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Recent Developments and New Directions in Sentencing Research

Jeffery T. Ulmer

Research on criminal sentencing, particularly on various types of disparity therein, has been an active field of inquiry for decades. This paper provides a conceptual survey of research on non-capital sentencing outcomes since 2000. I first look backward at the research agenda posed by reviews in the early 1980s, and in 2000. I then discuss theoretical developments in the study of sentencing in the 1990s and 2000s. I then provide an overview of recent sentencing research focused on the following: (1) court organizational and social contexts, (2) individual courtroom workgroup members, (3) disparity conditional on intersecting defendant characteristics, (4) victim characteristics, and (5) earlier case processing events and decisions. I then outline several directions for moving sentencing research forward into the next decade.

Keywords sentencing; courts; disparity

Research on criminal sentencing has been an active field of inquiry for decades. The 1980s and 1990s were particularly noteworthy, in that these decades saw advances in the quality of data, the sophistication of research methods, and improvements in theory. Sentencing research has continued as a vibrant enterprise in the 2000s, and sentencing studies appear with Jeffery T. Ulmer is currently an associate professor of Sociology and Crime, Law, and Justice. His recent research has focused on state and federal courts and sentencing, race/ethnicity, structural disadvantage, and violence, religion and crime, and criminological theory. He is the author of Social Worlds of Sentencing: Court Communities Under Sentencing Guidelines (1997, State University of New York Press), and coauthor (with Darrell Steffensmeier) of Confessions of a Dying Thief: Understanding Criminal Careers and Illegal Enterprise (2005, Aldine-Transaction) which won the 2006 Hindelang Award from the American Society of Criminology. His most recent book (with John Kramer), Sentencing Guidelines: Lessons from Pennsylvania was published in 2009 by Lynne Rienner Publishers. Correspondence to: Jeffery T. Ulmer, Sociology and Crime, Law, and Justice, The Pennsylvania State University, University Park, PA 16802, USA. E-mail: jtu100@psu.edu

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great frequency in the major criminology and criminal justice journals, and are even occasionally found in major sociology journals. The past two years have seen three National Science Foundation funded symposia on courts and sentencing research: one organized by Celesta Albonetti and Robert Baller in 2009 at the University of Iowa College of Law, the largest one in 2010 organized by Shawn Bushway and Diana Mancini at the University at Albany’s School of Criminal Justice (see http://www.albany.edu/scj/SentencingSymposium.htm), and one in 2011 organized by Mona Lynch and Carroll Seron at the School of Social Ecology at University of California, Irvine.

The study of criminal sentencing has drawn the interest of scholars from across the social sciences because it cross-cuts several topics of broad relevance, including, but not limited to:

1. **Social stratification and inequality**: to what extent are sentencing decisions shaped by, and in turn reproduce patterns of social inequality?

2. **Problems in organizational discretion and decision-making, including specifically the understanding of criminal justice discretionary decision-making**: which actors have the discretion to shape punishment decisions, how do they use that discretion, and what constraints exist, if any, on that discretion?

3. **Law and policy**: how do sentencing realities match up with policy goals and legal ideals, such as equality before the law?

4. **Localization and social contexts**: how does sentencing reflect the tension between broad legal/policy and institutional goals vs. the realization and implementation of those goals in local jurisdictions? How do local social contexts produce the “contours of justice” (Eisenstein, Flemming, & Nardulli, 1988)?

My purpose in this article is partly to look backward at where sentencing research has come from since 2000, and partly to look forward to what I think are useful new directions. This is not a meta-analysis or even a systematic topical literature review. I do not claim to have represented every sentencing study of the last 10 years, and space prevents a fine-grained review of all the empirical findings of the studies that I do note. Furthermore, I limit my scope to studies examining non-capital sentencing decisions as focal dependent variables, even while fully recognizing that such decisions are conditioned by and interdependent with a chain of earlier and later criminal justice processing decisions that are embedded in organizational and broader contexts. Rather, I intend to provide a survey of what I see as important new directions in the non-capital sentencing research of the past decade (since 2000), taking as a point of departure reviews at the beginning of the decade by Spohn (2000) and Zatz (2000). I then join other recent observers (Baumer, 2010; Forst & Bushway, 2010) in outlining suggestions for moving sentencing research forward into the next decade.
Sentencing Research in the 1990s: Responding to Issues and Opportunities

Before discussing developments in the 2000s, it is helpful to have some background regarding sentencing research in the 1990s. At the Albany symposium noted above, the research agenda laid out in the 1983 report *Research on Sentencing: The Search for Reform* (Blumstein, Cohen, Martin, & Tonry 1983 report hereafter) was held up as a frame of reference against which to measure progress made (or not) in ensuing decades. More than one symposium participant claimed that the field has made little progress on the agenda laid out in the Blumstein et al. (1983) report, and more than one participant opined that the report seems to have been largely ignored. In my view, however, many researchers in the 1990s did take the 1983 report seriously, and in many ways the research of the past two decades has made substantial progress on some, but certainly not all, of the Blumstein et al. (1983) report’s agenda. This progress was certainly uneven, and conditioned by data developments and opportunities that did and did not occur.

By far, the biggest development in the late 1980s and 1990s was the availability of data collected by sentencing commissions in guideline states and the federal system. For the first time, researchers had at their disposal reasonably high-quality post-conviction, jurisdiction-wide data for very large numbers of cases. These data were disseminated by sentencing commissions with legal mandates to collect and make available such data. If guideline sentencing data-sets did not include all researchers wanted (and they did not), they were at least an improvement over sentencing stage data that had been used before (Engen & Gainey, 2000).

These data enabled progress on the following issues, raised by the Blumstein et al. (1983) report, and particularly by Hagan and Bumiller’s (1983) essay in that report:

1. **The need for better measurement of legally relevant variables.** Sentencing commission data enabled substantially improved measures of offense severity and criminal history, which had often been measured crudely in earlier research. This need was highlighted by Kleck (1981, 1985) and Wilbanks (1987), who argued that sentencing research up to the mid-1980s and earlier was incapable of answering questions about racial disparity because legally relevant control variables (particularly offense severity and criminal history) were typically measured inadequately (see Klepper, Nagin, and Tierney (1983) report for a similar argument).

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1. It should be noted that, especially in early years of guideline implementation, there were problems with non-uniform reporting of cases across county courts in some guideline states (such as Pennsylvania, see Kramer & Ulmer, 2009), and across the federal courts.
The need to study different and more complex sentencing outcome variables. The Blumstein et al. (1983, p. 273) report called for "... more adequate treatments of the complexity of the dependent variable, sentence outcome. Instead of using a single scale to represent sentence severity, with all the arbitrariness such a scale represents, there should first be a qualitative dependent variable representing the choice among the various kinds of sentence options being considered." Guidelines data not only enabled easier differentiation of the incarceration and length decisions, but also often enabled the examination of jail vs. prison incarceration, the imposition of mandatory minimums, intermediate punishments and sentence waivers, and of course, various measures of guideline departures. The latter also enabled researchers to meet the Blumstein et al. (1983, p. 279) report's call for studies of compliance with sentencing guidelines.

The need for larger samples from more varied jurisdictions was particularly identified by Hagan and Bumiller (1983). Guideline data from states and the federal system provided very large samples drawn from large numbers of contextually diverse counties (for states) or district courts (with federal data). On the other hand, most published studies of sentencing in the 1990s and later concentrated on a handful of guideline states and the federal system (Spohn, 2000), thus limiting our knowledge of sentencing in a broader selection of states.

The need to investigate the conditioning effects of social contexts on sentencing and disparity was noted by Hagan and Bumiller (1983, pp. 16-17) among others (see, e.g. Peterson & Hagan, 1984; Thomson & Zingraff, 1981). As noted above, sentencing data from a relatively wide range of local jurisdictions enabled research on local variation in sentencing severity and disparity.

However, as noted at length by Forst and Bushway (2010) and Baumer (2010), the widespread reliance sentencing commission data discouraged the field from making headway on another major item on the Blumstein et al. (1983) report's agenda. Several chapters of the Blumstein et al. (1983) report, as well as others (e.g. Smith, 1986; Thomson & Zingraff, 1981) called for consideration of sentencing in the contexts of earlier criminal justice decisions, particularly pretrial detention, charging, and conviction. It has long been recognized that sentencing is conditioned by selection processes in earlier justice system decisions. Sentencing researchers have long struggled with the dilemma that prosecutorial discretion is highly consequential and pervasive, and yet much less visible than judicial sentencing discretion. For all their benefits noted above, guideline sentencing data are limited to convicted offenders, and do not include pre-conviction information such as the type and number of original charges (and rarely include pretrial detention). Data-sets that include pre-conviction data for large numbers of cases and multiple local jurisdictions have traditionally been scarce and difficult to obtain, and those that are
available (such as the State Court Processing System [SCPS] data) confront the researcher with other trade-offs. In any case, the years since the 1983 report have seen comparatively few studies that use relatively recent data to examine sentencing in the context of earlier decisions.

Relatedly, the Blumstein et al. (1983) report, and Hagan and Bumiller (1983) especially, called for sentencing research to examine the effects of defendant socioeconomic status variables on sentencing outcomes, and to disentangle the potential influence of race and ethnicity vs. socioeconomic factors in sentencing. In addition, the Blumstein et al. (1983) report and others called for studies that examine sentencing variation between criminal justice actors, especially judges and prosecutors, and the effects of decision-maker characteristics in explaining variation in sentencing. But, only a handful of studies since then have examined sentencing variation between judges, and the effect of judge characteristics, and even fewer studies have examined between-prosecutor variation. Also, defendant socioeconomic data and/or data on individual court actors have generally been hard to come by in the most widely used guideline data-sets. Thus, studies that disentangle socioeconomic factors from other defendant characteristics (especially race or ethnicity) have been scarce (but not non-existent, as I discuss below). It should be noted that the federal data provided by the United States Sentencing Commission (USSC) include variables such as defendant education, marital status, citizenship, and type of defense attorney (and these are widely used as control variables in federal sentencing studies), though most state sentencing commissions do not provide such information. As noted later, a helpful recent development is that the Pennsylvania Commission on Sentencing began providing judge-specific sentencing data in the mid-2000s.

The 2000 Reviews

At the beginning of this decade, two comprehensive reviews (Spohn, 2000; Zatz, 2000) summed up research on sentencing, primarily focusing on studies of disparity based on defendant social characteristics. Both reviews noted that research had improved in quality since the 1983 report. Both reports also highlighted research that went beyond simply assessing whether "race/ethnicity mattered" or "gender mattered" to investigating when and how such social statuses matter in sentencing—that is, investigating how the influence of race, ethnicity, and gender mutually conditioned one another, and were also condi-
tioned by other factors. Spohn’s (2000) review in particular provided a quantitative summary of racial/ethnic disparity studies with an eye to conditional influences.3

Regarding the in/out decision, Spohn (2000) found that 55% of 45 effects in 31 state court studies she reviewed, and three of seven effects in eight federal court studies, showed significant black disadvantages. Five of 12 effects in state court studies showed in/out disadvantages for Hispanic defendants, and three of seven effects in federal studies showed Hispanic in/out disadvantages. Twenty-three percent of 39 sentence length effects in 31 state court studies showed significant black disadvantage, and 1 of 14 effects showed a length disadvantage for Hispanics. In eight federal studies, six of nine effects showed black sentence length disadvantage and two of eight length effects showed disadvantages for Hispanics.

More importantly, Spohn (2000, p. 462) found that 11 studies had looked at whether race and/or ethnic effects were conditioned by other social statuses or characteristics, especially gender and/or age. All 11 found evidence of such effects. In particular, four studies found sentencing disadvantages for young black and/or Hispanic males, four found sentencing disadvantages for unemployed young black or Hispanic males, one found disadvantages for low income minorities, and one found disadvantages for low education minorities.

In addition, several studies in the 1990s showed that race or ethnicity effects on sentencing were conditional on criminal history, offense type or severity, case processing factors, or victim characteristics. Eight 1990s studies found that blacks or Hispanics with more serious criminal histories were sentenced more severely. Ten studies found that race/ethnic differences were conditioned by type or severity of crimes. Three found that racial disadvantages were greatest in less serious crimes, and six found that racial disadvantages were pronounced in drug offenses. In addition, six studies found that race/ethnicity effects were conditioned by case processing factors. Two studies found that blacks were sentenced more severely if they were detained prior to trial, one found that blacks were sentenced more severely if represented by a public defender rather than a private attorney, and three found that blacks were sentenced more severely if they were convicted by plea rather than trial. Finally, one study found that blacks who victimized whites received more severe sentences that other victim-offender race combinations (Spohn & Spears, 1996).

These reviews also spelled out directions for further research that they hoped would be undertaken in the ensuing decade. Several of these directions called for further progress on earlier recommendations from the Blumstein et al. (1983) report. Among other directions, Zatz (2000) called for: (1) investigations of how the effects of race and ethnicity on sentencing vary by social context and over time; (2) more investigations of the sentencing of Latinos;

3. Spohn restricted her analysis to 40 sentencing outcome studies that had adequate offense and criminal history measures, and reported results from multivariate regression analyses.
(3) research that utilized better measures of defendant socioeconomic status factors, and disentangling the effects of socioeconomic status from race and ethnicity; and (4) qualitative research that illuminated sentencing processes. Spohn (2000) called for: (1) research on how court social and organizational contexts shaped sentencing severity and disparity; (2) further research on the conditional effects of race and ethnicity on sentencing; (3) more research on Latino defendants; (4) investigations of sentencing and disparity in the context of earlier criminal justice (particularly prosecutorial) decisions; and (5) qualitative research that illuminated sentencing decision processes and court contextual influences.

Theoretical Developments

Assessments of literature are always undertaken from particular standpoints. I have always approached the study of sentencing as a sociologist, and more specifically, as a symbolic interactionist (for an overview of contemporary symbolic interactionism, see Maines, 2001). This symbolic interactionist perspective carries with it a characteristic epistemological stance which embraces certain assumptions that I think are relevant to, and implicitly permeate, several of our current theoretical frameworks on sentencing:

(1) Key units of sociological analysis are joint social acts. Joint social acts are produced by actors who define situations, interpret the communications and actions of other participants, and processes. Importantly, actors can be individuals (i.e. judges, prosecutors) or groups (i.e. prosecutor’s offices, court communities).

(2) Actors’ definitions, interpretations, and acts are shaped by, and in turn shape, larger social contexts (i.e. court organizational structure and culture, community political context and patterns of socioeconomic or racial/ethnic stratification, etc.)

(3) The impact of larger social structures or policies on local practices and arrangements is empirically indeterminate (Hall, 1997; Maines & Morri-one, 1990). That is, larger structures, social changes, or policies are likely impactful on individual activities, but the nature of the impact depends on how those distal structures, policies, or changes shape proximal situations through "points of entry into group life" (Blumer, 1990). "Points of entry into group life" here means local social contexts, and the interests, incentives, interpretations, and culture of court communities, or what Eisenstein et al. (1988) meant by the "contours of justice."

Interactionists who study processes of policy formation and implementation refer to policy as necessarily involving "the transformation of intentions" (Hall, 1997; Hall & McGinty, 1997; Ulmer, 2005). It is local actors’ discretion that
transforms those intentions. This means that policies—such as sentencing guidelines, mandatory minimums, etc.—are at the mercy of those who implement them. According to Hall (1997, p. 401), on one hand, “policy actors, dependent upon those who follow them to complete their intentions, set the terms that both limit and facilitate later actions.” On the other hand, “later actors may reinforce, clarify, subvert, or amend initial intentions and content” (Hall, 1997, p. 401). Since, for interactionists, social order is produced through social interaction, it follows that sentencing policies depend on their implementation by local individuals and participants (see, e.g. Jenness & Grattet, 2005).

My point in reviewing this interactionist perspective is that when we study sentencing, we are analyzing joint acts produced by the discretion and interactions of judges, prosecutors, defense attorneys, and sometimes probation officers. Courtroom workgroup actors’ interpretations and acts are embedded in (and maintain or change) local court communities, which are in turn embedded in local socio-cultural contexts. Policies such as sentencing guidelines are subject to the “transformation of intentions” noted above, in which such externally imposed rules meet the local “contours of justice” (Eisenstein et al., 1988), the organizational structure and culture of local courts, and the discretion of their actors, with variable results for guideline conformity, sentencing severity, disparity, “trial penalties,” and other concerns (Ulmer, 1997).

When we study sentencing, regardless of method or modeling procedure, I believe this is the epistemological terrain we enter. The causal mechanisms of sentencing decisions, and aggregate sentencing patterns, lie in the interpretive processes and joint acts in context described above. The vast majority of sentencing research takes the form of regression-based studies of one or another sentencing or case processing outcome. I have no quarrel with this, and have done a good deal of such research myself. I have always believed, however, that the coefficients in regression models are vital yet merely indirect windows into sentencing processes and their contextual embeddedness. I will return to this latter point at the conclusion of the article.

Theoretical Perspectives on Sentencing

Hagan and Bumiller (1983) as well as other contributors to the Blumstein et al. (1983) report noted that at that time there was little theoretical development in the sentencing literature. Spohn (2000, p. 458) also noted that most pre-1990s sentencing studies were based on “an overly simplistic version of conflict theory.” In my view, this is no longer true of the sentencing literature of the 1990s and 2000s. The 1990s and 2000s saw the emergence of new theoretical frameworks, and the refinement of older theoretical propositions from conflict and labeling theories. These theoretical developments have drawn from broader theories and concepts in sociology, social psychology, and in some cases economics. At this point, I can discern no truly competing, mutually
exclusive theories of sentencing. Rather, we seem to have a number of complementary theoretical concepts, hypotheses, and models, some of which have evolved through processes of mutual influence and cross-fertilization. Furthermore, many of these theoretical frameworks are broadly compatible with the interactionist view sketched above, and a few of them (namely the focal concerns, causal attribution, interpretive legal decision theory, and racial group threat perspectives) are directly influenced by symbolic interactionism (and labeling theory, spawned by symbolic interactionism) conceptions. Below, I briefly describe these theoretical frameworks (readers seeking full treatments of them should consult the original works cited below).

**Individual cases and actors**

Albonetti articulated an uncertainty avoidance (1986, 1987) and causal attribution (1991) perspective on sentencing and court decision-making. Albonetti (1987, 1991) applied insights from organizational theory to argue that sentencing suffers from operating in a context of bounded rationality in that court actors make highly consequential decisions with insufficient information, which produces uncertainty. Albonetti (1991) particularly stressed uncertainty and insufficient information regarding the recidivism risk and rehabilitative potential of offenders. Albonetti drew from attribution theory in social psychology (which was itself influenced by symbolic interactionism) to argue that, as a means of reducing uncertainty, decision-makers fall back on attributions about reoffending risk and/or rehabilitation potential that can be linked to race and gender, and other social status stereotypes. This can then result in extralegal sentencing disparity connected to these statuses.

Similarly, Farrell and Holmes (1991) presented an interpretive theory of legal decision making, in which they emphasized the situational role of stereotypes linked to defendant social statuses in case processing. Farrell and Holmes (1991) keyed off insights from labeling theory and Sudnow’s (1965) classic formulation of “normal crimes” to generate 10 propositions about the conditional, situation-specific role of status-linked stereotypes for routine and non-routine cases and defendants. A related idea is the liberation hypothesis which has sometimes been applied to sentencing discretion (Kalven & Zeisel, 1966; Smith & Damphousse, 1998; Spohn & Cederblom, 1991). The liberation hypothesis implies that as the seriousness and/or visibility of the offense or case increases, sanctioning discretion is tightened and legally relevant variables are decisive, leaving little room for extralegal influences. By contrast, in less serious and visible cases, opportunities for discretion are greater and extralegal variables can influence outcomes more than in serious cases.

Because the sentencing guidelines movement of the 1980s transformed the sentencing landscape, the 1990s saw important theoretical treatments of sentencing discretion and guidelines, which involves the management of several dilemmas: between flexible discretion and rule-bound control, between uniformity and individualization, and between centralization and decentralized localism. Savelsberg (1992) helpfully conceptualized sentencing and sentencing
guidelines as an attempt to impose a regime of *formal rationality* (approximating what early sociologist Max Weber called a "gapless system of rules" that are to be applied universally and uniformly, with a minimum of decision-maker discretion) onto a traditionally "substantively rational," individualized process. *Substantive rationality* in legal decision-making refers to criteria that are guided by, or in service of, ideological goals external to the law. Substantive rationality in criminal sentencing is thus oriented toward flexible and individualized decision-making in service of particular substantive goals (Savelsberg, 1992). The flexibility inherent in substantive rationality, however, permits the possibility of bias, discrimination, and unwarranted disparity.

The *focal concerns perspective*, in turn, is a model of criminal justice decision-making that in part elaborates on the notion of formal and substantive rationality. The focal concerns perspective has a complex lineage. The evolution of the focal concerns perspective can be traced through Steffensmeier (1980), Steffensmeier, Kramer, and Streifel (1993), Kramer and Steffensmeier (1993) and Ulmer (1997), and the term, "focal concerns," something of an homage to Walter Miller's classic study of lower class culture and gang delinquency, was applied in Steffensmeier, Ulmer, and Kramer's (1998) article. The focal concerns model was also guided inductively, from a qualitative research project involving scores of interviews with judges, prosecutors, and defense attorneys working under Pennsylvania's sentencing guidelines (see Steffensmeier et al., 1998; Ulmer, 1997; Ulmer & Kramer, 1996). Conceptually, it draws most strongly from symbolic interactionism and especially labeling theory. The perspective also grew out of studies of sentencing under guidelines, and partially drew from Savelsberg's (1992) conceptualization of substantive rationality in sentencing. In addition, focal concerns was influenced by and attempted to expand on Farrell and Holmes' (1991) interpretive theory and Albonetti's (1991) causal attribution model.

A recent statement of the focal concerns perspective in proposition form can be found in Kramer and Ulmer (2009). The focal concerns perspective emphasizes particular kinds of substantively rational criteria at work in sentencing decisions. The focal concerns perspective argues that court actors' subjective definitions of offenders and offenses in relation to three focal concerns of punishment—blameworthiness, protection of the community, and practical constraints—determine punishment decisions. The focal concerns perspective argues that both legal and extralegal considerations affect the interpretation and prioritization of focal concerns through local substantive rationality (Kramer & Ulmer, 2009; Savelsberg, 1992). The focal concerns model agrees with Albonetti's work and Farrell and Holmes (1991) in emphasizing the role of status-linked attributions and stereotypes. Whereas Albonetti (1991) focused on attributions about offenders' potential recidivism/rehabilitation, and Farrell and Holmes (1991) focused mostly on modes of conviction and did not specify particular punishment concerns, the focal concerns perspective specifies that Status-linked attributions and stereotypes potentially shape court decision-makers' assessments of defendant blameworthiness, dangerousness/
rehabilitative potential, and/or practical contingencies and constraints, though they likely do so secondarily to legally relevant factors (Kramer & Ulmer, 2009). The focal concerns model is congruent with Farrell and Holmes (1991) in arguing that the influence of defendant’s social status-linked stereotypes is situationally conditional. The influence of race in sentencing, for example, may be conditional on defendant’s gender, age, social class, or offense type and characteristics, criminal history, mode of conviction, and especially local contexts (discussed below).

Rational choice approaches have also been applied to sentencing in the times since the 1983 report (Bushway & Piehl, 2001; Forst & Bushway, 2010; Piehl & Bushway, 2007; Smith, 1986; see also Klepper et al., 1983). Proponents of a rational choice approach to sentencing research would call for researchers to identify the formal and informal incentive structures of different court actors involved, make theoretical predictions about what sentencing outcomes would look like if actors acted rationally in pursuit of those incentives, and then compare these predictions to real world data (see Forst & Bushway, 2010). For example, Smith (1986) argues that plea bargaining is a rational rather than a coercive process, and argues that from the perspective of defendants, plea-trial sentencing differences must be weighed against the possibility of acquittal at trial. Smith (1986) also argues that from prosecutors’ perspectives, guilty pleas are rational to pursue. Actors’ incentives, of course, are strongly influenced by the organizational environments of sponsoring agencies (e.g. prosecutors’ offices, bench, defense bar) and courts.

Court organization and multilayered environments
It has long been recognized that sentencing practices varied between jurisdictions, even within states or the federal court system. Myers and Talarico (1987), Eisenstein et al. (1988), Nardulli, Eisenstein, and Flemming (1988), Flemming, Nardulli, and Eisenstein (1992), Ulmer (1997) and others drew our attention to the localization of sentencing. If focal concerns and other interpretive perspectives orient us to the substantive rationalities of individuals within the “courtroom workgroup” (Eisenstein & Jacob, 1977), the court community perspective orients us toward the importance of the contours of local courts and their environments. The court community perspective views courts as communities or social worlds based on participants’ shared workplace, interdependent working relations between key sponsoring agencies such as the prosecutor’s office, judges’ bench, and defense bar, and the court’s relation to its larger sociopolitical environment (Eisenstein et al., 1988; Flemming et al., 1992; Ulmer, 1997). These court communities develop distinctive social orders that produce distinctive local organizational cultures. These local social arrangements and the cultures they encompass shape formal and informal case processing and sentencing norms (see Eisenstein et al., 1988; Ulmer, 1997; Ulmer & Kramer, 1998). These court communities are said to foster their own
locally varying substantive rationalities which influence sentencing outcomes and processes as least as much as formal policies and legal structures (Engen, Gainey, Crutchfield, & Weis, 2003; Savelberg, 1992; Ulmer & Kramer, 1996).

This line of theorizing argues that the use of and reliance on focal concerns tend to characterize courts generally, but the meaning, relative emphasis and priority, and situational interpretation of them is embedded in local court community legal and organizational culture. The ultimately subjective and interpretive nature of the assessment of focal concerns makes it likely that stereotypes and biases based on race/ethnicity or other extralegal defendant characteristics can influence the sentencing process. *If a social context where such stereotypes and biases exists* (Kramer & Ulmer, 2009, see especially Figure 1, p. 10).

Interest in social contexts that foster negative racial/ethnic based stereotypes and perceptions of threat has been fostered by *racial group threat theory*. In the context of sentencing, racial group threat theory implies that when perceptions of minority group threat are more pronounced and when courtroom actors perceive particular racial/ethnic groups as more dangerous or morally disrespectful, such minorities may receive harsher sentences. According to this view, as the relative sizes of minority racial populations increase, whites may feel threatened and feel that their positions of power and privilege are jeopardized (Blumer, 1958). Blalock (1967) argues that as minority racial groups grow in size relative to whites, they are likely to develop greater power, economic resources, and political influence in the community and are better able to compete with whites for power. Thus, whites may feel the need to protect their privileged positions of power and suppress the growing strength of minority racial or ethnic groups using a variety of social controls at their disposal.

Finally, *organizational efficiency/maintenance models* of sentencing have long been recognized (Dixon, 1995; Engen & Steen, 2000; Uhlman & Walker, 1980). In fact, the focal concerns model would also recognize organizational efficiency as a potentially important practical constraint faced by court actors (Ulmer & Bradley, 2006; Ulmer, Eisenstein, & Johnson 2010). This organizational efficiency model views rewarding people who plead guilty and avoiding time- and resource-intensive trials as an effort by courts to keep cases moving smoothly. Relevant to rational choice theory, an organizational efficiency perspective would suggest that rewarding guilty pleas and punishing trials is an organizationally rational response to the need to keep cases moving efficiently. Furthermore, this differential punishment would be conditioned by caseload pressure. The greater the caseload pressure, the more a court would rely on such costs and incentives.

Thus, a number of largely complementary theoretical ideas have been in play in the sentencing literature of the past 20 years. These theoretical developments have been instrumental in the five broad and sometimes interrelated areas of recent empirical inquiry discussed below.
What Have We Learned Since 2000?

Since 2000, we have continued to make progress on certain issues identified by the Blumstein et al. (1983) report, Spohn (2000) and Zatz (2000) reviews. This progress includes some issues on which little traction was gained in the 1990s. As called for by Spohn (2000), for example, in many sentencing studies published since 2000 we have more often moved beyond examining the traditional in/out and incarceration length outcomes to look at more refined outcomes with more specific meanings, such as distinctions between types of incarceration (e.g. probation, and county jail, state prison). Also, studies have examined the imposition of mandatory minimums, which are tightly linked to prosecutorial discretion (e.g. Bjerk, 2005; Farrell, 2003; Kautt & DeLone, 2006; Ulmer, Kurychek, & Kramer, 2007), habitual offender designations (Crawford, 2000; see also Crawford, Chiricos, & Kleck, 1998), adjudication waivers (Bontrager, Bales, & Chiricos, 2005), first time offender waivers and special sex offender sanctions (Engen et al., 2003), and types of sentencing guideline departures (e.g. Albonetti, 1998; Engen et al., 2003; Johnson, Ulmer, & Kramer, 2008; Kramer & Ulmer, 2002, 2009; Mustard, 2001). Further, both Zatz (2000) and Spohn (2000) called for more studies that included Hispanic defendants. Research in the 2000s generally heeded this call, and many, if not most, of the recent research on US racial sentencing disparity includes black, white, and Hispanic comparisons.

The 2000s have seen a very large number of sentencing studies published, too many to fully review here. Space does not permit a fine-grained review of the empirical findings of all of the studies published in the past decade, or even a detailed review of all of the specific empirical findings of research mentioned below. However, below I briefly describe a "roadmap" to guide readers’ inquiries into what I think are the most interesting developments in connection with the visions of the Blumstein et al. (1983), Spohn (2000) and Zatz (2000) reviews, and include areas where comparatively less progress was made in the 1990s. These are: (1) local contexts and sentencing; (2) the role of individual court community actors and their characteristics in sentencing; (3) the conditional nature of disparity; (4) the role of victim characteristics; and (5) sentencing in the context of earlier case processing decisions.

Social Contexts and Sentencing

Thomson and Zingraff (1981) and Peterson and Hagan (1984), along with several of the theoretical frameworks described earlier, predict that disparity likely varies by social contexts, and that social contexts may condition sentencing generally. This is perhaps one of the most prominent developments in sentencing theory and research in the last decade; the 2000s saw a burst of studies on contextual effects and variation, and just as importantly, how the influence of individual-level factors was conditioned by court or social context.
factors. Overall, the recent literature on contextual variation in sentencing shows that local variation permeates many aspects of sentencing, both under sentencing guideline jurisdictions and non-guideline jurisdictions. Studies typically find that most sentencing outcome variation exists at the individual level, and is most strongly predicted by individual level factors. However, not only does sentencing severity (and related outcomes such as guideline departures), vary between local courts and their contexts, but so too do the effects of other important sentencing predictors, including such as offense type/severity, criminal history, trial conviction or type of guilty plea, gender, race and ethnicity, and in the federal system, US citizenship. In sum, substantial evidence exists that what kind of sentence one gets, and the factors that predict why one gets it, in significant part depends on where one is sentenced. This appears true of jurisdictions under sentencing guidelines and non-guideline jurisdictions alike.

Racial/ethnic population composition
Some of this research has investigated the role of local racial/ethnic composition in conditioning racial and ethnic sentencing disparity, drawing from both racial group threat theory and the focal concerns perspective. Many published multilevel sentencing studies find that the effects of race and ethnicity in sentencing decisions do indeed vary significantly across courts. However, results have been decidedly mixed regarding racial threat theory’s ability to explain this variation. That is, race/ethnic effects on sentencing tend to vary across contexts, but not always in ways predicted by racial threat theory. Some studies have found that the percentage of blacks in local populations has been found to increase racial/ethnic disparities in imprisonment and sentence lengths (e.g. Kramer & Ulmer, 2009; Ulmer & Johnson, 2004; Weidner, Frase, & Schultz, 2005), and in receiving upward and downward departures from sentencing guidelines (Johnson, 2005; Johnson et al., 2008). Other research shows that judges are less likely to withhold adjudication for black defendants as the black presence in the community (and their levels of economic disadvantage) increases (Bontrager et al., 2005). Ulmer and Johnson (2004) found that county-level black and Hispanic populations were positively related to racial disparities in state court sentence lengths but not incarceration.

Other studies reveal either no support for racial threat (Kautt, 2002; Weidner & Frase, 2003; Weidner, Frase, & Pardoe, 2004), or evidence contrary to racial threat hypotheses (Britt, 2000). Feldmeyer and Ulmer (2011) found that, though race effects varied significantly between federal courts, federal districts’ percent black was unrelated to black/white disparities. Percent Hispanic strongly conditioned Hispanic/white disparities, but not in a manner predicted by racial threat theory. Hispanic/white disparity was greatest in districts where Hispanics were least numerous, but there was no significant Hispanic/white disparity in districts where Hispanics were most numerous (Feldmeyer & Ulmer, 2011; see also Helms, 2009). Yet another pattern was found by Wang and Mears (2010) using SCPS data. They found curvilinear
effects of percent black on black sentencing disadvantage that are consistent with Blalock’s (1967) political threat hypothesis, but did not find such a pattern for Hispanic sentencing.

Local organizational constraints
Other research has examined how local practical constraints such as caseloads or local criminal justice resources (i.e. jail space and victim services) affect sentencing, research relevant for the organizational efficiency hypothesis, as well as the focal concerns and court communities perspectives. Ulmer and Bradley (2006), Ulmer and Johnson (2004) and Kramer and Ulmer (2009) found that Pennsylvania court caseloads were negatively related to sentencing severity. Ulmer and Johnson (2004) and Johnson (2006) found that local jail space in Pennsylvania counties affected the probability of incarceration, and Kramer and Ulmer (2009) found that local jail space predicted the choice of county jail vs. state prison. Haynes’ (2011) research is relevant to an interesting an under-researched contextual dimension and practical constraint: she investigated cases in Pennsylvania from 1996 to 2006 and found the availability of victim resources increased victim participation in sentencing and thus resulted in longer incarceration sentences.

Socio-political influences on sentencing decisions
Though less common, studies have examined other socio-political influences on sentencing, including crime rates (e.g. Britt, 2000; Fearn, 2005; Johnson, 2006; Ulmer & Johnson, 2004; Ulmer et al., 2007; Weidner et al., 2004), political climate (Helms, 2009), neighborhood disadvantage (Wooldredge, 2007; Wooldredge & Thistlethwaite, 2004), and local religion (Fearn, 2005; Ulmer, Bader, & Gault, 2008). Crime rates and broad political climate measures (such as percent Republican voters) have generally not been found to be strong predictors of sentencing patterns or to strongly and consistently condition individual level predictors (a partial exception is Johnson, 2006), though Helms (2009) found that more conservative “law and order” jurisdictions sentenced more severely.

Fearn (2005) and Ulmer et al. (2008) found evidence that local religious contexts may affect sentencing patterns. Fearn’s (2005) analysis of SCPS data found that prison sentences were more likely in jurisdictions with greater proportions of evangelical Christians. Ulmer et al. (2008) found that local Christian religious homogeneity fostered greater use of incarceration in Pennsylvania, while religious pluralism had the opposite effect. Unlike Fearn (2005) and Ulmer et al. (2008) did not find that the local proportion of evangelical Christians influenced sentencing. Interestingly, Ulmer et al. (2008) found that local religious homogeneity interacted with local percent Republican voters, in that only counties that were religiously homogeneous and strongly Republican were more likely to incarcerate offenders—not religiously homogeneous but more Democratic counties.
Court community racial/ethnic composition
Researchers are just beginning to scratch the surface of studying the effects of court community composition on sentencing. Farrell, Ward, and Rousseau (2009) studied the effects of federal district court community sponsoring organization (i.e. bench, US Attorney’s Office, probation office, defense bar) racial composition on variation in the effects of race on sentencing. They found that district US Attorney’s Office black representation was associated with significantly smaller race differences on the odds of incarceration (the more black US Attorney personnel, the less disparity), and interestingly, greater black Federal Probation Officer representation was associated with greater black/white sentencing outcome disparity. In addition, King, Johnson, and McGeever (2010) found that greater black representation among county attorneys attenuated local black/white sentencing disparity. This research direction coincides nicely with the recent research on the effects of individual court community actors and their characteristics described next.

Court Community Actors

Another research direction where novel progress was made in the past decade has been the investigation of variation between court community actors, and the effects the characteristics of those actors might have on sentencing patterns. Earlier research had investigated the race and gender of judges on sentencing (e.g. Spohn, 1990; Steffensmeier & Hebert, 1999; Welch, Combs, & Gruhl, 1988), and this was reviewed in Spohn (2000). This past decade saw the analysis between-judge variation in a multilevel context, and at least one study (Spohn & Fornango, 2009) examine between-prosecutor variation.

In what is probably the most thorough treatment of the role of judge characteristics on sentencing to date, Johnson (2006) examined court contextual and inter-judge variation in sentences in Pennsylvania. He found that between-judge variation accounted for 6-7% of overall sentencing variation. This seemingly modest between-judge variation, however, is not the whole story. He also found that black and Hispanic judges sentenced all offenders, and particularly minority offenders, more leniently than white judges. Furthermore, male judges sentenced female offenders more leniently. Wooldredge (2010) also examined inter-judge variation in sentencing among 18 judges in Ohio, and also found wide variation between judges in the effects of race, gender, or financial means on their sentences. For example, half of the judges’ sentences showed no significant extralegal effects at all, while five judges actually sentenced young black males more leniently and four sentenced them more harshly.

Anderson and Spohn (2010) examined the sentencing decisions of 18 judges in three district courts, and found that sentence variation between judges was largely accounted for by case and defendant characteristics. However, they
found that judges considered legal and extralegal factors quite differently in their sentencing decisions. They found that judges varied greatly in the size of downward departures and their response to prosecutors’ substantial assistance departure motions. They also found that judges varied greatly in the degree to which they sentenced women more leniently, and their response to offenders’ employment status and pretrial release status.

Research has also extended for focus to other members of the courtroom workgroup. Spohn and Fornango (2009, discussed later) examined variation between federal prosecutors in three districts in their likelihood of moving for substantial assistance departures. Hartley, Miller, and Spohn (2010) examined the effects of type of defense counsel in Chicago among a random sample of offenders collected in 1993. They examined whether having a private attorney vs. a public defender affected whether defendants were released pretrial, had their primary charges reduced, or were incarcerated, as well as their sentence lengths. They found no significant direct effects of attorney type. However, they found attorney type conditioned the effects of some case processing effects. Most notably, they found that offenders represented by private attorneys faced much more substantial trial penalties than those represented by public defenders. This was interpreted as support for the argument that attorneys who are regular participants in the court community may be more likely to secure more favorable outcomes for their clients under certain circumstances.

In sum, suggestive evidence has grown this decade to suggest that courtroom actors matter, and that sentencing patterns, including disparity, are conditional on those actors and their characteristics. Between-actor variation is certainly congruent with and implied by the focal concerns, Albonetti’s causal attribution, and Farrell and Holmes’ interpretive frameworks. However, this kind of variation between judges and prosecutors, for example, does not contradict the notion that court community contexts shape actors’ decisions, and that between-actor variation occurs relative to court community norms (see Anderson & Spohn, 2010; Johnson, 2006; Spohn & Fornango, 2009).

Conditional Disparity

In addition, a key theme of Spohn’s (2000) and Zatz’s (2000) summaries of the 1990s literature was that the influence of social status factors such as race, ethnicity, gender, etc. was conditional and mutually contingent. Dozens of studies in the 2000s have continued to confirm this insight. Space considerations prevent me from fully reviewing them in detail here, though many of these studies are noted above and below in the discussions of research on court contexts, courtroom actors, victim characteristics, and earlier case processing decisions. From the literature discussed above, I believe there is substantial evidence that the effects of such extralegal social statuses are conditioned by court contextual factors, and provocative evidence that
disparity varies across individual court community actors (e.g. judges, prosecutors, local defense bar black representation, etc.). This evidence augments the well-supported conclusion (from many studies in the 1990s and 2000s) that the effects of individual defendant characteristics (especially race/ethnicity and gender) mutually condition each other. Also, the effects of defendant social statuses may interact with case processing, offense characteristics, and criminal history (as discussed later).

Most studies that examine the issue find young black, and to a lesser extent Hispanic, male defendants to be sentenced more severely (just a few examples are Curry & Corral-Camacho, 2008; Demuth & Steffensmeier, 2004b; Doerner & Demuth, 2009; Kautt & Spohn, 2002; Kramer & Ulmer, 2002, 2009; Spohn & Holleran, 2000; Steen, Engen, and Gainey, 2005; Steffensmeier & Demuth, 2000, 2001, 2006; Ulmer et al., 2007). Interestingly, at least three studies find minority females to be sentenced as leniently or even more leniently than white females (e.g. Kramer & Ulmer, 2009; Spohn & Beichner, 2000; Steffensmeier & Demuth, 2006), and discuss the implications of this finding for how black females, as compared to black males, tend to be perceived in terms of focal concerns of sentencing and other considerations.

Other researchers have found that minority males are sentenced more severely conditional on sentencing policy options such as mandatory minimums (Kautt & Delone, 2006; Kautt & Spohn, 2002) and the federal guidelines safety valve provision (Albonetti, 2002), and more research along these lines is needed to illuminate how sentencing policies might mobilize or dampen disparities.

Victim Characteristics

It should be noted that existing studies that utilize data from sentencing guideline jurisdictions such as Pennsylvania, Washington, Minnesota, and the federal system actually implicitly consider victim harm, financial loss, and often victim age and vulnerability. These factors are commonly included in creating guideline offense severity rankings. Thus, the strong effects of offense severity typically found in such studies in part incorporate victim impact and vulnerability. Such research, however, does not tell us about the effects of other specific victim attributes.

Curry (2010) and Curry, Lee, and Rodriguez (2004) studied random samples of offenders convicted of violent crimes (homicide, assault/sexual assault, and robbery) in seven largest counties in Texas in 1991. Curry et al. (2004) found that offenders who victimized females received longer sentences (by about 4 months), and females who victimized males received sentences about 10 months shorter than males who victimized females. Curry (2010), using similar data, extended the analysis to examine race/gender combinations of victims and offenders, and found that violent offenders who victimized white and Hispanic females (but not black females) received 16 and 30% (respectively)
longer sentences than other combinations, and Hispanic and black homicide offenders who victimized whites got 44 and 45% longer sentences, respectively, than other combinations. Interestingly, in the overall violent offense sample, whites who victimized other whites got 12% longer sentences. Curry and associates interpreted these findings as supporting the notion that victim race and gender inform the interpretation of the focal concern of blameworthiness.

Franklin and Fearn (2008) uncovered similar findings with a random sample of 1,343 non-capital homicides in a sample of 33 large counties. They found no race of victim/offender combination effects, but found that males who killed females received the longest prison sentences, and that females who killed males received 18% shorter sentences than males who killed females. Males who killed males and females who killed females received about 10% shorter sentences than males who killed females. By contrast, Auerhahn (2007) studied 1,137 non-capital homicide (third degree murder, voluntary and involuntary manslaughters, homicide by vehicle) offenses in Philadelphia from 1995 to 2000. Her study found no significant victim effects. Specifically, she found that generally victim race/ethnicity, gender, or whether the victim was an intimate partner or relative of the offender did significantly influence sentence lengths. Johnson, van Wingerden, and Nieuwbeerta (2010) studied the effects of victim characteristics in Netherlands homicide offenses, and this study is discussed later in the context of the needs for more international research.

Thus, there is evidence—albeit mixed—that victim characteristics may matter in non-capital violent (particularly homicide) sentencing, in a manner similar to what has been demonstrated in capital sentencing research (see review in Paternoster & Brame, 2008).

Sentencing in the Context of Earlier Case Processing

Finally, a comparatively smaller set of studies has examined sentencing as related to earlier case processing events, such guilty pleas vs. trial convictions, as well as charging decisions, (including those involving mandatory minimums), and pretrial release. This research provides some, albeit limited, insight into prosecutorial discretion as well as other joint courtroom workgroup outcomes, such as differentially punishing those convicted by trial relative to those who plead guilty.

Charging decisions
Other researchers have investigated prosecutors’ charging decisions and their impact on eventual sentencing. Wilmot and Spohn (2004) studied 348 federal defendants sentenced in FY 1995 (a USSC Intensive Study Sample), with data from indictment to sentencing. They found that the number of indictment charges filed by federal prosecutors significantly increased sentence lengths (each additional charge increased predicted sentences by 6 months), and
decreased the likelihood of substantial assistance or other downward departures. Kingsnorth, MacIntosh, and Sutherland (2002) examined prosecutorial discretion in whether to charge domestic violence offenders on probation with either probation violations or new criminal charges, and then demonstrated the differential consequences for eventual sentence lengths. New felony charges resulted in substantially longer sentences than probation violation filings, but new misdemeanor charges resulted in shorter sentences than violations. They argued that sentencing studies should take into account whether offenders are before the court with new felony charges, new misdemeanor charges, or probation violations.

Shermer and Johnson (2010) directly examined the likelihood of federal prosecutors reducing charges for defendants. They found that while about 12% of federal cases in their sample involved charge reductions, race/ethnicity and gender (along with offense severity and criminal history) influenced the likelihood of those charge reductions in drug and violent offenses. These charge reductions, in turn resulted in lower sentences for those who received them; and in fact, charge reductions strongly (but not completely) mediated race/ethnic effects on sentence lengths.

**Pretrial detention/release**

Though not as plentiful as studies of sentencing outcomes, there is a recent literature focused on explaining pretrial detention/release decisions, and a somewhat smaller literature focusing on the consequences of these decisions for defendants’ sentencing outcomes. I note a few of these studies here. Demuth (2003) used the SCPS data to examine Hispanic, black, and white differences in pretrial release. He found that Hispanic defendants were more likely to be detained, and received higher bail amounts, than white and black defendants, and that such differences were most pronounced in drug cases. Similarly, Demuth and Steffensmeier (2004a) used the SCPS data to assess the main and interactive effects of gender and race/ethnicity on pretrial release. They found that female defendants were more likely to receive pretrial release than similarly situated males, and Hispanic and black defendants were more likely to be detained than comparable whites. In particular, white females were the most likely to receive pretrial release, while Hispanic males received the most disadvantageous outcomes throughout the pretrial release process. Demuth (2003) and Demuth and Steffensmeier (2004a) explained the gender-conditioned race/ethnicity differences in pretrial outcomes by suggesting the inability of many Hispanics and blacks to post bail, and by positing a focal concerns process in which Hispanic males in particular were seen as threatening to the community.

In addition, Shook and Goodkind (2009) utilized data on juvenile case processing in an urban court in Michigan, and found that black youth were three times as likely as white youth to be detained pretrial/prehearing, net of other demographic and legal factors (including offense type and severity). They also found that white youth from suburban neighborhoods were notably less likely
to be detained than white youth from the city, as well as black youth from either the city or suburbs. In another recent study, Freiburger (2010) found that women and younger defendants were less likely to be detained pretrial, but race did not significantly predict pretrial detention after economic variables were included (i.e. socioeconomic variables mediated the effect of race). When she examined males and females separately, race was significant for females (but not males)—black females were the least likely group to be detained.

Comparatively fewer studies have focused on the impact of pretrial detention on sentencing outcomes. Several studies of federal sentencing include pre-sentence detention⁴ as a control variable and generally find that such detention is associated with longer sentences. Regarding studies specifically focused on the impact of pretrial detention on sentencing, Williams (2003) found that among adult felony cases in one Florida county, net of measured legal and extralegal factors, defendants subject to pretrial detention were more likely to be incarcerated, and to receive longer sentences, than defendants who had been released before case disposition. Spohn (2009) examined federal offenders in three district courts, and found that both legal and extralegal factors predicted pretrial status, and that pretrial status significantly impacted sentencing. Spohn (2009) found that pretrial detention was less likely for more educated offenders, employed offenders, and married offenders. However, pretrial detention was more likely for black offenders and male offenders. In addition, being under criminal justice system supervision (e.g. probation, parole) increased the odds of pretrial detention for blacks but not for whites, and employment and education decreased the likelihood of detention for whites but not for blacks. Spohn (2009) found that race had an indirect effect on sentence severity through its effect on pretrial status, but did not have a direct effect on sentence severity. Gender, however, exhibited both direct and indirect effects on sentencing through pretrial detention, with male defendants being more likely than female defendants to be detained (which increased sentences) and to also receive longer sentences than female offenders, net of pretrial status. Finally, black male offenders were more likely than all other offenders to be detained pretrial, but black male status did not affect sentencing, net of pretrial status, meaning that black male status indirectly affects sentence severity through pretrial status.

**Mandatory minimums**

Sentencing involving mandatory minimums has proved useful for understanding how earlier decisions shape and constrain sentencing choices. Bjerk (2005) found that prosecutors used their charge reduction discretion to circumvent three strikes mandatories for some defendants. He found that such

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4. It should be noted that the standard USSC files contain a variable for presentence detention, but not necessarily pretrial detention. One might be detained both pretrial and presentence, but this variable does not specify this, nor does it specify whether a defendant was released pretrial but detained presentence.
circumvention of three strikes mandatory minimums was moderately less likely to occur for men, Hispanics, and to a lesser extent, blacks. Similarly, Farrell (2003) found that blacks, males, and those convicted by trial were more likely to receive mandatory minimums for firearms offenses.

Ulmer et al. (2007) conducted a multilevel analysis of prosecutorial discretion in applying mandatory minimums among mandatory-eligible offenders sentenced for drug crimes or as “three strikes” offenders. They found that prosecutors’ decisions to apply mandatory minimums were significantly affected by the type and characteristics of offenses and guideline sentence recommendations (the greater the difference between the mandatory and the otherwise applicable guideline sentence, the less likely the mandatory was applied), prior record, mode of conviction (negotiated guilty pleas greatly assisted defendants in avoiding mandatories), and gender. In addition, Hispanic males were more likely to receive mandatory minimums, and black/white differences in mandatory application increased with county percent black such that blacks were more likely to receive mandatories in counties with greater black populations.

Also relevant is the research of Crawford et al. (2000; see also 1998), who isolated a sample of offenders eligible for designation as habitual offenders, and thus exposed to enhanced prison sentences, and then analyzed whether offenders actually were so designated (a decision that involved both prosecutorial and judicial discretion). Young black offenders in particular were more likely to be designated as habitual offenders, and thus to be more severely sentenced.

**Federal substantial assistance departure motions**

Hartley, Maddan, and Spohn (2007) examined prosecutorial discretion in decisions to file motions for substantial assistance guideline departures in federal court crack and powder cocaine sentences in 2000. They found that the likelihood of substantial assistance motions increased with offense severity and criminal history, and that having multiple concurrent charges reduced the likelihood of such motions for crack cocaine cases. In powder cocaine cases, black and Hispanic males had the lowest odds of receiving substantial assistance departures, while white females and males had the greatest likelihoods. The results were similar for crack cocaine cases, except that Hispanic females had the greatest odds of substantial assistance departures. Those with more education were also more likely to receive these departures, and non-citizens were less likely to get them in powder cocaine cases.

In addition, Johnson et al. (2008) examined inter-district variations in the application of both substantial assistance and other downward departures among a variety of offense types in federal sentences from 1997 to 2000. Findings indicated considerable between-district variation in the probability of these prosecutor-initiated substantial assistance departures. This variation was explained, in part, by organizational court contexts such as caseload pressures (substantial assistance departures were more likely in districts with
heavier caseloads), and by environmental considerations such as the racial composition of the district (substantial assistance departures increased with district black populations). Johnson et al. (2008) also summarized qualitative and survey evidence suggesting additional dimensions of variation between US Attorneys’ Offices in substantial assistance departure practices (see also Ulmer 2005).

Spohn and Fornango (2009) examined variation between federal prosecutors in three districts in their likelihood of moving for substantial assistance departures. They found substantial inter-prosecutor variation in the likelihood of substantial assistance departures, net of the influence of individual case and defendant characteristics. Specifically, about 24% of the variation between prosecutors in the likelihood of substantial assistance departures was unaccounted for by case or defendant factors, and even more between-prosecutor variation was unexplained in non-drug cases.

In sum, much research and policy discussion regarding federal sentencing centers around judges and their decisions as a locus of extralegal disparity and interdistrict variation. However, the studies above provide evidence that federal prosecutors’ discretion surrounding substantial assistance departures is at least as important a locus of individual disparity and between-district variation as judicial discretion (Ulmer, Light, & Kramer, 2011a, 2011b; see also Mustard, 2001). This is also apparently true of downward departures that are government sponsored (i.e. initiated by federal prosecutors), and “fast track departures” that are heavily influenced by prosecutors (Ulmer, Light, & Kramer, 2011b).

Mode of conviction

Finally, several studies have examined how mode of conviction affects sentencing; that is, sentencing differences between types of guilty pleas and types of trials. This research exhibits some limitations in that studies typically use data on convicted offenders only, which presents issues of selection and potential missing-variable bias absent data on the likelihood of acquittal (see Bushway & Piehl, 2007; Klepper et al., 1983). Still, this research provides some insight into how mode of conviction shapes sentencing. One overarching lesson from the recent studies below is that sentencing guidelines seem to provide a discretionary framework within which to differentially reward guilty pleas and punish trials.

Johnson (2003) argued that mode of conviction (type of plea or trial) provided an indicator of the differential use of discretion by judges vs. prosecutors. He found that mode of conviction moderated the role of race/ethnicity in predicting guideline departures, with blacks and Hispanics experiencing different odds of receiving downward or upward departures, depending on their modes of conviction (non-negotiated pleas, negotiated pleas, bench trials, or jury trials). In addition, King, Soule, Steen, and Weidner (2005) found significant “process discounts,” or plea/trial sentencing differences across five sentencing guideline states.
Ulmer and Bradley (2006) and Kramer and Ulmer (2009) looked at trial penalties for serious violent offenders and less serious offenders using hierarchical models with cases sentenced under Pennsylvania’s guidelines. They found that defendants were substantially penalized if they were convicted by trial relative to those with negotiated or open guilty pleas. Furthermore, this jury trial penalty varied depending on the seriousness and type of offense (more severe offenses had lesser trial penalties), defendant criminal history (offenders with more substantial criminal histories actually experienced less of a trial penalty), race (blacks experienced greater trial penalties), and court contextual characteristics such as court community size (larger trial penalties in larger courts), local violent crime rates (the higher the crime rate, the greater the trial penalties), and the size of local black populations (greater trial penalties in counties with larger black populations).

Ulmer et al. (2010) found that federal trial penalties could not be fully explained by US Sentencing Guideline factors that were relevant to mode of conviction (e.g. substantial assistance departures, acceptance of responsibility guideline reductions, and obstruction of justice guideline enhancements). They also found that higher district court caseload pressure was associated with greater trial penalties, while higher district trial rates were associated with lesser trial penalties (the latter suggested court community norms that either tolerated trials, or produced trial penalties insufficient to deter trials, or both). In addition, trial penalties were lower for those with more substantial criminal histories, and unexpectedly, for black men. Ulmer et al. (2010) also presented qualitative and survey data illuminating unmeasured dimensions of district variation in plea agreements and trial penalties, such as negotiation over fact stipulations that affect Guideline final offense levels and thus punishment exposure, and the prosecutorial threat of superseding indictments for higher charges or aggravating facts to induce timely guilty pleas.

As I discuss below, the study of sentencing in the context of earlier case processing events is a crucial direction for moving the field forward. I later argue that this should include moving beyond sentencing and even case processing outcome data to examine qualitative and survey data that improve our understanding of decision-making and courtroom workgroup interaction processes.

New Directions

As the discussion suggests, the field has indeed made progress on several parts of the research agenda outlined by Blumstein et al. (1983) and later by Spohn (2000) and Zatz (2000). However, as recent commentators have pointed out

5. Though rare, substantial assistance departures following trial convictions are technically possible under the federal guidelines.
(Baumer, 2010; Forst & Bushway, 2010), the existing literature leaves a num-
er of glaring gaps in our knowledge, and a number of promising new opportu-
nities lie on the horizon as well.

Pre-Conviction Data

The largest gap is in understanding prosecutorial discretion, the importance
of which sentencing researchers have agreed on and desired to fill since the
1970s. The largest obstacle in the way of such knowledge is the general pre-
conviction data, especially data on initial or indictment/information charges,
conviction/acquittal outcomes, and characteristics of guilty pleas (e.g. pleas
to charge reductions, sentence recommendations, or both). Data on charges
would allow researchers to measure and track charge reductions connected
to guilty pleas, while data on convictions and acquittals would allow
researchers to balance sentencing “trial penalties” against the likelihood of
acquittal and avoiding punishment altogether, and would allow researchers
to investigate issues of selection across criminal justice decisions (Bushway,
Johnson, & Slocum, 2007; Bushway & Piehl, 2007). Another vital but elusive
dimension of guilty plea agreements are prosecutorial sentence recommenda-
tions, or the occurrence of prosecutorial tactics such as “standing silent”
while defense attorneys make pleas for lenient sentences such as downward
guideline departures. Some qualitative research suggests that these can be
highly important and consequential, perhaps more important and prevalent
than plea bargains that revolve around charge reductions (Ulmer, 1997,
2005).

Fortunately, there appear to be some new possibilities in this direction.
On one hand, the SCPS data provide information about pre-conviction charges
and outcomes (such as pretrial release) and have been used in several stud-
ies (e.g. Bushway & Piehl, 2007; Demuth, 2003; Fearn, 2005; Franklin, 2010;
Piehl & Bushway, 2007), though the SCPS data present notable limitations of
its own (such as difficulty measuring and ranking offense severity across state
legal jurisdictions, and difficulties in constructing refined, detailed criminal
history measures). On the other hand, it is becoming more possible to access
pre-conviction outcome data from federal courts, as the Urban Institute has
put together linking files that connect data from the Administrative Office of
US Courts with USSC data (see Shermer & Johnson, 2010 for an example).
Furthermore, as court records systems continue to become increasingly
computer automated, researchers may seek to obtain pre-conviction/presen-
tencing case processing data from single or a small number of jurisdictions.
For example, the AOPC now has a uniform electronic data collection and
reporting system, though its records are in text rather than in numerical
format. In general, it should be noted that “improving prosecution and adju-
dication data” is one of the new strategic initiatives of the Bureau of Justice
Statistics (BJS; Lynch, 2011, p. 5).
Other Needs

Studies of prosecutorial discretion involving pre-conviction decisions and other case processing stages are vitally important as we move this research area forward. However, the value of sentencing outcomes research has not been exhausted. There are still many interesting and novel sentencing dimensions to study, and predictors of sentencing outcomes to examine, with sentencing-stage data.

Understudied sentencing-related dependent variables
We will, however, need to continue to become more creative in how we approach the conceptualization of sentencing outcomes and the breadth of outcomes, in ways that could be informative about individual actor discretion (i.e. prosecutors). For example, research discussed above has illuminated prosecutorial discretion by looking at particular sentence outcomes over which prosecutors have major influence or even control, such as the imposition of mandatory minimums (Bjerk, 2005; Ulmer et al., 2007), substantial assistance departures (Johnson et al., 2008), or government (prosecutor)-sponsored downward departures in federal court (Ulmer et al., 2011b). Other examples of understudied sentencing outcomes include intermediate punishments and other alternative sanctions (vs. incarceration), sentencing waivers, suspended sentences, career criminal or habitual offender designations, rehabilitative diversions, and others.

While the range of such courts punishment decision outcomes has expanded over time, the past decade has seen further evolution in the nature of courts themselves. "Problem solving courts" including drug courts, domestic violence courts, and family treatment courts, attempt to foster offender treatment and accountability, administer stair-stepped sanctions and incentives, and try to address needs of communities and victims (see Miller & Johnson, 2011). The sentencing research community in criminology and criminal justice studies has not yet fully attended to these non-traditional types of courts, nor the sanctioning decisions they produce. Studies that compare traditional vs. problem solving courts in terms of punishment outcomes as well as differences in court community organization would expand our understanding of the consequences of courts’ contemporary institutional evolution.6

Judge-specific data
As reviewed above, a few valuable studies have now examined judge characteristics and between-judge variation in sentencing. As noted above, recent research has examined between-prosecutor and between-judge variation in the effects of extralegal predictors on sentencing (Anderson & Spohn, 2010; Johnson, 2006; Spohn & Fornango, 2009). Quite simply, the field needs more of

6. I thank an anonymous review for suggesting this point.
such research. It is likely that a substantial portion of the interesting variation in sentence severity, the choice of sentence options, and the effects of legally relevant, organizational, and extralegal factors on sentencing exists at the level of individual judges. Such research would be of great value both to scholarly audiences and to policy-makers. In order for this research to occur, jurisdictions and relevant governmental agencies must release these data. It is almost certain that such agencies already have such data. At a bare minimum, agencies could provide anonymized judge identifiers (i.e. a numerical code for each judge). More desirably, judges are public officials, and their in-court decisions are matters of public record. Ideally, agencies should provide judge identification by name, which would allow more detailed investigations of the effects of judge characteristics on sentencing. The Pennsylvania Commission on Sentencing now releases judge identifications with their sentencing data, to no apparent ill effect for judges. More sentencing commissions and criminal justice data agencies should follow suit. Prosecutors are also public officials, and court records on their initial charge filing decisions, at a minimum, should be publically available.

**Extralegal effects conditional on legally relevant factors**

Farrell and Holmes (1991) interpretive perspective, Albonetti’s (1991) attribution framework, and the focal concerns perspective all imply that the effects of defendant social statuses may be conditioned by situational factors such as offense type and characteristics, or other defendant attributes such as criminal history. Different circumstances likely mobilize defendant status-based interpretations and attributions of character and focal concerns to different extents.

I believe we have not exhausted the investigation of ways in which legally relevant variables mediate and moderate the effects of extralegal variables. Although several recent studies examine these issues, I am surprised even more studies have not pushed in this direction, because such research is fairly easy to do with existing data-sets. As reviewed above, some studies have examined the extent to which the effect of race or ethnicity is moderated by criminal history. As another example, Brennan (2006) found that race/ethnicity did not directly affect sentencing in her sample of female offenders, but she found several indirect effects. "Black and Hispanic females were more likely to receive jail sentences than their White counterparts due to differences in socio-economic status, community ties, prior record, earlier case processing, and charge severity" (Brennan, 2006, p. 60). Other research has examined whether trial penalties are conditioned by offense severity, criminal history, offense type, as well as race/ethnicity and gender (Ulmer & Bradley, 2006; Ulmer et al., 2010), and how race/ethnic effects are conditioned by mode of conviction (Johnson, 2003).

We need more of such research. For example, to what extent are certain kinds of offenders advantaged or disadvantaged in particular case circumstances and/or for particular offenses (e.g. Auerhahn, 2007)? To what extent
does criminal history aggravate or blunt the effects of other defendant attributes? For example, we need more research on whether, how, and why the effect of race or ethnicity might vary by criminal history.

Alternately, we should more fully consider the implications of the extent to which criminal history may mediate the effects of race or ethnicity (in combination with gender). If, for example, criminal history partially or fully mediates the effects of black or Hispanic male status (as it appears to do in several studies) what does this mean? If criminal history strongly mediates the effects of being African American or Hispanic and male, in part this would mean that black and Hispanic males would receive more severe sentences in part because they, in the aggregate, had more substantial criminal histories. What would we then consider the “true” effect of black and Hispanic male status on sentencing—the effect when criminal history is included in models or the effect when it is not (i.e. the mediated vs. the unmediated effect)? If criminal history mediates minority male effects, this might not be considered unwarranted disparity, but it could be considered a differential sentencing impact on black and Hispanic males, and thus a relevant consideration in their overrepresentation among incarcerated populations. It is also worth remembering that official criminal histories themselves are products of past court and law enforcement decisions.

Spohn (2000) and others have argued that the relevant question is not merely whether race, ethnicity, gender, or socioeconomic status, matter in sentencing, but rather, under what circumstances they matter. Continued research in these directions is important because it helps to answer this question. We would therefore benefit from further research on mediation and moderation involving legally relevant factors and defendant characteristics in sentencing.

Victim characteristics
Several unanswered questions still exist regarding the role of victim characteristics in affecting sentencing (and prosecutorial) decisions. Are the effects of victim characteristics primarily concentrated among homicides rather than among violent crimes more broadly? Some of the research reviewed above suggests this might be the case. To what extent do victim characteristics, if relevant, matter for property crimes? These are important questions that are ripe for investigation. As with pre-conviction data and decisions, the obstacle here is not lack of imagination among scholars in identifying interesting research questions, but a lack of data. Sentencing commissions typically collect little if any data on victim characteristics, and detailed victim data may not even be collected by many court record keeping systems (to my knowledge, the AOPC, and the Administrative Office of US Courts are among the agencies that collect minimal or no victim data). Researchers seeking victim data likely must collect them from court docket files, presentence reports, correctional case management files, or other less easily accessible sources, and the labor involved in
collecting and coding such data will likely limit such research to one or a handful of jurisdictions.

New methodological extensions
The past decade has seen the application of new statistical methods to sentencing research questions, and several useful quantitative modeling alternatives now confront sentencing researchers. Bushway et al. (2007) present a very useful discussion of the merits and demerits of two-part models (modeling incarceration and sentence length separately), tobit, and Heckman two-step corrections with ordinary least squares (OLS) in addressing problems of censoring and/or selection surrounding the incarceration and sentence length decisions. Several researchers have also demonstrated the usefulness of using multinomial logistic regression to predict different types of incarceration, such as county jail vs. state prison, either in a individual-level (Holleran & Spohn, 2004), or multilevel context (Kramer & Ulmer, 2009; Wang & Mears, 2010).

In addition, Britt (2009) proposes quantile regression as an interesting alternative for assessing variation in the effects of predictors of interest (legally relevant, extralegal, case processing, etc.) across the distribution of sentence length/severity. That is, the quantile regression approach allows the researcher to separate the sentence length distribution into quantiles, and examine how the strength of predictors’ effects varies across those quantiles. Britt’s (2009) quantile regression analysis of 1998 Pennsylvania sentencing data indeed finds substantial variation in the effects of case and offender characteristics across the sentence length distribution.

Finally, propensity score methods appear to be a promising alternative for examining sentencing disparity in a way that attempts to create balanced, comparable samples of offenders that differ only on a “treatment” or characteristic of interest (e.g. race or mode of conviction). This therefore allows the construction of useful counterfactuals, for example, “what would the sentence be if this case involved a white rather than a black defendant.” Paternoster and Brame (2008) recently applied this method to assess offender race/victim race disparity in death penalty sentences in Maryland. Kurlychek and Johnson (2010) recently used propensity scoring methods to study the sentencing of juveniles in adult court. Given critiques of traditional regression methods in connection with issues of selection and omitted variable bias, we may see increased use of propensity scoring methods to compare sentencing outcomes of different kinds of cases and offenders.

Different court contextual measures
As mentioned, in my view one of the most exciting developments of the past decade has been the proliferation of studies that examine contextual variation between courts. Future research should extend and refine this line of inquiry with new and improved measures of organizational and jurisdictional contexts. If sentencing decisions are driven by interpretive meanings attributed to defendants and cases vis-a-vis focal concerns, and the making of causal attributions
about such cases and defendants, as Farrell and Holmes (1991), the focal concerns framework, and Albonetti’s (1991) work claim, then we should look to court community cultural dimensions that influence such interpretations. Thus, more direct measures of court organizational culture, such as measures of predominant case processing and sentencing norms from surveys of judges, prosecutors, and defense attorneys, would advance our understanding of the role of organizational culture in punishment decisions. As noted, data on pre-conviction outcomes have been hard to come by, but one alternative when they are not available is to survey court community actors on their case processing practices, decision-making considerations, and perceptions of the court community context (for examples how such data can be used, see Ulmer & Light, 2011; Ulmer et al., 2010).

Future studies should also improve on measures of local socio-political contexts. For example, a common measure, county percent Republican, is surely too crude to capture the complexities of local political contexts, even though this measure has shown some predictive usefulness in a small number of studies. More refined and specific measures of local political contexts could perhaps be constructed out of public survey data on criminal justice attitudes. Research should also follow up on the findings of Fearn (2005) and Ulmer et al. (2008) regarding the effect of local religious context on sentencing patterns, as well as other local sociocultural factors.

I also believe that research on the relationship between local racial and ethnic composition and minority sentencing is not exhausted, but we should move beyond looking for simple, linear relationships and simplistic interpretations of racial threat theory. Such research should also investigate whether there are non-linear effects or tipping points for the effects of black and Hispanic populations, at which these contextual features might dampen rather than aggravate racial or ethnic sentencing disparities (see Britt, 2000; Feldmeyer & Ulmer, 2011; Wang & Mears, 2010). Alternately, minority sentencing disadvantage might concentrate in jurisdictions where particular minorities are least numerous, as was found for Hispanic populations in federal districts by Feldmeyer and Ulmer (2011), or where minorities are most numerous, as suggested by some scenarios envisioned by Blalock (1967). Importantly, minority sentencing disadvantage might also concentrate in certain types of jurisdictions in ways that are unconnected to the minority population size. This is suggested by the finding in many studies that race or ethnic effects on sentencing vary significantly across jurisdictions, but such variation is not explained by minority population composition. Studies should also go beyond examining the effects of minority population or caseload composition to incorporating aggregated survey measures of local public racial attitudes when feasible. The recent research by Farrell, Ward, and others on the effects of court community minority composition on sentencing patterns is also very promising, and should certainly be followed by further inquiry. It would take more than minimal labor in collecting and coding variables such as local court judicial or District Attor-
ney (DA)’s office racial composition, but Farrell et al.’s (2009) research should be quite replicable at the state court level.

Temporal contexts
Furthermore, Thomson and Zingraff (1981) and Peterson and Hagan (1984) noted that disparity (and implicitly other dimensions of sentencing) likely changes with temporal as well as social contexts. We should continue to monitor historical variation in the effects of defendant social statuses and contextual factors on sentencing. This is particularly important in terms of racial/ethnic sentencing disparity. Theoretically, change in societal attitudes toward minority groups should predict change in sentencing disparity affecting those minority groups. Furthermore, more research should follow the lead of Johnson and Betsinger (2009) and broaden the focus of research on minority sentencing beyond African Americans and Latinos to other groups becoming more prominent, such as Asians. In addition, given recent and future immigration dynamics and demographic changes, more research is needed that follows the lead of Demuth (2002) Wolfe, Pyrooz, and Spohn (2011) and Light (2010) in examining how defendant citizenship affects sentencing directly and conditions the role of ethnicity.

Also, as Engen (2009) and Bushway and Piehl (2007) note, the evaluation of the impacts and effectiveness of sentencing guidelines is inherently a longitudinal question, and we simply have very little of such research. As long as there are sentencing guidelines, there will be a need for sound research on their evolution and on trends in sentence severity, disparity, guideline compliance, and the relative strength of predictors of sentence outcomes. Some recent studies have examined changes in unwarranted disparity by race/ethnicity, gender, and age as guidelines change over time (e.g. Crow & Bales 2006; Griffin & Wooldredge, 2006; Koons-Witt, 2002; Ulmer et al., 2011a, 2011b) and this type of research will continue to be necessary as guideline system evolve.

International research and cross-national comparisons
Another key gap in the literature is that almost all of the research on sentencing is limited to the contemporary North American—particularly the US—context. However, particularly useful overviews of the comparatively small amount of international literature on sentencing disparity that does exist can be found in Tonry and Frase’s (2001) Sentencing and Sanctions in Western Countries. Reports from the Netherlands indicate that sentencing disparity of a variety of kinds has long been a concern, and that country has experimented with a variety of polices, such as prosecutorial guidelines, to address disparity (see Tonry & Frase, 2001). Also, Johnson et al. (2010) studied 1,613 Dutch homicide offenses from 1993 to 2004, and found that homicide offenders that victimized youth under 18, elderly people, women, and Dutch (vs. foreign) victims were sentenced more severely than those victimizing other types of victims.
Some other suggestive information on ethnic disparity comes from Canada and Australia. In Canada, some reports find that Native Americans are sentenced more harshly than whites (Tonry & Frase, 2001). In Australia, the imprisonment rate among aboriginals exceeds that of the general non-indigenous population by 12-17 times, but it is unclear whether this reflects discrimination by the court system or differential criminal involvement among aboriginals, or both (Tonry & Frase, 2001). More recently, Snowball and Weatherburn (2007) found that aboriginal/indigenous offenders in Australia were very modestly more likely to be imprisoned than non-indigenous offenders, but that courts placed less weight on the prior records of indigenous offenders than in cases involving offenders of non-indigenous racial backgrounds.

In particular, very little research exists on sentencing in non-western contexts, particularly, in Asian countries, which are growing in global prominence. Lu and Kelly (2008) provide a useful summary of research on courts and sentencing in China. This research is mostly descriptive and historical, but a couple of multivariate studies have found that measures of offense severity were strongly predictive of sentence dispositions, and that confessions and court-perceived remorse were strongly predictive of more lenient sentences. Two recent studies focus on sentencing in South Korea, a country which very recently adopted sentencing guidelines. Hartley, Kwak, Park, and Lee (2010) investigated gender differences in South Korean drug sentences, and found that female drug offenders were sentenced more leniently than their male counterparts, though this gender difference disappeared among those with prior criminal records. Also, Lee, Ulmer, and Park (2011) found that legal factors connected to the offense and past criminal behavior primarily determined the length of sentences for Korean marijuana and methamphetamine offenders, but that males and older offenders received longer sentences. They also found that admitting guilt in court resulted in shorter sentences, but that those represented by publically provided attorneys received modestly longer sentences.

More cross-national and comparative research would greatly broaden knowledge of sentencing and sentencing disparity as related to larger patterns of social stratification. Without such research, our understanding of the overlap between criminal sanctions and social inequality will be limited, especially in the global society of the twenty-first century.

Concluding Thoughts

Returning to the reviews of Zatz (2000) and Spohn (2000) that provided the point of departure for this review, I note two quotes:

By interviewing judges and other criminal justice officials, observing court proceedings, and reading transcripts of sentencing hearings, researchers will gain a greater appreciation for the complexity of the decision-making
process and for the overt and subtle ways in which the offender’s race is factored into the sentencing equation. (Spohn, 2000, p. 480)

We also need to collect more detailed ethnographies of the courts and of people’s experiences in court, prison, and on the streets. We can then think about what the ethnographies tell us as we analyze our quantitative data, and vice versa, to better develop and assess theoretical paradigms capable of reflecting the complexities of people’s lives and the multiple factors that influence criminal justice decision-making. (Zatz, 2000, p. 529)

These views, along with the symbolic interactionist perspective and my earlier discussion of theoretical frameworks on sentencing, assume that behind quantifiable sentencing outcomes lie interpretive decision processes involving people who interact with each other, and interact with their local and larger social contexts. Therefore, a development that I would most like to see occur in the next 10 years would be a major renewal of court community ethnography. As the discussions of recent literature and desirable new research directions show, the study of sentencing in the past decade has been highly focused on quantitative measurement and modeling. As I said earlier, this is not a problem in itself. However, if we do not match that focus on modeling with a parallel focus on the in situ decisions and activities of courtroom workgroup participants, and how these are shaped by their surrounding court community contexts, our understanding of sentencing will be truncated.

As in classic court ethnographies of past decades, we need to conduct comparative, qualitative, and mixed-method studies of local court communities. We need to compare courts in sentencing guideline jurisdictions with those in non-guideline jurisdictions. We need to study court community actors as they implement, and transform, sentencing policies, and compare different court communities in the ways that actors do these things. For example, we need new qualitative research that directly inquires whether and how court actors orient to and use focal concerns of sentencing, and how they interpret and prioritize them. We need survey research that attempts to measure interpretations of focal concerns and how they may be linked to perceptions of different types of defendants and cases. We especially need new, updated understandings of whether and how race, ethnicity, gender, social class, age, and other extralegal factors influence the assessment of focal concerns, through attributions, availability or representativeness heuristics, or other cognitive processes, and whether and how these are shaped by local and larger cultural contexts. For example, without accompanying interpretive data, we can only infer whether results from sentencing outcome models are consistent with hypotheses about how defendant characteristics or court contexts affect the assessment of focal concerns—we cannot directly test such hypotheses.

Recall that almost all the theoretical frameworks applied to sentencing, such as focal concerns, uncertainty avoidance/causal attribution, rational choice, and racial threat ideas directly or indirectly rest on depictions of individual social psychological processes. None of these processes can be directly
observed with sentencing or even earlier case processing outcome data. Even if we had real-time data on charging, conviction, and sentencing outcomes, and detailed case and defendant attributes, this still would not directly tell us what was going on in courtroom workgroup members’ heads, or the content of their interactions with each other. As a field of inquiry, our collective research agendas need to better recognize this fact.

In my view, the study of sentencing has made substantial progress since the Blumstein et al. (1983) report, and the past decade has made exciting advances since the Spohn (2000) and Zatz (2000) assessments. I have described some of this progress, and have tried to point the way to new ways to move this area of inquiry forward. Hopefully, we can continue to make the study of sentencing exciting to social scientists and relevant to policy-makers.

References


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