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Editorial Introduction
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Successful research areas, like successful businesses, go through well-defined lifecycles identified with labels like establishment, growth, and maturity, followed by renewal or decline. Sentencing research in criminal justice has successfully reached the point of maturity. The predominant mode of research in the field has been the sophisticated statistical analysis of conviction data, usually from states with guidelines. This research has been important and far reaching. For example, criminological sentencing research was cited in Supreme Court decisions about the future of the federal sentencing guidelines (United States v. Booker, US 220 2005). This special issue is motivated by the question of what happens next, continued growth and development, or decline. This question, first asked by a sentencing working group in 2008, led directly to the symposium on the Past and Future of Empirical Sentencing Research, held on 23 September 2010 and 24 September 2010 at the University at Albany. The symposium was funded primarily by a grant from the Law and Social Science branch of the National Science Foundation.1 Diana Mancini, an assistant dean at the School of Criminal Justice, co-directed the symposium with me, and we were aided by advisory board members Sara Steen, Brian Forst, Allison Redlich, and Kevin Reitz.

The board first identified two substantive topics, the role of race in sentencing and the role of discretion, which drive much of the research in sentencing, and then identified two “hot” policy areas — risk assessment and prison population management — that directly implicate/affect those two topics. Finally, we identified main paper writers who might bring new insight to each of the four main topics, and recruited three discussants for each paper, two of whom were from different disciplines than the main writer, and the third who had a connection to the policy world. The symposium also featured speakers from the US Sentencing Commission. This special issue features revised versions of three of those main articles, along with one discussant per main article, and an insightful speech on how research can best influence...
policy by the research director of the US Sentencing Commission [and former director of the National Institute of Justice (NIJ)], Glenn Schmitt.  

The dominant message coming from the symposium is the need to better understand prosecutorial discretion and plea bargaining. Sentencing research originally focused on judges as the sentencing actor. But 95% of all cases are resolved by plea bargains, and even when judges have freedom to sentence independently, they are largely constrained by the charges brought by the prosecutor. Sabol (2010) argues that the increase in incarceration since 1990 can be attributed to the increase in the probability of conviction, which is largely driven by prosecutorial behavior. Research on sentencing outcomes clearly must consider more than the actions of the judges (see also Ulmer, 2012).

But, data on prosecutor behavior are not easy to gather, and it usually does not measure up to the quality (and completeness) of the conviction data from guideline states that now represents the “modal” model in sentencing research (Baumer, current volume). A good example is the State Courts Processing Statistics, which includes data on cases from arraignment and then follows them forward to conviction, although without the detail found in state specific conviction datasets. Researchers are left with a choice between answering the same questions with high-quality data (akin to looking for the proverbial lost keys under the lamppost) or answering important new questions with lower-quality data. The roaring success of the predominant paradigm in its most evolved form (Zatz, 1987) becomes a liability, rather than a strength, if it places unreasonable expectations about data quality on incipient new research ideas.

There is hope, however, that progress is beginning to be made in the study of prosecutors and plea bargaining. There are a growing number of papers being presented on prosecution and plea bargaining at the annual meetings of both the American Society of Criminology (ASC) and the Academy of Criminal Justice Sciences (ACJS). Rehavi and Starr (2012) have recently released a potentially groundbreaking paper on the creation of racial disparity by prosecutors through the disproportionate application of mandatory sentences in the federal system. This paper utilizes brand new data linking indictment and conviction data (see also Johnson, 2012). The Rehavi and Starr (2012) collaboration is also important, because it represents the profitable collaboration of two young scholars from different fields, economics and legal studies. Scholarship in criminal justice will always benefit from cross fertilization with substantive, theoretical or methodological innovations in other fields.

For example, consider the expanding use of identifiers on individual actors, such as judges, to study both the link between individual actions and sentencing outcomes, as well as the subsequent impact on crime (e.g. Green & Winik, 2010; Nagin & Snodgrass, 2012). Studying how the actions of individual actors affect outcomes that actors are ostensibly trying to influence, like crime, has the potential to greatly expand the scope of sentencing research.

2. Interested readers will find full versions of all articles produced for the symposium at http://www.albany.edu/scj/symposium_home.php.
It also has the potential to more directly address the questions facing policy-makers. Policy-makers are moving to the expanded use of risk assessment techniques throughout the criminal justice system, including at parole, probation and, increasingly, as part of the formal sentencing process. As the conversation at the symposium made clear, risk assessment makes many researchers uncomfortable, largely because risk assessment tools are correlated with race. However, policy-makers are faced with making hard choices about the use of criminal justice resources, and risk assessment provides the ability to create choices that are replicable, understandable, and "scientifically based". Of course, individual policy-makers (i.e. judges and prosecutors) will still make choices in the absence of risk assessment tools, and these decisions may also be correlated with race. Effective evaluation of risk assessment tools, as well as current clinical practice (i.e. individual decision-making) represents a major contribution of social science to current public policy. Moreover, if the symposium demonstrated anything, it showed that social scientists can have productive normative discussions about best practices.

The final takeaway from the symposium is the importance of interdisciplinary conversations about key questions in the field, conversations that will not happen within the umbrella of any one disciplinary organization. The structure of the symposium by definition created opportunities for constructive criticism of the dominant paradigm in criminological sentencing. This can lead to defensive responses, or growth and development. Jeffrey Ulmer, in particular, deserves credit for engaging constructively with the criticisms from the symposium in an attempt to move the field forward (Ulmer, 2012).

I personally believe that the symposium has also highlighted the need for a more focused, ongoing discussion around prosecutorial discretion and plea bargaining. Too often, progress in criminal justice is slow, at least in part because the key questions are not well defined. But even in the face of well-defined questions (does race play a direct role in sentencing practice?), progress is not clearly tracked and discussed. This failure to follow up might explain the disconnect between the important National Academy of Science report on sentencing research (Blumstein, Cohen, Martin, & Tonry, 1983) and subsequent research (see Baumer, current volume). This is in contrast to standard practice in the sciences, where groups of researchers routinely come together to discuss progress in answering important questions. We know there is an urgent need to understand more about prosecutorial discretion and plea bargaining. We can make progress if we maintain a focused, ongoing conversation about both key questions and the available answers. I look forward to finding ways to facilitate and encourage this conversation.

References


