specifically black, drug sale, and violent offenders. Finally, while controlling for legal, extra-legal, and courtroom context, I acknowledge that certain state level influences will influence sentencing outcomes. (for a summary of hypothesis testing please refer to table 5-1)

### ***Sentence Length***

First, I review the findings of models examining variance in sentence length. The analysis yields consistent results regarding the relationship between legal criteria and sentence length. However, contrary to the predictions of H1, individual offense and criminal history



variables do not have the *strongest* predictive relationship with sentence decisions. Across all models for sentence length and the incarceration decision, the defendants' mode of conviction (represented by the plea dummy variable) is the best and most consistent predictor of sentencing outcomes. Although offense and criminal history descriptors are not the *strongest* variables in the sentence length models, the analysis indicates that crime and criminal history severity are strong predictors of sentence length nonetheless. In the general models presented in table 4-1, as well as subsequent models, I find that violent offenses predict longer sentences than non-person felonies, as do drug sale convictions. This is not surprising as these offense categories are generally considered the most severe. Findings for drug possession, however, vary across models when compared to findings here. In the full general models, possession is associated with decreased sentence length when compared to non-person felonies. These findings vary in subsequent models, which perhaps is a function of a greater degree of sentencing discretion for drug possession compared to drug sale or violent crimes.

Perhaps the most surprising finding, at least initially, was the vast influence that mode of conviction has on sentencing outcomes. In the initial and subsequent models, the plea variable has the strongest relationship with odds of incarceration and sentence length. This finding is somewhat disheartening and produces a contrary depiction of the adjudication process than previously held. In these data, the strength of the plea variable indicates that perhaps the court process is more dependent on negotiating the best deal for one's respective party (either the state or the defendant) and less about its ideal intention, which is the pursuit and administration of justice (for all parties). The strength of this variable also indicates just how powerful the "going rate" process may be within people-processing organizations.

The general model also indicates that while controlling for offense and criminal history, extra-legal characteristics matter. Findings correspond with research suggesting that males receive harsher sanctions when compared to females, and that the young generally receive longer sentences than the old. Both findings speak to the validity of focal concerns theory, which asserts that court actors contemplate offender blameworthiness and culpability when rendering decisions. Focal concerns theory also argues that actors are charged with protection of the community, urging them to gauge an offender's future risk. Because of assumptions regarding criminal potency of males compared to females, and the young compared to the old, findings of harsher sanctions for males and the young support the general tenets of focal concerns theory.

In addition, findings for Blacks support the general predictions of the study. While

controlling for offense and criminal history, the general models indicate longer sentences for Blacks compared to whites. This is even more interesting considering that the models indicate that other minorities (Hispanics and other minority defendants) receive shorter sentences than their white counterparts. The finding for the racial group categories supports findings of previous research (Steffensmeier et al., 1998, Chiricos et al., 1995), citing what Chiricos terms as the racial typification of crime. This idea is central to this study and asserts that by and large, young Black males are held responsible for the majority of drug and violent crime in America.

Support is found for assertions of H1a, which predicts that while controlling for legal characteristics, extra-legal characteristics of race, gender, and age will mediate the relationship between legal descriptors and sentencing decisions. In addition to the findings discussed previously in chapter 4, table 4-1 illustrates a reduction in the strength of legal variables with the introduction of extra-legal variables, further supporting the assertions of H1a.

This research hinges on the idea that racial threat perceived within individual courtroom contexts influences sentencing decisions. The full general model also includes court context variables, operationalized by the percentage of minority, drug, and violent offenders processed by a jurisdiction. The findings in table 4-1 appear consistently throughout subsequent models. Although the coefficient is small, caseload minority is shown to increase sentence length (and later odds of incarceration) at about the same level as age. This finding supports the study's primary assertion, that threats exerted through the composition of the court caseload influence sentencing outcomes.

I now turn to a discussion specific court contexts and focus upon how variance across court contexts predicts variance in sentencing outcomes. I first examined sentence length by minority caseload volume, which is the primary court context of interest. While introducing a variety of controls in the analysis of sentence length, several findings appear consistent. In all sentence length models, findings suggest that in contexts of high minority caseload, offense categories are associated with longer sentences. This is a consistent finding throughout the analysis and provides direct support of H3. This finding is important as it lends strong support for the general thesis of this study regarding threat generated by the relative volume of minorities processed in a jurisdiction. This finding suggests that as threats increase, so does the severity of criminal sanctions levied by jurisdictions. Additionally, findings suggest that criminal history matters less in high volume contexts. This suggests that presenting behavior, coupled with extra-legal characteristics, is more important than prior behavior in high volume contexts.

Perhaps the most important finding of the analysis reports direct race effects by court context. While controlling for legal and court and state context, minority status, particularly Black and Hispanic, is associated with longer sentences in contexts of high minority volume. This is contrasted by findings of lesser sentences for the same groups in low volume contexts. These findings support assertions of H4, which predict harsher sanctions for black defendants in courts of higher minority caseload volume. Findings of longer sentences for violent and drug sale offenses support the predictions of H5 and H6, which assert that punishment costs for these types of convictions will be greater in courts that process a higher volume of minority defendants. Again, these findings demonstrate strong support for assertions that in courts where racial threat is high, punishments for minorities will be the greatest.

Interaction effects continue to play an important role in disentangling racial disparity. I find that while sentencing guidelines consistently predict longer sentences across models, they matter less in environments of high minority volume. This suggests that courts in these contexts dole out harsher sanctions to Blacks and Hispanic, as well as longer sentences in general, despite the constraints of determinant sentencing. Conservatism also influences sentences in high minority volumes more so than other contexts; penalties are greater in conservative states where minority threat is high, compared to where minority threat is low.

Analysis of sentence length contextualized by offense volume yields still further important findings. Contrary to predictions of H7, H8, H9, H10, in both drug and violent offense contexts we find harsher sanctions within low volume contexts rather than in high as predicted. This finding is consistent throughout models and contrasts with consistent findings of harsher sanctions in contexts of high minority volume. Although these findings contrast previous assertions regarding the threat generated by offense volume, it may actually underscore the minority threat argument. This indicates that courts respond with harsher sanctions consistently to the threats associated with minority populations *even more so* than the apparent threats generated by high levels of drug and violent crimes. These findings are particularly fascinating and suggest that actors are threatened more by the subjective assessment of certain types of people than they are by objective threats of serious violent crime. These findings also correspond with assertions of court communities theory, which argues that as acts increase in frequency, they become more commonplace and therefore less severe.

This association effect is particularly evident in the violent contexts models. In regards to the finding that punishment varies across racial groups by court context, the results still

demonstrate that Blacks are associated with longer sentences in high drug offense contexts, but not in high violent offense contexts. This suggests that perhaps in courts conditioned by large volumes of drug offenses, Blacks are associated with crime more so than in courts that processes a relatively high volume of violent crime. This leads to the final consistent finding of the sentence length models, which suggests a normalizing of race effects in contexts of high violent crime volume. In all models examining sentence length by violent caseload context, little to no race effects were observed. This, coupled with the effects of sentencing guidelines (which were also rendered impotent), suggests that violent crimes offer the least discretion for court actors to vary, or to allow extra-legal criteria to influence them.

In brief, the sentence length analysis strongly supports the thesis that race and context matter. Findings correspond with the major assertions of this study, predicting more punitive responses for offenders based on court context and extra-legal, rather than legal, criteria.

### ***Incarceration Decision***

Next, I review the findings of the analysis of the incarceration decision. Logistic regression analysis of the relative odds of incarceration presents several findings that support the general thesis of the study (models 4-9 through 4-16). Consistent with findings of the sentence length models, and again contradicting assertions of H1, we find that offense descriptors and criminal history are not the strongest predictors of incarceration in all models. Defendant's mode of conviction represented by the plea dummy variable consistently has the strongest relationship with the odds of incarceration in all logistic regression models. However, as found in the sentence length models, offense criteria still possess strong relationship with the odds of receiving an incarceration sentence.

Examining odds of incarceration by court context, I find that in court contexts of high minority caseload volume, odds of incarceration for the conviction categories are substantially larger. This parallels findings of sentence length models, documenting increased odds of incarceration and longer sentences for offenders processed within these contexts. This is a crucial finding as it validates assertions that punishments and social control will be higher where minority threats are high. The analysis also shows that odds of incarceration also increase for those accepting a plea in high minority volume courts, compared to low volume courts. This is also support for H2, which predicted increased odds of an incarceration sentence for defendants in courts of relatively high minority defendant volume.

Findings further document that Blacks are more likely than whites to be incarcerated, a salient finding that appears in all logistic models. Findings also illustrate that blacks are associated with harsher punishment than whites to a greater extent in courts marked by relatively high volumes of minority defendants. This finding corresponds with the results of the sentence length models and offers support for H2a. As with sentence length models, increased odds of incarceration for drug and violent offenders in courts of relatively high minority defendant volume is found. Again, these findings support assertions of H5 and H6, which predicted harsher sanctions for defendants of these statuses that are attributable to court context.

In models contextualized by drug offense volume, I find higher odds of incarceration associated with conviction variables in low volume contexts, rather than high. This suggests that communities with relatively low drug crime rates respond more severely to law violators than courts that process a high volume of drug offenses. However, higher odds of incarceration appear for minorities in high volume contexts than in low. When compared to the findings of the offenses descriptors, we learn that extra-legal characteristics have greater influence in high drug offense volume courts than in low. This finding supports H9 and the idea that Blacks are associated with drug offenses in courts where the threat of drug related crimes is high, and that they suffer greater odds of incarceration as a result.

In the violent offense caseload context models, I find exactly the opposite of what I predicted in H7, H7a, H8. As in the sentence length models, this finding confirms that courts respond with harsher sanctions consistently to the threats associated with minority populations *even more so* than the apparent threats generated by high levels of violent crimes. This finding may also lend support to theorists who suggest a normalizing effect is produced that causes crimes to appear less severe as they increase in frequency.

In sum, as the research literature has shown and the analysis extends, it is not difficult to find empirical evidence of race effects in criminal sanctioning. It is also apparent that the context in which defendants are processed exerts influence over sentencing outcomes. Furthermore, it appears that racial threat, as first proffered by Blalock (1967), interacts with populations at the courtroom level to exert influence on sentencing outcomes. Additionally, the effects of racial threat exert to an even greater effect than the threats produced by high volumes of drug and violent offenses.

**Table 5-1: Results of Hypothesis Testing**

	Regression Models															
	4-1	4-2	4-3	4-4	4-5	4-6	4-7	4-8	4-9	4-10	4-11	4-12	4-13	4-14	4-15	4-16
<b>H1</b>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>H1a</b>	Y								Y							
<b>H2</b>										Y				Y		
<b>H2a</b>										Y				N		
<b>H3</b>		Y				Y										
<b>H4</b>		Y				Y										
<b>H5</b>		Y				Y				Y				Y		
<b>H6</b>		Y				Y				Y				Y		
<b>H7</b>				N				N				N				N
<b>H7a</b>				N				N				N				N
<b>H8</b>				N				N				Y				Y
<b>H9</b>			Y				Y				N				Y	
<b>H9a</b>			N				N				N				N	
<b>H10</b>			N				N				N				N	
<b>H11</b>					Y	Y	Y	Y					Y	Y	Y	Y

Y=Hypothesis Supported N=Hypothesis Not Supported Blank Cell=Not Applicable

H<sub>1</sub> Individual offense and criminal history will have the strongest predictive relationship with sentence decisions.

H<sub>1a</sub> Controlling for individual level legal descriptors, extra-legal characteristics race, gender, and age will mediate the relationship between legal descriptors and sentencing outcomes.

H<sub>2</sub> Controlling for legal and extra-legal descriptors, defendants in court contexts of higher minority caseload volume will face increased odds of receiving an incarceration sentence than similarly situated defendants in court contexts of lesser minority caseload volume.

H<sub>2a</sub> Controlling for legal and extra-legal descriptors, black defendants in court contexts of higher minority caseload volume will face increased odds of receiving an incarceration sentence than similarly situated black defendants in court contexts of lesser minority caseload volume.

H<sub>3</sub> Controlling for legal and extra-legal descriptors, defendants in court contexts of higher minority caseload volume will receive sentences of greater length than similarly situated defendants in courts of lesser minority caseload volume.

H<sub>4</sub> Controlling for legal and extra-legal descriptors, black defendants in court contexts of higher minority caseload volume will receive sentences of greater length than similarly situated black defendants in courts of lesser minority caseload volume.

H<sub>5</sub> Controlling for legal and extra-legal descriptors, court contexts of higher minority caseload volume will predict harsher sanctions (incarceration and sentence length) for drug trafficking offenses than court contexts of lesser minority caseload volume.

H<sub>6</sub> Controlling for legal and extra-legal descriptors, court contexts of higher minority caseload volume will predict harsher sanctions (incarceration and sentence length) for violent offenses than court contexts of lesser minority caseload volume.

H<sub>7</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) than court contexts of lesser violent crime caseload volume

H<sub>7a</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) for black defendants than court contexts of lesser violent crime caseload volume.

H<sub>8</sub> Controlling for legal and extra-legal descriptors, court contexts of higher violent crime caseload volume will predict harsher sanctions (incarceration and sentence length) for drug offenses than court contexts of lesser violent crime caseload volume.

H<sub>9</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) for black defendants than court contexts of lesser drug crime caseload volume.

H<sub>9a</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) than court contexts of lesser drug crime caseload volume.

H<sub>10</sub> Controlling for legal and extra-legal descriptors, court contexts of higher drug crime caseload volume will predict harsher sanctions (incarceration and sentence length) violent offenses than court contexts of lesser drug crime caseload volume.

H<sub>11</sub> Controlling for individual and court-level predictors socio-political characteristics at the county and state level will exert added influence on sentencing decisions.



### *Policy Implications*

Perhaps the general design of this study is not ideally suited to generate concrete, specific suggestions to formulate, enact, or amend policy. To develop policy in the most efficient, valid manner possible, study design should be tailored to the specific context that it is intended for (geographic context, type of court, specific characteristics). However, in general terms, this study does offer some insight to mechanisms lying just under the surface of conscious thought, that influence how courts go about their daily business. Primarily, findings documenting that measures of social threat are associated with more severe sanctions support the following policy related suggestions. First, courts and jurisdictions should undertake routine measures to collect accurate data regarding the demographic composition of their subjects. Data should be collected on as many extra-legal and legal criteria as possible. These data should be examined on a regular basis as a diagnostic measure, searching for anomalies in court processing outcomes. If anomalies are observed, suggesting differential treatment for a particular category of defendants, then data would be available to undertake other measures in the effort to remedy the observed disparity. Data collection would also serve an additional function. Having properly collected information regarding the court's clientele, this information should help disseminate better understanding of the court's function and the makeup of its subjects to decision makers. Having accurate data regarding offense and defendant populations may be the first step in eliminating erroneous assumptions regarding the nature of criminal offenses and offenders.

I also encourage continued training and education for court personnel. Although this is not a groundbreaking recommendation, and its actual viability may be tempered by the fiscal reality of most public service organizations, this suggestion nonetheless has merit. Training and education designed to dispel some of the fallacies held by many members of the criminal justice system may be the most logical step in reducing sentencing disparity.

Given the relative strength of the sentencing guideline variables, further examination and revision of sentencing guidelines processes is warranted. Although several studies have reported competing findings of the efficacy or merit of sentencing guidelines, according to this study guidelines appear to reduce the relative odds of incarceration. However, these effects are not observable across contexts and for all categories of defendants.

Finally, findings associated with mode of conviction suggest further examination of the pre-adjudicatory process. Recent studies have examined prosecutors' attempts to circumvent the

constraining effects of sentencing guidelines (hydraulic displacement) by adjusting charging and negotiating practices. Underscoring the importance of examining prosecutorial discretion, legislation was recently proposed in Kansas, requesting implementation of prosecutorial standards. This policy, similar to sentencing guidelines, is designed to reduce discretion held by prosecutors that may lead to differential case processing outcomes.

### ***Directions for Future Research***

I consider this study the first run of future research. In subsequent efforts, I will attempt to account for many limitations of the current study. First, different methodological approaches are necessary to account for the skewed and clustered nature of the data. Exploring the use of Tobit, Probit, or Hierarchical Linear Modeling (HLM) will address some of the issues raised by using cross sectional data clustered on more than one level. The next consideration to improve future research efforts is suggested by Holleran and Spohn (2004) and regards the use of the total incarceration variable (In/Out-incarceration decision) when modeling incarceration decisions. Holleran and Spohn argue that much of the variance present in incarceration decisions is lost when dichotomizing the dependent variable, as necessary for binary logistic regression. They suggest the use of multinomial logistic regression, which allows the researcher to model variance in decisions for all possible outcomes (jail, prison, *and* probation) simultaneously. These data will accommodate all of the methodologies mentioned above.

Finally, in future endeavors, I intend to examine variation in sentencing practices for specific crime types. Given the continued controversy over issues such as mandatory minimums and the growing public concern with sexual offenders, applying the caseload threat approach to smaller sub-samples of offenders, or focusing on particular offenses, may yield interesting findings.

In closing, empirical support for the caseload threat approach as I have framed it is found in the analysis. It is my hope that this study represents the first of many attempts to refine and enhance this theoretical approach and ultimately knowledge of the mechanisms guiding current punishment practices.

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