12-15-2015

Federal Sentencing Guidelines & United States v. Booker: Social Context and Sentencing Disparity

Jeffrey Nowacki
Southern Illinois University Carbondale, jnowacki@siu.edu

Federal Sentencing Guidelines & *United States v. Booker*: Social Context and Sentencing Disparity

Abstract

The *United States v. Booker* (2005) decision rendered Federal Sentencing Guidelines advisory rather than mandatory. In the context of this decision, this study examines both the direct influence of aggregate-level political, community and administrative variables on sentencing outcomes, and the way that such characteristics might contextualize individual-level predictors. Using multi-level regression techniques, this study examines the role of aggregate level variables on sentence length decisions across four distinct time periods. Moreover, this article also examines whether aggregate-level variables condition the effects of race/ethnicity on sentencing outcomes. While the direct effects of aggregate-level variables on sentencing outcomes are generally limited to political climate effects, there is evidence that political climate and other aggregate-level measures contextualize individual-level race/ethnicity effects. Future research should seek to better understand the specific mechanisms behind these relationships.

Keywords: Federal Sentencing, social context, judicial discretion

Federal Sentencing Guidelines & *United States v. Booker*: Social Context and Sentencing Disparity

Sentencing is an important phase of the criminal justice process. At this stage, offenders who have been convicted of crimes are punished. The goals of these punishments have been debated, but commonly they are described as deterrence, incapacitation, rehabilitation, and retribution (Gibbs, 1975; Packer, 1968). Thus, if the broader goal of the criminal justice system is to address, and limit, criminal offending, the sentencing process is an important part of that.

Within the empirical literature on the sentencing process, an important question has regarded the sources, extent, and manifestations of racial/ethnic disparity in sentencing. In recent years, a large body of research has developed to investigate these issues. This research examines not only which variables (e.g., criminal history, offense severity, type of offense) predict sentence severity, but also under which conditions they are most salient. Moreover, this literature examines how much of the variation in sentencing outcomes is explained by race/ethnicity once these legal variables have been accounted for. While many of the racial/ethnic differences are explained by legal characteristics, a racial/ethnic effect often persists net of these factors.

More recently, researchers have examined how social contextual factors (e.g., political climate, community characteristics, and courtroom administration) influence racial disparity in sentencing (see Britt, 2000; Fearn, 2005; Wang & Mears, 2010). Many of these studies have focused on state, as opposed to federal, sentencing (see Feldmeyer & Ulmer, 2011; Ulmer, Light, & Kramer, 2011a for exceptions). There are important differences between state and federal systems, including differences in the amount of discretion available to courtroom actors, often linked to the stringency of structured sentencing policies (e.g., sentencing guidelines). This

creates a need for research which examines the intersection of social context and racial disparity in sentencing at the federal level.

Particularly notable about the federal sentencing system are Supreme Court and policy decisions that have influenced the levels of discretion available to judges and prosecutors. Mostly notable is the *United States v. Booker* (2005) decision, which ruled that the mandatory nature of Federal Sentencing Guidelines was unconstitutional, and in violation of the 6th Amendment. With this ruling, the Guidelines were made advisory rather than mandatory. The *Booker* decision, along with other decision points over the past two decades (e.g., the PROTECT Act, and *Gall v. United States* [2007]) have provided important avenues for researchers to examine how the relationship between federal sentencing and racial disparity in sentencing outcomes has changed over time.

An important part of this research is how much the factors that influence sentencing vary across U.S. district courts (see Ulmer et al., 2011a), and how the magnitude of those factors has changed over time. One of the purposes of federal sentencing is to create fair, consistent, and uniform sentencing practices. It is critical to understand how districts vary from each other in such a system. Identifying such variation can allow legislators and policymakers to take steps toward ensuring fair, equitable sentencing.

In this research, I examine the following research questions: Do social context variables, such as political climate, racial/ethnic composition, and administrative and organizational-level factors influence sentencing outcomes, and do they contextualize race/ethnicity effects on sentencing? If so, do the effects vary across time-period? Once the constraints on judicial discretion are loosened, judges may begin to take mitigating factors into account that they could

not in the past. Thus, I argue that social context variables may contextualize individual-level variables (e.g., race/ethnicity) more strongly in the post-*Booker* periods.

The importance of these questions is significant. This research attempts to help researchers and policymakers better understand the complex origins of sentencing decisions, both in terms of social context and time period. The results could help better understand how sentencing decisions are affected by both aggregate, district-level characteristics and policy shifts.

Racial/Ethnic Disparity in State & Federal Sentencing

A large portion of the sentencing literature is devoted to racial/ethnic disparity (for reviews of this literature, see Chiricos & Crawford, 1995; Johnson & Lee, 2013; Mitchell, 2005; Spohn, 2000; Zatz, 1987). Specifically, this literature examines whether racial/ethnic effects persist beyond controls for offense severity and criminal history. Broadly, this body of research finds that racial/ethnic effects are mediated partially, but not completely, by the inclusion of legal characteristics. Researchers have examined this type of disparity at both the state and federal levels (Albonetti, 1990; 1997; Kramer & Steffensmeier, 1993; Myers & Talarico, 1986; Spohn, 2013; Spohn & Cederblom, 1991; Spohn & DeLone, 2000; Spohn & Holleran, 2000; Spohn & Sample, 2013; Spohn, Welch, & Gruhl, 1985; Tonry, 1995; 1996; Unnever & Hembroff, 1988; Wooldredge, 2012; Wooldredge, Frank, Goulette, & Travis, 2015).

A number of studies have used the State Court Processing Statistics (SCPS) database to examine sentencing outcomes in state courts (Demuth and Steffensmeier, 2004; Jordan & Freiburger, 2010; Steffensmeier & Demuth, 2006). These studies generally find less favorable treatment for Black and Hispanic offenders (Steffensmeier & Demuth, 2006), with ethnicity effects strongest for drug offenses and race effects strongest for property offenses (Demuth &

Steffensmeier, 2004). Moreover, Jordan and Freiburger (2010) find evidence of race/ethnicity effects for juveniles sentenced in adult court.

Other studies have used data from specific states to evaluate sentencing outcomes. For example, using data from the Pennsylvania Commission of Sentencing (PCS), research indicates that young, Black males are the group that is most likely to be incarcerated and receive the most punitive sentences (Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993; Steffensmeier, Ulmer, & Kramer, 1998). Moreover, Kramer and Ulmer (2002) find that young, Black males are also the least likely to receive downward departures in Pennsylvania.

Research using data from other state sentencing systems produce similar findings. Using data from Michigan, Freiburger and Hilinski (2011) find that that sentencing outcomes were influenced more by race than probation officer recommendations. Other studies using data from Florida find that non-White offenders were 6 to 8 times as likely as White offenders to receive custodial sanctions (Warren, Chiricos, & Bales, 2012), and non-White offenders disproportionately receive habitual-offender status (Crow & Johnson, 2008). Moreover, studies using data from Georgia (Myers & Talarico, 1986), Ohio (Wooldredge, 2012), and Washington (Steen, Engen, & Gainey, 2005) find evidence of race effects above and beyond criminal history and offense severity. Finally, studies comparing sentencing outcomes across Chicago, Miami and Kansas City (Spohn & DeLone, 2000; Spohn & Holleran, 2000) find that non-White males face the greatest odds of incarceration. In short, studies using data from a variety of sources find racial and ethnic effects net of legally-relevant variables.

There is also a large body of research that has examined racial/ethnic disparity in sentencing at the federal level (Albonetti, 1990; 1997; Doerner & Demuth, 2010; Everett & Wojtkiewicz, 2002; Kautt & Spohn, 2002; Mustard, 2001; Nowacki, 2015; Rehavi & Starr,

2014; Spohn, 2013; Spohn & Sample, 2013; Steffensmeier & Demuth, 2000; Tonry, 1995; 1996; Ulmer et al., 2011a).[1] Similar to sentencing research in state courts, these studies find more punitive sentences from non-Whites, particularly young, non-White males (Doerner & Demuth, 2010). Specifically, Mustard (2001) finds more punitive sentences for Black offenders, in large part linked to the smaller likelihood of downward departures for these offenders. Steffensmeier and Demuth (2006) find that Hispanic offenders are sentenced most harshly, particularly for drug offending. Kautt and Spohn (2002) find that race conditions other variables differently across various types of sentencing strategies; Rehavi and Starr (2014) find more punitive sentences for Black offenders linked to charging decisions in earlier stages of the criminal justice process; and finally, Ulmer et al. (2011a) find evidence of racial disparity, but suggest that is has not expanded since the Federal Guidelines became advisory. Taken together, this body of research suggests that race/ethnicity exert influence on federal sentencing outcomes above and beyond legal variables.

Federal Sentencing Guidelines & *United States v. Booker*

The Federal Sentencing Guidelines were implemented in 1987 as a way to introduce more consistency and uniformity into federal sentencing. Under these mandatory guidelines, judges were expected to evaluate offenders primarily on two criteria: offense gravity and criminal history. Judges would consult a grid to find a range within which the offender should be sentenced (see Tonry, 1996). This was an attempt to foster uniformity and consistency into sentencing.

In the formative years of this era, the Guidelines were a work in process. One of the goals of the Guidelines was to limit judicial discretion, and control the situations where judges would use extra-legal considerations to mitigate sentences. One method for judges to mitigate

sentences was to apply downward departures, which allowed for sentencing below guideline ranges. Upon evaluation, rates of departures were too high, so the Feeney Amendment of the PROTECT Act of 2002 further limited judges' ability to apply these departures (see Friddle & Sands, 2004).

Over time, the guidelines were met with challenges (*Apprendi v. New Jersey,* 2000; *Blakely v. Washington,* 2004). In *United States v. Booker* (2005), the Federal Guidelines were challenged on constitutional grounds. They were found to violate the 6th amendment and became advisory (see Frase, 2007), meaning that judges would have more flexibility to depart from Guidelines recommended sentences. Judges would still calculate the sentences suggested by the Guidelines but had freedom to depart from them. In essence, *Booker* expanded judicial discretion. A number of researchers have examined changes to federal sentencing since *Booker* (see Fischman & Schanzenbach, 2012; Lynch & Omari, 2014; Nowacki, 2015; Starr & Rehavi 2013; Ulmer et al., 2011a; Ulmer, Light, & Kramer, 2011b, United States Sentencing Commission, 2006; 2010; 2012).

In 2007, two additional Supreme Court cases helped specify the circumstances under which judges could engage in downward departures: *Gall v. United States* and *Kimbrough v. United States. Gall* ruled that judges should not automatically accept Guidelines recommendations as reasonable, and instead reach their own conclusions, informed by facts from specific cases. Moreover, *Kimbrough* ruled that Guidelines recommendations were unreasonable in crack-cocaine related cases (Ulmer et al., 2011b).

Social Context & Sentencing

Although policy initiatives, such as the Federal Sentencing Guidelines are meant to introduce uniformity, consistency, and fairness into sentencing, the effects of those policies can

vary across context. Specifically, one might anticipate district-level variation in the effects of both legal and extra-legal characteristics on sentencing outcomes. This variation is likely related to three concepts: 1) political climate; 2) racial/ethnic threat; and 3) courtroom communities and administration.

Political Climate

Over time, political climate has influenced social control in important ways (for a rich discussion, see Garland, 2001). Broadly, research indicates that locales with more conservative political climates tend to utilize tighter social controls to constrain crime (Helms & Jacobs, 2002; Jacobs & Helms, 2001; Jacobs & Helms, 1999). To capture political context, these studies measure Republican party strength as the proportion of votes going to the Republican candidate in recent Presidential elections.

A conservative political climate generally represents a "law and order" approach to addressing crime. More specifically, such a climate likely favors crime control over due process (Garland, 2001). That is, punishing potential offenders becomes paramount. Conversely, an approach that favors due process would allow for some offenders to go free, so long as those who are unjustly accused for crimes are not punished. These conservative regimes are much more likely to dedicate resources to crime control,[2] which may include expanding prison admissions, fortifying police forces, building new prisons, and de-emphasizing intermediate sanctions.

Under a discretionary sentencing system, Federal judges are likely to consider the surrounding political climate, and sentence accordingly.[3] In more conservative districts, judges may be less likely to apply downward departures, even when the option is available. The

prospect of appellate review may deter some federal judges from engaging in departure sentencing altogether.

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

Racial & Ethnic Threat

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

presence, using more coercive police action against members of these groups, or sentencing more punitively.

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

Conversely, a number of studies do not fully support the threat perspective. For example, Britt (2000) finds that sanctions tend to be more severe for all offenders, not just minority-group members, in places (in this case, court jurisdictions) with large Black populations. Racial threat (measured by Black population size) did not appear to affect sentencing outcomes for habitual offenders (Crawford, Chiricos, & Kleck, 1998), for drug trafficking offenders (Kautt, 2002), or in large urban counties (Weidner, Frase, & Pardoe, 2004). Feldmeyer and Ulmer (2011) found that Black population did not affect the sentencing of Black offenders, and that Hispanic defendants were actually sentenced more harshly in places with small Hispanic populations, and more leniently in places with the largest Hispanic populations. Finally, Myers and Talarico (1987) found that all offenders, not just African Americans, are sentenced more harshly in jurisdictions with larger African American populations, which is inconsistent with Blalock's hypothesis. In short, with respect to sentencing, some studies find support for the racial/ethnic

threat perspective, while others do not, but even those that do not find support for threat do suggest variation in outcomes by place.

Courtroom Communities & Organizational Efficiency

A final contextual consideration is the courtroom community. Numerous local trends influence the courtroom community including correctional resources, caseloads, and norms and behaviors across courtroom actors. In a broad sense, courtroom personnel (e.g., judges, prosecutors, and defense attorneys) form courtroom workgroups (Eisenstein, Flemming, & Nardulli, 1988; Johnson, 2005; Kramer & Ulmer, 2009; Ulmer & Johnson, 2004). These workgroups develop cultural norms and goals and often work in conjunction to achieve them. Such norms include "going rates" for sentences (Eisenstein et al., 1988), as well as interests in courtroom efficiency (Dixon, 1995; Engen & Steen, 2000). In particular, Eisenstein et al. (1988) argue that sentences are less severe in larger court communities, tied to levels of autonomy, low visibility, and de-sensitization to crime and violence (see Kramer & Ulmer, 2009). In short, courtroom communities are likely to condition other influences on sentencing outcomes.

An explicit purpose of the courtroom workgroup is to reach substantively rational sentences. Structured sentencing systems (e.g., sentencing guidelines) represent a formally rational type of decision-making (Johnson, 2005; Ulmer et al., 2010; Ulmer & Kramer, 1996). Formally rational decision-making seeks to reach outcomes through process, procedure, and rules, such as those set by the Federal Sentencing Guidelines. Conversely, substantive rationality seeks to achieve specific outcomes linked to the individual characteristics of defendants (Savelsberg, 1992). Generally, the courtroom workgroup seeks to achieve its goals and norms despite the formality of structured sentencing policy.

As such, one of the goals of the courtroom workgroup is to process cases quickly and efficiently in order to avoid a backlog of cases, thus local caseload is an important consideration for courtroom dynamics (Dixon, 1995; Engen & Steen, 2000). In jurisdictions with heavy caseload pressure, offenders who accept plea negotiations are likely to receive more lenient sentences. Conversely, offenders that go to trial in heavy-caseload jurisdictions can generally expect a "trial penalty" (Engen & Steen, 2000). In short, courts form their own communities, and these communities have general goals and norms that can influence sentencing outcomes, and one of the most salient influences is caseload pressure.

Current Study

The current study advances the understanding of sentencing outcomes by examining the effects of aggregate-level variables on sentencing outcomes. More specifically, this study examines how political context, racial/ethnic threat, and administrative variables influence sentencing outcomes. Moreover, it examines how these aggregate-level variables may condition the effect of individual-level extra-legal variables (e.g., race & ethnicity) on sentencing outcomes, and how these effects may vary over time. As such, I examine the following hypotheses:

Hypothesis 1: Offenders sentenced in districts with a greater proportion of the population voting Republican, on average, receive harsher sanctions.

Hypothesis 2: Offenders sentenced in districts characterized by larger Black and Hispanic populations are likely to receive harsher sentences (linked to minority-group threat).

Hypothesis 3: Offenders sentenced in districts with higher caseloads are likely to receive more lenient sanctions than those sentenced in districts with lower caseloads (linked to organizational efficiency).

Cross-Level Interactions

Beyond the direct effects of district-level variables, I also expect that these contextual variables will interact with individual-level factors. Previous research has found support for the notion that social context interacts with individual-level variables, particularly race/ethnicity variables (Bontrager et al., 2005). Social context allows discretion to enter into the sentencing decision-making process, and as it does so, it is likely to influence the effect that extra-legal variables have on sentencing outcomes.

Following the literature, I test cross-level interactions between race/ethnicity indicators at the individual-level and social context variables (e.g., political, threat, and organizational variables) at the aggregate level (see Bontrager et al., 2005; Helms & Jacobs, 2005; Wang & Mears, 2010). Race/ethnicity is generally an important source of disparity in sentencing outcomes, and this is also where social context may influence judicial decision-making. Moreover, this selection of cross-level interactions represents both a parsimonious and theoretically meaningful approach to exploring the interactions between individual-level, extra-legal variables, and aggregate-level contextual variables (see Feldmeyer & Ulmer, 2011, for example). Therefore, I predict the following:

Hypothesis 4: Non-White offenders sentenced in more politically conservative districts can expect particularly severe sentences relative to White offenders.

Hypothesis 5: Non-White offenders sentenced in districts with larger non-White populations and more immigrant concentration can expect particularly severe sentences relative to White offenders.

Hypothesis 6: Non-White offenders sentenced in districts with higher caseloads can expect particularly severe sentences relative to White offenders.

Data & Methods

The present research draws on data from the Monitoring of Federal Criminal Sentences database from 1999-2008. These data are compiled by the United States Sentencing Commission (USSC) and include all convicted federal offenders from each of the 94 U. S. districts, making this dataset the most comprehensive available for federal offenses and offenders.[4]

As noted earlier, these time periods reflect judicial discretion via the ability to issue downward departure sentences (see Ulmer et al., 2011b). Prior to the PROTECT Act, federal judges had as much flexibility to issue departments as they had at any other time during the Federal Guidelines Era. After the PROTECT Act, the ability to issue such departures was restricted. Following the *Booker* decision, the discretion to apply downward departures was once again made available to federal judges, but the circumstances where those departures were most appropriate were unclear. Finally, the *Gall* decision clarified some of these circumstances. Broadly, these time periods reflect proxies for the amount of discretion available to judges at the federal level. Following previous research (see Ulmer et al., 2011a; 2011b), I partition the data into four distinct time periods: the pre-PROTECT period (1999-April 30, 2003), the post-PROTECT period (May 1, 2003- January 11, 2005), the post-*Booker* period (January 12, 2005-November 2007), and the post-*Gall* period (December 2007-2008).

These data include information on sentence length, type of offense, criminal history, presumptive sentence, race/ethnicity, gender, district, education, and other legal and extra-legal variables. Descriptive statistics for the variables used in the analysis are presented in Table 1.

I merged the USSC data with contextual variables that I computed using the 2000 Census and 2004 election data. These variables are aggregated from the county-level to the district-

level, as counties are cleanly imbedded within much larger districts. In order to aggregate the data up to the district level, I calculated the district mean across all counties in the district. Undoubtedly, this will produce some measurement error; however, this is the most appropriate way to match Census data to federal court districts. Few studies have attempted to match Census characteristics to federal districts to date (see Feldmeyer & Ulmer, 2011 and Kim, Cano, Kim, & Spohn, in press for notable exceptions). Smaller geographical units, such as cities and counties are embedded within districts, but specific data on dependent variables are not available at this level.

Dependent Variable

The dependent variable in this study is sentence length, measured in months.[5] A zero-month sentence reflects a non-custodial sanction, such as probation. These sentences are excluded, since treating them as zero-month sentences would skew the data (see Ulmer et al., 2011a). Even after removing non-custodial sentences, this type of data tends to be highly skewed, so I take the natural log of sentence length (see also Steffensmeier et al., 1998) to adjust for the non-normal distribution of the data.

Individual-Level Variables

I include a number of individual level (level 1) variables in the analysis. The key variables of interest at the individual-level are measures or race/ethnicity. These variables are measured using dummy variables for Black, Hispanic, and other race offenders, with White offenders serving as the reference category. I also include measures of sex (female coded as "1"), age, education, citizenship status, and pre-trial release, criminal history, presumptive sentence, mode of disposition, and type of offense. Age is a continuous variable, while education (coded as "1" if a high school degree or more was completed), citizenship status (non-

citizens coded as "1"), and pre-trial release (coded as "1" if detained prior to sentencing) are dummy-coded. Offense severity is measured using the natural log of the presumptive sentence, or minimum guideline recommendation (see Engen & Gainey, 2000). Criminal history is an ordinal variable, ranging from 1-6. Following previous research (Feldmeyer & Ulmer, 2011; Ulmer et al., 2011a), I anticipate that criminal history influences sentencing outcomes above and beyond its place in the presumptive sentence calculation, so I introduce a separate control. Mode of disposition is coded as "1" if the defendant went to trial and otherwise "0." I also include dummy variables for three offense types: violent, drug, and immigration offenses.[6]

Social Context Variables

The focus of this study is on aggregate-level, contextual variables. Therefore, I estimate three aggregate-level factors: political climate, racial/ethnic threat, and organizational efficiency. Political climate is measured as the percentage of persons in a district who voted for the Republican candidate in the 2004 Presidential election.[7] Racial/ethnic threat is measured using two variables: percent Black and percent Hispanic.[8] Finally, I measure organizational efficiency by calculating the caseload in each district per judgeship. I take the natural log of this variable to account for the non-normal distribution of caseloads across districts. In addition to these measures, I control for the trial rate, percent of residents below the poverty line, and whether the district is a fast-track district (see Tillyer & Hartley, in press). Contextual variables are grand-mean centered.

Analytic Strategy

The analyses for social context variables utilizes linear mixed modeling techniques, with individual, case-level variables at level 1 and social context variables at level 2 for the 89 districts. Multi-level modeling is appropriate because the data in this study is structured in

groups (e.g., cases are nested within districts) where intercepts may vary (see Britt, 2000). Moreover, the hypotheses that I am testing require that individual- and aggregate-level data are estimated simultaneously. Multi-level models act similar to a two-step model, but fit both steps at once (see Gelman & Hill, 2006). Additionally, this technique produces efficient standard errors and controls for correlation between districts (West, Welch, & Galecki, 2006). Failure to account for clustering could produce biased estimates (Gelman & Hill, 2006; West et al., 2006). I present a main effects model to test Hypotheses 1-3.

I also examine cross-level interactions, focusing on the interaction between race/ethnicity at level-1 and certain district-level variables at level 2. I include cross-level interactions between Black and Hispanic offenders for each of the primary level 2 variables of interest: political climate, racial/ethnic threat, and caseload. These techniques allow me to estimate the extent to which race/ethnicity effects are conditioned by social contextual variables. These cross-level interaction models test Hypothesis 4-6. In all models, I also control for sentencing year by including a set of dummy variables (not shown in tables). This accounts for non-independence across sentencing year.

Results

Intercept-only models are presented in Table 2. These models present intra-class correlations (ICCs), which illustrate the proportion of variation in the dependent variable (e.g., sentence length) explained by the level 2 (e.g., district) unit. These calculations indicate that the proportion of variation explained at the district-level generally increases over time, with ICCs ranging from .062-.083, which represents between 6-8 percent of the variation in the dependent variable.

Results are presented in Tables 3 and 4. Broadly, results from the individual-level predictors conform to findings from previous literature (Doerner & Demuth, 2010; Spohn, 2013; Steffensmeier et al., 1993; Steffensmeier et al., 1998). In particular, Black and Hispanic offenders and male offenders receive more punitive sentences than White and female offenders, and offenders with more extensive prior records and who committed more serious offenses are sentenced more punitively. Moreover, offenders who go to trial receive more punitive sentences than those who enter plea negotiations, and offenders detained prior to trial receive longer sentences as well. Offenders with at least a high school diploma receive more lenient sentences than those without a diploma, and immigration offenders receive shorter sentences, on average. The direction and significance of these results hold across time period.

Hypotheses 1 predicts that offenders sentenced in more politically conservative climates, on average, receive more punitive sanctions. Results indicate that offenders sentenced in these politically conservative districts do receive more punitive sentences in each time period. Hypothesis 1 receives support across time. Previous studies have produced similar findings (see Jacobs & Helms, 2001; Jacobs & Helms, 1996; Jacobs & Jackson, 2010).

Hypothesis 2 suggests that offenders sentenced in districts with larger non-White populations (e.g., percent Black and percent Hispanic) receive longer sentences. The measures of percent Black and percent Hispanic were not statistically significant in any of the time periods. Thus, Hypothesis 2 is not supported.

Hypothesis 3 posits that offenders sentenced in districts with larger caseloads per judgeship receive more lenient sentences. The measure of caseload was not statistically significant in any time period. Thus, Hypothesis 3 is not supported. In terms of main effects, only the percent voting Republican variable influences sentence length decisions.

The remaining hypotheses examine cross-level interactive effects between individual race and ethnicity, and the district level measures discussed above. Results from models testing these hypotheses are presented in Table 4. Specifically, Hypothesis 4 predicts that non-White offenders sentenced in politically conservative districts receive particularly harsh sentences. Results indicate that Black offenders sentenced in more politically conservative districts receive more lenient sentences in the post-PROTECT and post-*Booker* time periods, but not the pre-PROTECT or post-*Gall* time periods. Recall that the post-PROTECT period was a time when the avenues for applying downward departures were more limited, so this result is somewhat unexpected. On the other hand, Hispanic offenders sentenced in conservative districts receive more lenient sentences only in the post-*Booker* and post-*Gall* time periods. Therefore, Hypothesis 4 is not supported.

Hypothesis 5 suggests that Black offenders sentenced in districts with large Black populations and Hispanic offenders sentenced in districts with large Hispanic offenders will receive more punitive sentences. In the post-PROTECT and post-*Booker* time periods, Black offenders sentenced in districts with large Black populations do receive longer sentences, but there is no statistically significant interaction in the pre-PROTECT or post-*Gall* period. Again, the post-PROTECT period is when downward departures sentences were less prevalent, so one would expect more punitive sentences during this era. Moreover, Hispanic offenders sentenced in districts with large Hispanic populations are sentenced more leniently in each time period. Thus, Hypothesis 5 receives partial support: it is supported for Black offenders in only the post-PROTECT and post-*Booker* periods. It is possible that the effects of the post-PROTECT period (e.g., fewer downward departures) spilled over into the post-*Booker* period, explaining this

result. The finding that aggregate-level racial composition interacts with individual-level racial status reflects previous research findings (see Ulmer & Johnson, 2004).

Finally, Hypothesis 6 posits that non-White offenders receive more lenient sentences in districts with greater caseload pressure. Results indicate that caseload does not have any moderating effect on Black offenders in any time period. On the other hand, Hispanics receive more lenient sentences in each time period. Hypothesis 6 is not supported. Taken together, these results provide support for the main effect of political conservatism, and mixed support for cross-level interactions.

Discussion and Conclusions

The majority of studies on sentencing focus on the individual characteristics of offenders. In contrast, this study examined both the direct influence of social contextual variables on sentencing outcomes, and how these variables might condition the effects of individual characteristics. Broadly, the results in this paper suggest that some of these variables do influence sentencing outcomes. Moreover, in certain situations, they condition the effects of individual-level variables, sometimes conforming to expectations, other times not.

The main effect analyses showed that sentences are generally more punitive in districts with conservative political climates. In each time period, the percentage of Republican votes was associated with longer sentences. This finding conforms with previous research, which suggests that political conservatism is consistent with a "law and order" approach to social control (Garland, 2001; Helms & Jacobs, 2002). Judges in these districts are more likely to emphasize the retributive nature of punishment, and sentencing in particular. Conversely, measures of racial/ethnic composition, and caseload did not influence sentencing outcomes. These results do not speak well to the racial/ethnic threat perspectives (Blalock, 1967) or the

organizational efficiency perspective (Dixon, 1995; Engen & Steen, 2000). These results were uniform across time period.

The cross-level interactions produced interesting contingencies to these results. In particular, Black offenders sentenced in conservative political climates were sentenced more leniently in the post-PROTECT and post-*Booker* periods, and Hispanic offenders sentenced in conservative districts were sentenced more leniently in both the post-*Booker* and post-*Gall* periods. These findings do not conform to expectations about conservative districts. It is possible that in light of attention drawn to racial and ethnic disparities in the criminal justice system, judges in these districts have altered sentencing practices to address widespread concerns. It would be interesting to know whether (and to what extent) large-scale perceptions about disparity in the criminal justice system influence judicial decision making.

The racial/ethnic interactions also produced interesting results. Black offenders sentenced in districts with larger Black populations received more punitive sentences in the post-PROTECT and post-*Booker* periods, while Hispanic offenders received more lenient sentences in each time period. The result for Black offenders conforms to the racial threat perspective, and represents a more robust test than population composition alone. Conversely, the results regarding Hispanic offenders refute the ethnic threat perspective. This study is not the first to fail to find evidence of ethnic threat (see Feldmeyer & Ulmer, 2011, for example).[9] Others have argued that Hispanic population can actually serve as a protective factor (Sampson, 2006), where large Hispanic populations can make places safer.

Finally, measures of caseload did not produce significant interactions with Black offenders, but Hispanic offenders sentenced in districts with higher caseloads were sentenced more leniently in each time period aside from the post-*Gall* period. Approximately 21 percent of

the districts in the data are fast-track districts (Table 1), but these interactions persist net of controls for both those types of districts and immigration offenses. Judges in these districts may sentence more leniently to combat the perception that stereotypes are often attributed to Hispanic offenders (Steffensmeier & Demuth, 2000). This result provides support for the organizational efficiency perspective. Taken together, the cross-level interactions suggest that individual characteristics in sentencing are often moderated by social contextual factors. Accounting for social context in this way can lead to conclusions that are not clear from a less nuanced, broader picture.

It is important to note that effect sizes of the social context variables are small compared to those of the individual-level variables. Engen (2011) cautions against relying too heavily on statistical significance, when the substantive effects may be small. Even with small effects, however, the interactions produced in this study are interesting and merit further investigation, not only at the federal level but also in state courts.

Many of the interactions only achieved statistical significance in a few of the time periods examined, highlighting the importance of partitioning the data. It was particularly interesting that the proportion of variation explained at the district-level grew over the course of the study, peaking at over 8% in the post-*Gall* period. It is clear that many social context variables were not examined in this study. Future research should attempt to further explain the precise mechanisms affecting sentencing at the aggregate level, particularly given that the role of inter-district variation appears to be growing over time.

Future research should continue to examine aggregate-level influences of sentencing at both the state and federal levels. The literature requires further development, where we can better understand how and when concepts such as political conservatism, threat, and

organizational efficiency are important. While we have a foundation to conduct this type of research, it is important that these frameworks continue to grow. One important limitation of this study was the aggregation strategy used to match Census variables to districts. Since many of the districts cover large areas, and sometimes an entire state, these variables are much less telling than they might be at a smaller unit of analysis, such as the tract-level. For example, a variable such as percent below the poverty line is aggregated for the entire district. This means that concentrated levels of disadvantage will be mitigated by areas of relatively low disadvantage to produce a middle ground. Moreover, it might not make sense to assume that disadvantage that occurs in a certain pocket of a district could affect sentencing outcomes throughout the entire district.

Individual judicial characteristics was an important element missing from this study. While this study did include measures of political conservatism, it is not clear to what extent federal judge appointments match the voting behavior in the districts. It is important that federal courts achieve symbolic representation (Welch, Combs, & Gruhl, 1988) for the offenders who are sentenced, such that characteristics of the judges in some ways match characteristics of the offenders coming before them. These characteristics may include politics, but also ascribed statuses such as race/ethnicity and gender. Further research should examine the link between substantive representation and sentencing outcomes.

This study speaks to the influence of social context on Federal sentencing decisions. Both the United States Sentencing Commission (USSC) and the state-level commissions (and the Supreme Court) must continually re-assess the goals of sentencing and punishment and whether they are being achieved. If those goals are met better in some districts than others, adaptations are necessary. Landmark decisions such as *Booker* and *Gall* represent some of these changes,

but others may be necessary. Even though policy, such as mandatory minimums and sentencing guidelines, are meant to foster consistency and uniformity in sentencing, they are often connected to even greater disparities. It is crucial that research and policy are linked to the extent that they accomplish the necessary goals of punishment.

Notes

[1] The distinction between state and federal sentencing is an important one, because the federal system is bound to policy that many states are not, which influences the level of discretion available in the federal and state systems. Specifically, the federal system are bound by Federal Sentencing Guidelines (even in their current, advisory form). While some states may have guidelines systems, others may not, but even those that do vary to the extent that those systems constrain judicial discretion (Tonry, 1996).

[2] An anonymous reviewer noted that the federal system is a national institution, and all district courts receive resources from the Department of Justice. This is true, however, while those national resources might not vary, the allocation of resources might vary, even in structured sentencing systems (Wilhelm & Turner, 2002).

[3] Although Federal judges are appointed rather than elected, it is still reasonable to think that political climate could affect their sentencing decisions, particularly through public opinion (see Benesh, 2006; Caldeira, 1986; 1987; Levin, 1972). While they do not have to conform to voters, they also do not want to cause disturbances with those who appoint them. Moreover, it is likely that the general political climate affects these decisions subconsciously rather than explicitly. That is, political climate may affect judicial decision making without judges even realizing it.

[4] I include 89 of the 94 districts in my analyses (excluding territories and other districts not included in the U. S.). These districts are missing data on level-2 measures, and could not be included.

[5] I also attempted to estimate models treating non-government sponsored downward departures as a second dependent variable. Unfortunately, this variable did not show sufficient variation during the post-PROTECT period, as only 5% of cases were resolved in this way during that timeframe. Thus, only sentence length models are presented.

[6] Numerous studies of federal sentencing exclude immigration offenses from analyses (see Doerner & Demuth, 2010; Steffensmeier & Demuth, 2000). However, as an anonymous reviewer noted, some immigration offenders sentenced in "fast-track districts" are allowed to waive certain rights in exchange for sentencing departures. Rather than excluding these offenses, I chose to model both immigration offenses as a level 1 variable, and fast-track districts as a level 2 variable.

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

[8] I also tested for a possible quadratic relationship for these variables. These quadratic terms failed to reach statistical significance in any model, so the analysis with the linear term is presented in the interest of simplicity.

[9] Also note that the racial/ethnic threat perspective most closely corresponds to smaller units of analyses, such as census tracts or neighborhoods. While the application here is an imperfect one, it is still important to examine the extent to which threat processes may influence federal (and state) sentencing outcomes.

References

Albonetti, C. A. (1990). Race and the probability of pleading guilty. *Journal of Quantitative Criminology, 6,* 315-334.

Albonetti, C. A. (1997). Sentencing under the federal sentencing guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenses, 1991-1992. *Law and Society Review, 31,* 789-822.

Apprendi v. New Jersey, 530 U.S. 466. (2000)

Benesh, S. C. (2006). Understanding public confidence in American courts. *Journal of Politics, 68,* 697-707.

Blakely v. Washington, 542. U.S. 296. (2004).

Blalock, H. M. (1967). *Toward a theory of minority-group relations.* New York, NY: John Wiley and Sons.

Bontrager, S., Bales, W., & Chiricos, T. (2005). Race, ethnicity, threat, and the labeling of convicted felons. *Criminology, 43,* 589-622.

Britt, C. L. (2000). Social context and racial disparities in punishment decisions." *Justice Quarterly, 17,* 707-732.

Caldeira, G. A. (1986). Neither the purse nor the sword: Dynamics of public confidence in the Supreme Court. *American Political Science Review, 80,* 1209-1226.

Caldeira, G. A. (1987). Public opinion and the US Supreme Court: FDR's court-packing plan. *American Political Science Review, 81,* 1139-1153.

Carmichael, J. T. (2005). The determinants of jail use across large U.S. cities: An

assessment of racial, ethnic, and economic threat explanations. *Social Science Research, 34*, 538-569.

Chiricos, T. G., & Crawford, C. (1995). Race and imprisonment: A contextual assessment of the evidence. *Ethnicity, race, and crime: Perspectives across time and place, 13,* 281-309.

Crawford, C., Chiricos, C. & Kleck, G. (1998). Race, racial threat, and sentencing of habitual offenders." *Criminology, 36,* 481-511.

Crow, M. S., & Johnson, K. A. (2008). Race, ethnicity, and habitual-offender sentencing: A multilevel analysis of individual and contextual threat. *Criminal Justice Policy Review, 19*, 63-83.

Demuth, S., & Steffensmeier, D. (2004). Ethnicity effects on sentence outcomes in large urban courts: Comparisons among White, Black, and Hispanic defendants. *Social Science Quarterly, 85*, 994-1011.

Dixon, J. (1995). The organizational context of criminal sentencing. *American Journal of Sociology, 100,* 1157-1198.

Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly, 27,* 1-27.

Eisenstein, J., Flemming, R. B., & Nardulli, P. F. (1988). *The contours of justice: Communities and their courts.* Boston, MA: Little, Brown.

Engen, R. (2011). Racial disparity in the wake of Booker/Fanfan: Making sense of "messy" results and other challenges for sentencing research. *Criminology & Public Policy, 10,* 1139-1149.

Engen, R. L., & Gainey, R. R. (2000). Modeling the effects of legally relevant and extralegal

factors under sentencing guidelines: The rules have changed. *Criminology*, *38*, 1207-1230.

Engen, R. L., & Steen, S. (2000). The power to punish: Discretion and sentencing reform in the war on drugs. *American Journal of Sociology, 105,* 1357-1395.

Everett, R. S., & Wojtkiewicz, R. A. (2002). Difference, disparity, and race/ethnic bias in federal sentencing. *Journal of Quantitative Criminology*, *18*, 189-211.

Fearn, N. E. (2005). A multilevel analysis of community effects on criminal sentencing. *Justice Quarterly, 22*, 452-487.

Feldmeyer, B., & Ulmer, J. T. (2011). Racial/ethnic threat and federal sentencing. *Journal of Research in Crime & Delinquency, 48,* 238-270.

Fischman, J. B., & Schanzenbach, M. M. (2012). Racial disparities under the federal sentencing guidelines: The role of judicial discretion and mandatory minimums. *Journal of Empirical Legal Studies, 9,* 729-764.

Frase, R. S. (2007). The *Apprendi-Blakely* cases: Sentencing reform counter revolution? *Criminology & Public Policy, 6*, 403-431.

Freiburger, T. L., & Hilinski, C. M. (2011). Probation officers' recommendations and final sentencing outcomes. *Journal of Crime and Justice*, *34*, 45-61.

Friddle, T., & Sands, J. M. (2004). Don't think twice, it's all right: Remands, federal sentencing guidelines & the Protect Act-A radical departure. *Arizona State Law Journal, 36,* 527-549.

Gall v. United States, 552 U.S. 38. (2007)

Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Chicago, IL: University of Chicago Press.

Gelman, A., & Hill, J. (2006). *Data analysis using regression and multilevel/hierarchical models*. New York, NY: Cambridge University Press.

Gibbs, J. P. (1975). *Crime, punishment, and deterrence*. New York, NY: Elsevier.

Greenberg, D. F., & West, V. (2001). State prison populations and their growth: 1971-1991. *Criminology, 39*, 615-654.

Helms, R., & Costanza, S. E. (2010). Modeling the politics of punishment: A contextual analysis of racial disparity in drug sentencing. *Criminal Justice Review, 35*, 472-491.

Helms, R., & Jacobs, D. (2002). The political context of sentencing: An analysis of community and individual determinants. *Social Forces, 81*, 577-604.

Jacobs, D., & Helms, R. (2001). Toward a political sociology of punishment: Politics and changes in the incarcerated population. *Social Science Research, 30*, 171-194.

Jacobs, D., & Helms, R. (1999). Collective outbursts, politics, and punitive resources: Toward a political sociology of spending on social control. *Social Forces, 77*, 1497-1523.

Jacobs, D., & Helms, R. E. (1996). Toward a political model of incarceration: A time-series examination of multiple explanations for prison admission rates. *American Journal of Sociology*, *102*, 323-357.

Jacobs, D., & Jackson, A. L. (2010). On the politics of imprisonments: A review of systematic findings. *Annual Review of Law & Social Sciences, 6*, 129-149.

Johnson, B. D. (2005). Contextual disparities in guidelines departures: Courtroom social contexts, guidelines compliance, and extra-legal disparities in criminal sentencing. *Criminology, 43*, 761-796.

Johnson, B. D., & Lee, J. G. (2013). Racial disparity under sentencing guidelines: A survey of

recent research and emerging perspectives. *Sociology Compass*, *7*(7), 503-514.

Johnson, B. D., Ulmer, J. T., & Kramer, J. H. (2008). The social context of guidelines circumvention: The case of federal district courts. *Criminology, 46*, 737-784.

Jordan, K. L., & Freiburger, T. L. (2010). Examining the impact of race and ethnicity on the sentencing of juveniles in the adult court. *Criminal Justice Policy Review, 21*, 185-201.

Kautt, P. M. (2002). Location, location, location: Interdistrict and intercircuit variation in sentencing outcomes for federal drug-trafficking offenses. *Justice Quarterly, 19*, 633-671.

Kautt, P., & Spohn, C. (2002). Crack-ing down on Black drug offenders? Testing for interactions among offenders' race, drug type, and sentencing strategy in federal drug sentences. *Justice Quarterly, 19*, 1-35.

Keen, B., & Jacobs, D. (2009). Racial threat, partisan politics, and racial disparities in prison admissions: A panel analysis. *Criminology, 47*, 209-238.

Kim, B., Cano, M. V., Kim, K., & Spohn,C. (in press). The impact of *United States v. Booker* and *Gall/Kimbrough v. United States* on sentence severity: Assessing social context and judicial discretion. *Crime & Delinquency.* DOI: 0011128714551783

Kimbrough v. United States, 552 U.S. 85. (2007)

Kramer, J., & Steffensmeir, D. (1993). Race and imprisonment decisions. *The Sociological Quarterly, 34*(2), 357-376.

Kramer, J. H., & Ulmer, J. T. (2002). Downward departures for serious violent offenders: Local court corrections to Pennsylvania's sentencing guidelines. *Criminology, 40*, 897.

Kramer, J. H., & Ulmer, J. T. (2009). *Sentencing guidelines: Lessons from Pennsylvania.* Boulder, CO: Lynn Rienner Publishers.

Levin, M. A. (1972). Urban politics and judicial behavior. *The Journal of Legal Studies*, *1*, 193-221.

Lynch, M., & Omori, M. (2014). Legal change and sentencing norms in the wake of *Booker*: The impact of time and place on drug trafficking cases in federal court. *Law & Society Review, 48*, 411-445.

Mitchell, O. (2005). A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology*, *21*(4), 439-466.

Mustard, D. B. (2001). Racial, ethnic, and gender disparities in sentencing: Evidence from the U.S. federal courts. *Journal of Law and Economics*, *44*, 285-314.

Myers, M. A., & Talarico, S. M. (1986). The social contexts of racial discrimination in sentencing. *Social Problems*, *33*(3), 236-251.

Myers, M. A., & Talarico, S. M. (1987). *The social contexts of criminal sentencing.* New York, NY: Springer Science & Business Media.

Nowacki, J. S. (2015). Race, ethnicity, and judicial discretion: The influence of the *United States v. Booker* decision. *Crime & Delinquency*, *61*, 1360-1385.

Packer, H. (1968). *The limits of the criminal sanction*. Stanford, CA: Stanford University Press.

Rehavi, M. M., & Starr, S. B. (2014). Racial Disparity in Federal Criminal Sentences. *Journal of Political Economy, 122*, 1320-1354.

Sampson, R. J. (2006, March 11). Open doors don't invite criminals. *New York Times*, pp. A27.

Savelsberg, J. J. (1992). Law that does not fit society: Sentencing guidelines as a neoclassical reaction to the dilemmas of substantivized law. *American Journal of Sociology, 97*, 1346-1381.

Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing

process. *Criminal Justice, 3*, 427-501.

Spohn, C. (2013). The effects of the offender's race, ethnicity, and sex on federal sentencing outcomes in the guidelines era. *Law & Contemporary Problems, 76*, 75-104.

Spohn, C., & Cederblom, J. (1991). Race and disparities in sentencing: A test of the liberation hypothesis. *Justice Quarterly, 8*, 305-327.

Spohn, C., & DeLone, M. (2000). When does race matter? An analysis of the conditions under which race affects sentence severity. *Sociology of Crime, Law, and Deviance, 2*, 3-37.

Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed black and Hispanic male offenders. *Criminology, 38*, 281-306.

Spohn, C., & Sample, L. L. (2013). The dangerous drug offender in federal court: Intersections of race, ethnicity, and culpability. *Crime & Delinquency, 59*, 3-31.

Spohn, C., Welch, S., & Gruhl, J. (1985). Women defendants in court: The interaction between sex and race in convicting and sentencing. *Social Science Quarterly, 66*, 178-185.

Starr, S. B., & Rehavi, M. M. (2013). Mandatory sentencing and racial disparity: Assessing the role of prosecutors and the effects of Booker. *Yale Law Journal, 123*, 2-81.

Steen, S., Engen, R. L., & Gainey, R. R. (2005). Images of danger and culpability: Racial stereotyping, case processing, and criminal sentencing. *Criminology, 43*, 435.

Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly? *American Sociological Review, 65*, 705-729.

Steffensmeier, D., & Demuth, S. (2006). Does gender modify the effects of race–ethnicity on criminal sanctioning? Sentences for male and female White, Black, and Hispanic defendants. *Journal of Quantitative Criminology, 22*, 241-261.

Steffensmeier, D., Kramer, J., & Streifel, C. (1993). Gender and imprisonment

decisions. *Criminology, 31*, 411-446.

Steffensmeier, D., Ulmer, J. T. & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, Black, and male. *Criminology, 36*, 763-797.

Tillyer, R., & Hartley, R. (in press). The use and impact of fast-track departures: Exploring prosecutorial and judicial discretion in federal immigration cases. *Crime & Delinquency*. DOI: 0011128713505481.

Tonry, M. (1995). *Malign neglect: Race, crime, and punishment in America*. New York, NY: Oxford University Press.

Tonry, M. (1996). *Sentencing Matters.* New York, NY: Oxford University Press.

Ulmer, J. T., Eisenstein, J., & Johnson, B. D. (2010). Trial penalties in federal sentencing: extra-guidelines factors and district variation. *Justice Quarterly, 27*, 560-592.

Ulmer, J. T., & Johnson, B. (2004). Sentencing in context: A multilevel analysis. *Criminology, 42*, 137-177.

Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology, 34*, 383-408.

Ulmer, J., Light, M. T., & Kramer, J. (2011a). The liberation of federal judges' discretion in the wake of the *Booker/Fanfan* decision: Is there increased disparity and divergence between courts? *Justice Quarterly, 28*, 799-837.

Ulmer, J., Light, M. T. & Kramer, J. (2011b). Racial disparity in the wake of the *Booker/Fanfan* decision. *Criminology & Public Policy, 10*, 1077-1118.

United States v. Booker, 543 U.S. 220. (2005)

United States Sentencing Commission. (2006). *Final report on the impact of* United States v.

Booker *on federal sentencing*.

United States Sentencing Commission. (2010). *Demographic differences in federal sentencing practices: An update of the* Booker *report's multivariate regression analysis.* Washington, D.C.: U.S. Sentencing Commission.

United States Sentencing Commission. (2012). *Report on the continuing impact of* United States v. Booker *on federal sentencing.* Washington, D.C.: U.S. Sentencing Commission.

Unnever, J. D., & Hembroff, L. A. (1988). The prediction of racial/ethnic sentencing disparities: An expectation states approach. *Journal of Research in Crime and Delinquency, 25*(1), 53-82.

Wang, X. & Mears, D. P. (2010). Examining the direct and interactive effects of changes in racial and ethnic threat on sentencing decisions. *Journal of Research in Crime & Delinquency, 47*, 522-557.

Warren, P., Chiricos, T., & Bales, W. (2012). The imprisonment penalty for young Black and Hispanic males a crime-specific analysis. *Journal of Research in Crime and Delinquency, 49*, 56-80.

Weidner, R. R., Frase, R. S., & Pardoe, I. (2004). Explaining sentence severity in large urban communities: A multilevel analysis of contextual and case-level factors. *The Prison Journal, 84*, 184-207.

Weidner, R. R., Frase, R. S. & Schultz, J. S. (2005). The impact of contextual factors on the decision to imprison in large urban jurisdictions: A multilevel analysis. *Crime & Delinquency, 51*, 400-424.

Welch, S., Combs, M., & Gruhl, J. (1988). Do Black judges make a difference? *American Journal of Political Science, 32,* 126-136.

West, B. T., Welch, K. B. & Galecki, A. T. (2006). *Linear mixed models: A practical guide using statistical software*. Boca Raton, FL: CRC Press.

Wilhelm, D. F., & Turner, N. R. (2002). Is the budget crisis changing the way we look at sentencing and incarceration?. *Federal Sentencing Reporter*, *15*(1), 41-49.

Wooldredge, J. (2007). Neighborhood effects on felony sentencing. *Journal of Research in Crime & Delinquency, 44*, 238-263.

Wooldredge, J. (2012). Distinguishing race effects on pre-trial release and sentencing decisions. *Justice Quarterly*, *29*, 41-75.

Wooldredge, J., Frank, J., Goulette, N., & Travis, L. (2015). Is the Impact of Cumulative Disadvantage on Sentencing Greater for Black Defendants? *Criminology & Public Policy, 14*, 187-223.

Zatz, M. S. (1987). The changing forms of racial/ethnic biases in sentencing. *Journal of Research in Crime and Delinquency*, *24*, 69-92.

Tables

Table 1

Descriptive Statistics (Mean Value with Standard Deviation in Parentheses)

	Pre-PROTECT	**Post-PROTECT**	**Post-*Booker***	**Post-*Gall***
Dependent Variable				
Sentence Length (in months)	49.77	51.20	54.01	51.75
	(58.43)	(59.52)	(61.48)	(60.89)
Level 1 Independent Variables				
Black	.25	.22	.23	.22
	(.43)	(.42)	(.42)	(.42)
Hispanic	.42	.43	.43	.41
	(.49)	(.50)	(.50)	(.49)
Other	.03	.04	.04	.03
	(.18)	(.19)	(.19)	(.18)
Female	.12	.12	.12	.11
	(.33)	(.32)	(.32)	(.31)
Age	33.93	34.12	34.61	34.69
	(10.46)	(10.38)	(10.50)	(10.56)
Criminal History	2.44	2.56	2.57	2.55
	(1.72)	(1.76)	(1.75)	(1.74)
Presumptive Sentence	62.26	64.44	73.87	72.34
	(217.71)	(305.25)	(387.57)	(406.14)
Trial	.04	.04	.04	.04
	(.20)	(.20)	(.21)	(.18)
Violent Offense	.01	.01	.01	.01
	(.10)	(.10)	(.10)	(.10)
Drug Offense	.44	.38	.38	.35
	(.50)	(.49)	(.48)	(.48)
Detained Prior to Sentencing	.65	.71	.73	.76
	(.48)	(.45)	(.44)	(.43)
Education	.56	.54	.54	.54
	(.50)	(.50)	(.50)	(.50)
Non-U.S. Citizen	.36	.38	.39	.43
	(.48)	(.49)	(.49)	(.49)
Immigration Offense	.20	.25	.26	.30
	(.40)	(.43)	(.44)	(.46)
Level 2 Independent Variables				
Percent Republican	56.52	57.03	57.22	57.34
	(9.38)	(9.44)	(9.19)	(8.87)
Percent Black	8.73	8.56	8.51	8.60
	(9.89)	(10.15)	(10.00)	(9.99)
Percent Hispanic	17.60	17.71	17.46	18.29
	(16.65)	(16.66)	(16.66)	(17.21)
Caseload	418.95	317.92	572.75	184.16
	(330.54)	(245.67)	(447.30)	(158.12)
Trial Rate	95.99	96.05	96.02	96.06
	(2.03)	(2.03)	(2.01)	(2.00)
Percent Living Below Poverty Line	14.90	15.12	15.15	15.24
	(4.06)	(4.12)	(4.17)	(4.17)
Fast Track District	.21	.21	.21	.21
	(.41)	(.41)	(.41)	(.41)

Table 2

Inter-Class Correlations for Sentence Length Models

	Pre-PROTECT	**Post-PROTECT**	**Post-*Booker***	**Post-*Gall***
Intercept	.334***	.349***	.346***	.383***
	(.025)	(.026)	(.026)	(.029)
Residual	1.299***	1.259***	1.275***	1.269***
	(.002)	(.003)	(.002)	(.004)
Intra-Class	.062***	.071***	.068***	.083***
Correlation	(.009)	(.010)	(.010)	(.012)

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

Table 3.

Multi-Level Regression Models for Sentence Length.

	Pre-PROTECT	**Post-PROTECT**	**Post-*Booker***	**Post-*Gall***
Level 1 Variables				
Black	.060***	.049***	.062***	.086***
	(.004)	(.005)	(.004)	(.008)
Hispanic	.026***	.019**	.039***	.029**
	(.004)	(.006)	(.005)	(.009)
Other	.043***	.046***	.035***	-.008
	(.008)	(.011)	(.008)	(.016)
Female	-.189***	-.174***	-.183***	-.164***
	(.004)	(.006)	(.005)	(.009)
Age	-.0003*	-.0004*	-.0002	-.001*
	(.0001)	(.0002)	(.0001)	(.0003)
Criminal History	.030***	.026***	.033***	.038***
	(.001)	(.001)	(.001)	(.002)
Presumptive Sentence (ln)	.794***	.785***	.784***	.761***
	(.002)	(.002)	(.002)	(.003)
Trial	.311***	.294***	.275***	.271***
	(.007)	(.009)	(.007)	(.015)
Violent Offense	.103***	.073***	.007	.047
	(.014)	(.019)	(.015)	(.028)
Drug Offense	-.027***	-.024***	-.025***	-.006
	(.004)	(.005)	(.004)	(.007)
Detainment Status	.289***	.287***	.347***	.370***
	(.003)	(.005)	(.004)	(.008)
High School Graduate	-.025***	-.025***	-.020***	-.028***
	(.003)	(.004)	(.003)	(.006)
Non-U.S. Citizen	-.023***	-.039***	-.033***	-.008
	(.004)	(.006)	(.005)	(.009)
Immigration Offense	-.083***	-.070***	-.090***	-.113***
	(.005)	(.007)	(.006)	(.010)
Level 1 Intercept	1.917**	1.782**	2.429**	2.632***
	(.603)	(.649)	(.731)	(.732)
Level 2 Variables				
Percent Voting Republican	.005***	.006***	.008***	.009***
	(.001)	(.001)	(.001)	(.001)
Percent Black	.001	-.001	-.0002	.002
	(.001)	(.001)	(.001)	(.001)
Percent Hispanic	-.003	-.003	-.002	-.001
	(.002)	(.002)	(.002)	(.002)
Caseload Per Judge (ln)	.011	.027	.024	.023
	(.025)	(.026)	(.029)	(.026)
Trial Rate	-.17**	-.016*	-.024**	-.024**
	(.006)	(.007)	(.008)	(.008)
Percent Below Poverty Line	.003	.004	.004	-.002
	(.003)	(.004)	(.004)	(.004)
Fast Track District	-.067	-.054	-.082	-.090**
	(.035)	(.038)	(.042)	(.042)
Level 2 Intercept	.095***	.102***	.116***	.113***
	(.007)	(.008)	(.009)	(.009)
Level 2 Residual	.605***	.543***	.597***	.601***
	(.001)	(.001)	(.001)	(.002)

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

Table 4.

Multi-Level Logistic Regression Models for Cross-Level Interactions for Sentence Length.

	Pre-PROTECT	**Post-PROTECT**	**Post-*Booker***	**Post-*Gall***
POLITICAL				
Level-1 Variables				
Black	.060***	.049***	.061***	.086***
	(.004)	(.005)	(.004)	(.008)
Hispanic	.025***	.019**	.038***	.028**
	(.004)	(.006)	(.005)	(.009)
Level-2 Variable				
Percent Republican	.005***	.006***	.008***	.010***
	(.001)	(.001)	(.001)	(.001)
Political Interactions				
Black x Percent Republican	-.0005	-.001*	-.002***	-.001
	(.0003)	(.0005)	(.0004)	(.001)
Hispanic x Percent Republican	-.0001	.0003	-.001*	-.002**
	(.0003)	(.0004)	(.001)	(.001)
COMMUNITY				
Level-1 Variables				
Black	.059***	.046***	.060***	.086***
	(.004)	(.005)	(.004)	(.008)
Hispanic	.035***	.037***	.052***	.047***
	(.005)	(.007)	(.006)	(.011)
Level-2 Variables				
Percent Black	.001	-.001	.007***	-.002
	(.001)	(.001)	(.001)	(.001)
Percent Hispanic	-.003	-.003	-.001	-.001
	(.002)	(.002)	(.002)	(.002)
Community Interactions				
Black x Percent Black	.0004	.001***	.001***	.0003
	(.0002)	(.001)	(.0003)	(.001)
Hispanic x Percent Hispanic	-.001***	-.001***	-.001***	.002**
	(.0002)	(.0003)	(.0002)	(.0005)
ADMINISTRATIVE				
Level-1 Variables				
Black	.092**	.085*	.095*	.065
	(.035)	(.040)	(.036)	(.052)
Hispanic	.191***	.218***	.240***	.025***
	(.028)	(.010)	(.029)	(.042)
Level-2 Variable				
Caseload (ln)	.013	.030	-.026	.021
	(.023)	(.026)	(.029)	(.026)
Administrative Interactions				
Black x Caseload	-.005	-.007	-.006	.005
	(.006)	(.008)	(.006)	(.011)
Hispanic x Caseload	-.026***	-.036***	-.033**	-.047
	(.004)	(.006)	(.005)	(.009)

Note. Analysis also controls for all Level-1 Variables (not shown)
** p <.05; ** p <.01; *** p <.001*