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# Blue Ribbon Sentencing: Judicial Decision-making and Situated Identities

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BLUE RIBBON SENTENCING:  
JUDICIAL DECISION-MAKING AND SITUATED IDENTITIES

A Dissertation

Submitted to the School of Graduate Studies and Research

in Partial Fulfillment of the

Requirements for the Degree

Doctor of Philosophy

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August 2011

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This study examines judicial decision-making in the Wisconsin circuit courts through the sentencing decisions of incarceration type and sentence length to describe the social construction of sentencing processes within the courtroom workgroup environment.

An electronic and traditional mail survey design was utilized to gather information from judges about their sentencing practices to determine whether situated identity theory aids in the understanding of sentencing decisions. Analysis included independent t-tests and chi-square tests of independence to determine the connections between the independent variables of judicial characteristics, courtroom workgroup participants, and situated identity factors and the dependent variables of incarceration type and sentence length.

The results demonstrated that sentencing decisions are social constructed within Wisconsin circuit courts. Limited support was found for the three hypotheses, but descriptive statistics illustrated courtroom participants and judicial situated identities aid in the development of sentencing practices and that situated identity theory is an appropriate tool to help decipher the social construction of judicial decision-making.

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## CHAPTER I: INTRODUCTION

Sentencing decisions have been described as the most important power judges possess in trial courts (Levin, 1977; Tonry, 1996). The judicial decisions of whether to sentence a defendant to incarceration and for what length of time are critical to defendants as well as the criminal justice system. Examinations of sentencing patterns have provided descriptions of who receives particular sentencing outcomes. Historically, sentencing decisions across the United States have had disparate outcomes resulting in correctional system populations that are not comparable to the general population, with criminal sentences typically favoring defendants who are white, female, and from higher social classes (Walker, Spohn & Delone, 2004).

Numerous factors enter into sentencing decisions, including legal and extralegal characteristics. Legal characteristics include factors such as offense severity and criminal history that explain the legal foundation for the sentence. Extralegal characteristics include the defendant characteristics, judicial characteristics, and court organizational characteristics that do not have a legal foundation for being used as a basis for sentencing decisions. Researchers have argued the disparities that exist in sentencing processes are at least partially due to judicial discretion that utilizes extralegal characteristics as foundational elements for sentencing decisions. For instance, Frankel (1973) argued that unbridled judicial discretion allowed judges to create individualized justice. Judges do not need to justify decisions, and were free to use extralegal elements as deciding factors. Frankel suggested that moving away from indeterminate sentencing structures into determinate sentencing structures would remove sentencing disparities and force judges to make decisions only with legal factors. Other researchers, however, have demonstrated

that determinate sentencing structures do not remove disparities and extralegal factors from judicial sentencing decisions.

According to Tarr (2006) and Spohn (2009), research completed during and after the adoption of sentencing guidelines demonstrated determinate sentencing structures reduced disparities, but only for a limited time. Early sentencing research supported that after guideline implementation disparities were lowered and could be explained by legal characteristics (Kramer & Lubitz, 1985; Miethe & Moore, 1985; Moore & Miethe, 1986). To the contrary, years after guideline implementation disparities returned, and extralegal characteristics influenced sentencing outcomes (Koons-Witt, 2002; Kramer & Ulmer, 2009; Stolzenberg & D'Alessio, 1994; Ulmer, 1997). Spohn (2009) also suggested that research completed outside of jurisdictions with sentencing guidelines continues to support that extralegal characteristics hold statistical and substantive significance to sentencing outcomes.

In Spohn's (2009) review of sentencing research, she concluded that research prominently affirmed that legal characteristics explain a larger proportion of variance in sentencing outcomes, yet extralegal characteristics still were influential. Consequently, various extralegal characteristics have been examined to clarify sentencing outcomes. Research about defendant characteristics often has concluded that individuals who are minority, low income, young, and male are more likely to receive sentences of incarceration and longer periods of supervision (Spohn, 2009; Walker, et al., 2004). Researchers, such as Myers and Talarico (1987) and Ulmer (1997), have supported the need to incorporate judicial characteristics (e.g., age, sex, and experience), jurisdictional level factors (e.g., level of urbanization), and the courtroom workgroup into sentencing

research. The courtroom workgroup consists of the individuals who work with court trial processes, including judges, prosecutors, and defense attorneys. Consequently, factors outside of the legal concerns and the defendant influence sentencing decision, and researchers have argued that judicial decisions are captured best through a lens that includes court characteristics and social environments (Croyle, 1983; Eisenstein, Flemming, & Nardulli, 1988; Wice, 1985, 1991).

A few studies have examined the courtroom workgroup's connection to sentencing decisions and extralegal variables. Eisenstein's (Eisenstein, Flemming, & Nardulli, 1988; Eisenstein & Jacob, 1977; Eisenstein, Nardulli, & Flemming, 1982; Flemming, Nardulli, & Eisenstein, 1992) research initiative was among the first to view legal and extralegal characteristics via a community context. This research demonstrated how court social contexts mediated legalistic controls of courts and judicial decisions. Myers and Talarico (1987) studied the courtroom community context to confirm the importance of using a social model of how jurisdictional differences of courts influence sentencing outcomes. Finally, Ulmer (1997) placed the community framework into a symbolic interactionist approach that emphasized the organizational structure and processes of the courtroom workgroup. What is missing from past research, however, is an examination of how judges use the courtroom workgroup to make sentencing decisions and how the courtroom workgroup influences sentencing outcomes and processes.

To address this deficiency of past research, this dissertation investigated judicial sentencing decisions within the courtroom workgroup context through a symbolic interactionist framework. Symbolic interactionism presumes that individuals interact with



their environment to create their self-image through a process of socialization and acceptance of roles (Stryker, 1980). Of particular interest, the expectation states framework of symbolic interactionism presumes that group members develop decisions and behaviors based upon status characteristics (e.g., race, occupation, gender) that lead to stereotypes and typologies (Berger, Conner, & Fisek, 1974; Berger, Fisek, Norman, & Zelditch, 1977). Situated identity theory was used to examine how the courtroom workgroup influences sentencing. This theory posits that individuals make decisions based upon how they want to be viewed by others within a context of normed behaviors that are viewed favorably by the group (Alexander & Rudd, 1984; Alexander & Wiley, 1981). This study assumed the courtroom workgroup is critically important in sentencing research as it contextualizes judicial decisions by providing informal social control and norms about what decisions will be acceptable, and situated identity theory provides a means to analyze how members of the courtroom workgroup assist sentencing decisions.

This dissertation includes the following information to demonstrate the necessity and purpose of examining sentencing decisions within the context of courtroom workgroups and situated identity theory. Chapter II provides a literature review of sentencing research that summarizes the legal and extralegal characteristics that influence judicial decisions as well as the theoretical foundation for the research. Chapter III presents the methodology of this dissertation including the purpose of the study, research question, hypotheses, and analytical procedure. Chapter IV concludes by outlining the proposed significance of this study, specifically how judicial situated identities contextualized sentencing decisions in Wisconsin circuit courts.

## CHAPTER II: LITERATURE REVIEW

The purpose of this chapter is to provide a scholarly framework about judicial decisions and determinants of sentencing outcomes. First, the importance and context of judicial decisions are presented. Second, research about the judicial sentencing decisions of whether to incarcerate and sentence length as influenced by legal and extralegal characteristics is provided. Legal sentencing characteristics include current offense severity and criminal history. Extralegal characteristics include factors related to the defendant, judge, community, and court organization. Third, a discussion about the courtroom workgroup with three critical research endeavors of Eisenstein (Eisenstein, Flemming, & Nardulli, 1988; Eisenstein & Jacob, 1977; Eisenstein, Nardulli, & Flemming, 1982; Flemming, Nardulli, & Eisenstein, 1992), Myers and Talarico (1987), and Ulmer (1997) are developed as a contextual foundation for judicial decisions. Fourth, judicial socialization is described along with the theoretical approach for the dissertation. The theoretical approach provides general information about symbolic interactionism and the framework of expectation states as well as situated identity theory. Finally, Wisconsin circuit court sentencing and the judiciary of these trial courts are described.

### **Judicial Decision-making**

The duties of trial judges can be condensed into one simple statement, “judging is about deciding” through a context of situations and individual cases (Flemming, et al., 1992, p. 79). Consequently, judicial decisions are arguably the hallmark of court processes, especially when referring to sentencing decisions (Frankel, 1973; 1992). The sentencing decision has been described as the most important decision a judge can make during the trial process (Frankel, 1992; Levin, 1977; Tonry, 1996) as well as the “most

difficult task” completed by a judge (Wice, 1991, p. 222). The sentencing decision process has not been conceptualized fully as the constructs, correlates, and theoretical models that shape these decisions have not been identified completely through prior research. Judicial decisions are more than the sentencing outcome, it is a social phenomenon developed through various formal (e.g., case factors) and informal (e.g., courtroom workgroup) characteristics. As such, this section will explain the importance of judicial decisions and provide a context to examine decisions.

Legal models or a jurisprudence framework of judicial decision-making suggests that judges rely solely upon legal case characteristics (Gillman, 2001). More specifically, the rule of law or *stare decisis* (i.e., use of legal precedent) is the main factor in the determination of sentencing decisions (George & Epstein, 1992). This framework often is presented in opposition to the behavioralist model (i.e., non-legal or extralegal model) of judicial decisions. The extralegal model supports that sentencing outcomes are developed by sociological, psychological, and political factors that when integrated better explain judicial decisions than a legal model.

For instance, Fallon (1994) argued that judicial decision-making must include legal case characteristics, but judges also rely upon non-legal theory. Non-legal theory refers to elements outside of legal case factors (i.e., extralegal characteristics), such as historical and economic references. These non-legal elements are important determinates to aid judges in interpreting cases. Accordingly, extralegal elements are used by judges to make background assumptions about the defendant and case, for clarification of legal case elements, for motivation (i.e., reasoning) to decide a case, and as justification for their decisions. Fallon suggested that without judges expanding their viewpoints to

extralegal factors, judges would be unable to respond to needs and requirements of the larger system or to provide individualized justice.

To promote a behavioralist model, Albonetti (1991) examined judicial decisions and discretion through an integrated approach including legal and behavioralist conceptualizations of decision processes. Albonetti maintained that judges employed more than legal reasoning to develop sentencing decisions and constrain discretion; judges created stereotypes and attribute typologies about defendant and case characteristics to develop foundations for sentencing decisions. These stereotypes and typologies equip judges to make decisions efficiently and to ensure courts reach their goals, as judges have limited time to spend on each case and cannot scrutinize every specific case detail.

Along with Albonetti (1991), other researchers have suggested that to provide individualized justice, more than legal characteristics are considered because laws and statutes do not convey all information necessary for judges to process sentencing decisions (Frankel, 1973, 1992; Gaylin, 1974; Morris, 1951; von Hirsch, 1985). Laws afford some guidance, but judges examine legal and extralegal case factors to determine appropriate sentences. A sentencing decision may be founded upon legal constraints and goals, but inevitably other information enters each decision, especially when legislative authority does not proscribe specific sentences. Even in the context of legal variables (i.e., current offense and criminal history), judges use discretion and interpretive power concerning what factors are relevant to the decision. For instance, Wice (1985) concluded judges were not immune to outside pressures of the courtroom, and that judges want the ability to base decisions upon many factors to ensure individualized justice.

Albonetti (1991) concluded that uncertainties arise with respect to cases when judges attempt to provide individualized and efficient justice. Tonry (1996) and Walker (1993) argued that although it may be ideal to control this uncertainty through case precedent and legal statutes, judges are social creatures inclined to make decisions with the aid of all information available, not only what is legally relevant. Hence, as Albonetti (1991) suggested, uncertainties can be rectified by creating typologies of defendants and cases. These typologies are partially responsible for distinct sentencing patterns that place defendants with certain offender characteristics (i.e., minority, male, young) at a disadvantage. In fact, Walker, Spohn and Delone (2004) proposed that the criminal justice system was filled disproportionately with young minority males who were uneducated and poor, because discretionary decision-making utilizes social attributes as well as legal factors.

Consequently, when completing sentencing decision research, legal and extralegal characteristics must be included to develop a more realistic depiction of important sentencing characteristics. As discussed below, legal characteristics of offense severity and prior criminal history are traditionally the strongest predictors of sentencing outcomes (Spohn, 2009). Various models, however, have demonstrated the importance of extralegal characteristics (Zatz, 2000). Extralegal characteristics include defendant characteristics (e.g., age, gender, race/Ethnicity, and employment status), judicial characteristics (e.g., age, gender, race/Ethnicity, and experience), and organizational characteristics that include county level data (e.g., population, level of urbanization, and percentage of black population) as well as the courtroom workgroup.

These characteristics impute importance to sentencing decisions through mechanisms of judicial socialization as well as the courtroom workgroup. Consequently, sentencing decisions are developed initially during judicial socialization, specifically with how judges learn to be judges (Levin, 1977). Experience prior to the bench does not adequately educate judges how to move from attorney to judge (Wice, 1985). Judicial socialization instructs judges how to interpret defendant and case characteristics to dismiss uncertainties of sentencing situations. This socialization occurs through formal and informal contexts of the judicial role; not all socialization occurs through formal education and training (Wice, 1991). The courtroom workgroup is of special worth to the socialization process. When judges enter the profession, the courtroom workgroup comprised of other judges, prosecutors, defense attorneys, and court clerks guide judges to understand their new roles and duties. Part of this learning experience, includes the development of acceptable sentencing decisions and outcomes as defined by the courtroom workgroup (Eisenstein, et al., 1988). Through the aid of the courtroom workgroup, judges acquire (or reaffirm) the stereotypes and typologies that reduce uncertainty as well as create an efficient and customized decision-making process.

Describing the sentencing process is more than what defendant, judicial, and organizational characteristics are influential; the sentencing process is a representation of how and why sentencing outcomes exist. Albonetti (1991) argued that sentencing research has been saturated with depictions of sentencing outcomes, but lacks in theoretical underpinnings to explain how sentencing processes were connected to the outcomes. Courtroom workgroups and judicial socialization should be conceptualized as foundational sentence processing elements. Courtroom workgroups and judicial

socialization do not fully explain sentencing processes; a fuller theoretical approach should be used that can describe social phenomenon.

Social psychological literature, specifically symbolic interactionism, allows for the operationalization and conceptualization of complex social phenomenon, such as judicial decisions, to create measureable concepts and constructs. Stryker (1980) posited that symbolic interactionism is attuned at measuring complex socialization and group processes in a scientific manner. Theoretical underpinnings of expectation states theory allow groups to be understood as mechanisms that create decisions based upon status characteristics of others involved in the group (Berger, Conner, & Fisek, 1974). Situated identity theory provides a framework for measuring the connection of judges to courtroom workgroups as well as the influence of courtroom workgroups upon sentencing outcomes. Situated identity theory proposes that individuals make decisions to be viewed favorably by others in the social situation, when the decision-maker desires to be viewed positively (Alexander & Wiley, 1981). Consequently, situated identity theory can develop the process of how courtroom workgroup contexts produce sentence outcomes.

In summation, judicial sentencing decisions are influenced by legal and extralegal factors through a social context including the courtroom workgroup. Judges hold the most power over sentencing decisions, but sentence terms are not formed alone. Judges are social actors who interact with courtroom workgroup members and the court environment to develop acceptable sentencing decisions. These decisions are developed through group processes, such as socialization that provide an understanding of how judges interpret various case characteristics to decide sentences. These concepts are

discussed below in the sections of sentencing characteristics, courtroom workgroups, and socialization process. These sentencing decision elements are tied together through symbolic interactionist theoretical approaches of expectation states and situated identity theory. This section concludes with a description of Wisconsin sentencing that will provide the sample and environment to examine sentencing decisions and processes.

### **Sentencing Outcomes and Characteristics**

The culmination of trial processes is recognized prominently through the two distinct sentencing decisions of incarceration and term length. Various legal and extralegal characteristics of cases effect judicial decisions. Legal characteristics include prior criminal history and severity of the current offense. Extralegal elements are divided among defendant, judicial, and organizational characteristics. Research about sentencing outcomes, legal characteristics, and extralegal characteristics is presented in this section.

#### **Sentencing Outcomes**

Sentencing outcomes are typically the dependent variables of sentencing research. Sentencing outcomes can be examined through two distinct decision points of the sentencing process – the incarceration decision and the sentence length decision. The incarceration decision measures whether the adjudicated defendant was assigned a sentence of incarceration, which often is termed the in/out decision. The second decision of sentence length refers to how long the defendant was placed on probation, in jail, or in prison.

These two decision points of sentencing should remain in sentencing research and be distinguishable from each other. Mears (1998) recognized several limitations about sentencing research methods, designs, and analyses. Accordingly, he argued that



sentencing decisions must be realistic by separating and including the two decision points to capture important facets of each decision. Realistic representation of sentencing outcomes can include separation of the incarceration decision from sentencing length, but also type of sentence received. For instance, Myers (1988) and Myers and Talarico (1987) identified the incarceration decision as probation, split sentence (probation and incarceration), or incarceration, but sentence length only measured the term of incarceration. Holleran and Spohn (2004) examined total incarceration terms alongside separate decisions of probation, jail, and prison. The results indicated that separation of the type of disposition from sentence length provided a more accurate interpretation of influential factors, as different types of defendants received jail, prison, and probation sentences. Similarly, Steffensmeier and Demuth (2006) conceptualized sentence length as the months spent in total incarceration (i.e., includes both jail and prison sentence lengths), probation, jail, and prison. Higher rates of disparities were found in the individual sentence terms as opposed to the total incarceration length. Therefore, it may be best to measure sentence types and length as specific units to ensure findings do not become hidden.

These decisions points also should be separated because case and defendant characteristics can distinctly influence each decision. Kramer and Steffensmeier (1993) analyzed incarceration and sentence lengths as mediated by defendant's race. Race had a significant (albeit small) effect upon the incarceration decision, but was not a significant influence upon sentence length. Steffensmeier, Ulmer, and Kramer (1998) studied the interaction effects of race, gender, and age upon both sentencing decisions. Overall, black defendants aged less than 25 years received the harshest sentences as indicated by higher

incarceration rates and longer sentence terms; however, minor differences were found in interactive effects of age, race, and gender in other defendant categories. For instance, white males above the age of 50 received the fourth harshest sentences in terms of length, but were eighth in receiving terms of incarceration. Nobiling, Spohn, and Delone (1998) examined the impact of unemployment status and sentence severity upon sentencing outcomes of two counties. In one county, defendant unemployment status only influenced the incarceration decision, and in the other county, it only influenced the sentence length decision. Spohn and Holleran (2000) examined sentencing outcomes of three counties to determine the interaction effects of race, gender, and age upon the incarceration and length decisions. The results demonstrated no impact on sentence length, but young minority males had higher rates of incarceration.

Considering these studies, research must analyze realistic sentencing outcomes; distinctions between the decision to incarcerate and sentence term length must be made. Punishment is not a simple term that is identifiable as a single construct; differences between prison, jail, and probation must be included when applicable to the research design allowing for examinations. Consequently, various terms of incarceration, including jail, prison, and probation should be placed into research when necessary to the jurisdictional and logistical needs.

### **Legal Sentencing Characteristics**

Legal sentencing characteristics are legally proscribed elements of a case as identified by current offense severity and defendant criminal history. These characteristics typically explain the most variance and must be included in all sentencing research, as it provides a realistic analysis of what determines sentencing outcomes.

Hagen (1974), in a reanalysis of how gender affected sentencing outcomes demonstrated the need to control for legal variables; gender became non-significant when offense severity and criminal records were constants. In a review of the methods of sentencing research, Mears (1998) stated legal factors are imperative elements to capture and control for when conducting sentencing research. In a review of sentencing research, Spohn (2009) concluded that legal characteristics are measurable in various ways, but most research supported that legal characteristics are the strongest predictors of both sentencing outcomes. Research about these legal characteristics is described below.

Offense severity and criminal history have been conceptualized in distinct manners including measurement through arrests, charges, and convictions. Regardless of the conceptualization technique, legal factors are significantly and substantively important to sentencing outcomes. For instance, Clarke and Koch (1976) examined one county's sentencing outcomes of male defendants adjudicated with burglary or larceny. Offense severity was defined as the amount of property taken and degree of skill needed to commit the act. Criminal history was conceptualized as prior arrests. When compared to other case (e.g., offense type) and defendant (e.g., race, age, and employment status) characteristics, offense severity had the strongest predictive value in determining a sentence of incarceration, and criminal history was the third strongest predictor. Both measures were related positively to the chance of incarceration. Curran (1983) examined the effect of defendants' sex upon sentencing outcomes while controlling for legal characteristics. The offense severity measure was created with a scale ranking the seriousness of the crime situation. Criminal history was measured through the number of prior arrests. Both legal factors were positively significant to both sentencing outcomes.

Nobiling, Spohn, and Delone (1998) measured offense severity through the most serious conviction charge, class (i.e., level of felony) of the most serious conviction charge, and number of current felony convictions. Criminal history was measured by the number of times the defendant was sentenced to a prison term longer than one year. These legal characteristics had positive, significant relationships to sentencing outcomes.

In addition, studies used sentencing data from states with sentencing guidelines, which define legal characteristics of offense severity and criminal history, and specifically prohibit the use of extralegal variables. Studies of Pennsylvania guideline outcomes measured offense severity with a scale of 0 to 10, and criminal history was captured through the prior record score scale of 0 to 8 with higher numbers illustrating increased severity (Holleran & Spohn, 2004; Spohn & Holleran, 2001; Steffensmeier & Demuth, 2001, 2006; Steffensmeier, Ulmer & Kramer, 1998; Ulmer & Kramer, 1996). These studies confirmed that legal characteristics had positive, significant relationships to sentencing outcomes, and that legal factors explained more variance of sentencing outcomes than extralegal factors. In a study of sentencing outcomes from Minnesota, Koons-Witt (2002) examined the affect of gender upon sentencing outcomes while controlling for legal characteristics. Offense severity (number 1 to 10) and criminal history (number of misdemeanors and felonies) were measured per guideline definitions. Similar to the Pennsylvania studies, legal characteristics held stronger explanatory power in sentencing outcomes and had a positive, significant relationship to sentencing outcomes.

Regardless of the conceptualization of legal characteristics, all of the above studies demonstrated the significance of legal characteristics; however, each study also

verified that extralegal factors were significant predictors of sentencing outcomes. Thus, these studies along with Mears (1998) demonstrate the importance of creating realistic research about sentencing outcomes that include legal and extralegal characteristics.

### **Extralegal Sentencing Characteristics**

Numerous studies have examined the role of extralegal sentencing characteristics in judicial sentencing decisions at the trial court level. Extralegal factors can be divided into three categories: defendant characteristics, judicial characteristics, and organizational characteristics. Sentencing research has spent much time explaining how extralegal characteristic explain sentencing outcomes by identifying what type of defendant will receive or what type of judge will assign the harsher sentences as measured by incarceration type and sentence length (Mears, 1998; Spohn, 2009; Zatz, 2000). Much of the early research relied solely upon characteristics identifiers without examining the courtroom structure and social environment (Eisenstein, et al., 1988; Myers & Talarico, 1987; Ulmer, 1997), and usually found low statistical significance in the connection of extralegal variables to sentencing outcomes (Spohn, 2009). Sentencing outcomes are not necessarily determined through one particular characteristic, rather a combination of characteristics held by the defendant, judge, community, and courtroom workgroup. A discussion of the direct effects of defendant characteristics is followed with an examination of judicial characteristics and organizational characteristics of the community and court.

**Defendant characteristics.** Defendant characteristics are defendant demographics known to the judge during trial court processes. Throughout sentencing research, defendant characteristics have had confounding findings about how defendant

traits influence sentencing outcomes (Spohn, 2009). Zatz (2000) and Walker, Spohn, and Delone (2004), however, suggested generalities exist about defendant characteristics connections to sentencing outcomes, and concluded that young, minority, unemployed, and male defendants are most likely to receive the harshest sentences as measured through incarceration and longer sentence lengths, even when legal characteristics are controlled. Findings also have supported that single defendant characteristics are not as important as the particular combination of race, age, gender, and employment.

*Gender of defendant.* Various reasons have been proposed regarding why male defendants were incarcerated more often and for longer lengths than female defendants. Researchers have suggested that female defendants receive leniency (i.e., less frequent sentences of incarceration and shorter periods of custody) because judges act paternalistically or chivalrously towards them (Crew, 1991; Moulds, 1978, 1980; Gruhl, Welch, & Spohn, 1984). Conversely, others have supported a legalistic explanation; female defendants received lenient sentences because they have limited criminal histories and a less apparent risk of future offending (Curran, 1983; Steffensmeier, 1980). Curran (1983) stated one major concern of the chivalry hypothesis is that most of the supporting research did not use legal characteristics as controls, which results in a misrepresentation of significant factors. A last viewpoint posits that it is familial concerns more than gender that impact judicial decisions. For example, Daly (1989a, 1989b) clarified that more female defendants are caregivers and single mothers whose children would be placed into social services. Female defendants had lower incarceration rates and shorter terms because judges were not willing to remove mothers from households, as the consequence

for children was too severe. Thus, judges were not protecting female defendants, rather the familial context.

Regardless of the reason, most data substantiated that male defendants were assigned harsher sentencing outcomes than female defendants when legal variables were controlled. To illustrate, Curran (1983) researched individual cases from arrest to sentencing outcomes. Gender was not a significant predictor in any criminal justice system decision except for sentencing outcomes; male defendants had severer sentencing dispositions. In addition, Gruhl, Welch, and Spohn (1984) examined case files to conclude that female defendants received fewer sentences of incarceration and shorter periods of incarceration as compared to male defendants. Using a small city sample, Daly (1989a) concluded that male defendants were allotted sentences of jail and prison (i.e., incarceration) more than suspended or deferred sentences (i.e., non-incarceration). Spohn (1990) analyzed individual court cases to find that gender was a significant predictor of both sentencing outcomes; male defendants often received more incarceration and longer sentence lengths. With a large sample from three Pennsylvanian counties, Ulmer and Kramer (1996) discovered direct effects with gender; sentences of incarceration and longer sentence lengths were more often given to male defendants. In a study of three cities, Spohn & Holleran (2000) determined that gender was a significant predictor upon the incarceration decision but not sentence length. Steffensmeier, Ulmer, and Kramer (1998) and Steffensmeier and Demuth (2006) had a large sample of defendants sentenced through Pennsylvania sentencing guidelines. Both studies supported that male defendants received more terms of incarceration and longer sentence lengths than female defendants

as direct effects were supportive of male defendants obtained harsher sentencing outcomes.

Overall, research demonstrated the importance of examining the connection of gender to both sentencing outcomes, yet not all research found gender to be significant to both sentencing outcomes. Gender, however, may be best developed with other defendant characteristics as a contextual variable. For instance, Helms and Jacob (2002) did not analyze direct effects of race or gender as they believed the interaction of these two terms were more important predictors of sentence length disparities than as single constructs. Also, Nobiling, Spohn, and Delone (1998) and Koons-Witt (2002) did not find a direct link of gender to sentencing outcomes, but interactive effects were discovered in connection to age and race.

***Race of defendant.*** The connection between race and sentencing decisions is convoluted; some studies found direct effects with both sentencing decisions, one decision, and neither decision. Most research conceptualized race as a dichotomous construct of black or non-white defendants as compared to white defendants; research only recently has included Hispanic defendants. This section details what research has demonstrated about direct effects of race.

Research that dichotomized race as white defendants and black (or non-white) defendants generally concluded that black defendants were assigned to more incarceration and longer sentence terms. Three studies found significance between race and both sentencing outcomes. The first study, Kramer and Steffensmeier (1993) examined both sentencing decisions with a sample from Pennsylvania. Although race was significant for both sentencing decisions, the researchers suggested this was of low



substantive importance, as race had a small prediction value in the overall model; race may have been significant only because of the large sample size. The second study, Ulmer and Kramer's (1996) research supported the connection of race to both sentencing outcomes; black defendants received more terms of incarceration and longer sentence lengths. Lastly, Steffensmeier, Ulmer, and Kramer (1998) used a large sample of cases from Pennsylvania sentencing data, and race was related significantly to both sentencing decisions in the expected manner. In fact, when legal variables were controlled, black defendants had a 10% greater chance of receiving incarceration.

Additionally, two studies supported the significance of race with the incarceration decision. The study of Unnever, Frazier, and Henretta (1980) examined incarceration decisions with a sample of court case files. White defendants were 2.3 times more likely to receive probation than black defendants, and black defendants were more likely to receive terms of incarceration. Koons-Witt (2002) researched Minnesota sentencing pre- and post-guidelines through the incarceration decision. Race was the only significant defendant characteristic with black defendants receiving more terms of incarceration. Moreover, this direct effect remained significant even after interactive terms were placed into the model.

Some studies also have demonstrated that a direct race effect did not exist with either sentence outcome. For instance, Daly (1989a) found that race (black versus white) did not affect the incarceration decision with a small sample in Seattle, yet this may be due to the small sample from one jurisdiction. Another study that did not find a direct race effect was Kramer and Lubitz (1985), which was one of the first studies in Pennsylvania after the imposition of sentencing guidelines. They concluded that

sentencing guidelines were successful and controlled the influence of extralegal characteristics. This finding, however, may be an artifact of early tests of sentencing guideline research, as other studies of Michigan (Miethe & Moore, 1986; Stolzenberg & D'Alessio, 1994) and Pennsylvania (Kramer & Ulmer, 2009) sentencing guidelines have found direct race effects. In fact, Koons-Witt (2002) examined Michigan sentencing guidelines pre- and post- imposition to conclude that the strongest race effects upon sentencing outcomes were found pre-guidelines and then later post-guidelines, the smallest effects were noticed soon after guideline adoption. In addition, Helms and Jacobs (2002) examined a national sample of individual level cases to determine jurisdictional differences among states with and without sentencing guidelines. With respect to the sentence length decision, sentencing guideline states were not significantly or substantively different from states without sentencing guidelines, but this may be due to the macro-level data used in this research, which can hide jurisdictional differences.

Sentencing research recently has begun including Hispanic defendants into considerations of race and ethnicity. Overall, Hispanic defendants received similar sentencing outcomes as black defendants. Spohn and Holleran (2000) examined race in two jurisdictions; in both cities, black defendants and Hispanic defendants had higher incarceration rates, but race was not related significantly to sentence length. Similarly, Steffensmeier and Demuth (2006) examined Pennsylvania sentencing guideline data and found that black defendants and Hispanic defendants received more terms of incarceration than white defendants, but no direct effect was present with sentence length. Three studies have demonstrated that among minorities, black defendants received more sentences of incarceration, but when Hispanic defendants were incarcerated, they

typically received longer sentence terms than black defendants (Demuth & Steffensmeier, 2004; Holleran & Spohn, 2004; Steffensmeier & Demuth, 2001).

In summation, this research overall supports that race is an important defendant characteristic to measure as a predictor of incarceration and sentence lengths. Research has demonstrated that determinate sentencing guidelines have been unable to remove race as a significant factor in sentencing outcomes. In fact, Zatz (2000) completed a review of sentencing research, and discussed that sentencing research of determinate systems have demonstrated a reduction of direct effects, but more complicated indirect and interaction effects remain.

***Age of defendant.*** Age is a defendant characteristic that directly influences sentencing decisions, but the significance and strength may be dependent upon coding schemes and modeling techniques. Age can be measured as an ordinal or ratio level data, and can be modeled as a linear or curvilinear relationship to sentencing outcomes. Regardless of measurement or modeling technique, age typically had a negative significant relationship to sentencing outcomes suggesting that younger adult defendants were assigned the harshest sentencing outcomes.

When age was modeled as a linear relationship and measured as a ratio or ordinal variable, it had a significant negative correlation with sentencing outcomes. Studies that examined age as ratio level data discovered that younger defendants received harsher sentencing outcomes as measured by incarceration (Daly, 1989a; Unnever, Frazier, & Henretta, 1980) and by both incarceration and sentence length (Curran, 1983; Ulmer & Kramer, 1996). Specifically, Unnever, Frazier, and Henretta (1980) found that for every additional year older, a defendant was 5.8% more likely to have a term of probation over

incarceration. Two studies placed age into categorical, ordinal data. In a study about female defendants, Kruttshcnitt (1980-1981) divided age into categories of 21 to 30 years, 31 to 40 years, and above 40 years. The importance of age to sentencing was mediated by type of offense (i.e., assault and theft), but those in older age categories consistently were assigned less severe sentences. Using age categories of 18 to 29 years, 30 to 49 years, and greater than 49 years Steffensmeier and Demuth (2001) examined a large sample of defendants. The authors cautioned that possibility that this finding was an artifact of the large sample size, but all age categories were related significantly to both sentencing outcomes. Of substantive importance, the higher aged categories were least likely to be incarcerated and more likely to be granted shorter sentence lengths. In addition, defendants aged greater than 49 years were least likely to have harsher sentences imposed. Thus, age is an important predictor of sentencing outcomes when conceptualized as ratio or ordinal level data.

Defendant's age also has been explored as a curvilinear relationship to sentencing outcomes. Steffensmeier, Kramer, and Ulmer (1995) found a nonlinear relationship of age to sentencing outcomes when age was defined categorically (i.e., 18 to 20; 21 to 29; 30 to 39; 40 to 49; and 50 plus). The harshest sentences were assigned to those aged 21 to 29 years, and the most lenient sentence to defendants aged 50 and older. Defendants aged 18 to 20 years received similar sentences as defendants in their 30s. Steffensmeier, Ulmer, and Kramer (1998) supported this curvilinear relationship between age and sentencing outcomes using the same five categories and had similar findings. Of interest, sentence severity and age had a negative linear correlation with defendants older than 30 suggesting that the curvilinear aspect of age may diminish as defendants become older.

To advance the understanding of the linear and curvilinear connection of age, Steffensmeier and Demuth (2006) tested age through both linear and curvilinear assumptions. Age was not a significant predictor of sentencing outcomes unless it was exponentiated (i.e., quadratic representation) to fit curvilinearity assumptions. Likewise, Helms and Jacobs (2002) examined sentence length with age measured as a ratio level variable and as an exponentiated variable. To support the curvilinear effect of age, the quadratic age variable had a negative effect upon sentence length when controlling for legal variables with the curvilinear relationship ending around age 38. In addition, age in years (with non-quadratic coding) had a positive significant relationship, but the authors do not provide an explanation for this relationship.

In a study that rejected the curvilinear connection of age, Spohn and Holleran (2000) replicated Steffensmeier, Ulmer, and Kramer's (1998) study by using similar methods and conceptualizations but with a different sample and jurisdiction. Spohn and Holleran (2000) did not find a curvilinear relationship with the incarceration decision; those aged 21 to 29 received incarceration more often than any other age group. A linear negative relationship between age and incarceration existed; judges assigned less terms of incarceration as age increased. Some limitations, however, may have restricted the ability of this research to demonstrate a curvilinear relationship; few defendants were aged below 20 years or above 40 years, and those under the age of 20 were removed from the analysis. If more variance with age was present in the sample, the connection of age to incarceration may have resembled the curvilinear relationship of Steffensmeier, Ulmer, and Kramer (1998), as the age categories of whom were sentenced most often were the same in both studies followed with a linear relationship of defendants older than 30 years.

In summation, age is an important factor when researching sentencing outcomes. Age consistently has been a significant predictor of sentencing outcomes regardless of measurement and modeling techniques. To ensure proper modeling and conclusions, age may need to be examined in various manners.

***Employment status of defendant.*** Employment status has mixed results of its impact upon the decisions of incarceration and sentence length. Research has supported and refuted the direct connection of employment status, and often it is used as a proxy for social class. Conceptualizations of employment typically were a dichotomous variables with attributes of employed versus unemployed, but some studies have included categories of student and homemaker as well as representational divisions of steady employment compared to unsteady employment.

When employment is conceptualized as employed and unemployed, a few studies have found a relationship with the incarceration decision. Curren (1983), Helms and Jacobs (2002), Myers and Talarico (1987), and Unnever, Frazier, and Henretta (1980), all supported that employed defendants had a lower likelihood of being incarcerated, especially when adjudicated for less serious offenses. Employment status of the defendant has included other categories. In a study of female defendants, Kruttschnitt (1980-1981) concluded that harsher sentencing outcomes were given to economically disadvantaged defendants (i.e., unemployed or welfare recipients) as opposed to defendants who were employed, housewives, or students. Accordingly, more terms of incarceration and longer sentence lengths were imposed to those who were economically disadvantaged.

Other studies have demonstrated no significant direct connection between employment status and sentencing decisions. Clarke and Koch (1976) examined court dispositions of defendants adjudicated for burglary and larceny. Employment status was categorized by employed/student, unemployed and unknown. This information was gathered from police officer arrest reports. Employment was not significant to the incarceration decision, yet conceptualizations of employment and incarceration may have altered the results. Employed and students defendants were combined in the analysis to suggest these groups were the same. Additionally, the incarceration decision was not categorized clearly as in other studies. Incarceration was conceptualized as defendants who were guilty and sentenced to prison, but non-incarceration sentences were defendants who were found not guilty or not sentenced to prison. These measurement techniques may have disguised the importance of employment, as conceptual differences arguably exist between defendants who were employed or students as well as those who were not guilty and those guilty but not sentenced to prison. In another study examining employment status, Daly (1989a) researched the incarceration decision of a small sample of court cases from Seattle to determine the impact of a defendant's work history (i.e., steady versus not steady). The lack of a direct effect may have been an artifact of the small sample from one jurisdiction or how employment status was conceptualized. A last study ascertained the link of employment after the imposition of sentencing guidelines in Minnesota. Miethe and Moore (1985) could not discuss any conclusive or significant direct effects of employment status upon sentencing outcomes but interaction effects were present.

These studies demonstrated direct connections between employment status and either sentencing outcome may not be significant, but this appears to be related to the conceptualization of employment status. Studies that measured employment status as employed or unemployed were more likely to detect significance to sentencing outcomes than those studies that convoluted the measurements of employment statuses.

***Jurisdictional impact on defendant characteristics.*** Mears (1998) addressed a major caveat not expressed prevalently in the above research, the link between jurisdiction and sentencing outcomes. Mears argued to complete realistic sentencing research, it must include more than one jurisdiction (i.e., counties) to understand how environmental and organization differences impact judicial decisions. Other researchers have declared that sentencing decisions should be examined through jurisdictional differences because the locale of the court influences judicial sentencing decision processes. For instance, Michalowski and Pearson (1990) completed a macro-analysis of imprisonment rates in all states. They concluded that specific states influenced sentencing decisions to incarcerate but not as much as regional connections (i.e., southern vs. non-southern). These data were state-level data, which may have limited the ability of researchers to analyze the connection between sentencing outcomes and local jurisdictions such as counties. Crutchfield, Bridges, and Pitchford (1994) reexamined data that originally was researched at the national level by disaggregating the data to state level. This alteration of methods demonstrated aggregation hid disparities of sentencing decisions. For national level data, 90% of racial disparities in sentencing outcomes were explained by arrest data, but this dropped to 69% with state level data. Hence, local level data though might be even more appropriate than state or national data, as Mears (1998)



and Zatz (2000) both contended that sentencing research is most effective when individual sentencing data and local jurisdictions are examined, as demonstrated in the following studies.

Nobiling, Spohn, and Delone (1998) suggested that different jurisdictions might have various sentencing norms that define how judges perceived defendant characteristics. In this study of two counties, defendant characteristics affected the incarceration decision in one county, but in the second county, defendant characteristics only influenced sentence length. Similarly, Spohn and Holleran (2001) studied three counties in three different states. Race, gender, and age had varying levels of significance in incarceration decisions depending upon the county, but no significance was found in connection to sentence length. In both of these studies, it is unknown how counties compared to other counties within their same state, which is important to understand to control for interstate legal differences (i.e., crime definitions and statutes) and sentencing processes (i.e., grand jury versus preliminary hearing).

To highlight the importance of examining various counties in one state, Myers (1988) and Myers and Talarico (1987) examined all counties in Georgia. County-level variables affected sentencing outcomes as well as the strength of the correlation between sentencing outcomes and defendant characteristics. Likewise, Ulmer and Kramer (1996) concluded that types of counties (i.e., rich, metro, and southwest) differentially influenced the degree to which race and gender disparities were found in sentencing decisions. In the rich county, race influenced only the incarceration decision with black defendants receiving more terms of incarceration. In the southwest county, however, race had a negative significant impact upon sentence length, and gender had a negative

significant relationship to the incarceration decision. Lastly, Ulmer (1997) examined all counties in Pennsylvania; each county held various effects of age, race, and gender upon sentencing outcomes. Three counties (i.e., rich, metro, and southwest) also were examined through qualitative research. This highlighted that judges spoke distinctly about sentence processes and how defendant characteristics influenced their decisions. Hence, it is pivotal to examine jurisdictions when completing sentencing decision research.

In conclusion, regardless to the degree and direction of significant extralegal defendant characteristics, research demonstrated that extralegal variables influence sentencing outcomes. Sentencing research cannot ignore the extralegal characteristics that have become known to influence sentencing decisions, such as defendant characteristics. Although direct effects of defendant characteristics have been inconsistent throughout research, consistent results have been found through more interactive models. Sentencing research has concluded that defendant characteristics combine to form the whole person so that it may not be the individual characteristic of male or minority but the combine social impact of a defendant being a young, minority, unemployed male (Spohn, 2009; Walker, Spohn, & DeLone, 2004). Defendant characteristics remain important to place in sentencing research especially within the context of jurisdiction and other social factors to be discussed below.

**Judicial characteristics.** Judicial characteristics such as age, race, gender, length on the bench, and prior legal experience have been examined as predictors of sentencing outcomes. Overall, these judicial background characteristics have a weak or no direct association with sentencing outcomes (see Gibson, 1978; Myers & Talarico, 1987;

Spohn, 1990; Steffensmeier & Herbert, 1999). In a review of research, Spohn (2009) declared that these weak effects “suggest that these background characteristics do not consistently affect the sentences that judges impose” (p. 111), rather other organizational characteristics have a stronger influence upon sentencing outcomes. Researchers have proposed this lack of significance of judicial characteristics is due to the homogeneous life experiences and socialization of judges (Spohn, 1990; 2009, Steffensmeier & Britt, 2001; Steffensmeier & Herbert, 1998). This homogeneity also was reflective in characteristics of judges, as the majority of judges are white, male, educated, and from upper economic statuses. Consequently, judicial characteristics have been studied more recently as judges become more heterogeneous (i.e., females and minorities), and it is important to continue researching the effects of judicial characteristics upon sentencing outcomes.

***Race of judge.*** Judges’ race did not affect sentencing outcomes strongly; other judicial and organizational factors have explained more variance in sentencing outcomes (Spohn, 2009). Some limited associations between judge’s race and sentencing outcomes have been identified, to suggest non-white (i.e., black and Hispanic) judges make sentencing decisions more equal. Usually, regardless of race, judges sentence similarly to support the contention that other contextual elements of the court affect sentencing decisions rather than personal judicial characteristics.

Overwhelmingly, research examining judicial race supported its lack of impact upon sentence terms, expect by making outcomes more equal among all defendants. For instance, Uhlman (1978) discovered little support for black judges sentencing differently from white judges. In an examination of six years of court case files, black judges were

slightly more inclined to assign more severe sentences to all defendants, but black judges and white judges both sentenced black defendants to more severe sentences than white defendants. Similarly, Welch, Combs, and Gruhl (1988) examined the role of judges' race (i.e., black and white) upon incarceration choices and sentence lengths while controlling for legal variables. They concluded that black judges made sentencing processes more even-handed; black judges incarcerated all defendants equally, whereas white judges more often sent black defendants to prison. Black and white judges provided consistent sentence lengths to all defendants, but black judges assigned slightly longer sentences to black defendants. In a rare study that included Hispanic judges, Holmes, Hosch, Daudistel, Perez, and Graves (1993) researched the racial and ethnic composition of judges in Texas through combinations of Anglo and Hispanic judges and defendants. Their findings suggested that Hispanic judges did not assign dramatically different sentence terms to either Anglo or Hispanic defendants. Anglo judges assigned less severe sentences to Anglo defendants when compared to Hispanic defendants and judges.

Spohn (1990) analyzed both sentencing outcomes with respect to judges' race (i.e., black and white) while controlling for legal factors and defendant characteristics. Overall, black judges were more likely to sentence defendants to incarceration, but judge's race did not affect sentence length. Specifically, black and white judges sentenced black defendants more harshly than they sentenced white defendants. In addition, black judges sentenced black male defendants to incarceration less than white judges, but no difference was found with black female defendants, white male defendants, or white female defendants. Steffensmeier and Britt (2001) examined official data to determine if black and white judges sentenced distinctly as well as whether black

and white judges used the same criteria to make decisions. Generally, black and white judges sentenced defendants similarly regardless of race and offense. Black judges, however, were slightly more punitive as they more often assigned black and white offenders to terms of incarceration.

In summation, the race of the judge did not appear to influence sentencing outcomes strongly, especially when prior record and current offense are controlled. Judge's race was still an important variable to include as findings may differ jurisdictionally, especially since judges are becoming more diverse. Findings were supportive that other social dynamics outside of race have created more equalized sentencing patterns, as will be discussed below in the courtroom workgroup section.

***Gender of judge.*** The impact of judge's gender upon sentencing decisions has been difficult to determine because most judges are male (Spohn, 2009), but some studies have addressed this connection adequately. For example, Gruhl, Spohn, & Welch (1981) examined case files while controlling for current offense and defendant's gender. Female and male judges sentenced similarly; female judges, however, had a slight tendency to assign more terms of incarceration, and gave male defendants shorter prison terms than female defendants. When all judges are placed together and judge's sex is not considered, males received the harshest sentences. Using county-level sentencing data, Myers and Talarico (1987) studied the difference between counties that had a female judge and those that did not. Counties were divided between categories of all male judges, 25% female judges, and 50% or more female judges because only four percent of the judges were female. Judge's sex thus was equated with sexual composition of the court not an individual trait. Courts with female and male judges sentenced similarly when direct

effects were examined, but interactive models demonstrated courts with female judges assigned harsher sentences to white female defendants, especially defendants convicted of a property or violent offense (i.e., not a drug offense). Steffensmeier and Herbert (1998) examined official data to determine if male and female judges' sentencing patterns varied as well as whether male and female judges used the same criteria to make sentencing decision. Additive models demonstrated that female judges were harsher than male judges; females were more likely to incarcerate and assigned slightly longer sentences. Interactive models illustrated that female judges were harsher towards black defendants for both sentencing decisions, especially when the defendant was a repeat offender and younger.

Overall, judge's gender did not affect incarceration decisions or sentence lengths significantly. When it was significant, it was of small predictive value for the whole model. Judge's gender is more important as an interactive factor used to contextualize sentencing decisions, which was demonstrated by Gruhl, Spohn, & Welch (1981) as judge's gender aided in determining how defendants with certain characteristics would be sentenced.

*Age of judge.* Studies that examine judge's age have mixed results. Gibson (1978) examined one county trial court through case files over several years. A direct relationship of age to sentencing outcome was found; when offense severity was controlled, older judges sentenced more harshly especially for black defendants. This relationship, however, did not exist in a multivariate analysis. Similarly, Steffensmeier and Herbert (1999) demonstrated with official sentencing data that older judges were more likely to incarcerate offenders and impose longer sentence lengths. Myers and

Talarico (1987) completed an interactive analysis of judicial and defendant characteristics, and concluded that different combinations of defendant and case characteristics had various connections with older and younger judges; older judges were more likely to incarcerate drug offenders, and provided black defendants as well as most offense types with longer sentence lengths. In addition, older judges were most lenient with violent offenders as demonstrated by shorter sentences. Thus, even though the relationship has not been consistent, judge's age is an important characteristic to include, and interactive analysis might be best to uncover the connection to sentencing outcomes.

***Length of time on bench.*** The judge's length of time on the bench has mixed findings. Gibson (1978) examined sentencing case files for one county, and determined that the length of judgeship had no direct or indirect relationship with either sentencing outcome when legal variables were constant. Welch, Combs and Gruhl (1988) found when controlling for defendant and legal variables, judges with more experience imposed longer sentence lengths. Conversely, Steffensmeier and Herbert (1999) when controlling for legal variables concluded that more experienced judges were more lenient. Judges with longer time on the bench were less likely to incarcerate and gave shorter prison sentences. Judge's length of time on the bench should continue to be examined due to these limited mixed results and can be used as a contextual variable in interactive models.

***Prior occupation of judges.*** Judges who were former prosecutors tend to incarcerate more often, but conflicting findings exist as to the impact prosecutorial experience had upon sentence length. Myers and Talarico (1987) researched the role prior prosecutorial experience had on sentencing outcomes. Overall, former prosecutors were harsher than judges who were former defense attorneys, as they incarcerated both black

defendants and white defendants more often and gave longer prison sentences for all offense types. In addition, white defendants with more serious offenses were at the highest disadvantage when judges were former prosecutors. Similarly, Steffensmeier and Herbert (1999) found that prosecutorial experience created harsher sentences as judges with prosecutorial experience were more likely to incarcerate and assign longer sentences. Conversely, former prosecutors were found to be more lenient by Welch, Combs and Gruhl (1988). Judges with prosecutorial experience imposed shorter sentence lengths, and assigned more lenient sentence outcomes when defendant characteristics and legal variables were controlled. These limited mixed results demonstrate a need to continue examining how prior experiences of judges influence sentencing outcomes, and possibly include more than prosecutorial and defense attorney experience. As with the other judicial characteristics, prior occupation might be identified best as a contextual variable in interactive models.

**Organizational characteristics.** Organizational characteristics include specific community characteristics as well as court community organization. Community characteristics can be measured through standardized rates of urbanization, poverty, unemployment, and percentage of blacks. Court community organization pertains to the courtroom workgroup context. Literature can be separated between studies that solely examine community characteristics and those that examine community characteristics within the courtroom workgroup context. This section details the studies outside of the courtroom workgroup as a more detailed review of the courtroom workgroup is discussed in the following section.



In a review of past literature, Chiricos and Delone (1992) reviewed 44 studies about the impact of labor surpluses (i.e., unemployment rates) on prison admissions and sentence severity. Overall, high unemployment rates attributed for increases in prison admissions and to a lesser extent sentence severity when controlling for type of offense in both time series and cross-sectional analyses. In addition, Daly and Bordt (1995) analyzed 50 court datasets from published research articles about gender and sentencing outcomes, including an examination of the court context. It was concluded that sentencing outcomes were more favorable to women in urban courts, and less differences existed in sentencing outcomes in more rural areas.

Various studies have been completed in Pennsylvania with varying findings about the impact of county-level characteristics. One of the first studies, Lubitz, Kramer, and McClosky (1981, as cited in Kramer & Lubitz, 1985) found counties that were more urban (i.e., population density) had the lowest rates of incarceration. Conversely, Kramer and Lubitz (1985) concluded that the imposition of sentencing guidelines nullified the impact of urbanization upon incarceration rates. Kramer and Steffensmeier (1993) examined organizational county factors (i.e., percent of urban, black, and Republican) in Pennsylvania post-guideline implementation; no relationship existed between these county factors and incarceration, but the county's level of urbanization (negative relationship) and county's percentage of black residents (positive relationship) significantly influenced sentence length. Ulmer and Kramer (1996) conducted a study of Pennsylvania post-guideline implementation and the organizational context. Measures of county population, percent of black residents, and UCR crime rates were used to examine three counties (i.e., metro, rich, and southwest). All counties had varying levels of county

characteristics, the data supported that county characteristics significantly affected both sentencing decisions. Metro county, which had the highest population, a higher percentage of black population, and a higher crime index sentenced individuals less severely than both of the other counties. Hence, it is important to examine various counties to gain the ability of comparison in understanding the influence of county variables upon sentencing outcomes.

Outside of Pennsylvania, Helms and Jacobs (2002) measured county influence upon sentencing outcomes through political affiliation (i.e., percentage that voted Republican), percent black, urbanization, violent crime rates, and unemployment rates. This research demonstrated the need to use county level variables as determinants of sentencing outcomes because county variables reduced the influence of defendant characteristics upon sentencing lengths. In conservative counties (i.e., higher percentage of Republican votes), female defendants and white defendants had an advantage in sentencing outcomes; male defendants and black defendants received more terms of incarceration and longer sentence lengths. Counties with higher rates of violence assigned black defendants harsher sentencing outcomes. Defendants' age was associated directly with sentence outcomes as younger adults received harsher sentences regardless of county characteristics. Unemployment rates and the percentage of black residents did not have any bearing upon the connection of defendant characteristics to sentencing outcomes.

Even though organizational contexts have mixed influence on sentencing outcomes, this could be partially due to jurisdictional differences. Various researchers have agreed that when examining sentencing processes, especially the organizational

context, jurisdictions have distinct findings with respect to how variables influence sentencing outcomes. For instance, Dixon (1995) found results varied due to bureaucratization (i.e., central organization) of the courtrooms, but suggested other variables such as urbanization and percentage of black population may influence counties differently. Dixon suggested methods of Myers and Talarico (1987) and Myers (1988) might better describe the working environment of courtrooms in how variables interact to create judicial sentencing decisions, but measures of bureaucratization measure the organizational nature of the courtroom. Dixon (1995) conceptualized bureaucratization similar to Eisenstein's, Flemming's, and Nardulli's (Flemming, et al., 1992; Eisenstein, et al., 1988; Nardulli, et al., 1988) work, which is discussed later. Dixon assessed the type of cases the judge presided over (i.e., criminal, civil, or both) and the type of calendar used to schedule caseloads (i.e., individual, master). These studies all demonstrated that the courtroom community and workgroup contexts provided pivotal information about how judges decide sentences, and that jurisdictional differences must be examined.

Ulmer (1995, 1997) suggested that the level of acceptance by the judge of normed actions aid in determining the efficiency of trial processes, and encouraged courtroom workgroup members to work in a unified manner centered on informal norms created by social pasts. Social pasts and informal norms regulated sentencing outcomes and created various results in three Pennsylvanian counties (i.e., metro, rural, and southwest). Ulmer and Kramer (1998) also investigated guideline use in three Pennsylvanian counties to describe differences in organizational contexts and embeddedness. Embeddedness is the extent a professional network/culture accepts a formal rule (e.g., sentencing guidelines) and uses the formal rule to make decisions. Ulmer and Kramer concluded that higher

acceptance of sentencing guidelines by courtroom actors, created increased adherence to guidelines that resulted in increased explanatory power of legal variables. Taken together, these studies were supportive of the need to understand the courtroom workgroup along with other organizational variables.

***Courtroom workgroups.*** Judicial decisions are influenced by various legal and extralegal components within a social context. One of these components, yet to be addressed, is the courtroom workgroup. The courtroom workgroup includes the professional and non-professional members of the court trial processes such as judges, prosecutors, defense attorneys, court clerks, defendants, and victims (Spohn, 2009). This courtroom workgroup “provides the professional setting and the political arena for the craft of justice” to occur (Flemming, et. al., 1992, p. 10). Consequently, the courtroom cannot be understood fully through its laws and procedures (i.e., legal model) as it is better appreciated as a community that works within legal bonds (i.e., behavioral model) (Croyle, 1983; Eisenstein, et. al., 1988; Wice, 1985, 1991).

Courts can be described as communities because they are permanent organizations with shared goals, levels of cohesion, stability, and technology (e.g., information and resources) that yield specific outcomes or dispositions (Eisenstein, et. al., 1988; Eisenstein & Jacob, 1991). Courts have been explained as a “living organism” (Wice, 1985, p. 48) and akin to a “traditional village” (Wice, 1991, p. 221). These descriptions emphasize the nature of the networks and interdependences built between courtroom actors. Courts are a community because its processes require communication and interaction among courtroom workgroup members to achieve goals and objectives. The courtroom does not operate in mechanical isolation; rather courtroom workgroups

share a sense of togetherness and cohesion through is daily operations that foster informal social control mechanisms.

Courtroom workgroups exist due to their shared workplace and the interdependence among workgroup members (Eisenstein, et. al., 1988). Ulmer (1995, 1997) argued that courtroom social networks are social worlds created through interactions that occur during court processes (i.e., activities, causes) and court outcomes (i.e., effects). These processes and outcomes define the court institution whereby different activities create varied responses and needs per individual situations. As such, court processes include activities among courtroom workgroup members that progress a case from the charge decision to sentencing decision. What courtroom workgroups perceive as appropriate processes and outcomes vary from time and place, but this perception is embedded into the institution and individuals who interact within that institution (Croyle, 1983; Miceli & Cosgel, 1994). Hence, all courtrooms have a community developed through courtroom workgroups, but how the specific workgroup influences processes and outcomes might be jurisdictionally dependent.

The construction of communities or social worlds includes building social pasts or what Eisenstein, Flemming and Nardulli (1988) and Eisenstein and Jacob (1991) have termed processual orders. Processual orders are outcomes of past interactions that are foundations for communities, and allow individual members to define appropriate behaviors in situational contexts. These appropriate behaviors become normed events of the institutional structure. Normed events create informal control within the court community and dictate how formal rules are enforced. Processual orders and normed events are created within the court community through court decision processes,

adversarial proceedings, and negotiations. Consequently, courtroom workgroups develop informal rules about how to sentence individuals dependent upon situational contexts (i.e., relevant legal and extralegal characteristics). These informal rules are developed through communication and participation within the courtroom workgroup social networks. Subsequently, “sentences are collective decisions in which all participants have some influence” (Eisenstein & Jacobs, 1977, p. 267). Accordingly, judges will retain the most power over specific sentencing decisions, but courtroom workgroup members provide input during sentencing processes (Wice, 1991, 1995).

Ulmer (1997) proclaimed that sentencing decisions are situational tasks defined through informal regulations and shared social pasts as well as the legal codes and community needs. These tasks become normative actions often control courtroom proceedings (Eisenstein, et al., 1988; Flemming, et al., 1992; Ulmer, 1997). Going rates defined as standardized sentence terms developed with courtroom workgroup are an example of a normative action. Going rates depend upon the situation including type of case, case specifics, and defendant characteristics. Going rates may not be a particular sentence as much as a starting point for judges to use as a foundation for sentencing decisions. The use of going rates is acceptable in courtrooms as it provides an amiable working environment for judges and attorneys by reducing uncertainties of case specifics through reliance upon past practices (Flemming, et al., 1992; Levin, 1977; Wice, 1985, 1991). The use of going rates connects Albonetti’s (1991) conception of judicial decision-making to courtroom workgroups: when ambiguities arise, stereotypes, typologies, and past experiences aid in filling gaps to reach decisions efficiently. Hence, courtroom workgroups shape the direction and movement of court processes, including

sentencing decisions by addressing uncertainties and allowing judges to reach quicker conclusions without the need to understand every detail for each case. Courtroom workgroups create going rates to increase collegiality in sentencing decisions as well as to demonstrate acceptable actions for judges. As such, workgroups are essential components of sentencing decisions, and to understand workgroups is to know how sentencing decisions develop.

In connection to the courtroom workgroup, three critical research initiatives provide the conceptualization of courtroom workgroups for this dissertation. First, research completed by Eisenstein (Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) provided a conceptualization of courtroom workgroups. Second, Myers and Talarico (1987) demonstrated the need to examine all counties within a state to analyze jurisdictional differences among courtroom workgroups without a need to be concerned about varying definitions of crime and sentencing procedures. Third, Ulmer (1997) described the courtroom workgroup through a framework of symbolic interactionism. These researchers' endeavors and pertinence to this dissertation are discussed below.

*Foundation of the courtroom workgroup: Eisenstein's research.* Eisenstein and colleagues (Eisenstein, Nardulli, & Flemming, 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) examined the judicial sentencing decision process by interweaving individual, community, and organizational contexts into a single research design. These research findings are the basis for understanding courts as communities and social groups. A total of nine county trial courts in Illinois, Michigan, and Pennsylvania were examined. Courts were selected based upon logistical concerns

(e.g., in the home states of the researchers) as well as size of the court and the social, political, and geographical characteristics of the county. Data were collected through interviews of judges, prosecutors, and defense attorneys. Interviewees additionally completed surveys to identify social backgrounds, beliefs towards punishments, personality (i.e., tendency towards Machiavellianism), and local legal culture. To understand sentencing outcomes, case-level data (i.e., defendant characteristics, case outcomes, and identification of judge, prosecutor, and defense attorney) were collected for approximately 7,500 defendants.

Eisenstein and Jacob (1991, p. 20) presumed that the courtroom workgroup shares many aspects of a community. First, the courtroom workgroup can be a community as it exhibits authority relationships (i.e., presiding judge) that can be modified through the influence of relationships and connections to others in the group (i.e., prosecutor, defense attorney, and court clerk). Second, the courtroom community is held together by common goals of processing individuals through the court from the charging decision to sentencing decision. Third, each member of the courtroom workgroup has specialized roles to reach common goals (i.e., the prosecutor charges the defendant, the defense attorneys ensures due process rights of the defendant, and the judge sentences the defendant). Forth, to achieve these goals each member of the workgroup utilizes a variety of techniques suitable for individual and group roles. Fifth, these techniques and roles are supported by various tasks that each member must complete during the trial and sentencing processes. Finally, courtrooms are communities because they foster different degrees of stability and familiarity within and between its members. In summation,



courtroom workgroups are communities because members rely upon each other to achieve court objectives through interaction and communication.

With respect to the above community characteristics studied by Eisenstein and Jacob (1991), the first and second characteristics are the most salient to judicial decision-making. These community components suggested the judge holds the most authority in the courtroom, especially during sentencing processes; yet, other courtroom actors limit this authority through trial tasks and processes. For instance, a plea agreement that includes an agreed upon sentence restrains judicial discretion as when the judge accepts the plea, the requested sentence is assigned. Power further was limited in workgroups that cooperated with each other, and by attorneys who were perceived at being good at their job. These community processes aided the development of processual orders and normative actions that defined acceptable informal rules such as going rates.

The most relevant data from the research of Eisenstein (Eisenstein, et al., 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) is the conceptualization of the courtroom workgroup. This research agenda supported the necessity to examine different jurisdictions to grasp variations of sentencing decisions created by courtroom workgroup cultures. Eisenstein, Flemming, and Nardulli (1988) posited that courtroom workgroups have varying levels of influence over sentencing decisions due to five characteristics of potential cooperation or conflict. The first is that individual members of the court connection to the workgroup at varying levels. Not all judges, prosecutors, and defense attorneys place the same emphasis of the court community; some courts refuse to admit it is there while others fully embrace its existence. Second, courtroom workgroups hold various shared beliefs about how to treat

members and nonmembers of the court community. Some communities support each other in the workgroup by not initiating confrontation and being complacent with the status quo. Other courtroom workgroups will be more adversarial and challenging of decisions. Most courtroom workgroups, however, have some level of cooperation to proceed efficiently towards the necessary goals and objectives.

Third, courtroom workgroups differ with respect to shared beliefs about case processing. Most courtroom workgroups abide by going rates, but some workgroup members are not always as willing to adhere to this informal consensus of sentencing. Fourth, courtroom workgroups have a unique language of a shared culture used to differentiate members of the community. This includes various non-verbal and verbal codes that can express desires of individuals without full explanations of motives and needs. In most courtrooms, this places defendants and new attorneys as the outsider of the group, who must find ways to understand these customs. Finally, workgroups vary in their sense of tradition to aid understanding of current practices. Some workgroups eagerly explain experiences and customs of the workgroup during acculturation, while others did not.

The work of Eisenstein and colleagues (Eisenstein, et al., 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) collected information about legal and extralegal characteristics that influenced sentencing decisions within the courtroom workgroup context. Information about legal variables was collected in terms of current offense, seriousness of current offense, and criminal history (Nardulli, et al., 1988, p. 74). Seriousness of the current charge was measured by use and type of weapon, injury, amount of stolen/damaged goods, and/or amount of drugs involved. Criminal

history included prior arrests, convictions, and imprisonments as well as current parole/probation standing and number of other pending indictments. In connection to defendant characteristics, case files provided information about age, race, gender, occupation, and employment status. Sentencing outcomes were measured by type (i.e., incarceration or probation) and length. Judicial demographics were measured through age, gender, race, length of time on bench, political affiliation, and past legal experiences (i.e., prosecutor or defense attorney) (Nardulli, et al., 1988, p. 67). County characteristics were collected through census data of county population, median household income, percentage under poverty level, percentage of black county residents, percentage of county population residing in largest city, and percentage of county's black population residing in the largest city (Nardulli, et al., 1988, p. 58).

Eisenstein, Nardulli, and Flemming (1988, pp. 237-243) examined the influence county characteristics had upon sentencing outcomes through the context of the courtroom workgroup. The nine counties examined had similar proportions of violent, property, and drug offenses, but the degree to which incarceration, probation, and alternative sentences were assigned to defendants varied between county. The analysis included comparisons of current offense (i.e., armed robbery, burglary, and larceny) to demonstrate the vast differences between county terms of incarceration and sentence length decisions. Within-county variance of the sentencing outcome was explained most by legal characteristics. Eisenstein, Nardulli, and Flemming (1988) suggested this variance between counties supported the concept of going rates, and the influence that courtroom workgroups have upon going rates of individual counties. Legal characteristics might build the foundation for going rates, but extralegal variables modified the sentence

outcome. For instance, the more serious the current offense, the more likely the sentence formed a cluster of sentence terms and lengths as defined by going rates, but it was the extralegal variables that determined the specific sentence. Additionally, courtroom workgroup beliefs about punishment as well as personality of individual members influenced the sentence outcome. The race and gender of the defendant did not directly affect the sentence outcome for serious cases, but defendants who went to trial received more incarceration terms and longer sentence lengths than those who plead guilty.

Overall, the work of Eisenstein (Eisenstein, et al., 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) demonstrated the need to examine courtroom workgroups and cultures when researching sentencing outcomes and processes. Research should look at various jurisdictions as represented by counties. One limitation of their work is the lack of examining defendant characteristics as interactive measures; and only as direct effects in the courtroom workgroup context. This limitation was resolved in the studies of Myers and Talarico (1987) and Ulmer (1997) discussed below.

*Jurisdictional models: Myers and Talarico's research.* Myers and Talarico (1987) researched judicial sentencing decisions in Georgia at the trial court level through the context of courtrooms as social organizations. One aim of the research was to “offer an expansive contextual study of sentencing. Focusing on the county, court, and temporal contexts, [to] systematically explore the linkages between the social order and criminal sentencing” (p. 1). Myers and Talarico examined the traditional defendant, case, and judicial characteristics and how these variables interacted with the courtroom’s social context.

According to Myers and Talarico (1987), studying judicial decisions in one state allowed for the legal procedures of sentencing to be the same throughout all courts. Georgia was selected because its sentencing structures were not often studied, it did not have sentencing guidelines to limit judicial discretionary power, and it had a rich history of social diversity among its citizens. This research was conducted through a sample of case files of felons ( $n = 26,223$ ) convicted between January 1976 and June 1985 (Myers, & Talarico, 1987, p. 18). To supplement the quantitative data, Myers and Talarico observed court trial processes and interviewed various members of the courtroom workgroup from selected counties. The qualitative data gained information about punishment philosophies, sentencing process perceptions, and court and community characteristics perceived to impact sentencing decisions.

Myers and Talarico (1987) differentiated the incarceration decision from the length decision, as other means tend to mask interaction effects of defendant and judicial characteristics upon sentencing decisions. These different decision points should be separated as each represents a different level of harshness or seriousness of sentence outcomes. Prison decisions were divided between straight prison sentences (i.e., only sentenced to serve prison time) and split sentences (i.e., sentenced to serve prison term and extended supervision probation term) decisions.

With respect to legal characteristics, Myers and Talarico (1987) gathered information about type of crime (i.e., common-law violent, robbery, burglary, property theft/damage, and drugs), offense seriousness as determined by mid-range sentences, prior arrests, and prior incarceration. Defendant characteristics of gender, race (i.e., black, white), age (i.e., years old), and employment status (i.e., unemployed, employed) were

used as they were readily available in the case files and were found to have a connection to sentencing outcomes.

Extralegal characteristics included environment/community characteristics, defendant characteristics, and judicial characteristics. The community context of the county was measured through level of urbanization (i.e., urban, rural, and suburban). Urbanization was a matter of degree and was developed through the weighted linear composite of the Census figures of percent urban, population per square mile, and population size (Myers & Talarico, 1987, p. 25). In addition, economic conditions of the county were analyzed via income inequality, percentages of unemployment, and racial composition. Income inequality was measured as the difference between white residents and black residents mean income obtained through Census data. Unemployment measures were the percentage of unemployed persons as reported by Georgia's Department of Labor and were lagged by one year to understand the impact of unemployment upon sentencing. Racial composition was measured through the Census report of percentage black in the county. Curvilinearity was tested by creating two sets of dummy variables with small black populations (i.e., less than 25 percent) coded as 0, and sizable black minority (25 percent to 49 percent) and black majority (50 percent and over) coded as 1. Crime rate was measured through the crime index score lagged by one year to examine its causal impact upon sentencing decisions.

Judicial characteristic variables of gender, age, religion, and years as a prosecutor were developed to represent levels of judicial conservatism. These variables were selected as Myers and Talarico (1987) suggested these would influence judicial socialization more than other variables such as judicial attitudes, role orientations, and

responsiveness to community pressures as based upon their previous research.

Unfortunately, individual sentencing judges could not be identified for all cases, and only 24 percent ( $n = 6,618$ ) of cases were connected with the specific judge. For all other cases, average characteristics were used and determined through characteristics of judges holding a bench for that year. Myers and Talarico (1987) admitted to the imprecision this created but argued aggregation did not appear to systematically bias any results.

Myers and Talarico (1987) found that legal characteristics accounted for a larger proportion of variance in sentencing decisions than extralegal characteristics. Legal variables had the typical effect upon sentencing outcomes; defendants who were adjudicated for crimes of higher severity and longer criminal records were more likely to receive incarceration and longer sentences. This connection differed by type of crime; not all crimes had consistent sentencing outcomes. For example, defendants convicted of robbery were more likely to receive incarceration, but sentence lengths were more lenient than the average length for all offenses.

When extralegal variables were examined, legal variables were controlled. Community characteristics of urbanization, economic conditions, and county crime rate did not have strong direct effects on sentencing outcomes. Small negative effects were found with percentage of black residents and higher county unemployment rates to both sentencing outcomes. County-level crime rates did not have any direct impact upon sentencing outcomes. For defendant characteristics, black defendants were more likely to be incarcerated, and unemployed defendants received longer sentence lengths, but black and white defendants were assigned similar sentence lengths. Older defendants received more terms of incarceration and longer sentences, but prior record was not a control for

this model, which the authors stated as a potential reason for this finding. Judicial characteristics had little direct effect upon sentencing outcomes except for judicial conservatism and community involvement. Myers and Talarico (1987) suggested judicial characteristics do not have a strong direct correlation to sentencing outcomes, but still should be included in research.

To understand sentencing decisions, interactive effects of county, case, and defendant characteristics should be examined because additive models “mask important contextual effects” (Myers & Talarico, 1987, p. 171). Throughout this research, stronger and more significant relationships between sentencing outcomes and extralegal variables were found in interactive models that were not identified in additive regression models. Overall, the interactive models suggested that current offense and race are associated with both sentencing decisions. In interactive models, county characteristics of urbanization, economic conditions, and crime rate were related significantly to the incarceration decisions but not for all types of crimes. Crime rate was the only county-level variable that interacted with race and sentence length. Judicial characteristics of age, religion, and years as a prosecutor interacted with race of defendant in sentencing outcomes. Specifically, if the judge was older, Baptist, and spent more years as a prosecutor, the judge was more likely to sentence black defendants to a term of incarceration and longer sentence lengths. In addition, younger and female judges were more likely to assign black defendants to more lenient sentences than other types of judges. Similar to community variables, judicial characteristics had stronger interaction effects with certain offenses. Hence, interactive effects should be examined to determine more realistic predictors of sentencing outcomes.



Overall, Myers and Talarico (1987) demonstrated a need to examine different jurisdictions within a single state through the context of the courtroom workgroup. This method appeared to develop conclusions that were more concrete because state policies and procedures could be controlled. In fact, Eisenstein and colleagues (1988) suggested that some of their conclusions were weaker than anticipated because of their inability to control for between state differences. Another conclusion of Myers and Talarico (1987) was the necessity to examine legal and extralegal variables of sentencing decisions. Although legal variables exhibited more explanatory power, extralegal variables influenced the sentencing decisions of Georgia. It is important to identify interactive relationships in combination with additive models to determine the direct and indirect effects of variables, as true direct relationships may not be found when interactive effects exist.

A limitation of this study was the lack of theoretical integration with sentencing outcomes. Myers and Talarico (1987) suggest that their study was created to describe the sentencing practices of Georgia based upon court and community contexts through time. It was not their intention to develop a theoretical foundation for the study, but they used a conflict/consensus model approach to aid their conclusions. The conflict/consensus model suggests that the criminal justice system and its components (e.g., courts) were created through conflict or consensus of the general citizenry, and is a legal model. This approach is limited in its ability to explain the sentencing process especially through the courtroom and community contexts because it is too simplistic to provide a thorough conceptualization of the sentencing process. Eisenstein and Jacobs (1977) suggested that courtroom workgroups level of cooperation vary, and models such as those used by

Myers and Talarico (1987) are too static to depict the realistic nature of court processes. The conflict/consensus approach is more adept at explaining the courtroom workgroups influence upon sentencing outcomes, but not models of the sentencing process. Utilization of a conflict/consensus viewpoint ignores the internal and external community nature of courtrooms, and relies upon legal processes of sentencing decisions. When sentencing process research uses behavioralist or extralegal conceptualizations of sentencing, the study should not rely upon legal models of the criminal justice system because legal models do not have the ability to conceptualize or capture complex social phenomena such as sentencing processes (Eisenstein, et al. 1988; Flemming, et al., 1992; Frase, 1997).

*Connection of symbolic interactionism: Ulmer's research.* Ulmer (1997) advanced the symbolic interactionist work of Eisenstein (Eisenstein, et al., 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992) to examine the social context of judicial sentencing decisions in Pennsylvania. Pennsylvania was selected to comprehend judicial discretion and decision-making in the context of sentencing guidelines. Ulmer used the symbolic interactionist perspective of processual order theory to provide a working conception of social worlds in the court community. Processual order theory proposes that group dynamics can be understood by examining the duties, roles, social connections of the groups. Ulmer posited social networks in court communities developed processual orders, such as going rates, to effectively reach goals (e.g., sentencing outcomes). As such, processual order theory provided a foundation for describing the courtroom context partially to describe how sentencing decisions are created in the courtroom workgroup context.

Ulmer (1997) argued that although sentencing decisions are determined mostly by legal characteristics, extralegal characteristics have an effect upon sentencing outcomes, especially through interactive and indirect models. Models also should not rely upon aggregate variables of defendant, case, and judicial characteristics, and instead use individual-level measures. Legal characteristics of this study included a measure of current offense seriousness (i.e., offense gravity score of 1 to 14) and criminal history (i.e., prior record score of 0 to 5). Defendant characteristics of interest were age (i.e., adult years of age), race (i.e., dummy variable black and non-black), and gender (i.e., dummy variable of male and female). With respect to race, Ulmer (1997) suggested that a separate distinction of Hispanic is warranted in sentencing research, but the data from the Pennsylvania Commission on Sentencing did not allow for this type of specification.

Organizational characteristics of county level measures included urbanization, racial stratification, political affiliation, crime rate, and court community size. Urbanization was measured from the Census as the percent of county population residing in urban areas. Racial stratification was measured through Census data of the percentage black residents in the county. Political affiliation was the percentage of county voters registered as Republicans. The crime rate was the county index crime rate. With respect to the court context, court community size was a classification of how many judges worked in the county. Small courts contained seven judges or less, medium courts had eight to 15 judges, and large courts had 16 or more judges. These classifications were created by examining the number of cases per number of judges in each county. Each court community classification contained roughly the same proportion (i.e., 1/3) of

sample cases. Sentencing outcomes were measured through the incarceration decision and sentence length decision.

In connection to the quantitative analysis, Ulmer (1997) also completed an ethnographic analysis of three focus counties, metro, rich, and southwest. To provide a more complete analysis of the quantitative data, these three courts were observed to identify the processual and contextual aspects of sentencing decisions. In addition, interviews were completed with judges, prosecutors, public defenders, private attorneys, and probation officers. The interviews gathered information about case processing, courtroom workgroup activities, and relationships within the network and community.

The research of Ulmer (1997) supported a direct connection between legal and extralegal characteristics to sentencing outcomes. The legal variables of type of charge, offense gravity score, and prior record score explained the greatest proportion of variance in the decision to incarcerate, yet extralegal variables were significant. The variables of race, age, gender, and mode of conviction significantly influenced the incarceration decision; younger male black defendants who went to a jury trial received more terms of incarceration. With respect to the sentence length, legal variables explained more of the variance than extralegal characteristics with prior record being the highest explanatory factor of the direct effects of sentence length, but black defendants and those convicted by jury trials received the longest sentence lengths. Female defendants and defendant who were adjudicated in larger court communities were sentenced to the shortest sentence lengths.

Ulmer (1997) also examined interactive models that supported the importance of how legal and extralegal characteristics worked together to predict rates of incarceration

and sentence length. Legal characteristics explained more variance in both sentencing outcomes, but extralegal variables were statistically and substantively significant. Black defendants were more likely to receive terms of incarceration when convicted by a bench or jury trial than white defendants. Judges assigned less punitive sentences to female defendants; female defendants had fewer sentences of incarceration than male defendants when legal variables were kept constant. Criminal history had a curvilinear impact on the decision to incarcerate and length of sentence.

Prior record scores were associated positively with the chance of incarceration and longer sentence lengths, until a prior record score of three was reached. When the defendant had a serious prior record score (i.e., of three or more), prior record scores no longer increased the chance of incarceration or sentence length. Defendants who went to trial with higher prior record scores received more terms of incarceration and longer sentence lengths. Higher prior record scores also moderated effects of gender and race upon sentence length and the decision to incarcerate. Regardless of serious prior record score, younger defendants obtained longer sentence lengths. In sum, Ulmer (1997) found that outside of legal variables, mode of conviction, race, gender, and age substantially and significantly influenced both sentencing decisions.

Ulmer (1997) along with the other courtroom workgroup studies demonstrated a need to examine traditional variables of sentencing within the courtroom context. Individual, community, and organizational characteristics should be included in the analysis to develop a more realistic conception of the sentencing decision process. Ulmer suggested that interactive models along with additive models should be considered to

determine the direct and indirect effects of legal and extralegal characteristics on sentencing outcomes.

The processual order framework of symbolic interactionism aided to the understanding that the courtroom workgroup context contributed to the sentencing outcomes (Ulmer, 1997). Each of the three counties had varying levels of embeddedness and stability of the courtroom workgroup. The county with higher stability among its courtroom workgroup members was more apt to using going rates through an approach of consensus and cooperation. The two other counties with less stability more often used conflict and coalition processes to complete criminal trials.

Even though Ulmer (1997) applied a symbolic interactionist approach to his study, processual order theory did not fully capture the judicial decision-making context. Processual order theories only explore the organizational framework of decisions and not the individual judicial decision processes. In examining the sentencing process of judicial decision-making, the individual judge should be taken into consideration as the judge holds the power to develop and assign the decision. Processual order theory cannot fully account for how judicial socialization affects the formation of sentencing decisions because it only examines the current sentencing process and decision, not the complete social phenomenon behind the decision.

*Summary of courtroom workgroup literature.* The judicial decision-making processes are developed through legal, extralegal and social aspects of the case and courtroom workgroup. Past research demonstrated that the sentencing decision is a judicial power, but that the courtroom workgroup aids in its creation. An image of the social influence of the courtroom workgroup members was illustrated through the

courtroom research of Eisenstein and colleagues (Eisenstein, et al., 1982; Eisenstein, et al., 1988, Eisenstein & Jacob, 1977; Flemming, et al., 1992; Myers and Talarico, 1987; and Ulmer, 1997). Eisenstein and his colleagues depicted the purpose and use of a courtroom workgroup foundation in understanding sentencing decision. Myers and Talarico demonstrated that jurisdictional differences exist even within state boundaries, and appropriate means to capture the differences of courtroom workgroups. Ulmer provided a symbolic interactionist framework to capture how the courtroom workgroup affects the sentencing decision process.

This research, however, still contains gaps in understanding how and why the courtroom workgroup can be an influential force to the autonomous power held by judges in sentencing decisions. A theoretical framework of symbolic interactionism and situated identity theory is discussed below, but before this literature is presented, a brief understanding of the socialization process is warranted. The socialization process will provide foundational information about how the individual judge is rooted into the courtroom workgroup and why the courtroom workgroup affects sentencing decisions. Without developing the role of the individual judge in connection to the courtroom workgroup, the sentencing process cannot be developed, and the why and how of sentencing cannot be studied.

### **Socialization Process**

A basic explanation of socialization purports that “socialization of new members is the means by which a society perpetuates itself” (Gecas, 1981, p. 165). “Socialization refers to the process by which persons acquire the knowledge, skills, and dispositions that make them more or less able members of their society” (Brim & Wheeler, 1966, p. 3).

Socialization provides individuals with the norms, values, and beliefs of society to fulfill the expectations of social roles. Early conceptualizations of socialization were limited to childhood development and neglected the learning and role acquisition that occur beyond adolescence (Becker, 1968; Brim & Wheeler, 1966). Childhood socialization models overlook how various interactions, memberships, and roles individuals acquire throughout life create meaningful individual changes (Becker, 1968; Gecas, 1981).

Adult socialization builds on the foundation of earlier socialization; most changes that occur are associated with behaviors more than morals, values, and beliefs (Becker, 1968; Brim & Wheeler, 1966; Mitsch, Bush, & Simmons, 1981). The ideologies created during childhood are usually more static than the behaviors associated with them. For instance, Strauss (1959) presumed that socialization was a lifelong process where basic beliefs and ideologies of individuals remained, but behaviors were altered as the individual adapted to the new situational context. According to Becker (1968) and Mitsch, Bush, and Simmons (1981), behaviors change due to new role acculturation, as individuals gain new roles (e.g., new employment) their behaviors must shift to be supportive of the role's duties, objectives, and goals. Acculturation allows individuals to incorporate group rules into their individual life; their self changes in connection to the needs of the group. Subsequently, acculturation of new roles and ideals is paramount for adults to survive adulthood and be productive members of society.

Accordingly, occupational context becomes the most important socializing agent during adulthood, similar to that of parents and family during childhood (Brim & Wheeler, 1966; Gecas, 1981; Mitsch, et al., 1981). When individuals enter a new occupation, role acquisition and transition occur to allow the individual to gain an



understanding of what is and is not acceptable (Mitsch, et al., 1981). Lutfey and Mortimer (2000) suggested that occupational subculture allows individuals to learn the subculture of the work environment including definitions of success, attitudes towards others, and acceptable behaviors. Brim and Wheeler (1968) and Gecas (1981) proposed this socialization process is usually informal, and it develops identities and identifications that usually remain with the individual during the tenure of that profession. Moore (1985) supported that each occupation (e.g., judge, prosecutor, or defense attorney) holds particular role definitions and expectations that aid in the creation of self-identity. Roles create identity through comparisons of self to others bounded within situations and impacted by experiences of others. Hence, with transition to a new role, additional socialization is required for the individual to learn the nuances of that particular role. Although some behaviors and knowledge likely will aid the acculturation process, no two jobs are the same due to differing social situations of the workplace (Becker, 1966).

When judges transition from advocate to arbiter, they engage in formal and informal socialization experiences (Gaylin, 1974; Wice, 1991). This socialization process is imperative as past education and experiences do not prepare the individual to become a judge; the individual enters the profession untrained (Wice, 1991). Being a lawyer aids the judge in legal prowess, but not in understanding how the law should operate, how to be an objective observer of the law, or how to make crucial, life-changing decisions for others (e.g., the impact of sentencing decision upon defendants). Judges learn how to make these decisions through socialization and recruitment processes of becoming a judge (Levin, 1977; Ulmer 1997). Hence, without formal and informal socialization mechanisms individuals would be unable to develop the role of judge.

Socialization processes affect decisions and behaviors of those involved in the courtroom workgroup such as the judge, with the most important of socialization experiences resulting from daily career experiences and not outside factors such as formal education and training (Levin, 1977; Ulmer 1997). Wice (1991) presumed that judicial socialization processes taught judges how to behave, act, and think like a judge and may include attitude shifts (e.g., the importance of money, the importance of helping). Judges sometimes learn the directives of the bench through formalized training or an orientation; however, it often does not adequately address the problems and frustrations beholden to the bench. More often, judges learn how to judge through informal training from the courtroom workgroup once they are sitting on the bench and deciding cases (Ulmer, 1997).

This judicial socialization process is imperative in understanding how judges learn to make decisions, but often is overlooked in sentencing literature. Existing judicial socialization literature is focused on examining federal courts or appellate courts, and rarely has examined the trial court (see, for instance, Wice, 1991). When connected with the basic assumptions of adult socialization processes, socialization is required for judges to acquire their new role. Sentencing decisions, as behaviors or acts, are created within the context of courtrooms and courtroom workgroups and become influenced by norms. The socialization process demonstrates to new judges that communication and interaction with the courtroom workgroup is imperative in completing their daily tasks. The courtroom workgroup provides judges with a definition of what types of sentencing decisions are desirable actions. This conceptualization of judicial socialization is

important in determining the why of sentencing decisions that is refined further through the theoretical approach discussed below.

### **Theoretical Approach**

Generally, symbolic interactionism is the belief that identities are constructed socially through interactions with environments, situations, and other individuals (Stryker, 1980). Additionally, symbolic interactionism is the perspective that “social realities of the environment infuse the activity of the individual who is affected by the presence of others” (Alexander & Wiley, 1981, p. 269). In this manner, society is created through communication and interaction; individuals notice the actions of others and adhere to social norms as developed by individual and others’ perceptions (Stryker and Vryan, 2003). This interaction develops symbolic meaning rooted in the specific situational context. This allows humans to learn proper behavior, including norms and beliefs from observing how others interact in social worlds. Those involved with the situation can understand others by putting yourself in the roles of others to determine preferred behaviors and possible responses to actions. This ability of humans to learn through situations teaches individuals acceptable roles and allows for successful interactions.

According to Stryker (1980), symbolic interactionism is a unique approach to examining socialization mechanisms of all members of a society. Socialization can be understood through interpreting the processes of creating the self in various positions and social roles through behavior and actions. Similarly, Goffman (1959) presumed that through socialization and interaction individuals learn that self-definition is created partially through the perceptions of others. These perceptions are developed when

individuals observe behaviors or attributes expressed during actions and activities. In addition, Strauss (1959) suggested that identities are created through self-conceptions of how others will perceive social actions and these perceptions continually are created during interactions. Goffman (1971) suggested that experiences and interactions create definitions about appropriate social behavior as actions and decisions that will be viewed favorably by others. Individuals involved in group settings will learn to adapt to group behavior to be viewed as socially acceptable persons and to avoid social sanctions. Thus, symbolic interactionism is an appropriate foundation to understand how judges determine proper sentencing outcomes as judges engage with courtroom workgroup and community to learn acceptable sentencing practices during socialization.

The courtroom workgroup becomes a paramount contextual factor in understanding how and why sentencing decisions are created. Thus, the behavior of sentencing decisions cannot be examined solely through an individual viewpoint; rather a theoretical perspective providing group analysis will be more accurate to depict sentencing decision processes. The symbolic interactionist perspectives of expectation states and situated identity accurately portray group decision processes. According to the theoretical framework of expectation states, humans, as interactive creatures, develop self-conceptions through group activities where perceptions of others become imperative to how individuals behave and make decisions (Berger, Conner, & Fisek, 1974). Situated identity theory presumes that individuals act in certain, purposive manners that allow others to view them how they desire to be defined in that specific social act or situation (Alexander & Weil, 1969). The ideas of expectation states will provide a general foundation for understanding how and why courtroom workgroups influence judicial

sentencing decisions, whereas situated identity theory will be tested as a framework for explaining judicial sentencing decision processes and reasons for particular sentencing outcomes.

### **Expectation States Foundation**

According to Berger, Conner, and Fisek (1974), expectation states is a theoretical research enterprise associated with various theories and empirical research. It is concerned most with explaining how hierarchies in small task-oriented groups determine the types of procedures and processes used to achieve goals. Fisek, Berger and Norman (1991) suggested, “the task must be valued, and the actors must take each others’ behaviors into account in performing the task” (p. 122). Within expectation states, tasks include various behaviors occurring during group social interaction that typically involve decision-making (Berger, Cohen, & Zelditch, 1972). Expectation states frameworks presume that each individual member of a group has particular status roles and that these roles aid others in creating perceptions of the individual and self (Berger, et al., 1974). Status characteristic is defined as “a characteristic around which differences in cognitions and evaluations of individuals or social types of them to come to be organized,” such as race, gender, age, occupation, and education level (Berger, Fisek, Norman, & Zelditch, 1977, p.5). The perceptions affect which individuals are most and least influential over the final task product (e.g. decision). Accordingly, those with the highest status for the specific situation will have the most influence over the end decision and behavior.

Status meanings are developed through culturally accepted stereotypes about particular types of people. The meaning of status characteristics originates from social interaction and is embedded into social situations, which determine what statuses are

important in specific situations (Berger, et al., 1977). Correll and Ridgeway (2003, p.40) explained this cultural acceptance of the meanings of statuses: “individuals [possess] a basic vocabulary of cultural beliefs about the socially significant categories by which persons, settings, and events can be classified.” Thus, societal and group members will share similar preconceptions about particular individuals based upon stereotypes and typologies created through societal beliefs.

These meanings of statuses have been evaluated empirically. Balkwell and Berger (1996) examined gender as a status connected to behaviors. Individuals were placed into gender pairs to converse about particular behaviors. Gender identities were formed through acceptance of cultural norms about gender appropriate behaviors. For instance, males were more likely to take the lead when discussing male topics (e.g., automotive maintenance) than when speaking about female topics (e.g., sewing). Balkwell and Berger concluded that individuals acted according to their socially defined characteristics and more strongly accepted others who behaved in socially acceptable manners per their stereotypical status characteristics (e.g., males were viewed more favorably when they eagerly discussed automotive maintenance). In addition, Berger, Balkwell, Norman, and Smith (1992) researched what type of status was most likely to affect task situations. The research supported the presumption that status characteristics were not evaluated singularly outside of the context; rather, the social situation and individual combination of status characteristics determined the individual’s degree of importance during the specific task situation. As such, it is difficult to separate or describe the influence a particular status has upon a task or perception of the individual. Typically, those with the most socially acceptable status characteristics were more valued and accepted by others,

whereas those with less acceptable characteristics were more likely to be considered outsiders and received less favorable outcomes.

These types of power-prestige hierarchies of status roles remain static over time, especially in groups that continually meet for particular activities (Berger, Conner, Fisek, 1980). This stability is an inherent production of stable interactions, as individuals in the group will ultimately accept normed behaviors (Berger, et al., 1977). Subsequently, the group either positively or negatively values specific task alternatives. The more stable the group, the more salient tasks become connected to particular statuses. Individual members become labeled positively and negatively based upon their acceptance of group values as demonstrated through actions and decisions (Berger, et al., 1980). Thus, individual members of the group will be viewed favorably if they adhere to group definitions of acceptable behaviors.

Webster and Whitmeyer (1999) presumed that individual behaviors and choices are determined by how others' expectations interconnect with the development of personal expectations. It is presumed that others' expectations are maintained through group processes, yet the strength of others' expectations upon individual actions depend upon the group structure. Troyer and Younts (1997) analyzed the decision-making task to conclude that individuals rely upon others to make decisions, but who matters depends upon situational characteristics including ascription of leadership roles. When group conflicts between members exist between alternative decisions, others in the group influence the actor's decision more than personal opinions. Hence, cooperation, interaction, and opinions of others are of value during decision-making processes.

Particular to the task situation, Salancik and Pfeffer (1978) examined the role of uncertainty and secrecy in tasks involving the selection of teaching assistant candidates. Uncertainty was created through equally ranked objective characteristics (e.g., G.P.A., experience level), whereas certainty was created through unequal rankings where one individual became the (obvious) preferred candidate. In uncertain task situations, choices were based upon individual status characteristics (e.g., age, hobbies, and marital status); individuals who were most like the decision-maker received preferential treatment. Secrecy was placed into the tasks by telling the respondents that the decision would not be released publically. When information was not released publically, individual status characteristics became strong decisive factors.

The theoretical framework of expectation states connects to courtroom workgroup and sentencing decision literature. Judges should be more likely to follow normed sentencing structures (e.g., going rates) of the courtroom workgroup to maintain social acceptance and avoid social ostracism. Sentencing decisions will be a function of workgroup processes, but social status hierarchies should ensure the judge has the most decisive power over final sentencing outcomes than other workgroup members. Judges will be more likely to listen to courtroom workgroup members when the workgroup is a cohesive unit, and when members hold more characteristics that are common with the judge. More specifically to sentencing outcomes, sentencing decisions are created with uncertainties resolved through creation of stereotypes of defendant and case characteristics. Expectation states would presume that young minority uneducated defendants receive harsher sentencing outcomes because judges, and society, view this combination of status characteristics unfavorably. Judges may be more inclined to base



decisions upon extralegal characteristics because they do not have to provide rationales for their sentencing decisions and can remain secretive to the influential factors of the decision.

Expectation states does not provide information specific to how the courtroom workgroup aids in making decisions through socialization and daily activities. It simply argues that tasks are important group functions that are determined partially through status characteristics and is more relevant to sentencing outcomes. Situated identity theory, however, provides a more effective framework in conceptualizing how the courtroom workgroup aids in the decision-making process.

### **Situated Identity Theory**

Situated identity theory is an attribution perspective of symbolic interactionism, and as such presumes a person can be described and defined through their social behavior (Alexander & Wiley, 1981). Situated identity theory proposes individuals purposively act to create self-definitions through perceptions of how others will define the action through preconceived norms and schemata (Alexander & Rudd, 1981). Within social situations, multiple situated identities exist for each individual. Humans are mindful of others during interaction as all individuals involved in the situation or within social environments attribute social meanings to particular circumstances and situations of individuals. Consequently, the actor purposively selects behaviors to be defined in the desired manner, either socially desirable or undesirable (Alexander & Knight, 1971; Alexander & Lauderdale, 1977; Alexander & Rudd, 1981; Alexander & Wiley, 1981). Social situations can be explained through attributes of individuals involved in the situation. When an individual desires to be perceived positively by others within the social situation, he/she

will select an action that will be viewed positively (Alexander & Knight, 1971). For instance, if a judge desires to be viewed positively by courtroom workgroup actors through sentencing decisions, the judge will adhere to the norms of sentencing in that court. If the court is considered conservative and punitive, the judge will sentence in this manner for the others to view him/her desirably. A model of the theory is found in Appendix A.

With situated identity theory, it is important to designate the difference between behavior and conduct. Behavior is nothing more than action; it does not designate social meaning because the individual is in an isolated environment and usually alone; behavior occurs in private places when no one else is watching (Alexander & Sagatun, 1973; Alexander & Wiley, 1981). Behavior turns into conduct when the actor becomes aware of his/her surroundings and is in a social or a public environment. Conduct results in formation of a situated identity because the individual actor is cognizant of his/her surroundings; this infringes upon how the actor will behave. Individual behaviors are constrained by social situations differently than in private behavior; the context of the social situations creates environments where individuals are judged by all involved (Goffman, 1959). It is this identity formation where the individual becomes ingrained in and receptive to the social world that creates social meaning for the individual (Stryker, 1980). Social meaning connects the individuals to their situated identities.

Situated identity theory is formed along the assumption that any moment or situation can be defined in social world terminology and that similar perspectives create socially definable norms and behaviors (Alexander & Rudd, 1981). It focuses on normative action (i.e., those behaviors that have come to be defined socially) in

environments where choices between alternative actions are constrained by normative assumptions, expectations, and the perception of a socially desirable action (Alexander & Lauderdale, 1977; Alexander & Wiley, 1981). Finally, the more socially desirable the action is perceived as being, the more likely it will be selected among individuals who choose to behave according to these normative actions (Alexander & Knight, 1971). Individuals are able to engage in undesirable behaviors if that is how he/she wishes to be perceived.

Situated identity theory further assumes that behavior can be predicted based upon how an individual perceives the opinions of others (Alexander & Beggs, 1986; Alexander & Lauderdale, 1977; Alexander & Rudd, 1981, 1984; Alexander & Wiley, 1981). In addition, an individual learns favorable and unfavorable behavior by watching the behaviors and reactions of others. For example, if person  $x$  will act in a certain manner and person  $y$  knows how person  $x$  will behave, it is probable that person  $y$  will behave in accordance to person  $x$  in similar social situations. In other words, if a judge believes that the prosecutor and court clerk want the defendant to receive a sentence of incarceration, and if the judge wants to be perceived favorably by these individuals, the judge will sentence the defendant to incarceration.

Under the premise and extensions of social identity theory, the following can be assumed: (1) individuals are most likely to associate with those most similar to themselves; (2) individuals look to those they are most intimate with for shared beliefs, values, and assumptions of the social world; (3) individuals base their behavior upon schemata and preconceived social expectations; (4) when expectations are unknown in new situations, individuals are unlikely to know how to behave except by following

others in the particular situation; and (5) individuals will act in highest accordance to those relationships that exert the most social influence (Alexander & Knight, 1971; Alexander & Lauderdale, 1977; Alexander & Rudd, 1984; Alexander & Wiley, 1981; Touhey, 1974). These assumptions of situated identity theory connect appropriately to the courtroom workgroup, even though the theory has yet to be connected to any parts of the criminal justice system.

Based upon the above research about judicial decision-making and courtroom workgroups, it is reasonable to presume that the dimensions (i.e., choices) of sentencing decisions have an agreed upon value (e.g., going rate = normative actions) in the courtroom workgroup as required by situated identity theory (Alexander & Rudd, 1984). Ulmer (1997) applied a symbolic interactionist approach to examine the courtroom workgroup and judicial sentencing decisions. Ulmer connected the processual order framework to Eisenstein's (Eisenstein et al., 1988; Eisenstein & Jacob, 1977; Flemming, et al., 1992) research; this processual order framework is also the foundation for situated identity theory (Alexander & Rudd, 1981; Alexander & Wiley, 1981).

Research has suggested that each courtroom workgroup, normally defined and divided via county trial courts, develops its own set of norms utilized to evaluate behaviors (Eisenstein et al., 1988; Eisenstein & Jacob, 1977; Flemming, et al., 1992). These workgroups exist due to social pasts (Ulmer, 1997), and these social pasts are key in any social process theory such as situated identity theory (Couch, 1992) because social identities define current and future situations (Alexander & Rudd, 1981). In fact, Flemming, Nardulli, and Eisenstein (1992) suggested that courtroom actors "shared a common concern for their professional reputations because their reputations signaled to

others the kinds of persons with whom they were dealing” (p. 195). Miceli and Cosgel (1991) collaborated that the desire to preserve professional and personal reputations influences judicial decisions. Although normed behaviors may not be conscious, they aid in forming situated identities of courtroom workgroup members, including the judge. These normative structures may be beneficial in understanding judicial sentencing decision processes as the theory has potential to explain numerous types of behaviors in various social situations.

Situated identity theory will provide a theoretical framework in understanding the court community as a social network. Various studies in different jurisdictions have examined and explained the court process as one that contains social networks. It is assumed that these informal social ties manage workplace norms along with the formal rules, procedures, and guidelines to produce predictable conduct in relation to judicial sentencing decisions (Myers, 1988; Myers & Talarico, 1987; Eisenstein, et al., 1988; Eisenstein & Jacobs, 1977; Ulmer, 1997). Thus far, research has not examined exactly why behavioral norms exist in the courtroom outside of socialization. Situated identity theory allows the development of behavior norms to be examined in relation to the creation and operation of social networks in the courtroom workgroup (Alexander & Sagatun, 1973). This theory “is designed to measure the normative definitions of the situations and the factors underlying the behavioral expectations there” (Alexander & Lauderdale, 1977, p. 231). Most research stops at the basic level of understanding judicial sentencing decisions by only examining legal and extralegal characteristics connected to sentencing outcomes.

Situated identities can be presumed to be built throughout the course of daily work between judges, court administrators (e.g., court clerks), and attorneys (e.g., district attorneys and public defenders). Past research of social identity theory has suggested it is an appropriate means to focus on the conditions and reasons of why decisions are made, not only the outcome. It can be applied to any social setting and be precise in its predictions of how an individual will behave, especially when the situation revolves around a normative choice (Alexander & Knight, 1971; Alexander & Lauderdale, 1977; Alexander & Rudd, 1984; Alexander & Sagatun, 1973; Alexander & Wiley, 1981). Much of the past research of situated identity examined experiments of social outcomes created by the levels of control, power, and leadership inherent in the particular social context (Alexander & Sagatun, 1973). Judges and courtrooms are similar in these notions of power, control, and leadership, as judges retain authority and supremacy of the courtroom, similar to the researcher in an experiment. Hence, courtrooms and judicial decisions appropriately are studied with situated identity theory.

### **Wisconsin Sentencing in Circuit Courts**

Historically, Wisconsin's intermediate sentencing structure was based upon judicial discretion and individualization. Following trends across the United States, Wisconsin's sentencing practices became scrutinized in the 1970s and 1980s when a crisis of lenient sentencing policies were perceived by media, politicians, and citizens (Fontaine, 2005). Legislators responded by creating various research efforts to examine the leniency and disparities of Wisconsin sentencing outcomes. Initial research efforts placed sentencing legislation on hold as it failed to demonstrate sentencing disparities originated from extralegal characteristics. Later research, however, supported the

institution of guidelines developed through sentencing practices as constituents demonstrated that any level of disparities were not acceptable regardless of the cause. It was believed that judges would more easily accept sentencing policy changes if guidelines were created using past practices.

In 1984, temporary and advisory guidelines were accepted by the legislature to be developed further by an administrative (not legislative) board (Fontaine, 2005).

Wisconsin still was considered an indeterminate state as the offenses with guidelines were limited (i.e., sexual assault, robbery, and burglary) and their use by judges were voluntary. The first sentencing commission subsequently was created in Wisconsin with the directive to create permanent sentencing rules, and ensure guidelines were fair, equal, and just in the eyes of the legislature, judiciary, and public.

This first sentencing commission was to ensure that disparities did not enter the Wisconsin sentencing system through the creation of acceptable guidelines that allowed normal amounts of judicial discretion in sentencing decisions (Fontaine, 2005). A matrix of appropriate sentences was created based upon offense seriousness and criminal history of the defendant. The matrices provided possible prison and probation terms in months as well as information about the percentage of individuals who were sentenced to prison based upon past sentencing practices; if the percentage fell below 50 percent, judges were to assign defendants probation. Judicial discretion and power was limited; however, use of the matrix was voluntary and judges did not have to justify departures as the legislation and commission believed that extralegal characteristics did not influence sentencing decisions. The sentencing commission continued to collect information about judicial sentencing practices as well as maintain data and complete statistical analyses to

ensure disparities remained low in Wisconsin. This manner of guideline construction proved to be resource draining although necessary to appease judicial and legislative intents. The first sentencing commission was abolished due to state budgetary concerns.

Concurrent with the ending of the sentencing commission was the beginning of the drive towards determinate sentencing in Wisconsin (Fontaine, 2005). The early 1990s brought Wisconsin higher crime rates and a public focused upon the fear of crime due to media and political agendas. Ideologies counterbalanced between the need to reduce prison populations and the need to appear tough on crime. Additionally, the public, media, and political representatives became knowledgeable about the disparity between length of prison sentences assigned by judges and the actual time served by offenders. Proponents of determinate sentencing, specifically truth-in-sentencing, argued that longer prison terms would not only increase public safety, but also decrease budgetary concerns, as fewer offenders would be moving through the system. In 1994, truth-in-sentencing became a state policy agenda when then governor Tommy Thompson declared Wisconsin was to become tough on violent criminals by ensuring they served their total sentenced time behind bars.

Wisconsin officially adopted and began its determinate sentencing status with truth-in-sentencing in 1999 (Fontaine, 2005). Truth-in-sentencing was developed “to restore credibility and coherence to criminal sentencing and deliver a greater measure of public safety to our communities” (Annual Report 2004, p. 8). Additionally in 1999, the Wisconsin state legislature developed new temporary sentencing guidelines based upon recommendations and findings of the first sentencing commission. These temporary sentencing guidelines were to be used until a second sentencing commission could be



created to develop permanent guidelines. The second sentencing commission was formed in 2003 with the directives of creating advisory, presumptive guidelines that ensured equality, consistency, and fairness in the sentencing practices of Wisconsin while promoting public safety and cost effectiveness (Annual Report, 2004, 2005; Fontaine, 2005).

The new sentencing commission was to assure that truth-in-sentencing policies were effectively and efficiently established and implemented. According to Fontaine (2005), it was imperative that the criminal justice system's budget remained economically sound and that prison population growth was controlled. The commission developed guidelines with the aid of computer modeling techniques that projected the impact of sentences upon system costs and prison populations. Although the ability to control judicial discretion was a concern when creating the commission, the economics of the decision were just as important. Truth-in-sentencing created temporary guidelines based upon past practices, yet these needed to be tested to determine if they were politically feasible and had the intended consequences of lowering disparities and appeasing all interested parties.

The sentencing commission was directed to ensure the usefulness and productiveness of the sentencing guidelines. Accordingly, the commission collected sentencing data about the 11 felonies (Appendix B) that had the "greatest impact on state resources" (Annual Report, 2005, p. 13) from February 2005 to December 2007 with sentencing worksheets. These felonies were the only crimes using the temporary guidelines instituted through adoption of truth-in-sentencing policies. The worksheets included information about the important factors of sentences including current offense,

county of conviction, defendant characteristics (i.e., age, gender, race, and ethnicity), sentence type (i.e., probation or prison), sentence length, risk score and offense score. Sentencing courts voluntarily completed sentencing worksheets that were submitted to the commission and entered into a database.

Analyses were to be completed using the data to ensure disparities from extralegal characteristics were not found in sentencing outcomes. Some reports were developed including annual reports, semi-annual reports, and general findings of the impact of extralegal characteristics upon sentencing in Wisconsin. For instance, Oliver (2004, April) calculated the racial disparity ratio of Wisconsin imprisonment decisions of black and white defendants prior to truth-in-sentencing. During 1999, black defendants had a 20.2 percent higher chance of being incarcerated than white defendants. Oliver concluded that huge racial disparities were apparent in Wisconsin decisions to incarcerate during the 1990s, especially those defendants who were young and adjudicated for drug offenses. Mayrack (2007) examined Wisconsin sentencing outcomes after truth-in-sentencing to determine the influence of extralegal characteristics upon the incarceration and length decisions. Cases ( $n = 14,550$ ) were examined through the use of the public court reporting system, Wisconsin Circuit Court Consolidated Court Automation Programs (CCAP) for the convicted offenses of sexual assault of a child, sexual assault, robbery, burglary, and drug trafficking from January 2003 to October 2006. Analyses supported that race influenced the incarceration decision more significantly than the sentence length decision. Overall, when type of offense was controlled black defendants and Hispanic defendants received terms of incarceration more often than white defendants, but racial

disparities decreased with more serious offenses. No significant findings were reported for the sentence length decision.

Although the sentencing commission altered guidelines in 2005, the governor abolished the commission by removing it from the 2007-2009 budget. The commission became an unnecessary department especially since with the U.S. Supreme Court rulings suggesting the unconstitutionality of mandatory guidelines (Wisconsin Sentencing Commission, 2007, March 30). To date, guidelines are intact for the 11 felonies, but adherence to the guidelines is considered voluntary and sentencing courts no longer complete the worksheets.

### **Wisconsin Circuit Court and its Judiciary**

The Wisconsin Circuit Court is the trial court for the three-tiered court system. The circuit court is responsible for all civil and criminal proceedings in the state of Wisconsin (Wisconsin Court System – Circuit Court, 2009). Most of the Wisconsin counties are assigned one circuit court, except for six counties that are paired (Buffalo/Pepin, Florence/Forest, and Shawano/Menominee) to share a courthouse. The 72 counties are divided into ten districts (Appendix C), each with its own chief judge. Chief judges are responsible for the general administration of all circuit courts in the district as well as being a liaison for the state supreme court. Each circuit court has at least one judge, who are elected to a six-year term through a non-partisan election. Judges are to adhere to the rules and procedures of the courtroom and have ample resources available to meet this requirement. For instance, judges are required to complete 60 credits of continuing education during each term as well as have the option to attend yearly conferences and obtain written resources online (Wisconsin Court System – Continuing

Education, 2010). In addition, judges have courtroom staff including clerks and bailiffs to aid their daily duties.

### CHAPTER III: METHODOLOGY

Mears (1998) argued that one major limitation of sentencing research was the overreliance upon official data and sentencing outcomes without examining sentencing processes through methods other than secondary research. Sentencing process literature typically has examined courtroom workgroups through quantitative and qualitative methods. For instance, Myers (1988, Myers & Talarico, 1987) addressed the court community context through a quantitative survey that reached a larger sample of courtroom workgroup members along with interviewing of a random sample of willing respondents. Similarly, Ulmer (1995, 1997; Ulmer & Johnson, 2004) used a mixed method approach and suggested that symbolic interactionist examinations of judicial decisions require statistics to analyze court process outcomes and ethnography to analyze the courtroom workgroup and decision processes. Eisenstein and Jacob (1977) used a mixed method approach, but acknowledged that as court community research expanded, quantitative methods would be increasingly appropriate to develop the courtroom workgroup context.

The courtroom workgroup studies of Myers (1988, Myers & Talarico, 1987), Ulmer (1995, 1997), and Eisenstein and Jacob (1977), created a strong foundation to support the existence of courtroom workgroup and that sentence processes are developed through social interactions in a community setting. This dissertation examined judicial decisions in the context of the courtroom workgroup and situated identities. This study was less about the courtroom workgroup and more about how it correlated with situated identities to influence sentencing decisions. Thus, the conceptualization of the courtroom workgroup will rely upon past research in the determination of its existence as well as

information gathered from a survey. According to Eisenstein and Jacob (1977), a direct ethnographic examination of the courtroom workgroup is unwarranted, as research has demonstrated the existence of the workgroup. Alexander and Rudd (1984) suggested that situated identities appropriately are examined using surveys that gather data about decision-making and planned actions.

Subsequently, this study examined judicial decision-making through situated identities and the courtroom workgroup with self-administered surveys. Surveys included court case scenarios constructed from Wisconsin sentencing commission data to obtain sentencing outcomes. In addition, surveys gained information about courtroom workgroups, situated identities, and judicial characteristics. These surveys were administered to all Wisconsin circuit court judges ( $n = 246$ ) via traditional postal mail using the Dillman tailored design method (Dillman, 2007). This chapter provides the purpose of this study, research question, and hypotheses. It discusses the survey construction, sample selection, and survey administration. It concludes with the analytical procedures, human subject protections, and the strengths and limitations of the dissertation.

### **Purpose of this Study and Research Questions**

According to Levin (1977), prior studies have examined the outcome of sentencing decisions and a basic analysis of important variables, but what is lacking is the understanding of how decisions realistically are created. More than 20 years later, Mears (1998) had the same arguments; much is known about sentencing outcomes but not the process. The above literature review demonstrated that these concerns still are applicable; the gap of knowing how and why has not been closed. Understanding judicial decision

processes attached to sentencing provides a foundation adept at explaining sentencing outcomes. More than defendant and case characteristics must be examined; a fuller approach also considers sentencing decisions in the context of judicial and organizational characteristics. A simple analysis of characteristics that lead to sentencing outcomes will only develop an appreciation of significant variables, but not how these factors influence judicial decision-making. It is imperative to understand the why or the creation of sentencing decisions, not solely what variables affect the decision.

Socio-cultural influences help define the manner in which judges consider defendant characteristics and what characteristics develop particular decisions. Judges are embedded into a community and courtroom that create a social world through communication and interaction in observance of a direct goal – movement of defendants out of the court process. Prior research has focused on courtroom participants, but has failed to scrutinize how social networks impact sentencing decisions. According to courtroom workgroup research, these networks significantly influence judicial socialization and training mechanisms. Perspectives of symbolic interactionism including expectation states framework and situated identity theory further suggest that groups develop the foundation for acceptable behaviors and decisions. The informal social control mechanisms of groups foster a need to not only engage with the group, but also adhere to the normed behaviors.

Situated identity theory presumes that purposive action is based on the actor's belief of who will formulate value judgments, what the perception will be in relation to the level of social desirability, and whether the actor wants to be socially desirable or undesirable. Individuals do not limit their focus on those directly involved in the

situation, but all who might place value judgments upon the actor (e.g., judge) in relation to the action (e.g., sentencing decisions). Thus, as argued by Mears (1998), judicial decisions cannot be limited to courtroom organization and community structures; it must be expanded through sociologically-based examinations of decisions that include personal ties as well as community structures and professional ties.

This dissertation examined if judicial situated identity increases the contextual impact of judicial characteristics and courtroom workgroups as connected to sentencing outcomes. Instrumental to this study was the development of a foundation for examining sentencing processes through symbolic interactionism. Situated identity theory was the basis for this research as it provided an adequate framework for assessing individual decisions within group processes. The theory presumes that by researching individual attributes and perceptions of others, depictions of judicial decision processes are strengthened by using a more realistic foundation.

### **Research Question and Hypotheses**

Do situated identities contextualize the connection of judicial characteristics and courtroom workgroups to sentencing decisions in Wisconsin circuit courts?

H<sub>1</sub>: The judicial characteristics, including demographics and social factors, aid in understanding the differences between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions.

H<sub>2</sub>: The organizational characteristics, including variables about the outside community and court community organization would aid in understanding the differences between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions.



H<sub>3</sub>: The situated identities of judges will aid in the development of sentencing patterns in Wisconsin circuit courts between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions.

### **Self-Administered Mail Survey**

Previous courtroom workgroup research has suggested that quantitative surveys are an appropriate means to gather data about the judicial decision-making process (Eisenstein & Jacob 1977; Nobiling, Spohn, & Delone, 2006; Myers, 1988; Myers & Talarico, 1987; Ulmer, 1997). Surveys were selected as they allow the researcher to control the information provided to respondents as well as efficiently research larger samples (Creswell, 1994; Maxfield & Babbie, 2001). Self-administered mail surveys provide the respondent with more control over when they will complete the survey, and respondents may feel less coercion and reactivity from the researcher. As a limitation, traditional survey approaches can have difficulty in matching real-world multicollinearity present in social situations (Brewer & Hunter, 2006).

This concern can be remedied in part by using scenarios based upon real-world sentencing decisions. Scenarios were used by situated identity theorists because simulation methods can be controlled to limit spuriousness and other threats such as reactivity that often are present in more qualitative-based research (Alexander & Sagatun, 1973). Carefully crafted scenarios where respondents must choose between alternative behaviors create realistic situations where respondents must create appropriate situated identities. Alexander and Knight (1971, p. 75) argued that respondents will perceive the scenario as incomplete without creation of situated identities, as identities “quantifies the ‘meaning’ of situated activity and social action,” especially in normed events such as

group decisions. Subsequently, respondents should have created realistic situated identities upon reading scenarios that will have aided in the decision-making process.

Connected to sentencing decisions, Spohn (2009) suggested that scenarios could be effective tools to understand sentencing processes and judicial decisions. Scenarios are able to control case characteristics to ensure judges are making decisions about identical cases, and allow researchers to identify how judicial and organizational characteristics influence sentencing decisions. Clancy, Bartolomeo, Richardson, and Wellford (1973) used 16 scenarios through an experimental design to depict the sentencing decision process of federal court judges. The scenarios contained relevant case and defendant characteristics where judges were to provide the sentence for crimes of forgery and burglary. This was deemed a reliable method to examine the disparity of sentences between judges. They concluded that disparities existed in sentencing practices due to judicial, defendant, and legal characteristics as well as the rationale for imposing sentences (e.g., deterrence or incapacitation) and perception of case severity.

Likewise, Kapardis and Farrington (1981) studied magistrates' sentencing decisions through scenarios. The scenarios were based upon real case characteristics of the offenses of theft, assault, indecency with a boy under 16-years-old and unlawful intercourse with a girl under 16-years-old. Each scenario had constant elements and randomly manipulated characteristics to create an experimental design. Some judges decided the cases individually while others worked with a group of three to assign sentencing decisions. Sentencing outcomes varied per legal and extralegal factors, but of most importance, judges sentencing in groups assigned more severe sentences than those making individual judicial decisions. Although Spohn (2009) suggested that the cases

might not reflect reality because data can be drawn only from a limited number of sentencing scenarios unlike secondary data sources, Kapardis and Farrington (1981) compared their simulated sentences from scenarios to real sentencing data and the sentencing outcomes were similar. Thus, creating sentencing scenarios are created in a realistic manner using appropriate characteristics, is an effective method to obtain data about sentencing decisions and processes.

For this dissertation, self-administered mail surveys were used to gather data from Wisconsin circuit court judges about sentencing decisions within the context of situated identities and the courtroom workgroup. The survey included the use of realistic sentencing scenarios and sentencing decisions to understand sentencing outcomes in Wisconsin trial courts. In addition, the survey collected data about situated identities and the courtroom workgroup through closed-ended and open-ended questions. The following sections explain the processes of sample selection as well as survey construction and implementation.

### **Scenario and Survey Construction**

The survey is divided into four parts to gather data about sentencing decisions, situated identities, courtroom workgroups, and judicial characteristics. The first part included five scenarios to collect data about sentencing outcomes as well as open-ended questions to explore the how and why of sentencing decisions. The second part requested information to identify situated identity scales. The third part gathered information about the courtroom workgroup context in connection to the sentencing decision process. The fourth part collected information about relevant judicial characteristics.

**Part 1: Sentencing scenarios.** Part 1 of the survey contained six sentencing scenarios to measure the dependent variables (i.e., both sentencing outcomes). The sentences presented in the scenarios were created using data from the Wisconsin Sentencing Commission collected during February 2005 to November 2006. This dataset was obtained by contacting the Wisconsin Court System representative for sentencing information; an excel file with the sentencing data was received and placed into SPSS. The case files (n = 2927) included in this data are from 2002 to 2006 from most Wisconsin counties. Although this dataset was limited from the voluntary nature of completing and submitting sentencing worksheets to the commission, enough sentencing information was present to be representative of Wisconsin sentencing patterns.

To develop realistic sentencing scenarios, situations were created using legal and extralegal characteristics of sentencing decisions as defined by modal levels from sentencing data. Modes represent the most common element of a distribution (Vogt, 2005, p. 194), specifically the most prevalent assigned sentencing outcomes of the incarceration decision and sentence length decision. Theoretical underpinnings of situated identity theory support the use of modal sentences. Situated identity theory presumes that individuals make decisions based upon behavior they perceive others as viewing favorably. The courtroom workgroup provides a context for judges to recognize favorable sentencing outcomes. Wisconsin criminal statutes for the five offenses used in the scenarios specify acceptable sentencing ranges that judges are familiar with due to daily activities and sentencing worksheets. It is arguable that judges have an understanding of favorable sentence options per situational contexts. By controlling the situational context with modal scenarios, judges should be more likely to select the modal sentence category

per assumptions of situated identity theory. Modal values were selected as they represent favorable court decisions, akin to the conception of the going rate (Eisenstein, et al., 1988; Ulmer 1997).

Modal scenarios were created from the Wisconsin dataset by selecting modal defendant and case characteristics. First, descriptive statistics were used to determine the five most common offenses (i.e., burglary, forgery, armed robbery, possession with intent to deliver – cocaine, and sexual assault – 2<sup>nd</sup> degree). These offenses were included as they represent the crimes judges should be most familiar with for normed sentencing decisions. Second, the dataset was limited through case selection for the specific offense in the scenario. This was repeated for each separate crime type. Third, the modal category of incarceration or probation was determined for each offense type and the dataset was limited through that variable. Fourth, modal categories were determined for relevant defendant and case characteristics to build realistic sentencing situations.

In the survey, respondents read each scenario and provided anticipated sentencing outcomes. Respondents first assigned an incarceration decision of probation or incarceration (i.e., prison with extended supervision). Second, a skip pattern was used for the scenarios to have respondents assign defendants a probation or incarceration sentence term. The skip pattern forced respondents to assign only a probation term or prison with extended supervision term for each scenario. Upon selecting probation or prison, the respondent was then guided to provide a sentence length only for their corresponding response. Respondents wrote the probation or prison with extended supervision term length in months dispensed to the defendant in each scenario.

**Part 2: Situated identity construction.** Part 2 of the survey asked judges to describe members of the courtroom workgroup in their county. This section included four tasks based upon semantic differentials and research conducted about situated identity theory. Semantic differentials are a research tool used to study the meaning of words and expressions (Osgood, Suci, & Tannenbaum, 1964). Semantic differentials provide polar adjectives to be used in exemplifying a word or expression. Respondents mark a line towards the adjective that most closely represents how they view (i.e., the meaning of) the subject word. Traditionally, results are analyzed through factor analysis to determine the loading of the subject word in terms of evaluation (e.g., good – bad), potency (e.g., strong – weak), and activity (e.g., fast – slow) (Osgood & Suci, 1969). As demonstrated through studies examining various populations, semantic differentials are a reliable and valid method of measuring meaning (Snider & Osgood, 1969).

Semantic differentials have been used to examine identities in symbolic interactionist perspectives, including identity theories such as situated identity theory. In an examination of juvenile delinquency and identification of the self, Schwartz and Stryker (1970) used semantic differentials for respondents to create a personal self-concept. The factor analysis identified four categories entitled evaluation, potency, activity, and interpersonal qualities. Burke and Tully (1977) measured self-concept of gender role and identities. Results indicated instead of using evaluation, potency, and activity as concrete constructions of the adjective pairings, meanings of self-concept can be divided into different typologies. In this manner, attributes to address meanings and self-concepts aid in determining whether the subject possesses more of attribute A than attribute B, or what is termed A-ness or B-ness. Roles can then be compared to their

counter-roles (e.g., judges to attorneys) to determine which is more like attributes A or attributes B.

Burke (1980) expanded and refined the work of Burke and Tully (1970) by conceptualizing the role/identity as an image that is reflexive. Reflexivity allows the respondent to place the term into the situation and evaluate the term per an internal standard. Using semantic differentials, subject words were studied within a situation for the respondent to evaluate the term more realistically. This research was used to connect the role to a situation and to a specific behavior (e.g., sentencing decision) by examining the link of identity to performance (Burke & Reitzes, 1981). It moved outside of the typical evaluation-potency-activity use of semantic differentials, college students and their goals were examined through academic responsibility, intellectualism, sociability, and assertiveness. This research aided the understanding that behavior and identity can be examined in a reliable and valid manner to determine that “to be (some identity), one must act like (some identity)” (p. 90). This behavior was viewed and evaluated by the individual as well as by those involved within the situation. Thus, meaning can be attributed to understanding evaluations of behavior when placed inside a context such as sentencing decisions and members of the courtroom workgroup.

Specifically connected to identity theory, Riley and Burke (1995) examined identities during small group processes. This research suggested the process of building identities in small groups could be measured through examination of individual behaviors and contextual meanings with semantic differentials. Related to the assumptions of situated identity theory, behaviors of self and others will be interpreted and held constant throughout small group processes to create shared group meanings. These shared

meanings are for the identity and behavior. Within situated identity theory research, Alexander and Rudd (1984) used this technique to build attributes about test subjects to determine what type of individual subjects were most likely to imitate due to construction of favorable situated identities. Adjective poles were created to determine the reliability and validity of semantic differentials as compared to Machiavellianism scales. Respondents were required to mark each of the adjective pairs and then rank the top seven attributes. In addition, respondents rank ordered the top attributes that were used by the researchers to create the situated identity of the individual.

This list of attributes used by Alexander and Rudd (1984) were examined for their ability to explain members of the courtroom workgroup during sentencing decisions. Those that had face validity were placed into the part two of the survey. Alexander and Lauderdale (1977) suggested this method of selecting adjective pairs was appropriate as these attributes were used in examinations of situated identities and they represent the issues of the current study. Osgood, Suci, and Tannenbaum (1964) argued that researchers do not need to create and test their own lists of attributes if others already have engaged in this process.

Each of the four semantic differential tasks asks respondents to think about the average judge, prosecutor, defense attorney, court clerk, and probation officer in their county during sentencing decisions. According to Santee and Jackson (1982), it is important that the courtroom workgroup actor be placed into a situational context as this makes the polar adjectives easier to choose between because distinct situations create different attributional judgments. Additionally, the situation should not be too complex because with complex tasks, it is too difficult to disentangle what the respondent is



creating an opinion about, the subject word (i.e. courtroom workgroup member) or a situational characteristic.

To complete Part 2, respondents were required to write a slash on the line (i.e., visual analog) closest to the adjective they think best describes the courtroom workgroup actor. Respondents are encouraged to mark the lines with their first instincts as research has suggested that when assigning attributes to individuals the most accurate results occur without over-thinking responses (Osgood, Suci, & Tannenbaum, 1964). Of importance to this study is whether respondents view courtroom workgroup members favorably. Per situated identity theory, individuals selected normed behaviors when others were viewed favorably, and when the individual wants to be seen favorably. A favorable/unfavorable adjective pair was provided for respondents, and was used as a direct measure. In addition, the cooperation/competitive adjective pair determined the degree respondents perceived the courtroom workgroup members as working cooperatively during sentencing decisions. Ulmer (1997) found judges who worked in workgroups that were cooperative were more likely to decide sentences with going rates and normed behaviors. Situated identity also assumes that groups who work together were more likely to view each other as favorable and make decisions that other members will like (Touhey, 1974). These will be the only adjective pairs used for this dissertation; other adjective pairs are for future research.

**Part 3: Courtroom workgroup context.** Part 3 of the survey develops the courtroom workgroup context for each respondent. It includes measures of whom respondents obtain information from and whose opinions matter when making sentencing decisions. To understand whom respondents obtain information from to reach sentencing

decisions, respondents were provided with a list of individuals important to courtroom processes and wrote a slash on the line that represented how often they obtain information from each individual (i.e., continuum of never to always). The same list of individuals was used to identify whose opinions respondents' value when making sentencing decisions. This was measured by the respondent marking the line (i.e., continuum of not helpful to extremely helpful) to represent how helpful the courtroom workgroup member's opinion is when making a sentencing decision.

The remaining three questions of Part 3 capture specific information about the courtroom workgroup. In question three, respondents stated whether a planned sentence term (i.e., the sentence is decided by the judge, but not assigned to the adjudicated defendant) would change if different members of the workgroup did not agree with it. This captured a direct measure of the influence of the courtroom workgroup upon sentencing decisions to determine if a causal link between situated identity and sentencing outcomes exist. Question four asked judges to determine the level of stability in the courtroom workgroup members. Ulmer (1997) argued that increased stability of the workgroup members was connected to the use of going rates; higher levels of stability increase reliance upon going rates. In addition, expectation states theory proposes that stability creates more reliance upon the group's power divisions and increases cooperation among the group members (Berger, et al., 1974; Fisek et al., 1991). Also, situated identity theory presumes that stable groups will exert more influence over decisions through cooperation. Question five is a direct measure of whether going rates are presented in the courtroom to aid sentencing decisions.

**Part 4: Judicial and court characteristics.** Part 4 of the survey collected relevant information about judicial characteristics as connected to prior literature. Judicial age, sex, race/ethnicity, prior occupation, years served for the Wisconsin circuit court, socialization process, political orientation, and level of conservatism. It also gathered data about the bureaucratization and urbanization of the court. Most of these characteristics have been examined in the literature review and do not require additional explanation here with the exception of the construction of the conservatism scale, and the creation of court bureaucratization and county urbanization variables.

Court district was used in place of county-level variables. To protect the confidentiality of respondents, county was not collected; if county was known, it might be easier to extract judges with particular defendant characteristics. For instance, in smaller counties a minority judge or female judge may be identifiable. Most districts contain more than one county, which would make it more difficult to determine a specific respondent through judicial characteristics. Judges provided their district number (i.e., 1 to 10). Court district was to be used to identify counties of the district to create urbanization variables from the 2000 Census. This study was unable to create these variables as there was not enough variation in the district for it to be a useful variable; this is discussed in the findings section.

With respect to the construction of the conservatism scale, studies have examined the connection of political orientation to sentencing decisions under the guise that conservative judges assign different types of sentences (Spohn, 2009). This might be completed with errors, as political parties are different from social acceptance of ideas (Wilson, 1970). As such, conservatism can be understood as inflexible, rigid, and

authoritarian, whereas liberalism is more tolerant, progressive, and flexible to social changes. Myers and Talarico (1987) argued that conservatism was one of the most significant judicial characteristics to influence sentencing outcomes. Ulmer (1997) also suggested that conservative judges are more willing to cooperate with the courtroom workgroup and sentencing guidelines.

The conservatism scale in the survey is adapted from Henningham's (1996) 12-item scale of social conservatism. Henningham's scale is an updated and shortened version of Wilson and Paterson's (1970) conservatism scale. The original scales were created and tested for its reliability and validity mainly in Australia and United Kingdom with one known validity test in the United States in the 1960s (Wilson, 1970). Changes were made to the scale for this research to contemporize the social concern items to increase relevancy to current issues of the United States, which Wilson (1970) and Dollinger (2007) suggested may be necessary to ensure validity of the measure. Appendix D shows Henningham's original 12-item scale compared to the scale used in this research.

Instead of using the traditional response categories of yes, no, and maybe, maybe was removed. Wilson and Patterson (1970) stated they placed the maybe category "to help maintain rapport by averting the annoyance experienced by many respondents when dichotomous choice is demanded" (p. 6). They also declared the selected measures would provoke immediate response due to the familiar and controversial nature of the items. Most of the original research with this scale was completed through telephone interviews where rapport with respondents was instrumental to obtain data. Due to the nature of this sample (i.e., being non-partisan elected judges), it was important to force respondents to

select favor or non-favor of the social issue; without a dichotomous response respondents may be most inclined to be undecided, making the scale less useful.

### **Variables of Interest**

The dependent variables for this dissertation were incarceration term and sentence length decisions. Both of these sentencing outcomes were developed from respondents assigning defendants either terms of probation or prison with extended supervision, and then providing the length of the term in months. Inherent in this choice is a sense of social desirability as required to exist in studies of situated identity theory. Alexander and Lauderdale (1977) suggested that choices must differ based upon social desirability to replicate social life and the construction of situated identities. The opinion or situated identities of others do not need to be known explicitly for respondents to obtain impressions of what choice is favorable. Instead, the respondent simply must believe that others will view him/her favorably or unfavorably, depending upon the choice of action made.

The independent variables for this study can be divided into three categories of judicial characteristics, organizational context, and situated identity. Sentencing research traditionally included defendant and case characteristics as independent variables (Spohn, 2009); however, the purpose of this study is to gather information about sentencing processes in the context of situated identities and courtroom workgroups. As described above, defendant and case characteristics were in the scenarios, but kept constant to create modal sentencing situations. The defendant and case characteristics include legal and extralegal characteristics that research found to be important determinants of sentencing decisions and were described in the literature review.

Judicial characteristics are collected from part four of the survey. Items 16 to 22 measure age, sex, race/ethnicity, prior occupation, years served for the Wisconsin circuit court, and socialization process. Items 1 to 12 will be used to build the social conservatism scale with item 13 being a direct measure of conservatism.

Situated identities will be examined through direct measures from Part 1 and Part 2 of the survey. Part 1 provided data about whether professional courtroom workgroup members and non-professional workgroup members were perceived by the respondent to view the assigned sentencing term favorably. Part 2 of the survey developed a favorability scale, or if respondents viewed those in the courtroom workgroup including professional members and non-professional members as favorable.

The organizational context included the district and courtroom variables. The construction of the district and bureaucratization variables is discussed above. The courtroom workgroup was examined through items in Parts 2 and 3 of the survey. Part 2 created a cooperation attitude scale, or if respondents viewed their courtroom workgroup as cooperative or competitive. Part 3 developed two constructs about how judges used the courtroom workgroup. The first construct measured who judges relied upon to get information from in the courtroom workgroup. It included professional and non-professional courtroom workgroup members. This was turned into a scale that represents how often judges obtained information from members of the courtroom workgroup. The second scale measured how much judges valued the opinions of professional and non-professional courtroom workgroup members. In addition, a measure of courtroom workgroup stability was included. Number 4 of Part 3 of the survey will be used to create

a scale that symbolized the transitory nature of the courtroom workgroup; that is, whether there was high employment turnover among workgroup members.

### **Sample Selection**

Sentencing research supports the examination of a single state's sentencing process over collecting data about numerous states, especially when researching court processes and decision-making (Myers & Talarico, 1987; Spohn, 1990). By examining one state, concerns about differences in substantive law definitions, sentencing practices, and state appellate rulings are removed. It is important to examine numerous jurisdictions (i.e., counties or districts) within the state to detect explainable variance, as legal processes are controlled (Dixon, 1995; Eisenstein & Jacob, 1977; Helms & Jacobs, 2002; Myers & Talarico, 1987; Nobiling, et al., 1998; Ulmer, 1997; Ulmer & Kramer, 1996). Therefore, the sample for this survey included all Wisconsin Circuit Court (county level) criminal trial judges (N= 246). Judicial names and addresses were received from the officer of the state court director. This information was also available through a public directory from its website <http://www.wicourts.gov/contact/docs/circuit.pdf>.

All judges were administered surveys to ensure statistical power for data analysis. The survey had a possible 17 independent variables with the plan to employ logistical regression. When using Dillman's tailored design method, mailed surveys have a minimal non-response rate of 50%, but typical response rates are lower than 50% and electronic surveys have a much lower rate (Dillman, 2007; Fowler, 2002). With the Wisconsin Circuit Court judge population of 246, it was hoped that approximately 120 judges would respond. Sampling would have been an impractical use of resources as it increases bias and decreases generalizability as well as lowers the number of potential

respondents. Under these circumstances, a purposive sample of this whole population was appropriate (Bachman & Schutt, 2008).

### **Survey Administration**

All criminal circuit court judges of Wisconsin were mailed a survey. A mail survey was chosen because, as a whole, judges' availability and time is heavily constricted, so methods that require more specific time commitments (e.g., face-to-face interviews) or availability contacts (e.g., telephone surveys) would not be appropriate. Additionally, mail surveys allow a broader population to be contacted, as needed for statistical analysis. The mail survey does not come without limitations, including cost, post office delivery concerns, and lower response rates. These concerns are outweighed by the benefits gained in allowing respondents to complete surveys in a more convenient, discreet, and anonymous manner. In addition, the cost and delivery concerns were lowered by using an electronic survey option through Qualtrics as well as the traditional paper survey.

Dillman (2007) presented four sources of error often apparent in surveys: sampling error, coverage error, non-response error, and measurement error. Sampling error is what results from only including some members of the sampling frame into the sample and as a result those not in the sample are systematically different from those in the sample. Coverage error is a result of not conducting proper probability sampling techniques, which creates a sampling frame with unknown chances of selection. Both sampling and coverage error are not of concern with a purposive census sample.

Measurement error and non-response error must be considered. Measurement error is a result of poor question wording or an inability of respondents to understand the



meaning of the question and respond accurately. Misunderstanding is of low concern in a population of highly educated judges, assuming that questions are worded properly. Survey items were constructed using Dillman's (2007) tailored design method to improve question wording and comprehension. Additionally, time and caution were used when constructing scenarios to not infuriate or be dismissive of judicial authority. Finally, scenarios were built using information from sentencing worksheets to increase the familiarity with the terms presented for judges to make accurate and realistic sentencing decisions.

Non-response error is bias that results from individuals refusing to participate or failing to answer all survey items. This can be addressed by administering the survey with Dillman's (2007) tailored design method, which includes five required elements to achieve high response rates: (1) respondent-friendly questionnaire, (2) four contacts by first-class mail, with additional special contact, (3) return envelopes with first-class stamps, (4) personalization of correspondence, and (5) token prepaid financial incentives. The first four elements will be used. The fifth element of a financial incentive is not warranted because of the nature of the sample; judges would possibly see financial incentives as an insult and not as a benefit because of their socioeconomic and professional status. Dillman (2007) suggested that in place of financial incentives to demonstrate a true appreciation of the time and effort exerted by respondents who complete the survey. This sincere appreciation will be completed during the first four elements of Dillman's design.

A respondent-friendly questionnaire was constructed by making the survey user-friendly in a format that ensures credibility of the researcher. To reach this goal, the

survey instrument was in a booklet format with a professional front cover and plain back cover with plain, large font for readability. The front cover included the name of the researcher and Indiana University of Pennsylvania to promote respectability as well as a simple graphic to encourage interest. The back cover provided a place for comments and the mailing address in case of a lost return envelope.

The second element of engaging in five contacts will be achieved in the following manner with each contact being sent in two-week increments: The first contact (Appendix E) sent a pre-notice letter that included information about the survey and the hyperlink to the electronic survey on Qualtrics and a support letter from the University of Wisconsin - Remington Law Center. The second mailing (Appendix F) further explained the survey and again included the hyperlink to the electronic survey. The third mailing (Appendix G) included a cover letter, informed consent, paper survey, and a self-addressed stamped envelope for respondents to return the survey. The fourth mailing (Appendix H) was another letter urging respondents to fill out the survey as the research would be ending soon and included the hyperlink to the electronic survey. In addition, it asked respondents to contact the researcher if a new paper survey was needed. The final mailing (Appendix I) was a thank-you postcard that provided additional appreciation for completing the survey, but also acted as a reminder for those respondent who had not completed the survey.

The third element of limiting non-response error is placing first-class stamps on return envelopes instead of a business reply envelope. This improves the response rate because the monetary value of stamps invokes a social exchange relationship where the respondent is less likely to dismiss the survey (Dillman, 2007; Groves, Cialdini, &

Couper, 1992). Additionally, it shows that the researcher cared enough to individualize each return envelope and placed trust in the respondent that the survey would be returned and stamps would not be wasted.

The fourth element of Dillman's (2007) design is the personalization of correspondence. Correspondence was personalized by each envelop holding the working address and title of each Wisconsin circuit court judge. The letters were written with care to sound formal, not question judicial authority, and be understanding of the time constraints inherent with judicial duties. Each letter was dated with the date the correspondence was mailed. Lastly, first-class mail was used instead of third-class bulk mail. Following these design elements should not reduce non-response error while increasing the external validity of the research.

### **Analytical Procedures**

This dissertation examines the degree to which judicial situated identities aid in predicting sentencing outcomes, including the decisions to incarcerate and of sentence length. As such, this is an exploratory analysis of situated identity theory and its role in predicting sentencing outcomes, but causal interpretations can still be identified through the analysis. The research questions concerning whether situated identities contextualize the connection of judicial characteristics and courtroom workgroups to the sentence outcomes will be analyzed with the aid of the three hypotheses listed above.

For this study, 246 surveys were sent to the circuit court judges of Wisconsin via email and traditional mail. In total, 74 surveys were returned, 48 electronic surveys from Qualtrics and 26 paper surveys, for a response rate of 30.1%. The surveys were not all completed fully, which limits the usability of all respondents. With considerations of the

missing cases, there are approximately 50 surveys that can be used for all statistical operations. The five contacts were considered enough, and that the costs of additional mailings or contacts would not increase respondents substantially, as the fifth contact only returned two additional surveys.

Descriptive and bivariate statistics were used to draw conclusions about the hypotheses. After examining descriptive statistics, estimated correlation coefficients, and factor analyses of scales, it was planned to analyze the hypotheses through logistical regression with backward elimination. The small sample size of this study unfortunately limited the types of statistical analyses able to be used as the statistical power was not great enough to draw conclusions from tools such as logistical regression. For instance, rules dictate that a minimum of 50 cases are necessary for appropriate levels of statistical power in logistical regression with more needed with increased numbers of independent variables (Harrell, 2001; Hosmer and Lemeshow, 2000). Some preliminary analyses with bivariate logistical regression were completed with no statistical significance being found, with the assumption that the small sample size was to blame.

Bivariate analyses of independent t-tests and chi-square tests of independence were produced in combination with the descriptive statistics to determine the relationships of judicial characteristics, organizational characteristics, and situated identity factors to sentencing decisions. The following sections outline the analytical steps used to analyze the three hypotheses to determine if situated identity contextualizes sentencing decisions.

## **Variable Creation**

Completed surveys received from respondents were coded and entered into SPSS partially by Qualtrics and by hand for statistical analysis. The coding mechanisms for each of the 10 dependent variables are found in Appendix J. This table provides the scenario offense, decision type, coding scheme (with zero as the reference category), and modal sentence term of each variable. The dependent variable is created from the incarceration decision (i.e., probation or prison with extended supervision) and the sentence length (i.e., months) assigned for each scenario. Decisions within the modal category for the scenario were coded as 1, and all sentences outside of the modal sentence term were coded as 0. When entering sentence lengths into SPSS, some respondents wrote sentence ranges instead of a fixed number of months. For these ranges, the average was calculated and placed into SPSS.

The independent variables' coding schemes are displayed in Appendix K, which includes variable name, coding scheme, and the survey item(s) used to create each variable. All visual analogs (i.e., lines in Part 2 and 3) were measured with a ruler to the tenth of a centimeter. Care was taken to ensure that the lines were 10 centimeters prior to the surveys being copied; however, the copying process resulted in lines equaling 9.8 centimeters, which was discovered during measurement of the lines for coding purposes. To rectify this issue, mathematical alterations were completed with SPSS to match the Qualtrics measurements. In addition, Parts 2 and 3 were not measured in the same way in the Qualtrics and paper survey, but were altered mathematically in SPSS to develop the scales. Part 2 was measured on a seven-point scale; this was to be altered on the paper survey but was not. Thus, the measurement of the lines of the paper surveys were

transformed to be on a seven-point scale by multiplying all the paper responses by .714 ( $7/9.8=.714$ ). Part 3 was measured on a 0 to 100 scale. The responses from the paper surveys were altered in two steps. First, all numbers were multiplied by 10 when entering the responses into SPSS (e.g., 9.4 became 94). Second, all paper survey responses were multiplied by 1.02 to adjust for the incorrect line length ( $10/9.8=1.02$ ).

Judicial demographics of sex, race, age, occupation prior to be a circuit court judge, socialization, and length of time served as a circuit court judge are directly from Part 4 of the survey. The social conservatism scale was created using items 1 to 12 from Part 4 of the survey. The automatic coding by Qualtrics was followed in the paper surveys. Originally, yes responses were 1 and no responses were 2; this was recoded to create the social conservatism scale. The liberal measures (e.g., favoring interracial marriages and voluntary euthanasia) are reverse coded as 2 for yes and 1 for no. The conservative items (e.g., favoring Bible truth and death penalty) are coded 1 for yes and 2 for no. This means that lower values in the scale indicate conservatism. The social conservatism scale has a possible range of 12 to 24 with a midpoint of 18. Those values above 18 suggest respondents are more liberal and those values below 18 represent respondents that are more conservative. This scale's validity will be examined with the direct measure of conservative viewpoints assessed by item 13.

The organizational characteristics were measured through identification of the district and bureaucratization levels. It was planned that the district measures of population and percentage of black residents would be gathered from the 2000 Census, and entered into SPSS. This was not completed as there was not enough variation in the respondents' districts for this variable to be useful; this is discussed in more detail below.

Bureaucratization of the court was measured by type of cases the judge presides and judicial calendar ownership; items coded as 1 are measures suggesting the court organization has higher bureaucracy (i.e., centralization). Types of cases remained in the Qualtrics automatic coding where 1 equals only criminal cases and 3 equals both criminal and civil cases; no judges selected only civil cases. Court calendar represents the control judges have in making their own schedules; items are coded as individual ownership equals 1, master (i.e., others) ownership equals 2, and mixed ownership equals 3. All other independent variables are scales constructed from survey items.

For courtroom workgroup measures, two scales were created from how often judges receive information from workgroups. One scale is of professional members (i.e., judges, prosecutors, defense attorneys) with a possible range of 0 to 300, and the other scale includes non-professional members (i.e., court clerks, probation officers, victims, defendants, and constituents) with a possible range of 0 to 500. For both of these scales, the higher values represent more use of information from others. Similarly, two scales were created about the value placed in professional and non-professional opinions when respondents make sentencing decisions. The scales include a range of 0 to 300 (i.e., professional workgroup members) and 0 to 500 (i.e., non-professional workgroup members) with higher values representing respondents holding more value in workgroup opinions. The stability scale represents the static nature of professional workgroup members. The stability scale has a range of 0 to 12 with higher values representing more stability of the courtroom workgroup members.

With respect to the situated identity variables, two situated identity scales were developed from measures found in Part 1 of the survey. Following each scenario and

sentencing term, respondents were asked if they think others in the courtroom workgroup will view the sentencing term favorably or unfavorably. The professional situated identity scale has a range of 0 to 3 and the non-professional situated identity scale has a range of 0 to 5 with higher numbers suggesting the courtroom workgroup view the respondent's sentencing outcome in a favorable manner. Two scales were created from the adjective pairs, a cooperation scale and a favorability scale. The cooperation scale represents the degree to which judges view members of their courtroom group as cooperative. The scale was created from how the respondent views each of the professional courtroom workgroup members on the cooperative/competitive adjective pair. The scale has a range of 0 to 28 with the higher value symbolizing a cooperative workgroup. The favorability scale represents whether judges view members of their courtroom group favorably during sentencing decisions. The scale was created from how the respondent views each of the professional courtroom workgroup members on the favorable/unfavorable adjective pair. The scale has a range of 0 to 27 with higher values representing favorability.

To ensure the scales were made appropriately, factor analysis was used with the courtroom workgroup and situated identity scales, the results are discussed below. Factor analysis is used when items from surveys create scales to ensure items cluster together (DeVellis, 2003; Vogt, 2005). Specifically, factor analysis aided in determining if the division of professional and non-professional workgroup members was appropriate. Past research was suggestive that members in the courtroom workgroup (i.e., judges, prosecutors, defense attorneys) are weighed similarly and are distinct to those outside of the official courtroom workgroup (i.e., victims, defendants, and constituents) (Eisenstein et al., 1988; Myers & Talarico, 1988; Ulmer, 1997). Symbolic interactionist and



expectation states frameworks posited that insiders and outsiders of the group are treated differently; outsiders are often negated and treated negatively (Berger, et al., 1992; Stryker & Vryan, 2003). Courtroom workgroup research, however, has not provided input on where probation officers and court clerks should be placed in context of the courtroom workgroup. Thus, results from factor analysis will be used along with prior research and theoretical underpinnings to determine the best means of scale creation.

In addition to factor analysis, the internal validity of the scales will be assessed with Cronbach's alpha. Internal validity or consistency "is concerned with the homogeneity of the items within a scale" (DeVellis, 2003, p. 27). Cronbach's alpha measures the likeness of items in a scale to determine the degree to which the items are measuring the same idea, and ranges in value of 0 to 1 (Vogt, 2005). The closer the alpha is to one, the higher likelihood the scale is measuring one construct, and the less likely the scale has random variance from spuriousness. Per DeVellis (2003, p. 137), factor analysis should be completed prior to Cronbach's alpha to determine that the scale holds one construct, Cronbach's alpha then can demonstrate the scale's level of cohesion. Vogt (2005) suggested that a value above .70 is reflective of a good scale. Similarly, DeVellis (2003, p. 95) recommended the following scale for appropriate alpha levels: "below .60, unacceptable; between .60 and .65, undesirable; between .65 and .70, minimally acceptable; between .70 and .80, respectable; between .80 and .90, very good; much above .90, one should consider shortening the scale."

### **Univariate Statistics**

Following data entry into SPSS and analyses of scales, descriptive statistics were computed to examine each variable. Descriptive statistics are analytical "procedures for

summarizing, organizing, graphing, and, in general, describing quantitative information” (Vogt, 2005, p. 87). Descriptive statistics provide key information about individual variables, including measures of central tendency and dispersion as well as frequency tables (Lewis-Beck, 1980). These descriptive statistics provided a general understanding of the dependent and independent variables.

Correlation coefficients were computed between all independent variables to ensure variables are not strongly related. According to Vogt (2005, p. 64), correlation coefficients signify the degree to which variables are associated or vary together and range from -1.0 to 1.0. Negative and positive one represent a perfect correlation between two variables with zero suggesting no relationship exists between the variables. A strong correlation exists at  $\pm 0.70$  and a high correlation is  $\pm 0.90$ . Collinearity is a concern because regression equations assume that all independent variables vary independently of each other. When collinearity exists between two variables, both independent variables cannot be placed into regression equations together, as it violates the assumption of non-collinearity (Menard, 2002). Correlation results will be used to ensure all variables can be placed appropriately into logistical regression equations.

### **Bivariate Statistics**

Two types of bivariate statistics were used to determine the relationships between the independent and dependent variables. First, independent t-tests were utilized to understand the connections between the independent variables measured with interval or ratio level data (e.g., age, time as judge, stability, cooperation scale). Independent t-tests are useful for this sample as there is no population information that exists about judges, courtroom workgroups, situated identities, and sentencing decisions, the dependent

variable was divided among two groups or categories (i.e., modal and non-modal), and there were no matched cases among the two groups (Bachman & Paternoster, 2004).

Independent t-tests examine the differences between the means of the independent variables within each of the categorical variables to determine if the difference between the means is statistically significant.

This is determined by examining the  $t_{\text{critical}}$  and  $t_{\text{obtained}}$  values; if the  $t_{\text{obtained}}$  is greater than or equal to (+)  $t_{\text{critical}}$  or if  $t_{\text{obtained}}$  is less than or equal to (-)  $t_{\text{critical}}$ , the null hypothesis can be rejected. The  $t_{\text{critical}}$  value is used with smaller samples that are less than 100 and is found in the t-distribution table (Bachman & Paternoster, 2004, p. 725) by determining the level of significance (typically set at .05 with a two-tailed test). The  $t_{\text{obtained}}$  value is determined by dividing the difference of the two sample means by the standard error of the difference of the sample means when the population error in the groups is assumed to be equal. The equation of  $t_{\text{obtained}}$  equals  $(\bar{x}_1 - \bar{x}_2) / \hat{\sigma}(\bar{x}_1 - \bar{x}_2)$ . Where

$$\hat{\sigma}(\bar{x}_1 - \bar{x}_2) = \sqrt{\frac{(n_1 - 1)s_1^2 + (n_2 - 1)s_2^2}{n_1 + n_2 - 2}} \sqrt{\frac{n_1 + n_2}{n_1 n_2}} \text{ and } n = \text{the number of cases in each}$$

variable and  $s$  = the standard error of each case. The null hypothesis states that the difference between the means is due to sampling error and not real differences in the population. When the null hypothesis is rejected, it suggests that the difference in the means between the categories is due to real differences of the variables in the population, and that the difference is statistically significant. SPSS was used to complete the independent t-tests.

The second bivariate statistic used to understand the connections between the variables was the chi-square test of independence. According to Bachman and Paternoster

(2004), the chi-square test of independence determines if the independent and dependent variables are connected and, if so, how strong the relationship is between the variables. Chi-square tests of independence are appropriate when independent variables are categorical (e.g., individual and non-individual calendar or experience as a prosecutor or no experience as a prosecutor). When using chi-square ( $\chi^2$ ) for hypothesis testing, a null hypothesis is created stating that the variables are independent or that the variables do not influence each other; similar to the independent t-test, correlation or causation is not tested, but whether a relationship exists between the variables is. The null hypothesis is rejected when the  $\chi^2_{\text{obtained}}$  is greater than the  $\chi^2_{\text{critical}}$ . The critical value is found on a table with the degrees of freedom and level of significance, typically set at .05 (Bachman & Paternoster, 2004, p. 726). Degrees of freedom are determined by the number of rows in a contingency table (1) multiplied by the number of columns in a contingency table – 1; in a typical 2x2 contingency table, as used here, the degree of freedom equals 1.

To create chi-square tests of independence, SPSS was used to make the contingency tables and to find the  $\chi^2_{\text{obtained}}$ . The  $\chi^2_{\text{obtained}}$  represents the difference between the observed cell frequencies and the expected cell frequencies of the true null hypothesis or what values would be expected if no relationship exists between the variables. When the obtained value is less than the critical value, it is understood that no difference exists between the values and that any difference in the values is due to sampling error and not real differences in the population. When the null hypothesis is rejected, the variables are assumed to be dependent or that a relationship exists between the variables. When this statistical significant relationship is found, the strength of the relationships is found with the phi coefficient ( $\Phi$ ). The phi coefficient only needs to be

determined when a statistically significant relationship is found between variables. The phi coefficient is computed by finding the square root of  $\chi^2$  divided by n or  $\sqrt{\frac{\chi^2}{n}}$  where  $\chi^2$  equals the  $\chi^2_{\text{obtained}}$  and n equals the sample size. According to Bachman and Paternoster (2004, p. 345) the phi coefficient ranges from 0 to 1 with higher values representing stronger connections; the strength of the connection is as follows: weak 0 to .29; moderate .3 to .59, and strong .60 to 1.00.

### **Human Subjects Protection**

Judges as a population are well educated and in higher ranks of social economic status; thus, are not considered disadvantaged populations who could be easily persuaded or limited in basic human rights. The survey requested hypothetical information regarding sentencing decisions and respondent perceptions of courtroom workgroup members. The scenarios, in themselves, do not present risk more than minimal harm, especially since the scenarios were created from realistic data to aid the sentencing decisions and not being used to construct variables. This study examined the judicial sentencing process outside of how defendant characteristics affected sentencing outcomes. To protect judges, the survey was anonymous and voluntary; this was outlined to judges in all correspondence and in the informed consent. The research, also, does not have the ability to connect individual judges to the survey. To reduce costs, judges who completed the electronic survey were asked to provide their name in a separate electronic file that could not be connected to their survey response; this was voluntary and judges had the option to opt out from providing their name. Demographic information was used solely as aggregated information, and the research did not attempt to use data to identify

individual judges. Hence, no ethical concerns are identified due to the nature of the population and research.

### **Strengths and Limitations of the Study**

All research comes with its strengths and limitations. Of special importance are those strengths and limitations that connect to the reliability and validity of the instruments, measurements, and findings of the study. This section will detail how content validity, convergent validity, construct validity, reliability, and external validity connect to this proposed study.

In survey research, content validity is of utmost importance; it ensures that your survey is accurately representing the variables of interest (Vogt, 2005, p. 59). With respect to the dependent variables of incarceration decision and sentence lengths, content validity has been addressed through the considerable time and effort used in creating scenarios that accurately reflected case situations. The scenarios were developed after an extensive examination of prior research and from modal court case information from Wisconsin sentencing data. The independent variables, however, provide some limitations as to the strength of the content validity. The judicial characteristics are not of concern, as these are direct measures provided by respondents. The measures of the courtroom workgroup and situated identity variables are of concern, as these measures are original to this study. The content validity of these measures rests upon theoretical foundations and literature review to provide support that the survey is appropriately measuring these concepts. Vogt (2005) suggested that content validity can be examined through factor analysis, which was used to determine the appropriateness of the courtroom workgroup and situated identity scales, and is discussed below.

Another means of addressing the strength of a survey is through convergent validity. Convergent validity allows the research to examine current research against other measures to ensure the survey is measuring variables accurately (Carmines & Zeller, 1979). The dependent variables are not a concern with respect to convergent validity as they are direct measures of sentencing outcomes. Of concern, are the independent variables relating to the courtroom workgroup and situated identities. Carmines and Zeller (1979), however, suggested that convergent validity is difficult to assess when variables are of an abstract nature (as these two variables), and that content and construct validity are more appropriate ways to judge the validity of the measurement. Construct validity will be examined during and after the data analysis to ensure that the empirical results match the theoretical constructs. This is a limited measure of construct validity because it must be built over time with repeated use of the measure, and since this is the first time situated identity has been used in the courtroom, context this will be considered a limitation.

A strength of the survey is that scenarios are advantageous to collect information regarding attitudes and intentions to increase the reliability of the responses. A more simplified survey without scenarios would not provide judges with a context and would be unable to address complexities of decision-making (Mears, 1998). Without developing a realistic context for judges to decide sentencing outcomes, the survey, as best, would be reliable, but not intrinsically valid (Carmines & Zeller, 1979). The strength of scenarios gathering data about real behaviors is a minor concern. Using scenarios does not provide actual sentencing outcomes and practices of judges – it can only tell the researcher what sentencing term a judge thinks he/she will assign the defendant in each scenario. Thus,

this intention must be inferred as a realistic behavior. Research connected to intentions has suggested that although the link between attitudes and intention is stronger than the link between attitude and behavior, intention is an appropriate proxy of real behavior (Ajzen, 1985; Kim & Hunter, 1993; Liker, 1982; Rossi & Anderson, 1982; Schifter & Ajzen, 1985). Respondents will be familiar with the type of sentencing information provided in the scenarios as they use it on a regular basis to assign sentence terms to defendants. Thus, hypothetical scenarios are an appropriate and advantageous means to obtain judicial sentencing practices by inferring intentions to actual behaviors.

A last strength is the external validity of the study, or generalizability. External validity refers to the ability of research findings to be inferred to the population of interest (Vogt, 2005, p 114). This research can be generalized to the specific population of interest of Wisconsin trial court judges. The survey response rate does allow the information to be generalized to Wisconsin trial court judges, especially since all judges were included in the sample population. Bachman and Schutt (2008) posited that in a census sample when the whole population is surveyed, generalizability is increased because sampling can introduce systematic bias. The findings and conclusions cannot be used to understand sentencing practices of judges in other states or at other levels. The research is limited to Wisconsin circuit court judges because each state trial court has independent sentencing structures and informal sentencing practices. As discussed in the literature review, it is important to examine jurisdiction as individual entities to gain knowledge about nuances of the sentencing process. Consequently, this limitation is of minor concern as this project is exploratory. One of its main purposes is to determine if situated identities can aid in the explanation of sentencing outcomes and processes. The



findings discussed below are supportive of the influence of situated identities upon sentencing outcomes; however, to expand the situated identity approach of sentencing processes additional research must be completed with other methodologies and in other jurisdictions.

## CHAPTER IV: FINDINGS

This chapter details the findings and results of the completed research. It includes information about the univariate and bivariate statistics that were employed to develop an understanding of how judicial characteristics, courtroom workgroup characteristics and situated identity factors impact sentencing decisions in the Wisconsin circuit court.

### **Univariate Statistics**

This section discusses the descriptive statistics of the main variables including judicial characteristics, courtroom workgroup characteristics, and situated identity factors. It provides the means, medians, modes, standard deviations, and ranges, when applicable, and suggests the meaning and importance of these variables in connection to the hypotheses and research questions.

### **Judicial Characteristics**

Judicial characteristics provide a depiction of respondent demographics, levels of social conservatism, prior occupation, and judicial socialization. Many of these variables have low variance and will not be examined beyond descriptive statistics. These similarities among judges have been a concern and inhibition in prior research to determine how judicial characteristics influence sentencing decisions.

Judicial demographics paint a picture of judges looking quite similar in physical and social qualities; Appendix L provides detailed information about these characteristics. Respondents on average were males ( $n = 45$ , 85%), Caucasian ( $n = 50$ ), and aged in their mid to late 50's. In fact, only eight respondents were female judges, and one was an African American with no other minority race/ethnicity represented. The age range for the sample was 38 to 68 years with 25% aged 50 years or lower and 61 years or

higher. Respondents have spent approximately 10 years, on average, as a circuit court judge, with a range of 0 to 35 years with the first quartile at three years, the second quartile at 10 years, and the third quartile at 16 years.

**Social conservatism measures.** There are two ways to develop the level of social conservatism of respondents in the sample, a direct measure from the survey and a scale created from items in the survey. Information about the direct measure and social conservatism scale is presented in Appendix L. The direct measure of conservatism asked judges to provide whether they viewed themselves as conservative or liberal.

Respondents identified themselves more with the liberal viewpoint ( $n = 31$ , 70%) than the conservative measure ( $n = 16$ , 30%). The conservatism scale was created with items that asked respondents to identify their favorable attitudes towards different social viewpoints (e.g., death penalty and abortion). The items were coded with lower values indicating conservatism. Cronbach's alpha was at .744 suggesting the scale has strong internal reliability, and the items are measuring the same construct. This alpha is similar to Henningham's (1995) social conservatism scale, which had an alpha of .74. With respect to respondents, 72.3% ( $n = 39$ ) were above the midpoint of 18, supporting a liberal viewpoint of judges. When compared with the direct measure of conservatism, this scale is reliable and valid at measuring the level of social conservatism with this sample.

**Prior employment experience.** The survey asked respondents to report work experience prior to becoming a Wisconsin circuit court judge. Appendix M details the descriptive statistics of prior employment experience. These responses were not mutually exclusive as some judges held more than one type of occupation, and 21 responses were missing. The majority of respondents were previously employed as attorneys. Of those

respondents who indicated their past employment, 40.7% or 22 were a prosecutor, 61% or 33 were a defense attorney, and/or municipal judge (n = 2, 2.7%). The majority of respondents (48.1% or n = 26) who selected other employment (n = 33, 61%) worked in general practice and/or as civil attorneys with the remaining seven judges (12.9%) being in occupations such as social work, private consulting, and education.

The length of time judges have worked in these previous occupations varied greatly, but the average years worked in these professions suggests that respondents have vast experience in the court sector and a lack of experience outside of the court. This is demonstrated by no respondents working in law enforcement prior to entering the circuit court and only a few (12.9%, n = 7) with other types of roles outside of the court (e.g., teacher, social worker). Respondents held the previous position of prosecutor for an average of 8.93 years, of public defense attorney for 9.8 years, and of private defense attorney for 11.62 years. Judges who selected the other category who were employed mainly as general practice and civil attorneys held these previous occupations for the longest period at an average of 17.42 years.

**Judicial socialization.** Respondents were asked to determine where and how their judicial socialization occurred when they first became a circuit court judge by entering the percentage of training provided by formal state training, formal county training, formal education, trial judges, court clerks, other court staff, prosecutors, defense attorneys, and other sources. Respondents were able to select multiple sources of socialization so that the types of aid were not mutually exclusive, and respondents were asked to ensure that the percentages of multiple types of aid added to 100 percent. Appendix N provides the descriptive statistics of these judicial socialization variables.

All respondents acknowledged the state of Wisconsin provided formal training to aid them in learning how to become a judge, or 100 percent of the respondents stated Wisconsin provided some level of formal training to aid with their socialization process. The next most frequent sources of socialization came from other trial judges (98.1%), prosecutors (70.4%), defense attorneys (68.5%), and formal education (57.4%). When respondents selected that other sources of influence (46.2%) were present during the socialization process, the vast majority of respondents identified general life experience and general work experience as socialization tools. The county (11.1%), however, was not identified as a major help in the socialization process.

When examining the range of the percentage of aid offered by these factors, formal state training, formal education, other life and work experiences, and trial judges were listed as the most helpful; this was corroborated by the frequency tables and the means. Overall, the formal training from Wisconsin and education were identified by this sample as the most influential in the judicial socialization process, but general life and work experience as well as the professional members of the courtroom workgroup have their place in developing judicial behavior. This is supportive of the foundational elements of past courtroom workgroup research and situated identity theory; those who surround judges in the courtroom workgroup are influential in what type of judges individuals will become and how roles will be fulfilled in their daily duties. In addition, those who surround the judge have the potential in developing the foundation for sentencing decisions early in the career of these respondents, and that others outside of the courtroom workgroup may affect sentencing decisions as numerous judges stated general life experiences aided them in learning their judicial role.

**Summary.** Within the judicial characteristic variables, not much variance was found among the judges, especially in their demographics. This is supported by past literature; most judges are males, middle-aged, Caucasian, and varied with connection to conservative or liberal ideology. The judges had vast experience within the court system prior to becoming circuit court judges, mostly as attorneys in the civil and criminal arena. Judicial socialization occurred through formal training from the state and education as well as informal training in the form of general life and work experience and aid from various courtroom workgroup members. In essence, Wisconsin judges share similar social and personal identifiers that create a homogeneous landscape for judicial characteristics. These similarities among the judges create an inability to use many of the variables in further statistical analyses because of the lack of variance and the smaller sample size. The variables with the most variation are age, time as judge, type of court calendar, and degree of conservatism.

### **Organizational Characteristics**

The organizational characteristics include community and courtroom organizational factors that past research has suggested may be important to judicial sentencing decisions. The outside community variables were to be measured through the district number item to create an image of the district's population, percentage of black residents, and average annual income for the area. The court community variables include the bureaucracy level of the court as well as the courtroom workgroup characteristics. The courtroom workgroup variables include information about how respondents perceive particular attributes of the courtroom and its members. These variables include whom respondents gain information from while making sentencing decisions, whose opinions

were trusted by respondents while making sentencing decisions, the stability of the courtroom environment, and the use of going rates in the court. The organizational context and details about the courtroom characteristics also are presented.

**Organizational contexts of the court.** The organizational contexts of the court can include the district of the judge and level of bureaucracy in the courtroom; information about these variables is presented in Appendix L. The lower number of survey respondents along with 21 missing values for the district variable resulted in not enough respondents presiding in each of the districts for it to be a useful variable in examinations beyond univariate statistics. District 10 was the modal district with nine respondents (16.7%) from this northwestern Wisconsin district. For the other districts, 6 (11.1%) judges were from districts 5 and 7; 5 (9.2%) judges were from districts 2, 3, 6, 8, and 9; 3 (5.5%) were from district 4; and 2 (3.7%) were from district 1. These also cannot be separated into useful dichotomous variables of urban and non-urban because the most urban area measured by district 1, which contains Milwaukee County, only had 2 respondents.

Two variables were used to create an understanding of the level of bureaucracy in the respondents' courtrooms, type of cases over which the judges preside and the type of court calendar. Respondents overwhelmingly presided over a mixed caseload of criminal and civil cases ( $n = 49$ , 90.7%), and have at least some control over their daily calendar schedule as 24 respondents or 44.4% have complete control over their schedules and 26 respondents or 48.1% share scheduling duties with court administration; only 3 (5.5%) stated they had no control over their court calendar. This presents the nature of Wisconsin courtrooms as being mixed in bureaucratic levels. A bureaucratic courtroom would be

considered one where the judge holds control and power over the duties and activities of the courtroom, or one where he/she only engages in criminal cases and has complete individual control over their calendar. These descriptive statistics demonstrate that there is not a high level of bureaucracy in Wisconsin circuit courts.

**Sources of courtroom workgroup information and opinions.** Judges were asked from whom information about sentencing decisions was obtained from on a 0 to 100 scale with higher values reflecting that information was obtained more often from those individuals. Descriptive statistics about the information gathered from the courtroom workgroup is displayed in Appendix O. Examination of the mean percentages of responses demonstrated that respondents obtained information more often from prosecutors ( $\bar{x} = 92.13$ ), defense attorneys ( $\bar{x} = 90.73$ ), defendants ( $\bar{x} = 84.78$ ), victims ( $\bar{x} = 71.11$ ), and probation officers ( $\bar{x} = 52.5$ ), than from other judges ( $\bar{x} = 31.66$ ), citizens/constituents ( $\bar{x} = 17.64$ ), and court clerks ( $\bar{x} = 14.99$ ). However, the ranges suggested that judges varied upon whom and how often they obtain information from these courtroom participants as ranges are wide and variables have high standard deviations. Prosecutors and defense attorneys have the smallest ranges and standard deviations supporting the idea that judges obtain information more often from attorneys than other courtroom participants when making sentencing decisions. In addition, defendants, victims, probation officers might not be considered professional members of the courtroom workgroup, but it appears that their information is important to judges when making sentencing decisions.

Judges were asked to assign the degree they value the opinions of courtroom workgroup participants in connection to sentencing decisions on a scale of 0 to 100 with



higher values representing more highly valued opinions. Appendix P provides the descriptive statistics about sources of opinions in the courtroom workgroup. Through examination of the means, the most valued courtroom actors were prosecutors ( $\bar{x} = 74.3$ ), victims ( $\bar{x} = 74.45$ ), defense attorneys ( $\bar{x} = 72.26$ ), probation officers ( $\bar{x} = 67.66$ ), defendants ( $\bar{x} = 67.01$ ), and other judges ( $\bar{x} = 55.9$ ). Similar to information, the least valued opinions were from citizens/constituents ( $\bar{x} = 33.93$ ) and court clerks ( $\bar{x} = 14.81$ ). These items have wider ranges with higher standard deviations suggestive of different respondents attaching varying values to the opinions of others. Taking into consideration the means, standard deviation, and ranges, it seems that prosecutors, defense attorneys, and victims were the highest and most consistent opinions valued.

**Courtroom workgroup information and opinion scales.** To construct the courtroom workgroup scales, the plan was to develop two variables around the professional and non-professional roles in the courtroom. This was completed so that the conceptualizations of these variables reflected the data and respondent commentary. Two scales were to be constructed as research has suggested that courtroom workgroup members are select individuals (Eisenstein, et al., 1988; Myers & Talarico, 1987; Ulmer, 1997) who contribute to the daily activities and routines of courtroom processes. It was assumed prior to this research that a division of professional members would include judges, prosecutors, defense attorneys, court clerks, and probation officers while the non-professional variables would contain defendants, victims, and county citizens/constituents. After examining the results of factor analyses, Cronbach's alpha coefficients, and past research, however, it was more theoretically sound to define the professional members as judges, prosecutors, and defense attorneys with all other roles in

the non-professional category. In addition, the non-professional scale might be understood better as those individuals who are participants in the courtroom workgroup processes, but may not be stable members (e.g., defendants, victims, citizens) over various court cases.

Prior to completing a factor analysis or examining alpha coefficients, it appeared that court clerks and probation officers might not be best placed in the professional category of the courtroom workgroup, as respondents did not value their opinion or obtain information from them at the same level as attorneys and other judges. This resulted in an examination to determine the appropriateness of placing these two individuals in the professional category of courtroom workgroup members as was planned originally.

Factor analysis was completed with all members of the courtroom workgroup in developing the scales. With respect to courtroom workgroup information, the factor analysis extracted two constructs of (1) prosecutors, defense attorneys, defendants; and (2) judges, probation officers, court clerks, victims, citizens. The alpha coefficients for these two constructs were 0.831 and 0.582 respectively. With respect to the opinion scales, factor analysis of these items created three constructs with the following divisions: (1) prosecutors, defense attorneys, probation officers, victims, defendants; (2) court clerks, citizens; and (3) judges. Only two variables were desired for this study, so extraction was forced into two constructs, which placed judges into the second category and all other variables remained in the same categories resulting in the groupings of (1) prosecutors, defense attorneys, probation officers, victims, defendants; (2) court clerks, citizens, judges. The alpha coefficients for these two constructs were 0.829 and 0.167

respectively. As demonstrated by the alpha coefficients, the addition of judge lowered the alpha coefficient.

Examination of the factor analysis, alpha coefficients, and descriptive statistics of the courtroom workgroup information and opinion leads to a conclusion that strong alpha coefficients from the factor analysis constructs could be due to whom respondents gathered information and opinions from during sentencing decisions, not necessarily that these construct groupings were statistically the best fit. When considering past research, theoretical constructs, and respondents' commentary about the inclusion of probation officers and court clerks in the survey, it might be better to remove court clerks and probation officers from the professional members. Some respondents wrote into the survey they were unsure why probation officers and courts clerks were included in the sentence decision pages of the survey because these individuals do not have much direct contact with the decision-making process. Some respondents also wrote comments about how including probation officers and especially court clerks into the survey demonstrated the naivety of the researcher in not understanding sentencing processes and court dynamics. With respect to court clerks and probation officers, the following are examples of what judges wrote:

*Respondent A:* [Court clerks] play no part [in the sentencing decision]  
other than to keep the calendar, schedule, and enter info into the computer.

*and*

[Probation officers] do written presentence reports in a number of cases,  
but don't often come to court. Their recommendations are supposed to be  
matrix based. Some are much more conscientious than others.

*Respondent B:* Who cares what clerks think?

*Respondent C (via email):* I think it's a waste of time to gauge how probation agents and court clerks react to sentencing. In [my county], at least, they have nothing to do with sentencing decisions -- the only effect they might have on the process is a background role, given the reaction/feedback we sometimes (and relatively infrequently) receive informally from them.

In addition, past research has not included court clerks or probation officers as members of the professional courtroom workgroup. Although these individuals were important to include to aid with specification of the connection of situated identity theory to sentencing processes, it is important to create realistic divisions among professional and non-professional members of the courtroom workgroup to portray sentencing processes and theoretical connections accurately. Therefore, the constructs created through factor analysis are not logical, when considering how the courtroom workgroup operates and who is important, regardless of the reported alpha coefficients.

Thus, four scales were constructed to aid in the understanding of sentencing decisions; professional information, non-professional information, professional opinion, and non-professional opinion. The professional scales include courtroom workgroup members of judges, prosecutors, and defense attorneys. The non-professional scales include courtroom participants of court clerks, probation officers, defendants, victims, and citizens/constituents. The professional information scale has an alpha coefficient of

0.054, and the non-professional information scale has an alpha coefficient of 0.468. The professional opinion scale has an alpha coefficient of 0.041, and the non-professional opinion scale has an alpha coefficient of 0.65. Although, these alpha coefficients were lower than the constructs created through factor analysis, this division of the courtroom workgroup members was more logical and supported by past research. The professional alpha coefficients are lower due to adding the role of judge to the group. Future research should examine the judge and other participants individually because different roles may have distinct and significant connections to sentencing decisions that is not apparent from the scales created in this research. For this dissertation, however, the desire to have two constructs of professional and non-professional to limit the number of independent variables supports the use of the scales.

Information about the descriptive statistics of these scales is provided in Appendix Q. The professional information scale had a mean of 214.52 with a possible range of 0 to 300 and an actual range of 102 to 300. The non-professional information scale had mean of 241.02 with a possible range of 0 to 500 and an actual range of 105 to 386. The professional opinion scale had a mean of 202.74, a possible range of 0 to 300, and an actual range of 94 to 300. The non-professional opinion scale had a mean of 257.86, a possible range of 0 to 500, and an actual range of 80 to 400. Examination of these scales demonstrated that overall respondents value opinions and gain information from professional members of the courtroom workgroup, as the means are greater than the midpoints of both scales. The non-professional scales of information and opinions illustrate that respondents do not value the opinion of or gain information from non-professional members as much as professional courtroom workgroup members. Both of

the non-professional member scales hover around the midpoint of the possible range. This demonstrates respondents were mixed as to which non-professional courtroom participants were important, which was supported by the descriptive statistics of the individual items that created the scales; respondents were more likely to gain information from and to value opinions of victims and defendants, not the other members of the non-professional scale (i.e., court clerk and probation officer).

From looking at the descriptive statistics of information and opinions, it appears court clerks and citizens were the most devalued group according to these respondents in sentencing decision processes. The most valued individuals are prosecutors, defense attorneys, defendants, and victims with judges and probation officers being in the middle. This supports prior research about courtroom workgroups in that direct members of the courtroom workgroup are regarded more highly when making decisions. With respect to situated identity theory, this study supports the presumption that individuals who are closest to the decision-maker will be perceived as the most important and those outside of the group will not be as valued. This allows for the presumption that prosecutors, defense attorneys, and, perhaps, other judges may be more important indicators of how judges sentence and that their favorable opinions will be sought after more.

**Stability of courtroom workgroup members.** Items were placed in the survey to determine whether the courtroom workgroups of the respondents were stable (i.e., the same individuals worked in the court on a consistent basis). These items were coded with higher numbers representing lower stability. Appendix R displays information about the stability items and scale. The descriptive statistics of the individual items supports that prosecutors ( $\bar{x} = 2.12$ ) and court clerks ( $\mu = 1.93$ ) are usually the same individuals,

whereas defense attorneys ( $\bar{x} = 2.54$ ) and probations officers ( $\bar{x} = 2.94$ ) are sometimes the same individuals. A scale was created with these four items with an alpha coefficient of .242. Although the alpha coefficient is low and suggestive of lower continuity of items, these items were placed specifically in the survey to create this scale. The scale has a possible range of 4 to 20, and an actual range of 6 to 15. The mean, median, and mode of approximately 9 suggest that, overall, the courtroom workgroup is stable among these respondents, as the value nine would represent the courtroom workgroup members being usually the same.

**Presence of going rates.** Respondents were asked to state whether a going rate or a standardized sentence was present in their courtrooms with 1 being yes and 2 being no. The descriptive statistics for the going rate ( $\bar{x} = 1.3$ , median and mode = 2) demonstrated that in this sample a going rate might not exist in most of the respondents' courtrooms, but 18 respondents (24%) stated that a going rate did exist in their county. In addition, 2 respondents provided written comments that going rates do not exist in all types of offenses, but drug offenses did have strong predictability in what sentences would be assigned to the defendant and that going rates did exist in drug cases.

**Summary.** Overall, the descriptive statistics of the courtroom workgroup variables of information, opinion, stability, and going rates were supportive of a courtroom workgroup existing in the courtrooms of the respondents. The courtroom workgroup members were perceived as being highly stable across court cases in most of the courtrooms, which allows respondents to build relationships with various individuals. These relationships are imperative for the creation of situated identities, as the more stability in the groups the more likely situated identities have been created. Even though

most judges did not admit to going rates existing in their courtrooms, the sentencing information discussed below will suggest otherwise. In addition, respondents do gather information from courtroom participants and value the opinions of those participants especially when they are professional members of the courtroom workgroup. These findings are positive and provide a foundation for the importance of situated identities in sentencing decision processes.

### **Situated Identity Factors**

This section highlights the descriptive statistics of the situated identity variables created through the survey. The situated identity variables are the perceived cooperativeness of courtroom workgroup members, the perceived favorability of courtroom workgroup members, the perceived favorable viewpoint of assigned sentences by courtroom workgroup members, and the willingness to change planned sentences.

#### **Cooperative nature and favorability of courtroom workgroup members.**

Respondents were asked to develop an image of the courtroom workgroup members who work in their court on a continual basis. The two items of interest for this research are the cooperative nature and favorability of the courtroom workgroup members. Past research suggested that when members of the courtroom workgroup were viewed as cooperative and favorable, judges were more likely to engage with these individuals and work with them towards the common goal of sentencing defendants. Judges selected the cooperative nature of members in opposition to competitive and favorable against unfavorable in a seven-point scale. Overall, respondents view the courtroom workgroup members as cooperative and as favorable.



Cooperation/competition variables are coded towards cooperation or that higher values represent respondents viewing those courtroom workgroup members as being more cooperative than competitive during sentencing decisions (Appendix S). On average, respondents view the most cooperative courtroom workgroup members to the least courtroom workgroup members as court clerks ( $\bar{x} = 4.93$ ), probation officers ( $\bar{x} = 4.42$ ), judges ( $\bar{x} = 4.15$ ), defense attorneys ( $\bar{x} = 3.25$ ), and prosecutors ( $\bar{x} = 2.89$ ). All members except for defense attorneys and prosecutors were viewed on average as cooperative; these two attorneys are seen slightly as competitive as the mean is lower than the midpoint. A scale was created with these items to represent the overall cooperative nature of the courtroom workgroup. This scale has a possible range of 0 to 35 with the higher values suggesting the courtroom workgroup is more cooperative than competitive. On average, respondents perceive the courtroom workgroup as slightly more cooperative than competitive because the mean ( $\bar{x} = 19.71$ ) is above the midpoint of the possible range (17.5) with an actual range of 6 to 30.

Favorable/unfavorable variables are coded towards unfavorable or that higher numbers represent respondents viewing those members as more unfavorable than favorable during sentencing decisions (Appendix T). On average, the most favorable members of the courtroom workgroup to least favorable members are judge ( $\bar{x} = 1.96$ ), court clerk, ( $\bar{x} = 2.23$ ), probation officer ( $\bar{x} = 2.48$ ), defense attorney ( $\bar{x} = 2.5$ ), and prosecutor ( $\bar{x} = 2.85$ ). Respondents depicted all members on average as being more favorable than unfavorable because all means are below the midpoint. A scale was created with these items to represent the overall favorability of the courtroom workgroup members. This scale has a possible range of 0 to 35 with the lower values suggesting the

courtroom workgroup is more favorable than unfavorable. On average, respondents depicted the courtroom workgroup as slightly more favorable than unfavorable because the mean ( $\bar{x} = 16.76$ ) is below the midpoint (17.5) of the possible range with an actual range of 5 to 29.

The findings of the cooperative and favorability of the courtroom workgroup members supports the contention that respondents were willing to engage with the courtroom workgroup members and work with each other to find a mutually acceptable solution or sentencing decision to cases. As Ulmer (1996) suggested, those judges who viewed the courtroom workgroup as cooperative in nature would be more willing to use sentencing guidelines. Although Wisconsin does not have formal or strict sentencing guidelines, these findings provide reasons to believe that situated identities are important to respondents when making sentencing decisions, and that sentencing decisions should fluctuate similarly within each of the scenarios and be close to the modal sentences as provided by the Wisconsin sentencing data used to create the scenarios. Some disconnect may be found within the sentencing decisions, as respondents perceived the defense attorneys and prosecutors as being the least cooperative and slightly towards competitive; however, this may be due to the adversarial nature of the courtroom and that attorneys exert power and influence over the sentencing decision whereas the other members do not hold that type of power. The research around situated identity theory also purports that when people view others as favorable, they are more likely to make decisions that will be viewed favorably by others, or in other words, when respondents see members of the courtroom workgroup as favorable, the judges will be more likely to assign sentences to defendants that the workgroup would approve.

**Perceived favorability of assigned sentences in scenarios.** Perceived favorability was determined along with each of the five scenarios by asking respondents to determine if the courtroom workgroup members would perceive the assigned sentence as favorable or unfavorable. These items, overall, were supportive of the propositions of situated identity theory; judges overwhelmingly believe that others will view their sentencing decisions favorably. Appendix U provides detailed information about the percentages and number of respondents who perceived particular courtroom workgroup members as holding favorable views of the assigned sentence.

The lowest levels of support were found in Scenarios 3 and 5, which have modal incarceration decisions of prison with extended supervision. With these two scenarios, the defendant and defense attorney were perceived as not being in favor of the respondents' sentencing decisions. Defendants were viewed only by 47.8% of respondents in Scenario 3 and by 40.6% of respondents in Scenario 5 as being in favor of the sentence decision. Defense attorneys were perceived by 61.2% of respondents in Scenario 3 and 50.0% of respondents in Scenario 5 as being in favor of the sentence decision. Outside of these two scenarios, the victim consistently was viewed by respondents as not deeming the sentencing decisions of the respondents as favorable with percentages in the mid 50s to mid 70s. Citizens and court clerks hold the next lowest favorability percentages; citizens have favorability percentages in the mid 70s to low 80s, and court clerks have percentages of favorability in mid 80s to low 90s. The modes for all variables in these scenarios were 1 (i.e., favorable of sentence decision), except for Scenario 5 where the defendant had a mode of 2 (i.e., not favorable of sentence decision) and all other courtroom participants were at 1.

Scales were created from the items that describe the overall perceived favorable viewpoint of the professional and non-professional courtroom workgroup members in connection to each of the five scenarios. The professional and non-professional scales were developed similarly to the courtroom workgroup scales discussed above with the professional scale including judge, prosecutor, and defense attorney, and the non-professional scale including probation officer, court clerk, victim, defendant, and citizen/constituents. Each scenario has its own professional and non-professional scale because each scenario is its own dependent variable. The possible range for the professional scale is 3 to 6 and the non-professional scale is 5 to 10 with lower values representing increased perceived favorability of the sentencing decisions by courtroom workgroup members. The descriptive statistics of these scales can be viewed in Appendix V.

Means for all of these scales are suggestive of respondents believing professional and non-professional courtroom workgroup members will view sentences favorably; the means for the scales are close to the values of 3 (professional scale) and 5 (non-professional scale) demonstrating that respondents perceive the professional and non-professional members as viewing their sentencing decisions favorably in all five scenarios. Mean values slightly are higher in the non-professional scales with the highest being found in Scenarios 3 and 5, which have modal sentences of prison with extended supervision. These scales were supportive of situated identity theory in that judges decided cases in a manner that will be confirmed and viewed favorably by other courtroom participants.

Conclusions drawn from these descriptive statistics support the conclusion that judges make decisions that are viewed most favorably by professional courtroom workgroup members as well as the probation officer. It appears that judges may make sentencing decisions that will not be perceived positively by victims, citizens, and court clerks as well as defendants. These findings are supportive of situated identity theory, expectation states, and prior research about courtroom workgroup members; judges are most concerned with the viewpoints of those they work with, but they place the defense attorney (and defendant) at a lower positioning than other members and at times more similar to those viewed outside of the process (i.e., court clerks, victims, and citizens).

**Decision to change planned sentences.** Judges were asked whether he/she would change a planned sentence if they knew that others in the courtroom workgroup would not view the decision favorably. Overwhelmingly, respondents stated that unfavorable views of others would not change their opinion about a sentence once it was decided. When respondents indicated that a planned sentence would be altered, the change usually was due to the perception of another judge ( $n = 6$ ) or victim ( $n = 5$ ). A couple of respondents ( $n = 2$ ) also stated that a sentence might be changed due to a prosecutor or defense attorney.

These low numbers could be for a few reasons, some more related to speculation than others; yet, numerous respondents wrote comments connected to this question. The comments demonstrated sentencing decisions are firm, and judges are not compelled to change their mind. The purpose of the question, however, may have been misinterpreted by respondents as judges commented that once a sentence has been entered into record they do not have the ability to change it. This was not the intent of the survey item, and

perhaps better wording may have been necessary to alert judges that the survey was asking judges to report if they had made a decision but not entered it into formal court proceedings, would they change their mind, due to the opinions of others in the courtroom workgroup. This clarification could have produced different results as some respondents did comment that if valuable information did come from attorneys, probation officers, defendants, and victims, they possibly would change the decision if the case were still open. In addition, judges might not have felt free to answer this question, and thought that the implication of judges not holding complete control and power over sentencing decisions was insulting.

Prior research suggests that judges are autonomous creatures and do not want to appear as if others are engaged in the decision-making processes of sentencing individuals, especially since this decision has been heralded as the most important decision of court proceedings. This lack of admitting that others are influential is in opposition to the questions about from whom respondents gather information and whose opinions are valuable while making sentencing decisions. Perhaps the directness of this question and the slightly different viewpoint of the question (i.e., changing a decision versus gathering information to make the decision) made respondents opposed to the question and the very idea it was raising. This might be represented best in the comment made by one respondent who stated that he did not care about the opinions of others once his decision has been made.

Regardless of the reasoning, the low response to this survey item and the lack of variance in this variable make it unusable for analysis beyond descriptive statistics. This variable will not be considered when completing bivariate statistics.

**Summary.** The situated identity variables generally provide support for the theory and its use in connection to sentencing decisions. The theory purports that when individuals view others favorably, he/she will make decisions that the others will see as favorable. This study supported that judges make decisions to be perceived as favorable by others in the courtroom workgroup, and that judges viewed members of the courtroom workgroup as favorable, especially the professional members. Courtroom workgroup literature suggested that judges will be more likely to work with cooperative members and will make decisions that are deemed favorable. This statement was supported by the descriptive statistics of this study. Hence, there is reason to believe that situated identity theory can be useful to understand sentencing decisions from the descriptive statistics; however, more in-depth analyses are warranted to determine whether these variables are connected.

### **Dependent Variables**

The dependent variables were created from using the respondents' sentencing actions in the five scenarios. Information about the incarceration decision and sentencing length decision are in Appendix W. Some of the survey items that intended to measure the dependent variables were unusable due to a lack of variance in reported sentence decisions as many judges sentenced within modal sentence categories. With respect to the incarceration decision, only the dependent variable from Scenario 3 can be examined beyond descriptive statistics, as it is the only incarceration decision that holds enough variance between modal and non-modal sentences. Respondents in Scenarios 1, 2, and 4 all selected the modal category of probation, and in Scenario 5 there is not enough variance between the two categories (i.e., probation and prison with extended

supervision) to be useful. For the sentence length decision, only Scenarios 1, 2, and 4 can be used as enough variance exists between the modal and non-modal sentence lengths. In trying to include more variables, the standard deviations were examined to determine if using one or two standard deviations of the modal category would be useful, but acceptable levels of variance still were not reached.

In Scenario 1, with the crime of burglary, all respondents (n = 71) assigned the defendant probation with a term in the range of 5 to 60 months and a mode of 36 months. This is the modal category for this scenario with 38.7% or 29 respondents providing the modal sentence length to the defendant. Scenario 1 can be used as a dependent variable for the sentence length decision, but not the incarceration decision.

For Scenario 2, the crime of forgery and uttering, all respondents (n = 69) appointed the defendant probation with a term in the range of 12 to 60 months and a mode of 24 months. The modal category for this variable according to the Wisconsin sentencing data was 36 months, and 38.7% or 21 respondents provided this sentence length to defendants. Scenario 2 can be used as a dependent variable for the sentence length decision, but not the incarceration decision.

In Scenario 3, the crime of armed robbery, the majority of respondents (75%, n = 50) allocated defendants with the modal sentence of prison with extended supervision, and 25% or 17 respondents assigned probation sentences. This will be the only dependent variable for the incarceration decision because it is the only scenario with enough variance in the incarceration decision to warrant further examination. The sentence length decision, however, will not be used as only 2.7 % or 2 respondents provided defendants with lengths in the modal category of 120 months prison with extended supervision.



For Scenario 4, with the crime of delivery of cocaine, all respondents (n = 65) assigned the defendant to the modal category of probation, and 37.3% or 28 respondents allocated a sentence length of 36 months of probation, which was the modal category. The range of probation sentence lengths was 15 to 60 months. This scenario will be used as a dependent variable to assess the sentence length decision, as enough variance exists in the modal and non-modal categories.

Scenario 5, with the crime of sexual assault of an adult will not be used for either dependent variable, as not enough variance exists in the incarceration decision or sentence length decision. The majority of respondents (89% or n = 58) selected incarceration decisions with a range of 36 to 240 months of prison with extended supervision. The remaining respondents (11% or n = 7) assigned probation sentences with a range of 36 to 60 months. No respondents were in the modal category for the sentence length decision.

Although there is a lack of variance in the variables to be included in bivariate statistics, the descriptive statistics still can be scrutinized to determine if support exists in connecting situated identity theory to judicial sentencing decisions. Overall, there is support for the connection of situated identity theory to sentencing decisions. This research proposed that if judges provided sentences that are in the modal categories and sentenced similarly to other judges that support for foundational elements of situated identity influencing sentencing would exist. The lack of variance in the dependent variables is supportive of situated identity theory because it demonstrates that judges sentenced similarly and were within the modal categories derived from the Wisconsin sentencing data and respondents believed courtroom workgroup participants would

perceive their responses favorably. The dependent variable findings also are supportive of an informal “going rate” being in existence in Wisconsin circuit courts across the state. Judges displayed a willingness to demonstrate their individual power and autonomy; however, Wisconsin judges appear to be sentencing in a manner that could be assumed to be found in jurisdictions with prescriptive determinate sentencing structures, and not a determinate state without strict guidelines. Although the lack of variance in the dependent variables limits the ability to explore judicial decision-making it is beneficial to the argument of this research. The continuity of sentencing terms provides cause to continue this line research to determine how aspects of situated identity connect to other variables (e.g., judicial characteristics and courtroom workgroup) and explain sentencing decisions with the four usable dependent variables.

### **Bivariate Statistics**

This section describes the bivariate analyses used to determine whether judicial characteristics, courtroom workgroup characteristics, and situated identity factors are connected to sentencing decisions. Two types of analyses, independent t-tests and chi-square tests of independence, were completed with the variables as deemed appropriate per the requirements of each of the tests; these results are detailed below.

### **Results from Independent T-tests**

This section highlights the main findings of the independent t-tests conducted with the dependent variables and independent variables of interest. The dependent variables include the incarceration decision from Scenario 3 and the sentence length decisions from Scenarios 1, 2, and 4. The independent variables used for this analysis were the continuous variables measured at an interval or ratio level, and include judicial

characteristics of age, time as judge, and level of conservatism; the courtroom workgroup factors of professional information, non-professional information, professional opinion, non-professional opinion and stability; and the situated identity variables of cooperation, favorability, and the professional and non-professional favorable view items. Appendices X to AA provide detailed information about the independent t-tests results. The remaining independent variables of court calendar, dichotomous conservatism measures, prior occupational experience, and the going rate are examined using chi-square contingency tables and discussed in the next section.

***Judicial characteristics.*** The judicial characteristics with enough variance were included in the independent t-test analyses and were developed in the following manners. Age and time as a judge will remain continuous variables. The conservatism scale will be used as opposed to the direct measure because the continuous nature of the scale allows for subtle variations in the level of conservatism to be associated with sentencing decisions. Prior occupation will be three dichotomous variables used in chi-square analyses, as independent variables must be continuous in independent t-tests. The remaining judicial characteristic variables of sex, race, circuit court district, and type of court cases do not contain enough variance to be used in bivariate analyses.

Overall, judicial characteristics proved to be non-significant in explaining the differences between modal and non-modal sentencing decisions. For the majority of the judicial characteristics employed in the independent t-tests, the findings failed to reject the null hypotheses, which supports that the mean differences in the sample do not exist in the population and only were present in the descriptive statistics due to sampling error. With the four dependent variables under scrutiny, only time as a circuit court judge was

significant at the 0.1 level<sup>1</sup> with the sentence length variable in Scenario 4. This significant finding supports that the null hypothesis can be rejected, and that the difference in the means between the modal and non-modal sentencing group can be attributed in part by the length of time respondents have spent as a circuit court judge. Although this does not determine correlation or causality, it does support the contention that the length of time spent as a circuit court judge may aid in understanding the differences in sentencing decisions between modal and non-modal decisions. No other judicial characteristic variables were significant in these analyses, which was to be expected because past research has found a lack of support in connections between judicial characteristics and sentencing decisions.

Of interest, however, is that level of conservatism was not significant to any of the dependent variables even though research has demonstrated this to be one characteristic that often aids in the prediction of sentencing outcomes. This could be attributed to the lower sample size, and the identification of respondents being more liberal than conservative, as conservative views typically have stronger connections to sentencing decisions. For this reason, the direct conservatism measure also was examined using chi-square contingency tables to determine if a different conclusion can be determined with an alternate measurement.

**Courtroom workgroup characteristics.** The courtroom workgroup characteristics with enough variance and conceptualized as continuous variables were used for independent t-test analyses. These variables included professional and non-professional information, professional and non-professional opinion, and stability. Court calendar and going rates were used in the chi-square tests of independence because these

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<sup>1</sup> Relaxed level of significance was used due to the small sample size.

variables are dichotomous. The district measures and type of court cases did not contain enough variables to be placed into any type of bivariate analyses.

Similar to judicial characteristics, most courtroom workgroup variables were not significant in the independent t-tests in this sample. This suggests for this sample that the null hypotheses of the population means being different between modal and non-modal sentencing decisions cannot be rejected, and the difference found in the sample is most likely due to sampling error and the low number of cases. The only variable with statistical significance ( $p \leq 0.05$ ) for courtroom workgroups was found in Scenario 3 with nonprofessional information. Hence, for the nonprofessional information variable in this scenario, the null hypothesis can be rejected and the research hypothesis that the populations means for modal and non-modal sentencing decisions are distinct with respect to nonprofessional information. Again, this does not demonstrate correlation or causality but that respondents who rely on nonprofessional information (e.g., from probation officers, defendants, and victims) may make different incarceration decisions.

The fact that all of the other variables were non-significant raises some issues with the sample. The failure to reject almost all of the null hypotheses for this grouping of variables demonstrates that the differences can be due to sampling error, which increases as sample size decreases. The lack of significant findings partially can be attributed to the smaller sample size of this study; the lack of respondents who differ in terms of sentencing decisions greatly limits the ability find and determine differences. This is especially true with these groupings of variables because the courtroom workgroup has been a decent predictor in evaluating different sentencing decisions. The descriptive statistics suggested that differences did exist in the courtroom workgroup

variables; however, the lack of significance in these tests also could be related being limited to sentence length dependent variables when the courtroom workgroup in past research has been more influential with the incarceration decision.

**Situated identity factors.** The situated identity variables were all usable for bivariate analyses. The variables of cooperation, favorability, professional favorable view, and non-professional views are all continuous variables appropriate for placement into independent t-tests. With respect to the situated identity variables, almost all of the variable connections are non-significant with the exception of professional favorable view in Scenario 1 and the cooperation scale in Scenario 2. These items had statistical significance with the modal/non-modal variables at the 0.1 level<sup>2</sup>, which rejects the null hypothesis of the population means being the same and contends that the differences were potentially due to real differences and not only sampling error. The remaining variables across all four dependent variables were not significant, and the null hypotheses could not be rejected, which led to the assumption that the differences of means found in the sample were due to sampling error and not actual differences of the population.

These findings could be for various reasons beyond the small sample size and the corresponding increased sampling error. This study was the first of its kind in connecting situated identity theory to sentencing decisions. The lack of significance can be due to an incorrect conceptualization of situated identity variables or due to a lack of connection between the situated identity of judges and their sentencing decisions. These both are valid concerns with new lines of research, especially when insignificance is found between variables. With respect to the first concern of improper conceptualization of the situated identity variables, great concern and care were placed into creating the survey

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<sup>2</sup> Relaxed level of significance was used due to the small sample size.

items in assuring that variables were being appropriately measured by their attributes. Various measures were placed into the survey to develop a complete picture of situated identity, yet this must be seen as a limitation as there is no means to test for concurrent validity with additional measures of situated identity variables.

The second issue of the lack of connection between situated identity and sentencing decisions can be due to the lower response rate and numbers of useable cases in this study as well as self-selection and/or response bias. It is possible that the judges who did not respond to the survey were those who did not have strong situated identities to others in the courtroom or were in somehow different in other variables; this cannot be known as non-responders cannot be differentiated from respondents in the population of all judges. The descriptive statistics were supportive of situated identity in that most judges sentenced in the modal categories and that judges viewed others in the courtroom workgroup as favorable and cooperative individuals who would view their sentences favorably. This cannot be overlooked, especially in exploratory research that in its infancy still is determining the best means to examine situated identities and its connection to judicial sentencing decisions. Although the significant findings are limited, the positive nature of the descriptive statistics along with the few significant connections between variables is supportive of future research about how courtroom workgroup and situated identities influence sentencing decisions.

### **Results from Chi-square Contingency Tables and Tests of Independence**

With the categorical independent variables, chi-square contingency tables and tests of independence were calculated. Similar to the independent t-tests, these statistics do not deduce causality or correlation between the variables but the tests can demonstrate

if the independent variable and the dependent variable were related to each other and, if related, the strength of that relationship. Models with a lack of independence support that the variables are dependent upon each other and allow for rejection of the null hypothesis (i.e., the dependent and independent variables are independent). The significant contingency tables are displayed in Appendices BB to FF and the results of the chi-square tests of independence are in Appendices GG to JJ.

The independent variables of interest were the nominal measures of type of court calendar, conservative ideology, prior occupation of prosecutor, defense attorney, and other, and going rate. The type of court calendar was developed into a dichotomous variable that combined the respondents who selected mixed calendar and no control over the calendar; thus, the two attributes of the court calendar variable were individual control over the calendar versus non-individual control over the calendar. Prior occupation was examined using three variables of prosecutor, defense attorney, and other courtroom workgroup participants; these were dichotomous variables each examined separately as attributes of experience and no experience to determine if any of these prior occupations connected to modal sentencing decisions. The two defense attorney variables were collapsed, as few respondents stated they were public defense attorneys and prior literature suggests that differences may exist in influencing sentencing decisions between prosecutors and defense attorneys as opposed to different types of defense attorneys impacting sentencing patterns.

Similar to the t-tests of independence, the vast majority of the relationships were non-significant. All of the independent variables were not related to the dependent variables of Scenario 1 and 3; only the variable of type of court calendar was related



significantly to Scenario 2. The strongest connections were forged with the dependent variable of Scenario 4 and the independent variables of type of court calendar, prosecutor experience, other experience, and conservative ideology; these connections are discussed.

Scenario 4 demonstrates that judicial characteristics can be an important factor in the determination or prediction of sentencing decisions. Type of court calendar, which was also significant with Scenario 2, was a measure of the bureaucratic nature of courtrooms. Although the phi coefficient of .279 is below .3 and suggestive of a weak connection, this is supported in past literature that measures of bureaucracy in the courtroom typically have weaker connections but still may contribute to court processes such as sentencing decisions. Likewise, respondents having past experience as a prosecutor or other (e.g., civil attorney, general practice attorney) are connected at a weak ( $\Phi = .288$ ) and moderate ( $\Phi = .326$ ) level, respectively. Past literature about these types of variables often connected the respondent's level of conservatism with the presumption that judges who have experience as a prosecutor are more conservative, and this variable has been more often significant than whether the judge was a defense attorney. Both prosecutor and other prior experiences were related to the dependent variable, as is the direct measure of conservatism at a moderate level of .316, which could support the idea that conservative and liberal judges sentence in particular manners as connected to modal and non-modal sentences. Even though these findings must be examined skeptically and with reservation due to the low sample size, it is reasonable to suggest that different types of judges have distinct sentencing patterns as connected to modal and non-modal sentencing decisions.

It would be advantageous to the purpose of this study to examine how the dependent variables connect to the situated identity variables. Unfortunately, the low case sizes of this sample do not allow for analyses. Some preliminary analyses with the dependent variables and the situated identity variables of favorable decisions (e.g., perceived favorable or not) did not have enough cases (i.e., fewer than five) within each of the contingency cells as defined by chi-square requirements, and therefore could not be interpreted.

## CHAPTER V: DISCUSSION AND CONCLUSION

This chapter details the interpretation of the findings and its implications for judicial decision-making and sentencing decisions in the context of courtroom workgroups and judicial situated identities. The discussion describes the impact of this study upon courtroom workgroup literature and judicial decision-making in connection to situated identity theory. It first discusses the purpose of situated identity within courtroom workgroups and sentencing decisions as outlined by the three hypotheses of this study. It then provides an explanation of policy changes that may aid in the reduction of disparities and increase of cooperation amongst courtroom workgroup members. Finally, it presents how future research can improve upon the survey as well as what additional methodologies can be employed to gather more information about how situated identity theory contextualizes sentencing decisions. The conclusion provides a summary of the important connections of past literature and this study.

### **The Purpose of Situated Identity**

The intent of this research was to determine whether situated identity theory developed an explanation for sentencing decisions of judges in the Wisconsin Circuit Court. Although this goal was limited by a lack of respondents, general conclusions can be reached about the value of situated identity theory in understanding the decision-making processes of judges. It must be stated that this study cannot be generalized beyond Wisconsin judges; however, the results of this study do provide support for continued exploration of how situated identities contextualize sentencing decision processes.

It cannot be ignored that the majority of respondents assigned defendants a modal sentence, especially for incarceration decisions. Very few judges made an incarceration decision outside of the modal category, which provided strong evidence of a normative going rate and created an inability to use the incarceration decision as a dependent variable except for Scenario 3. Likewise, for the sentence length decisions many judges provided defendants with modal sentence lengths, except for Scenario 5. What can be drawn from this in a state without strict sentencing guidelines and proscriptive sentences is that judges still provide defendants with similar sentences, and that these sentences can be understood as normed actions for the inclusion of situated identity theory. Some of this may be due to the work of the defunct sentencing commission in attempting to establish sentencing guidelines with the criminal offenses used in the scenarios, but with legal variables held constant in the scenarios, extralegal factors can explain why variations did exist. This study adds to the literature that extralegal variables aid in the determination of sentencing decisions, especially sentence length.

Judicial characteristics, courtroom workgroup characteristics, and situated identity factors were examined in an attempt to explain the sentencing processes of Wisconsin circuit court judges. The univariate and bivariate statistics provided an image of how these variables develop a foundation to understand the social world of sentencing decisions. Each of these variable groupings are explained below with its connections to not only sentencing decisions, but also situated identity theory propositions to answer the research questions of how situated identities contextualize sentencing decisions within Wisconsin circuit courts.

## **Judicial Characteristics – Hypothesis 1**

The first hypothesis for this study was whether judicial characteristics, including demographics and social factors (e.g., level of conservatism, type of socialization, and prior occupation), aid in understanding the differences between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions. This hypothesis does have some support and follows past research in that judicial social factors connect more to sentencing decisions than demographics, as social factors tended to have more variance than judicial demographics. The connections of judicial characteristics were limited and weak suggesting that other factors (e.g., legal variables that were not examined directly in this study) may have a stronger relationship to the dependent variables.

Respondents fit the typical homogeneous image of a judge as being male, older, Caucasian, and leading a professional life inside the courtroom prior to being a judge (Spohn, 2009). Of note, the demographic characteristics of respondents were not related significantly to sentencing decisions as demonstrated in the independent t-tests, except for the length of time the respondent was a judge for the circuit court, but this variable has been connected more to the social nature of the judge and not personal demographics. For instance, Myers and Talarico (1987) used the time as judge variable as an identifier of conservative views or that judges who have been on the bench longer are more conservative. This finding does add to the mixed support in past literature, and demonstrates the continued need to include the length of time on the bench as a variable in sentencing studies. Similarly, holding experience as a prosecutor is another indicator of conservative views (see Myers and Talarico, 1987). This variable was connected

significantly to the dependent variable of Scenario 4. It does not resolve the mixed findings of how prosecutorial experience affects the harshness of assigned sentences, but it does demonstrate the need to continue its placement into future research about sentencing decisions.

Hence, the judicial characteristic variables that were found to be associated significantly to the dependent variables were more indicative of conservatism ideology than personal demographics (e.g., age, race, and gender). This is supported by past research with the argument that judges are very similar with respect to personal characteristics, but it is the social factors that may make them distinct individuals and influence their sentencing decisions (Spohn, 1990, 2009; Steffensmeier & Britt, 2001; Steffensmeier & Herbert, 1998).

Hypothesis 1 has some limited support especially in the direct and indirect measures of social conservatism. This demonstrates that respondents in this sample are demographically similar but have more distinct social characteristics that were related to sentence decisions. This similarity of judges aids in the ability to generalize from this sample, as it is reasonable to believe that the non-respondents share similar demographics as the respondents.

### **Organizational Characteristics – Hypothesis 2**

Hypothesis 2 stated that the organizational characteristics, including variables about the outside community and court community organization would aid in understanding the differences between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions. The outside community context could not be developed for this study, as the smaller sample size inhibited the ability to use the

district items as a variable. Hence, more time will be spent with discussing the courtroom workgroup characteristics than the community contexts outside and inside the courtroom.

This second hypothesis generally was unsupported, except when interpreting the univariate statistics. The bivariate analysis of independent t-tests only found nonprofessional information to be related significantly to the dependent variable of Scenario 3, the only incarceration decision variable analyzed as a dependent variable. It could be argued that these variables may be more influential on the incarceration decision than the sentence length decision, as past studies have demonstrated that unique variables can affect each decision differently (Spohn, 2009). Although this hypothesis lacks strong evidence of relationships between the variables, it does have support in that respondents overwhelming responded that courtroom workgroup members do influence the decisions made through information and opinions of the professional and nonprofessional individuals.

This district variable not having variance led to the community outside of the court not being examined. In addition, a few variables that were to be used to create an image of the court context did not have enough variance for analysis. The level of bureaucracy was to be determined with the items addressing type of court calendar and type of cases. In the descriptive analysis, the type of court cases and type of court calendar were reflective of a lower bureaucratic court structure within the Wisconsin circuit courts. The hierarchical authority figure of judges were somewhat inconclusive in Wisconsin as many respondents stated that they had a mixed case load and mixed calendar, however, the type of court calendar holds more promise in sentencing literature (Dixon, 1995). Type of court calendar had a weak connection to the dependent variables

of Scenario 2. This variable supports the line of research that purports the level of bureaucracy impacts sentencing decisions (Dixon, 1995; Eisenstein, et al., 1988; Flemming, et al., 1992; Myers, 1988; Myers and Talarico, 1987; Nardulli et al., 1988), but both variables and possibly others should be included in future research to understand how bureaucracy connects to sentencing decisions.

**Courtroom workgroup connections to sentencing decisions.** The creation of the courtroom workgroup for this study was developed with the aid of respondents. It was based on the principle findings of past research in that a courtroom workgroup exists (for instance, Eisenstein, et al., 1988; Myers & Talarico, 1987; Ulmer, 1997), but it attempted to strengthen the conception of the courtroom workgroup by including individuals in the analysis such as court clerks and probation officers, who were not typically examined. Although respondents had some issues with the addition of these members (e.g., victims, court clerks, and probation officers), it was important to the creation of situated identities and development of sentencing research that all possible members who held influence in sentencing decisions were considered. The creation of the courtroom identities of professional and non-professional were developed with the aid of factor analysis, computation of Cronbach's alpha coefficients, review of respondent commentary, and consideration of past research. These tools provided some support for the divisions of professional members as judges, prosecutors, and defense attorneys, and nonprofessional members being court clerks, probation officers, defendants, victims, and citizens/constituents.

The courtroom workgroup was viewed by respondents as individuals in the professional sector of the courtroom (i.e., judges, prosecutors, and defense attorneys) who



were involved in the internal dynamics of court processes and strongly rejected the idea of more non-professional employees such as court clerks and probation officers as being important to sentencing decisions. Respondents also viewed victims, defendants, and citizen/constituents in distinct manners with the defendant and victim often more akin to the professional members than outside members in the usefulness of their information and opinions to respondents in reaching sentencing decisions. Respondents identified the defendant and victim as vital components of court processing during the sentencing decision, especially since the only courtroom workgroup factor that was related significantly to a dependent variable was nonprofessional information. When examining other items, however, such as how judges perceived their sentencing decisions to be viewed by others in the courtroom workgroup, when defendants were assigned to incarceration defense attorneys and defendants were touted as being individuals against the decision. Additionally, victims were viewed at times as not being supportive of the sentencing decisions when probation was assigned to the defendant.

Judges, thus, may have distinct ideas about the type of information and opinions that matter during sentencing, but are not afraid to make unfavorable decisions to some individuals involved in the sentencing process. Judges may be more inclined to make unfavorably decisions as perceived by victims, defense attorneys, and defendants because these members have been viewed as being outside the system. Victims traditionally have had little impact upon court processes as society takes on the roll of victim in criminal court cases. It has only been in the past twenty years where the individual victim has had stronger connections to the sentencing process of court cases by victim impact statements (Shichor & Tibbetts, 2002). Defense attorneys are perceived as outsiders because of their

role in defending defendants, stronger ties have been found between the judge and prosecutors (Spohn, 2009). Additionally, in accordance with expectation states individuals involved with group processes who were seen as outsiders will not exert the same amount of influence on group dynamics and decisions as those perceived as insiders (Berger, et al., 1974). In short, respondents may view particular individuals in higher regard when making sentencing decisions, but all components are helpful when reaching the sentencing decision. The professional and non-professional members of the courtroom workgroup may need to be explored further in future research to ensure that proper conceptualizations do exist and how each group influences sentencing decisions.

Outside of the divisions of the courtroom workgroup members, other courtroom workgroup factors demonstrated the autonomous nature of judges. Respondents were asked if they would change a sentencing decision if particular members of the courtroom workgroup did not view the planned sentence as favorable. Although there may have been some concerns with the interpretation of this item in the survey, respondents overwhelmingly stated that decisions would not be changed. Judges hold prestige and power due to their occupational standing that rarely is questioned within or outside the courtroom environment (Levin, 1977). The lack of willingness to change a sentencing decision demonstrates the perceived autonomous power of judges as much as their situated identity.

The descriptive statistics, however, do support that the courtroom workgroup is a vital component of sentencing decisions and situated identity, and that judges may not be as individualistic as they may want others to believe. Not only does changing a sentence due to others' influence question judicial authority, so does the use of going rates; most

judges stated that a standardized system of sentencing does not exist in their courtroom except for particular cases (e.g., driving under the influence). When examining the incarceration and sentence length decisions of the five scenarios; however, it appears that some normed or informal sentencing guidelines do exist around the modal categories, as was found by Eisenstein's research (Eisenstein, et al., 1988) of courtroom workgroups. Judges, as a whole, were unwilling to admit that standardized sentencing existed in their courtroom, but the sentencing decisions assigned in the five scenarios demonstrated that judges throughout the state of Wisconsin did sentence similarly to support that standardized rates do exist. In addition, questions that more indirectly formed dependence upon the courtroom workgroup demonstrated the usefulness of the courtroom workgroup in making sentencing decisions. For instance, respondents stated that sentencing decisions were made with the information and opinions of the professional and non-professional courtroom workgroup members; however, only non-professional information was statistically significant with Scenario 3 when analyzing independent t-test results. This could be a result of the differing legal factors in each of the scenarios; judges held varying views who perceived to the decisions as favorable in each of the scenarios. This is something that can be examined further in other research or by separating the courtroom workgroup participants in analyses.

In addition, the courtroom workgroup provided judges with invaluable socialization in understanding the judicial role and in how to complete sentencing decisions. Respondents stated that even though the state of Wisconsin educated the judges through formal training, the court clerks, prosecutors, defense attorneys, and other judges were indicated as beneficial factors in their socialization. Many respondents also

stated that general work and life experiences were helpful, which would include working with members of the courtroom workgroup and working as members of the courtroom workgroup. This can be connected to the significant relationships found between respondents who were prosecutors, civil attorneys, and general practice attorneys and the sentence lengths of Scenario 4. Those judges whose life and work experiences included being a prosecutor or general practice/civil attorney had a connection to assigning the defendant a modal/non-modal sentence length. Thus, members of the courtroom workgroup were a strong factor in the socialization of these respondents in learning how to be a judge in the Wisconsin circuit court.

According to the propositions of adult socialization, occupational context is the most important socializing agent during adulthood (Brim & Wheeler, 1966; Gecas, 1981; Mitsch et al., 1981). It is during these work experiences that attitudes, conceptions, and beliefs are developed with informal socialization often being more powerful than formal socialization tools such as training (Ulmer, 1997; Wice, 1991). It is this form of learning and connection to the members of the courtroom workgroup that Ulmer (1997) discussed with the term of embeddedness. Ulmer argued that the more a judge became embedded into the structure of the judicial role, the more stable the courtroom workgroup members, the more likely judges obtained information and opinions from other to form sentencing decisions. In addition, expectation states stated the role of status characteristics in group decisions; those with the most power will exert more influence over the decision but all members will play some role in the end result (Berger, et al., 1974). Also, situated identity theory argues that individuals who work together in a stable cooperative unit, as most judges in this study, are more willing to use normed actions (e.g., going rates) to

make quick, timely decisions (Alexander & Wiley, 1981). Thus, even though respondents declared that they were autonomous beings in their sentencing decisions, the courtroom workgroup was important to the formation of socialization and sentencing decisions throughout the respondents' careers because all elements of socialization impact all future decisions and behaviors, including sentencing decisions.

Overall, Hypothesis 2 regarding the connection of organizational contexts and the courtroom workgroup has little direct support for having a strong relationship with the dependent variables, but this can be due to the small case size and inability to perform other types of statistical operations. The univariate statistics do provide a depiction of judges who rely to some extent upon the professional and nonprofessional members of the courtroom workgroup in making sentencing decisions. This provided support that a courtroom workgroup exists for judges to build a situated identity with, and that may be important to the construction of sentencing patterns.

### **Situated Identity Factors – Hypothesis 3**

The third hypothesis suggested that the situated identities of judges will aid in the development of sentencing patterns in Wisconsin circuit courts between the modal and non-modal sentencing patterns of the incarceration and sentence length decisions. Similar to the courtroom workgroup, univariate statistics aid in creating support for the ability to connect situated identities to judicial decision-making and some significant relationships were found with bivariate statistics. The findings have support for situated identity theory; a foundation for using the theory to understand sentencing decisions was established in this sample. Situated identity theory proposes that when individuals view others favorably, they want those others to perceive them as favorable, so the decisions

they make will reflect what they think the others will see as favorable (Alexander & Rudd, 1981). This proposition has support within the confines of this dissertation, especially when combined with the propositions of expectation states theory.

Prior to discussing the main elements of situated identity theory, time should be taken to describe why this research supports the ability to use situated identity theory and describe the connections between the situated identity factors to sentencing decisions. At its core, situated identity theory argues that situated identities only can exist in social situations that involve conduct and normative actions (Alexander & Rudd, 1981; Alexander & Wiley, 1971). The majority of judges did not admit to the presence of a going rate, which could be a possible limitation to the connection of situated identity theory to sentencing decisions. The purpose of a going rate is that it offers a standardized sentence for specific cases, and if the majority of judges agreed that a going rate existed in their courts, it would support that the conduct of sentencing decisions was indeed a normative action. This direct connection cannot be made with this sample but other information as discussed above demonstrated that normative actions were found in the structure of sentencing decisions among Wisconsin circuit court judges. Expected modal sentence categories, especially for the incarceration decisions, were found in this study. The presence of modal sentence categories in the study attributes to the belief that some form of normative action was present in the sentencing conduct of judges. Thus, situated identity can be connected to the study and its findings, because the requirement of sentencing decisions to be normative actions has been met.

In connection to situated identity, three propositions must be clarified to demonstrate that the circle of favorability in sentencing decisions. First, respondents

supported the contention that they view others as cooperative and favorable, but prosecutors and defense attorneys were viewed as slightly competitive and were perceived as the least favorable among all the courtroom members. This can be attributed to the nature of their duties and position within the court as adversaries fighting on opposite sides of the law. The nature of the work accomplished by attorneys during the sentencing process is distinct from all others in the system, which may place them lower in regard to these two adjectives. This is something that can be scrutinized further in future studies to understand why judges perceived these two individuals as the least cooperative and least favorable.

Even though individual courtroom member differences existed with how respondents viewed their cooperation and favorableness during sentencing decisions, the scales of cooperation and favorability demonstrate as a whole respondents depicted the courtroom workgroup members as cooperative and favorable. Courtroom workgroup literature suggests that in cooperative environments judges were more likely to make decisions that will be accepted by others in the courtroom workgroup as well as politicians and citizens (Ulmer, 1997), whereas situated identity literature speaks more of favorability in decision-making processes (Alexander & Rudd, 1981). Of these two variables, only cooperation had a significant relationship to a dependent variable. This could be due to the cooperation scale having a wider range of responses (and more variance) than the favorability scale. Regardless, it does support the contention that how judges perceive others is connected to sentencing decisions, and since all members were perceived by respondents as favorable it strengthens the connections of situated identity theory to sentencing decisions.

Second, this research supports the idea that judges make decisions that were viewed favorably by others. In most of the sentencing decisions, respondents perceived all courtroom workgroup members as viewing their decisions favorably. The exceptions to the favorable attitudes towards sentencing decisions were with Scenarios 3 and 5 where prison terms were the modal incarceration category; defense attorneys and defendants were perceived not as supportive of the decision, arguably due to the sentence of prison. This, more than likely, is a realistic view by judges, as most defendants, and perhaps defense attorneys, are not going to be happy with a prison term. This may appear as a lack of support for situated identity theory; however, it can be supportive of other propositions of the theory. Situated identity theory, and more generally symbolic interactionism, state that individuals make favorable decisions, only when they want to be viewed as favorable by the other people in the situation (Alexander & Knight, 1971; Alexander & Weil, 1969). Understandably, judges are not as concerned with the perceptions of the defense attorneys and defendant when it comes to sentencing decisions as they are with those individuals such as prosecutors and citizens/constituents; this is the contentions and use of expectation states. In a criminal justice climate that is prone to being tough on crime, judges may care more about ensuring that others hold this perception of them, especially in a state where judges are elected to their position every six years. Perhaps judges are less likely to be concerned with the viewpoint of the outsiders (i.e., defendant and defense attorney), and instead want to gain the favorable opinion of others invested in sentencing processes and outcomes. These arguments are supported by the propositions of expectation states theory and could prove to be useful discussion points in future research.



Although this research does not provide information about whether the courtroom workgroup members actually perceived the decisions favorably, this is of little concern to situated identity theory. Situated identity theory proposes that when individuals are engaged in group dynamics, individuals will make decisions they believe will be perceived as others as favorable. Individuals gather knowledge about favorability in decisions from socialization and work experiences, especially when the group is of a static nature. Judges stated that key factors in their socialization were members of the courtroom workgroup and work/life experiences or informal more than formal. It is arguable then that respondents learned from the courtroom workgroup what would be perceived as a “good” or “bad” sentence and, at least partially, make their decisions from this division. This is in support of the contentions of situated identity theory, and provides a proper foundation for using this theory to explore judicial decision-making and sentencing decisions.

Situated identity theory, however, is not enough to understand the tenets of the social construction of sentencing outcomes. The literature review examined expectation states theory to demonstrate how and which courtroom participants may aid in the sentencing process. According to expectation states, individuals in social groups, especially static groups, create ways to make decisions as divided through status and power of the individual members (Berger, et al., 1974; Fisek, et al., 1991). Expectation states theory connects to the findings of this research and details the manner of which the situated identities of judges interact with courtroom participants, and provides additional support for the third hypothesis. This study found that particular individuals mattered more to judges during sentencing decisions as measured through the information,

opinions, and favorable perceptions of courtroom workgroup participants. For instance, court clerks and constituents were not regarded as highly in the sentencing processes as attorneys and defendants; more judges accepted the information and opinions from attorneys and defendants than from court clerks and constituents. Furthermore, the attorneys were not perceived as the same by judges; most judges trusted the information and opinions of prosecutors more than defense attorneys, and believed prosecutors would perceive sentences more favorably than defense attorneys.

Expectation states theory would suggest that judges have the highest status and power within the group during sentencing decisions; this is why judges are able to make the seemingly autonomous decisions of incarceration type and sentence type (see Troyer & Younts, 1997; Webster & Whitmeyer, 1999). This research would suggest that prosecutors hold the next level of power in sentencing decisions, perhaps followed by defense attorneys and defendants. Probation officers, other judges, and victims would be in the middle group of status and power with court clerks and constituents being almost non-existent in the decision-making process, and thus, holding very little status or power within the group for sentencing decisions. Therefore, expectation states theory develops the decision-making process as one based on hierarchies developed alongside the type of decision being made while situated identities demonstrate how the social conditions of desired favorability impact individual decisions. In other words, expectation states theory provides information about who judges will gather information from in their pursuit of being perceived favorably .

Overall, the study limits the ability to make strong conclusions about how situated identity impacts sentencing patterns between modal and non-modal sentences. This study

does support that situated identity theory can be used as an appropriate foundation for how and why sentencing decisions are made. Hypothesis 3 does have tentative support for the use of situated identity theory in judicial decision-making, and future research can aid in more fully understanding the complex social phenomenon of sentencing decisions.

### **The Policy Implications of Situated Identity Theory**

The policy implications for connecting situated identity theory to judicial decision-making and sentencing decisions revolve around the means to ensure that the courtroom workgroup is an effective tool in managing sentencing decisions. Judges assume a great responsibility and power in making sentencing decisions; a decision that rarely is challenged and often is the final voice over the defendant's future. Although legislation and *stare decisis* impact the development of the sentencing decision, this research demonstrated that judges do rely upon members of the courtroom workgroup for information and opinions, in support of situated identity theory. It is in this connection of the courtroom workgroup members that can be utilized to influence sentencing decisions, develop legislation changes, and provide socialization to judges.

The exact amount of influence exerted by members of the courtroom workgroup on the final sentencing decision is unknown. This study illuminated the idea that the courtroom workgroup, especially prosecutors, defense attorneys, defendants, and victims, is connected to sentencing decisions; the strength of this impact can only be assumed and is left for future research to determine. Similar to Ulmer (1997), the cooperative nature of the courtroom workgroup did affect sentencing decisions. Perhaps in cooperative environments judges are more likely to obtain information and opinions from other members, and are more willing to work with attorneys at creating a workable sentencing

decision. For policy, it may be important for courts to ensure that collegiality be kept amongst the more stable courtroom workgroup members to develop an effective and efficient court case processing system.

In addition, the socialization of judges is an important step in individuals learning and understanding the roles and duties of a judge, such as the acceptable sentencing decisions (Eisenstein, et al., 1988; Levin, 1977; Wice, 1991). This study also demonstrated that socialization occurred within the formal pursuits of the state and education, but judges also stated that the informal connections of general life and work experiences as well as members of the courtroom workgroup aided their ability to learn about becoming a judge. This means that these respondents obtained information, opinions, and skill sets from those inside the system. For Wisconsin, and arguably other courts, it would be in the best interest to train all members of the courtroom workgroup about sentencing decisions, and other important decisions (e.g., charging decisions), so that a common legal foundation can be achieved amongst all members of the group. If all members have a strong legal understanding of the principles of sentencing decisions, it is possible that disparities based upon extralegal variables could be lessened when judges and others no longer view certain types of defendants as more deserving of harsher sentences and instead focus more upon the legal constructs of the case. This is not to say that all disparities will be removed from court decision-making as members of the courtroom still belong to the outside society and its cultural beliefs, but by understanding and using the social nature of the courtroom, there may be a stronger ability to promote change within the system.

In this light, the work of Ulmer (1997) can be connected to the usefulness of courtroom workgroup members and judges being embedded into the process. Ulmer used the term to suggest courtrooms that worked together through cooperation and towards common sentencing goals (i.e., those that were embedded into the system) would be more accepting of sentencing changes imposed by outside forces (e.g. sentencing commissions and legislation). It appears even though the Wisconsin sentencing commission's guidelines and policies never took full effect and now are more suggestive in nature; these informal guidelines still might exert influence over judicial sentencing decisions, which may be a byproduct of many of the judges holding the bench when the sentencing commission and guidelines existed. This legal factor is not examined directly in this study, but the creation of scenarios and development of the expected modal sentence types and lengths were made with the use of information from sentencing commission data. Although examining the usefulness of the commission's guidelines was not a goal of this research, its findings with the use of past research, does suggest that the sentencing guidelines have impacted the way Wisconsin judges sentence in the circuit court. This study has supported that workgroups exist in Wisconsin courtrooms and that its professional and nonprofessional members influence the sentencing decisions assigned to adjudicated defendants through tenants of situated identity theory. It can be argued from the results of this study that Wisconsin judges are embedded into the courtroom workgroup and that all work together to form acceptable (i.e., favorable) sentencing decisions for defendants based upon the social norms created from legal doctrines as well as extralegal factors.

## **The Future of Situated Identity Research**

This study found limited significant relationships between judicial characteristics, courtroom workgroup characteristics, and situated identity factors. This research was exploratory in nature due to the newness of merging situated identity theory to courtroom decision-making and sentencing decisions. New movements in research take time to determine the appropriate means to examine, explore, and comprehend the connections between variables. Although sentencing research has studied the connections between some of the variables explored in this research, the findings often have been mixed as to what variables aid in the determination or prediction of sentencing decisions. This research sought to develop the more traditional variables of judicial characteristics and courtroom workgroups within a context of situated identity. These limited findings may be suggestive of a lack of connections between the variables, but it is more advantageous to pursue the positive findings of the univariate statistics with the understanding that the limitations from a smaller sample size and the methodological constraints of examining judges can be improved in future research. The following is a discussion about how situated identity theory can be researched more effectively and how methodological changes can be used to enhance future studies.

### **Survey Design**

Some concerns existed with the layout of the survey design and the types of questions being asked of judges and the tasks were expected to complete. For instance, some respondents declared that the scenarios were too contrived and did not contain enough information for respondents to enter sentencing decisions. Some of the judges' commentary included:

*Respondent A:* I would want to hear from both defendant and victim and have more background information on defendant. What and when was his prior? How did he perform on [probation] supervision? ... What programming might help to keep him out of the system? Has he ever had a job? Need educational assistance?

*Respondent D:* The sentencing scenarios are so dependent on other factors not listed in the scenarios, like victim statements (for instance) – the likelihood of defendant paying restitution.

Other judges suggested that the dichotomous choice between probation and prison with extended supervision ignored the reality of allowing judges to assign jail and prison sentences along with probation as a type of shock incarceration. Some of the comments connected to this concern were:

*Respondent C (via email):* [W]ith regard to the sentencing scenarios, there is simply too little information and we are given two stark choices that do not give us the flexibility we are used to applying at sentencing. For example, when we are told that the defendant has a "criminal record," we need to know more. It makes a big difference to us whether the record is dated, isolated, current, mostly petty, mostly serious, etc. It also makes a big difference to us whether a defendant with a record has been successful on probation before. Also, we now have AIM evaluations which help us assess the defendant's risk of re-offense.

*Respondent D:* Deciding whether to impose prison or probation is usually not the difficult questions. Often it is more difficult to decide how much jail time to impose as part of probation.

*Respondent E:* It was difficult to complete Part I because there are other options to the sentencing outcomes.

Past research has highlighted the need to create real categories when asking judges to assign sentencing decisions (Mears, 1998; Spohn, 2009), but it was to the interest of the researcher to use the data available from the Wisconsin sentencing commission so that scenarios could be built from modal categories of sentencing constructs. The commission only collected data about sentences of probation and prison with extended supervision for the crimes entered into the scenarios. Likewise, the details placed into the scenarios were created from the Wisconsin sentencing commission information; however, it is understandable that the scenarios left the judges lacking information that would be available in a real case. Some of the judges remarked that the scenarios provided an adequate foundation for the decision but lacked specific details about what the attorneys were requesting, how the defendant reacted to the crime, and how or why the defendant did not work with police or the attorneys during the course of the case. These are items that judges may have at their disposal and could be entered into future scenarios. This is something that could be completed in Wisconsin, as cases are open to the public and detailed case information can be requested. The information from the Wisconsin sentencing commission does include case numbers so that a case scenario could reflect the real details found in a case. It may take time to locate a case that



includes all the necessary information, but it could be retrieved and incorporated into a survey.

Also in connection to the scenarios, a few judges had concerns with victims being included in the favorable sentencing assessment items. Most of the concerns rested in Scenario 4, which was the delivery of cocaine offense. Appropriately, drug offenses are identified as victimless cases, and judges were unsure of how to respond to this seemingly arbitrary connection of a victim to this crime. Some judges told the researcher that they identified the victim as society, or the defendant, or the buyer, but that these connections were not correct in the eyes of justice and the laws of Wisconsin. This issue can be fixed by removing the victim statement from this scenario or identifying it as a specific entity.

A few respondents wrote with concern about the use of information or the purpose of certain questions. One judge even returned the cover letter for the third mailing and wrote the following:

This study is NOT about the sentencing decision making process unless the judge treats it as a way to gain favor with selected interest groups – that is a political process. Of course if they do they should not be a judge.

Factors [important to sentencing] are:

1. Gravity of the offense
2. Character of the offender - risk
3. Need for public protection

This example demonstrates a concern with sample bias, or that the non-response rate might be attributed to judges not understanding the purpose of the survey, or assuming

that intentions were not honorable. The most debated survey items related to the conservatism scale. Some judges wrote in emails and on the questionnaires that these items would not be answered as there was fear regarding the potential uses of the data in connecting them to particular social viewpoints. For instance,

*Respondent B (for the unanswered item asking about legalized abortion):* I am a 59-year old middle class white guy. My values are not to be imposed on every person in society.

*Respondent F (via email):* I received your letter and began to complete the survey. I did not complete it. The questions required one to answer from the selection provided. Many of the questions could not be honestly answered as asked. Example: Do you favor church authority? Yes/no. I cannot answer questions such as that in the options presented. I don't know how this survey will be used. I find the questions offensive and irrelevant.

Return email messages were sent to judges, who emailed concerns, ensuring that items would not be examined individually or used to determine the social likes and dislikes of judges, but they would be used to develop an understanding of the social consciousness of judges. The data also supports that these items were concerns to the respondents, as these items have the most missing data. When engaging with judges, it must be remembered that in most states, especially in Wisconsin where judges are elected, judges must remain impartial about social issues and are not supposed to abide by conservative or liberal ideologies. In retrospect, a different scale could have been used

that would not connect judges to holding opinions about potentially socially dangerous aspects (e.g., favor gay unions/marriage) or a direct measure could be the sole means of measurement; however, judges were somewhat on polar opposites with respect to identifying themselves. For instance, one judge (Respondent A) did not answer the direct measure of conservatism and simply stated, “I don’t like labels,” whereas another judge (Respondent B) selected liberalism and wrote “Blue dog” and “democrat” next to it. To increase sample size, it might be better to cater to all potential respondents and take special care of these types of concerns by using a direct measure that is not a forced choice; in this study, the direct measure and scale validated each other to suggest that only one of the items could be used to measure social conservatism.

Another item that needs to be corrected is the items asking if judges would change their opinion about a planned sentencing decision knowing that others in the courtroom workgroup disagreed with it. The majority of respondents declared that a final decision would not be changed; however, some respondents wrote that depending upon the information provided or rationale for their opinion, a sentencing decision may be altered as long as it was not yet entered formally into the court records. Two judges wrote the following:

*Respondent G:* It depends on the validity and thoughtfulness of reasons given. Also, is it additional information that I did not have before. This is a badly drafted question.

*Respondent H:* I decline to consider what others think after the hearing is concluded. What the D.A., defense lawyer, victim, others say before the court pronounces sentence/probation is important, not after.

One issue with this item was that respondents might not have understood that the item was asking about changing a decision before it was entered formally; this could be changed with editing the wording of the item. This could still cause problems with respondents and may be addressed better during interviews or other methods of investigation so that a conversation can be started about how or why opinion changes may occur and how the courtroom workgroup or situated identities enter into judicial decisions.

### **Inclusion of Courtroom Workgroup Participants and Scale Creation**

As discussed above, some judges appeared to take offense to the idea that court clerks and/or probation officers had influence or opinions about sentencing decisions. Some respondents simply refused to answer any of the questions on the paper survey that dealt with probation officers or court clerks, while others from the electronic survey wrote emails and comments about making inferences of these individuals' connections to the sentencing decisions. Some respondents stated that these two individuals, especially the court clerk, had no influence on the sentencing decision and that placing them on the survey demonstrate the naïve beliefs of the researcher. To the judges who wrote emails, reply messages stated that court clerks and probation officers have not been extensively examined in connection to sentencing decisions, and the researcher does not have preconceived notions about how these individuals may or may not contribute to the sentencing decisions, but a finding indicating a lack of connection is still of interest. It is

important for future research to determine how these individuals may be connected to the courtroom workgroup and situated identities, and why judges seemed offended by their inclusion in this research.

In addition, the lack of significant findings in the professional and nonprofessional scales of hypothesis two in this research can be attributed to the conceptualization and creation of the scales. The individuals placed within the professional (i.e., judges, prosecutors, and defense attorneys) and the nonprofessional (i.e., court clerks, probations officers, victims, defendants, and constituents) scales may not have been appropriate. The scales were created in part through past research of the courtroom workgroup and understandings of the operation of court processes. The use of these scales could have limited the ability to find significance in this research as individuals of the courtroom processes were viewed in distinct manners as evident in the Cronbach's alphas of the scales and some of the descriptive statistics. Of particular note, the judges lowered the professional scale's alpha whereas probation officer, victims, defendants, and court clerks provided varying levels of information, opinions, and perceived acceptance by the respondents. For these reasons, it may be best in future research where sample sizes are a concern to examine the connections between the individual roles and sentencing outcomes.

Future research could also explore the specific relationship of certain members of the court process, such as the victims, court clerks, and probation officers. These individuals are not viewed typically as members of the courtroom workgroup but are influential to some degree in the sentencing processes as made evident by this research. These individuals were included in the current study to start an examination of how these

roles connect to sentencing decisions, as past research has not included these individuals. When concerned with victims, one reason for the lack of inclusions could be the courts that have not made individual victims important to the process until the mid 1990s. The importance judges attributed to the victims, which was not found with court clerks and probation officers, could be a function of the current emphasis placed upon the usefulness of victims in sentencing of offenders (Shichor & Tibbetts, 2002), and perhaps the desire of judges to be perceived favorably. The suggestion that these individuals are important to judicial sentencing decisions should continue to be explored in future sentencing research.

### **Survey Methodology**

The biggest constraint to this research was how the lower sample size limited the ability to find significant connections and engage in appropriate tests of correlations and/or causality (e.g., logistical regression). This sample size potentially could be improved by altering some of the items as previously discussed as well as examining the data with different statistical tools and by using different methodologies to gather information.

Independent t-tests and chi-square tests of independence developed an understanding of how courtroom participants and situated identities of judges connect to sentencing outcomes. One statistical tool not utilized in this research was analysis of variance or ANOVA. In future sentencing and decision-making research where courtroom participants are analyzed as individuals and not combined into the professional and nonprofessional scales, ANOVA would be an appropriate means to determine how these different individuals connect to modal sentencing outcomes. ANOVA allows for

exploration of groups to see if the within-group and between-group variances of means are due to actual differences within the population or other concerns (e.g., sampling error, other variables). In addition, judicial characteristic variables of prior occupation and socialization also could be explained more through ANOVA.

Another means to examine the data differently would be to develop new categories for the sentence length variable or use it as a continuous variable. For example, chi-square analysis could be used to determine the mean differences for sentence lengths in groups of above modal, within modal, and below modal. This could be developed in two distinct ways by using the Wisconsin sentencing data modes or the current study modes as the reference point for the categories. Sentence length as a continuous variables would allow for bivariate ordinary least squares regression to be used to determine which independent variables had a significant direct effect upon sentence lengths; this would be most similar to analyses completed in past sentencing research.

One hindrance to this study was being unable to find an organization that was willing to provide a list of judges' emails or to forward an email message in support of the data collection. This issue did not allow the web address of the Qualtrics survey to be emailed to judges, and instead the first two mailings included a complicated hyperlink for judges to type into a web browser or asked judges to contact the researcher by email to have the link sent. This limited the use of Qualtrics and made the research rely more upon the paper copy of the survey, which increased costs and the likelihood of losing the survey and return envelope.

It should be noted that prior to the research starting, several attempts to secure an email list were made. In addition, during the data collection process a judge requested

that the hyperlink be emailed to all judges as this would ensure higher completion rates. The judge sent a letter to the director of state courts requesting and advocating that a solicitation letter with the hyperlink be forwarded to all judges' email addresses, but this was not done. If an email link could have been sent to judges a higher response rate would have been likely, especially since two-thirds of the collected surveys were completed through Qualtrics. Perhaps future research could be employed with states that have judges' emails publically listed or where agencies agree to forward emails for research. In states where this does not exist, traditional postal mailings may be best employed when using a self-report survey.

Another concern that was addressed by respondents who took the electronic survey was the choice of forcing responses before judges could progress in the survey. Forced responses were developed to encourage judges to complete the survey and not have too many missed items. For some judges, this was not a desired aspect of the survey and it limited the number of responses received. A few judges emailed comments about the forced responses and thought it was pointless to make them respond to items they did not care about or where they did not want to provide a response. Other judges stated that because they were not able to preview the full survey before taking it, a choice was made to not start the survey. This was rectified to some extent once the paper survey was mailed, but without the forced choices, more judges may have completed portions of the electronic survey increasing the sample size and usability of the information. Thus, forced choices may be a useful tool for some studies that do not contain potentially sensitive information (e.g., social opinion questions) or with samples that do not carry



prestigious occupations who may be more concerned with the type of information requested by the survey.

The findings of this study do provide a foundation to continue the examination of how situated identity aids in contextualizing sentencing decisions. Self-report surveys, however, do place limitations on the type of exploration that can be conducted, especially when examining a prestigious population such as judges. This exploratory survey gathered information from judges and created a starting point for further research about the topics. This study can be a foundation for future surveys, interviews, and focus groups that examine various courtroom workgroup members and situated identities in the context of sentencing decisions or other decisions.

Interviews could gather additional detailed information such as how judges use the courtroom workgroup members in making decisions, what type of information and opinions are most useful, what motivates specific decisions, why defendants and defense attorneys' unfavorable perceptions do not limit sentencing decisions, and why are court clerks and probation officers pushed outside of the professional courtroom workgroup status. In addition, specific information could be gathered about situated identities in the connection of real sentencing decisions. Case studies could be completed that engage the researcher in the sentencing decision process where information could be obtained from all members of the courtroom workgroup that would provide a more complete understanding of favorable perceptions, cooperation within the court, and how it all intermixes to form the decision-makers' situated identity. Although survey instruments can gather information, there is difficulty in developing surveys that can reflect the complex social nature of the courtroom and its members, and this is necessary to

understand the connections of situated identity theory. This study also allows future contact with judges who communicated their desire to be involved with future research, which can provide a starting point for building situated identity theory into courtroom decision-making.

### **Summary**

This first exploration of the situated identities of judges demonstrated promise of future research finding results that are more substantial with improved and/or different methods. The survey items can be altered to make it more attractive to judges, different methods of sending or completing the survey can be employed, and other methodologies such as interviews can be utilized to gain more information about situated identity theory and its connection to courtroom decision-making.

### **Conclusion**

Judicial decision-making is a complex social process built within a foundation of precedent, statutory law, courtroom workgroups, and the obligations and goals of a judge. Prior research has demonstrated that extralegal factors aid in the determination of a sentence regardless to the type of sentencing structure of the trial court. These extralegal factors include defendant characteristics, judicial characteristics, and courtroom workgroup characteristics, but explanation of why or how these variables predict or determine sentencing outcomes is largely unknown. This research attempted to close this gap by applying the symbolic interactionist theory of situated identity to sentencing decisions within the Wisconsin circuit court.

This study supports the movement away from constructing sentencing decisions through strict legal theory and into a behavioralist model. The scenarios presented each

judge with the same legal characteristics of five offenses. These five offenses were among the original 11 offenses that the state of Wisconsin sentencing commissions have attempted to create sentencing guidelines about, which impact the discretionary choices in sentence lengths. Thus, in support of such research as Albonetti (1991), Wice (1985), and Zatz (2001), more than legal characteristics must be examined in sentencing studies to illustrate the true nature of how judges engage in the decisions-making processes of sentencing decisions.

As an exploratory examination of how judicial situated identities contextualized sentencing decisions, this research provides foundational support for future research to be conducted in this area. The findings suggest that situated identities exist amongst the courtroom workgroup members and that may have some influence upon sentencing decisions. Stronger conclusions cannot be reached due to the lack of statistical analysis that develops an understanding about correlation and causation. The univariate statistics and bivariate statistics employed, however, did show that most judges sentenced within the modal category, viewed professional courtroom workgroup members as favorable and cooperative individuals, and believe that professional and non-professional courtroom workgroup members hold favorable opinions about assigned sentences. Overall, the research is supportive of the propositions of situated identity theory in that when individuals perceive others as favorable, especially in static small groups, decisions will be made that the others will view favorably.

This tentative support may be unable to draw strong conclusions about the causal mechanics between situated identity and sentencing decisions, but reason does exist for continued evaluation of the research questions raised in this study. The research questions

asked if judicial situated identities contextualized the incarceration and sentence length decisions. It is arguable with the data provided here that situated identities do have a connection or at least a place within the framework of sentencing processes and decision-making, but future research needs to be completed. Future research can continue to examine the variables of this study through a survey taking into consideration the items judges had issues with and making modifications. In addition, other types of methodologies such as interviews, focus groups, and case studies, may provide beneficial and in-depth information that is difficult to obtain from a survey.

In summary, this research demonstrated that situated identities could aid in the understanding of how courtroom workgroup members are valuable to sentencing decisions and why specific sentencing patterns exist. It supported past research that judicial demographics have less to do with sentencing than social factors of judges (e.g., conservatism/liberalism ideology). In addition, courtroom workgroup characteristics have a role in sentencing decisions, especially the professional members in providing opinions and information to aid the judicial decision-making process. Finally, more research must be conducted to determine the subtle connections of courtroom workgroup members and situated identities have in sentencing decisions.

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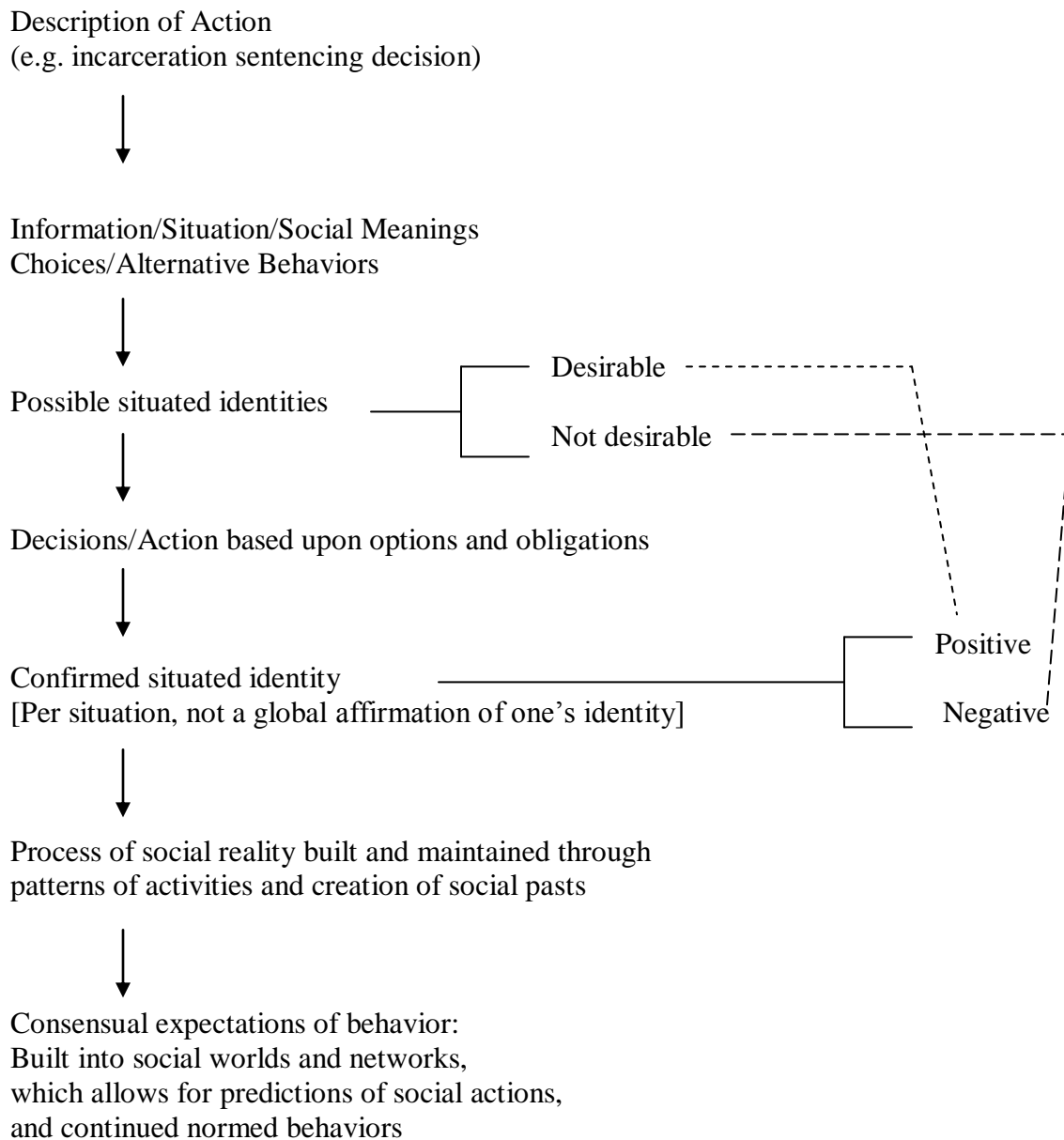
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## Appendix A

### *Model of Situated Identity Theory*

Adapted from Alexander & Rudd, 1981



## Appendix B

### *Wisconsin Sentencing Commission Crimes*

#### FELONY CLASS "B"

- 1st Degree General Assault
- 1st Degree General Assault of a Child

#### FELONY CLASS "C"

- 2nd Degree General Assault
- 2nd Degree General Assault of a Child
- Armed Robbery

#### FELONY CLASS "E"

- Robbery

#### FELONY CLASS "F"

- Burglary

#### FELONY CLASS "G"

- Delivery & PID Cocaine (<1g)
- Theft (>\$10,000)

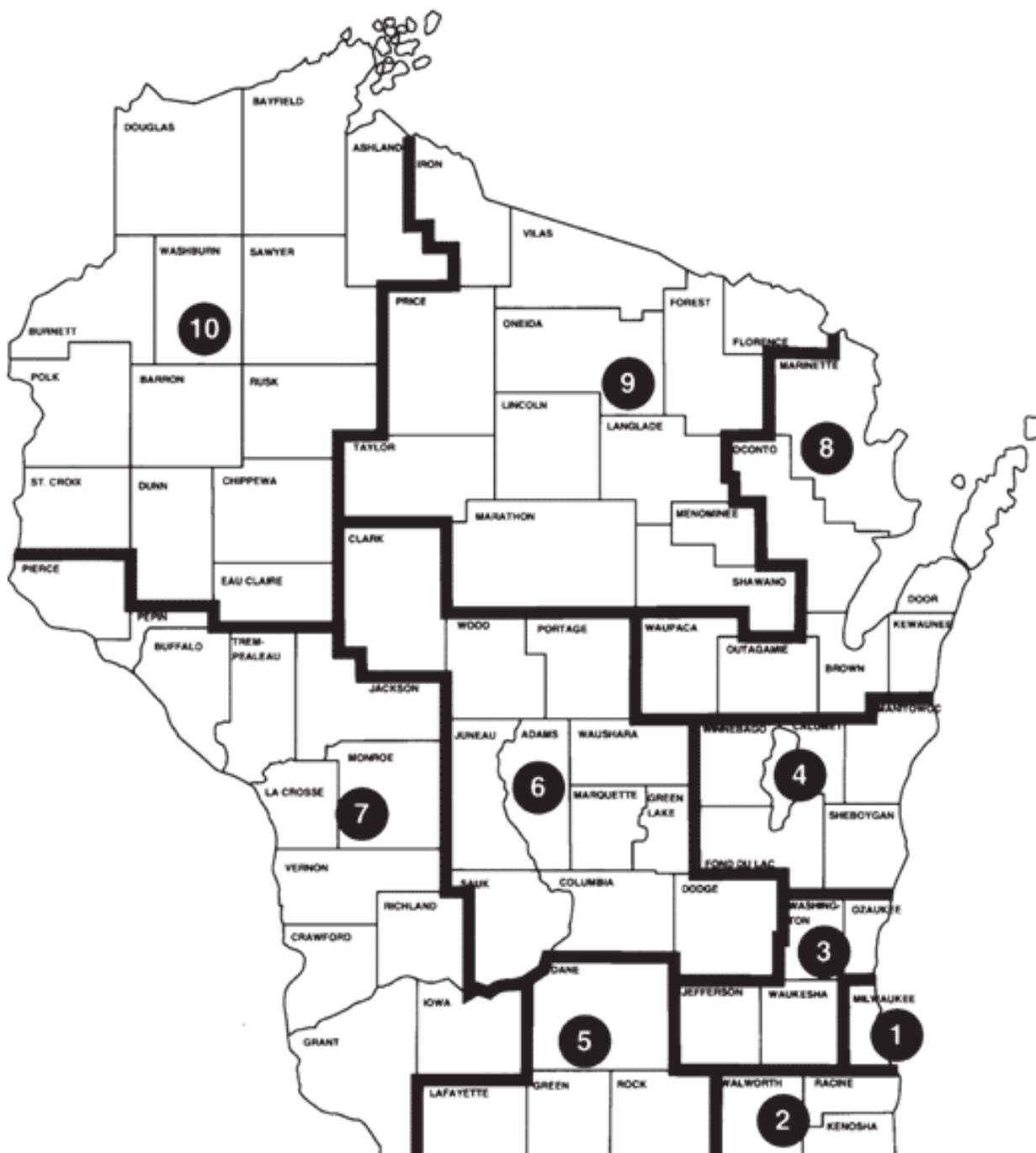
#### FELONY CLASS "H"

- Delivery & PID THC (200g - 1,000g)
- Forgery/Uttering



## Appendix C

### *Wisconsin Circuit Court District Court Map*



## Appendix D

### *Social Conservatism Scale*

Henningham (1996) $\alpha = .074$	Current study $\alpha = .074$
Death penalty	Death penalty
Multiculturalism	Interracial marriages
Stiffer jail terms	Harsher prison terms
Voluntary euthanasia	Voluntary euthanasia
Bible truth	Bible truth
Gay rights	Gay union/marriage
Pre-marital virginity	Pre-marital abstinence
Asian immigration	Immigration
Church authority	Church authority
Legalized abortion	Legalized abortion
Condom vending machines	High schools providing condoms
Legalized prostitution	Legalized prostitution

## Appendix E

### *First Contact*

September 3, 2010

Dear Wisconsin Circuit Court Judiciary:

In the next few weeks, you will receive a letter requesting you to complete a survey for the Wisconsin Sentencing Assessment. This is an important research project being conducted by Indiana University of Pennsylvania to understand Wisconsin judicial sentencing decisions. The purpose of the Wisconsin Sentencing Assessment is to examine judicial decision-making and the role of the court community context. The information collected from each member of the judiciary is critical to the success of this project and only can be obtained through your participation.

I am writing in advance because we have found people like to know ahead of time that they will be contacted to complete research. You have been selected due to your status as a judge in the Wisconsin circuit court.

Enclosed with this mailing is a letter of support from the Remington Center of the University of Wisconsin Law School that encourages the circuit court judiciary to complete this research project.

You can take the Wisconsin Sentencing Assessment survey now by visiting the secure website  
[http://iup.qualtrics.com/SE?SID=SV\\_8nOAZudBPEitoEY](http://iup.qualtrics.com/SE?SID=SV_8nOAZudBPEitoEY)

If you prefer to have this link emailed to you, please email the request to Jennifer Huck at [lwzn@iup.edu](mailto:lwzn@iup.edu).

Thank you for your time and consideration. Do not hesitate to contact us with any questions or concerns.

Sincerely,

Jennifer Huck, Principal Investigator  
Wisconsin Sentencing Assessment  
Department of Criminology  
Indiana University of Pennsylvania  
Email: [lwzn@iup.edu](mailto:lwzn@iup.edu)  
Phone: 262.xxx.xxxx

August 23, 2010

Dear Wisconsin Circuit Court Judiciary,

The Wisconsin Sentencing Assessment research project is dedicated to understanding the sentencing decision-making process of Wisconsin criminal trial court judges. The purpose of the study is to examine judicial decision-making and the roles that judges fill within the court community. As a part of this project, members of the Wisconsin Judiciary will be asked to provide responses to a survey that presents several defendant scenarios and measures judicial sentencing decisions. In the next few weeks, you will receive by email communication or traditional postal mail a request to respond to the survey.

I have reviewed the research agenda and survey related to this project. I believe this research project is an important addition to developing contextual information about court organization and the criminal sentencing process. The collection of data from individual members of the judiciary is a critical component of this research project and only can be obtained through your participation.

Upon completion of the research, Ms. Jennifer Huck, the Principal Investigator, is willing to provide an aggregated report about the status of Wisconsin sentencing decisions to those who express interest in receiving it.

The Frank J. Remington Center of the University of Wisconsin Law School fully supports the research initiatives of Ms. Huck, and strongly encourages you to complete the Wisconsin Sentencing Assessment survey as it will help us all better understand the judicial sentencing process. Please consider her request for participation.

Sincerely,

Walter J. Dickey  
Faculty Director, Remington Center

## Appendix F

### *Second Contact*

September 17, 2010

Dear Wisconsin Circuit Court Judiciary:

I am requesting your assistance with the Wisconsin Sentencing Assessment survey. This is an important research project being conducted by Indiana University of Pennsylvania to understand Wisconsin judicial sentencing decisions. The purpose of the Wisconsin Sentencing Assessment is to examine judicial decision-making and the roles that judges fill within the court community context. The information collected from each member of the judiciary is critical to the success of this project and only can be obtained through your participation

Your participation is completely voluntary and confidential – the researchers cannot identify the individual who completed the survey. The responses will only be delivered in aggregate form without identifiers and your name will not appear anywhere on the questionnaire. This is not a survey about defendant characteristics; its focus is upon the sentencing process in the court community context. There is no known risk of participating in this survey. If you are interested in the results of the survey, please contact us, and a research report will be sent to you upon its completion.

The 20-minute survey can be accessed using the following link  
[http://iup.qualtrics.com/SE?SID=SV\\_8nOAZudBPEitoEY](http://iup.qualtrics.com/SE?SID=SV_8nOAZudBPEitoEY)

If you have questions or comments about this study, we would be happy to speak with you. Thank you very much for your assistance with the Wisconsin Sentencing Assessment, your time is appreciated.

Sincerely,

Jennifer Huck, Principal Investigator  
Wisconsin Sentencing Assessment  
Department of Criminology  
Indiana University of Pennsylvania  
Email: lwzn@iup.edu  
Phone: 262.xxx.xxxx

Appendix G

*Third Contact*

October 1, 2010

Dear Wisconsin Circuit Court Judiciary:

A few weeks ago the Wisconsin Sentencing Assessment survey link was sent to you. If you have already completed and returned the survey to us, please accept our sincere thanks and discard the enclosed paper survey.

If you have not had time to complete the survey, please find time to do so soon. Your information is critical to the success of understanding Wisconsin sentencing decisions. For your convenience, a paper copy of the survey is enclosed along with a self-addressed, stamped envelope. The survey still can be accessed at [http://iup.qualtrics.com/SE?SID=SV\\_8nOAZudBPEitoEY](http://iup.qualtrics.com/SE?SID=SV_8nOAZudBPEitoEY)

We are especially grateful for your help because it is only by asking judges to share your experiences that we can understand the sentencing decision process.

If you would like the final research report to be sent to you or if you have any questions or concerns, do not hesitate to contact us.

Sincerely,

Jennifer Huck, Principal Investigator  
Wisconsin Sentencing Assessment  
Department of Criminology  
Indiana University of Pennsylvania  
411 N. Walk, Wilson Hall  
Indiana, PA 15705  
Email: [lwzn@iup.edu](mailto:lwzn@iup.edu)  
Phone: 262.xxx.xxxx

## Informed Consent

You are invited to participate in this research study. The following information is provided in order to help you to make an informed decision on whether or not to participate. If you have any questions please do not hesitate to ask. You are eligible to participate because of your employment status as a judge in the Wisconsin Circuit Court.

The purpose of this study is to gain information about sentencing decisions in Wisconsin and judicial perceptions about the decision process. Participation in this survey will take approximately 20 minutes. Your information is crucial to the success of this research, as only judges are able to provide their perceptions about sentencing decisions.

---

Your participation in this study is voluntary. You are free to decide not to participate in this study or to withdraw at any time without adversely affecting your relationship with the researchers or the court. This study is separate from the circuit court and completed under the direction of Indiana University of Pennsylvania. Your decision will not result in any loss of benefits to which you are otherwise entitled. If you choose to participate, all information will be held in confidence as the researchers have no way to know who completed the survey. Your response will be considered only in combination with those from other participants. The information may be published in scientific journals or presented at scientific meetings.

If you are willing to participate in this study, please fill out the survey. Your completion of the survey signifies your informed consent to participate in this research, which grants the researcher to use your response for this study.

---

If you should have any concerns about this project or have questions concerning the results, please contact one of the project directors:

Project Director: Ms. Jennifer Huck  
Email Address: lwzn@iup.edu  
Phone: 262.xxx.xxxx

Faculty Project Director: Dr. Daniel Lee  
Email Address: danlee@iup.edu  
Phone: 724-357-5930

Mailing Address: Wisconsin Sentencing Assessment  
Department of Criminology  
Indiana University of Pennsylvania  
411 North Walk, Wilson Hall  
Indiana, PA 15705

This project has been approved by the Indiana University of Pennsylvania Institutional Review Board for the Protection of Human Subject (Phone: 726.357.7730).

---

*Thank you for your time in completing this survey.*

# Wisconsin Sentencing Decisions



Jennifer Huck  
Department of Criminology  
Indiana University of Pennsylvania  
Wilson Hall, 411 North Walk  
Indiana, PA 15705

Email: lwzn@iup.edu  
Phone: (262) xxx - xxxx



## Part 1 Instructions

There are five sentencing scenarios created from real Wisconsin case information. Please read the scenarios and assign each defendant a sentence. You must first select whether you will give the defendant probation or prison with extended supervision. Then write the sentence length of probation or prison with extended supervision in months. An example of how to respond to scenarios and provide sentence lengths is below.

After assigning the sentence term, respond how you think other individuals involved with and interested in trial court cases will view your sentencing decision.

*Example PROBATION response:*

*Your response would look like this if you assigned the defendant to 3 years probation:*

Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☒ Probation      \_\_\_\_\_ →      Length of probation: 36 months

OR

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

---

*Example PRISON WITH EXTENDED SUPERVISION response:*

*Your response would look like this if you assigned the defendant to 1.5 years prison with 1 year extended supervision:*

Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

OR

☒ Prison      \_\_\_\_\_ →      Length of prison sentence: 18 months  
with extended supervision

Length of extended supervision: 12 months

## Scenario 1

A defendant was adjudicated in your county for burglary of a residence. The defendant was 18 years old and he was unemployed at the time of the offense. The residence was undamaged and no great economic harm or any physical harm was incurred by the owner. While committing the offense, he did not conceal his appearance or have a weapon in his possession. The defendant does not have any prior offenses. At the time of arrest, he did not cooperate with law enforcement. During court proceedings, he did accept responsibility for the offense, but the attorneys entered no sentence recommendation.

1. Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

or

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

How would the following individuals from your county and trial court view this sentencing decision?	Favorably	Unfavorably
Other judges		
Prosecutors / District attorneys		
Defense attorneys		
Court clerks		
Probation officers		
Victim(s)		
Defendant		
County Citizens / Constituents		

## Scenario 2

The defendant was adjudicated in your county for forgery and uttering. The defendant was 22 years old and was unemployed at the time of the offense. She used a credit card without the owner's permission to purchase items in the amount of \$866.67. She did not abuse any type of position to commit the forgery, and the victim was not a vulnerable target. She has a misdemeanor offense on her record. The defendant did not cooperate with the prosecution and did not pay restitution to the victim. During court proceedings, she did accept responsibility for the offense, but the attorneys entered no sentence recommendation.

2. Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

or

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

How would the following individuals from your county and trial court view this sentencing decision?	Favorably	Unfavorably
Other judges		
Prosecutors / District attorneys		
Defense attorneys		
Court clerks		
Probation officers		
Victim(s)		
Defendant		
County Citizens / Constituents		

### Scenario 3

The defendant was adjudicated in your county for armed robbery. He was 18 years old and was unemployed at the time of the offense. When this offense was committed, he was in possession of a knife but did not use extreme force to commit the armed robbery. The victim was not elderly nor considered vulnerable. Further, his appearance was not concealed while committing the offense and he was not under the influence. At the time of arrest, he did not cooperate with police officers. The defendant has a felony offense on his criminal record, but no similar offenses. During court proceedings, he did accept responsibility for the offense, but the attorneys entered no sentence recommendation.

3. Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

or

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

How would the following individuals from your county and trial court view this sentencing decision?	Favorably	Unfavorably
Other judges		
Prosecutors / District attorneys		
Defense attorneys		
Court clerks		
Probation officers		
Victim(s)		
Defendant		
County Citizens / Constituents		

### Scenario 4

The defendant was adjudicated in your county for delivery of cocaine less than 1 gram. At the time of the offense, he was 18 years old and not employed. He was caught dealing to an adult. The incident was not in a known drug house nor connected to gang activity. He did not conceal his appearance nor was wearing bulletproof clothing. In addition, \$730 in cash was seized from the defendant. At the time of arrest, he did not cooperate with law enforcement. The defendant does have a misdemeanor on his criminal record, but is not a habitual offender. Further, he has a frequent history of substance abuse problems but has never been in substance abuse treatment. He accepted responsibility for the crime but the prosecutor and defense attorney did not enter a sentence recommendation.

4. Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

or

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

How would the following individuals from your county and trial court view this sentencing decision?	Favorably	Unfavorably
Other judges		
Prosecutors / District attorneys		
Defense attorneys		
Court clerks		
Probation officers		
Victim(s)		
Defendant		
County Citizens / Constituents		

## Scenario 5

The defendant was adjudicated in your county for sexual assault - second degree. At the time of the offense, he was 46 years old and was unemployed. The incident involved sexual conduct including intercourse with a non-elderly adult who was not a vulnerable target. The incident did not involve any extreme use of force or weapon. The defendant does not have any STDs and the victim did not become pregnant or obtain any diseases from the incident. He does have a criminal record but no similar offenses. The defendant does not accept responsibility for the offense and did not cooperate with the prosecutor during court proceedings. The attorneys did not enter a sentence recommendation for the defendant.

5. Please specify what sentence you would give this defendant.

Make sure to assign the defendant either probation or prison with extended supervision.

☐ Probation      \_\_\_\_\_ →      Length of probation: \_\_\_\_\_ months

or

☐ Prison      \_\_\_\_\_ →      Length of prison sentence: \_\_\_\_\_ months  
with extended supervision

Length of extended supervision: \_\_\_\_\_ months

How would the following individuals from your county and trial court view this sentencing decision?	Favorably	Unfavorably
Other judges		
Prosecutors / District attorneys		
Defense attorneys		
Court clerks		
Probation officers		
Victim(s)		
Defendant		
County Citizens / Constituents		

## Part 2 Instructions:

This section asks you to describe courtroom actors in your county. For each of the five tasks, think about how you characterize judges, prosecutors, defense attorneys, court clerks, and probation officers in connection to sentencing decisions.

Each task contains a courtroom actor and a set of adjective pairs. Each adjective pair is created from antonyms and should be assumed to be complete opposites. Between each adjective pair is a line for you to mark with a slash ( / ) to represent how you would describe the employee as connected to sentencing decisions. The line should be closest to the adjective you think best describes the employee.

Please move as quickly as possible and mark your first instincts.

### Example:

- Think of your neighbors.
- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you would describe your neighbor.

If you view your neighbor as highly ethical, very good, and highly rational, you would mark the lines as follows:

Ethical		Unethical
Bad		Good
Rational		Irrational

or

If you view your neighbor as slightly unethical, kind of bad, and highly irrational, you would mark the lines as follows:

Ethical		Unethical
Bad		Good
Rational		Irrational

## ***Task 1***

- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you characterize judges in connection to sentencing decisions.

### **Judges**

Unrealistic	_____	Realistic
Concerned	_____	Indifferent
Cynical	_____	Idealistic
Dependable	_____	Undependable
Dishonest	_____	Honest
Ethical	_____	Unethical
Immoral	_____	Moral
Insincere	_____	Sincere
Suspicious	_____	Trustworthy
Aggressive	_____	Passive
Assertive	_____	Indecisive
Competitive	_____	Cooperative
Favorable	_____	Unfavorable
Defiant	_____	Compliant
Insensitive	_____	Sensitive
Dominant	_____	Submissive
Hostile	_____	Sympathetic
Practical	_____	Impractical
Unkind	_____	Kind
Irrational	_____	Rational
Likable	_____	Unlikable



## Task 2

- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you characterize prosecutors in connection to sentencing decisions.

### Prosecutors

Unrealistic	_____	Realistic
Concerned	_____	Indifferent
Cynical	_____	Idealistic
Dependable	_____	Undependable
Dishonest	_____	Honest
Ethical	_____	Unethical
Immoral	_____	Moral
Insincere	_____	Sincere
Suspicious	_____	Trustworthy
Aggressive	_____	Passive
Assertive	_____	Indecisive
Competitive	_____	Cooperative
Favorable	_____	Unfavorable
Defiant	_____	Compliant
Insensitive	_____	Sensitive
Dominant	_____	Submissive
Hostile	_____	Sympathetic
Practical	_____	Impractical
Unkind	_____	Kind
Irrational	_____	Rational
Likable	_____	Unlikable

### Task 3

- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you would characterize defense attorneys in connection to sentencing decisions.

## Defense Attorneys

Unrealistic	_____	Realistic
Concerned	_____	Indifferent
Cynical	_____	Idealistic
Dependable	_____	Undependable
Dishonest	_____	Honest
Ethical	_____	Unethical
Immoral	_____	Moral
Insincere	_____	Sincere
Suspicious	_____	Trustworthy
Aggressive	_____	Passive
Assertive	_____	Indecisive
Competitive	_____	Cooperative
Favorable	_____	Unfavorable
Defiant	_____	Compliant
Insensitive	_____	Sensitive
Dominant	_____	Submissive
Hostile	_____	Sympathetic
Practical	_____	Impractical
Unkind	_____	Kind
Irrational	_____	Rational
Likable	_____	Unlikable

## Task 4

- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you would characterize court clerks in connection to sentencing decisions.

### Court Clerks

Unrealistic	_____	Realistic
Concerned	_____	Indifferent
Cynical	_____	Idealistic
Dependable	_____	Undependable
Dishonest	_____	Honest
Ethical	_____	Unethical
Immoral	_____	Moral
Insincere	_____	Sincere
Suspicious	_____	Trustworthy
Aggressive	_____	Passive
Assertive	_____	Indecisive
Competitive	_____	Cooperative
Favorable	_____	Unfavorable
Defiant	_____	Compliant
Insensitive	_____	Sensitive
Dominant	_____	Submissive
Hostile	_____	Sympathetic
Practical	_____	Impractical
Unkind	_____	Kind
Irrational	_____	Rational
Likable	_____	Unlikable

## Task 5

- Read each adjective pair below.
- Write a slash ( / ) on the line that represents how you would characterize probation officers in connection to sentencing decisions.

### Probation Officers

Unrealistic	_____	Realistic
Concerned	_____	Indifferent
Cynical	_____	Idealistic
Dependable	_____	Undependable
Dishonest	_____	Honest
Ethical	_____	Unethical
Immoral	_____	Moral
Insincere	_____	Sincere
Suspicious	_____	Trustworthy
Aggressive	_____	Passive
Assertive	_____	Indecisive
Competitive	_____	Cooperative
Favorable	_____	Unfavorable
Defiant	_____	Compliant
Insensitive	_____	Sensitive
Dominant	_____	Submissive
Hostile	_____	Sympathetic
Practical	_____	Impractical
Unkind	_____	Kind
Irrational	_____	Rational
Likable	_____	Unlikable

### *Part 3: Instructions*

When making sentencing decisions, various factors may aid in determining the type and length of sentence assigned to the defendant. The following questions ask you to think about sentencing decisions and how you reach the final decision.

---

1. When making sentencing decisions, information may have to be obtained from those involved with the court case. Think about your average sentencing decision.

Write a slash ( / ) on the line that represents how often you obtain information to inform your sentencing decisions from each individual.

#### *Judges*

Never obtain \_\_\_\_\_ Always obtain

#### *Prosecutors*

Never obtain \_\_\_\_\_ Always obtain

#### *Defense attorneys*

Never obtain \_\_\_\_\_ Always obtain

#### *Probation officers*

Never obtain \_\_\_\_\_ Always obtain

#### *Court clerks*

Never obtain \_\_\_\_\_ Always obtain

#### *Victim(s)*

Never obtain \_\_\_\_\_ Always obtain

#### *Defendant*

Never obtain \_\_\_\_\_ Always obtain

#### *County Citizens*

Never obtain \_\_\_\_\_ Always obtain

2. When making sentencing decisions, the opinions of other may be valuable for you to reach a conclusion. Think about your average sentencing decision.

Write a slash ( / ) on the line that represents how valuable the individual's opinion is when making a sentencing decision.

*Judges*

Not valued \_\_\_\_\_ Extremely valued

*Prosecutors*

Not valued \_\_\_\_\_ Extremely valued

*Defense attorneys*

Not valued \_\_\_\_\_ Extremely valued

*Probation officers*

Not valued \_\_\_\_\_ Extremely valued

*Court clerks*

Not valued \_\_\_\_\_ Extremely valued

*Victim(s)*

Not valued \_\_\_\_\_ Extremely valued

*Defendant*

Not valued \_\_\_\_\_ Extremely valued

*County Citizens*

Not valued \_\_\_\_\_ Extremely valued

3. When making decisions, you may learn how others would want the defendant to be sentenced. Think about the decisions you made earlier with the scenarios. With respect to each of the individuals listed below, respond to the following question:

If _____ did not agree with your anticipated sentence, would you change the sentence before it was officially assigned to the defendant?	Yes I would change the sentence	No I would not change the sentence
Other judges		
Prosecutor		
Defense attorney		
Probation officer		
Victim		
Defendant		
County Citizens/Constituents		

4. Various courtroom actors participate in criminal trials. The individual prosecutor, defense attorney, court clerk, or probation officer may differ. This question asks you to think about the individual courtroom actors within specific sentencing decisions and cases in your court, and whether the same actors work for different cases.

When presiding over criminal court trials, are the same individuals involved with the process?

Individual	Always the same	Usually the same	Sometimes the same	Rarely the same	Never the same
Prosecutors					
Defense attorneys					
Court clerks					
Probation officers					

5. When sentencing defendants, is there a typical sentence structure for specific offenses in your courtroom, such as a going rate?

☐ Yes      ☐ No

#### ***Part 4: Instructions***

- The following questions ask about your characteristics.
- Read each question carefully and respond accordingly.

For questions 1 to 12, respond whether you favor each of these issues.

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1. Do you favor the death penalty?               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do you favor interracial marriages?           | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Do you favor harsher prison terms?            | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Do you favor voluntary euthanasia?            | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Do you favor Bible truth?                     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Do you favor gay unions/marriage?             | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Do you favor pre-marital abstinence?          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Do you favor immigration?                     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Do you favor church authority?                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. Do you favor legalized abortion?             | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. Do you favor high schools providing condoms? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 12. Do you favor legalized prostitution?         | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

13. Which of the following best represents your political viewpoints?

- |                                       |                                     |
|---------------------------------------|-------------------------------------|
| <input type="checkbox"/> Conservatism | <input type="checkbox"/> Liberalism |
|---------------------------------------|-------------------------------------|



**For questions 14 to 22 provide the correct response.**

14. Prior to serving on the circuit court, what was your occupation and how long did you work at that profession? (Fill out all that apply, leave professions blank if you never worked in that occupation)

Profession	Number of years worked at profession
Prosecutor	
Public defender	
Private defense attorney	
Law enforcement	
Municipal judge	
Other: _____	

15. Consider all the things that helped you become a more effective judge. Using the list below, identify what or who has helped you the most by entering the percentage of aid. The total percentage must equal 100%

	Percentage of aid (%)
Formal state training	
Formal county training	
Formal education (such as college courses)	
Trial judges	
Clerk of court	
Other court staff _____	
Prosecutors	
Defense attorneys	
Other _____	
Total	100%

**For questions 14 to 22 provide the correct response.**

16. How many years have you served for the circuit court of Wisconsin? \_\_\_\_\_ (years)

17. What circuit court district do you serve? \_\_\_\_\_ (write district number 1 to 10)

18. What types of cases do you preside?

- ☐ Only criminal cases    ☐ Only civil cases    ☐ Both criminal and civil cases

19. What type of court docket/calendar is used in your courtroom?

- ☐ Individual calendar – you have sole control over your daily caseload  
☐ Master calendar – the court has control over your daily caseload  
☐ Mixed calendar – you have control over some cases and the court controls others

20. What is your sex?        ☐ Male        ☐ Female

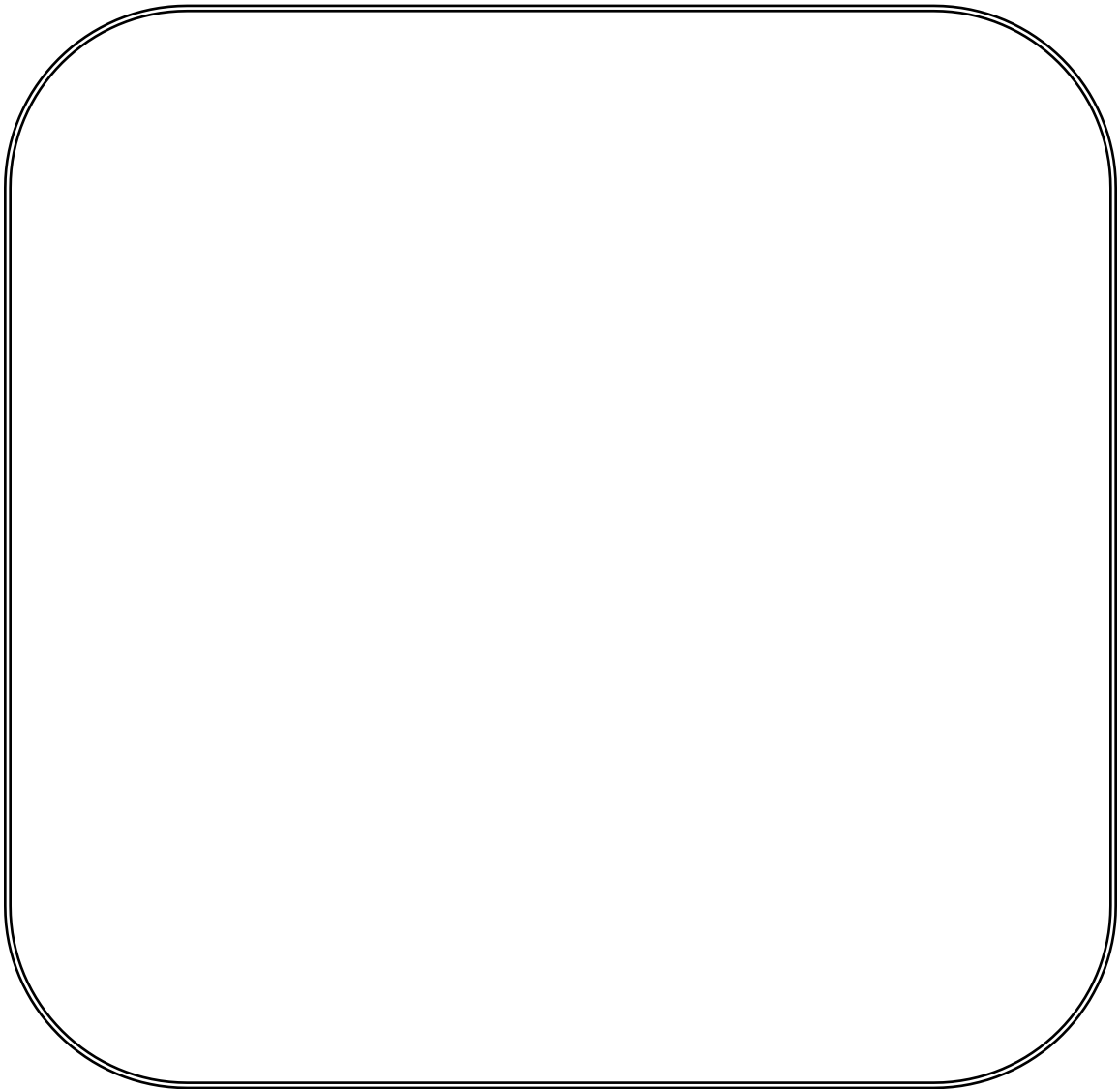
21. Select one category that best explains your race/ethnicity.

- ☐ African American        ☐ Caucasian        ☐ Hispanic  
☐ Other \_\_\_\_\_ (please provide)

22. What is your current age? \_\_\_\_\_ (years)

# Thank you for your response.

If you have additional comments, please write them in the space below.



If your comments do not fit above, please send additional information to:

Jennifer Huck  
Department of Criminology  
Indiana University of Pennsylvania  
Wilson Hall, 411 North Walk  
Indiana, PA 15705

## Appendix H

### *Fourth Contact*

October 1, 2010

Dear Wisconsin Circuit Court Judiciary:

Thank you to those who have completed the Wisconsin Sentencing Assessment! If you have already completed the survey, please disregard this letter.

If you have not had time to complete the survey, please do so as the survey will be closing soon. Your information is critical to the success of understanding Wisconsin sentencing decisions. The survey can be accessed in a secure and anonymous manner using the link provided:

[http://iup.qualtrics.com/SE?SID=SV\\_8nOAZudBPEitoEY](http://iup.qualtrics.com/SE?SID=SV_8nOAZudBPEitoEY)

You can also complete the paper copy that you should have received last week. If you need an additional copy, please contact us. You can mail the completed paper survey to Wisconsin Sentencing Assessment, Department of Criminology, Indiana University of Pennsylvania, 411 N. Walk - Wilson Hall, Indiana, PA 15705.

We appreciate the time and effort used in completing this research. If you would like the final research report to be sent to you, please contact us with the request.

Thank you,

Jennifer Huck, Principal Investigator  
Wisconsin Sentencing Assessment  
Department of Criminology  
Indiana University of Pennsylvania  
Email: [lwzn@iup.edu](mailto:lwzn@iup.edu)  
Phone: 262.xxx.xxxx

## Appendix I

### *Fifth Contact*

Dear Wisconsin Court Judiciary,

Thank you for your time and effort in completing the Wisconsin Sentencing Assessment!

If you have not completed the survey, you still have time to aid this important research project.

Please contact us if you need another copy of the paper survey mailed to you, or would like the secure internet website link emailed to you.

Your time and information is much appreciated.

Jennifer Huck, Principal Investigator  
Wisconsin Sentencing Assessment  
Email: lwzn@iup.edu



## Appendix J

### *Coding of Dependent Variables*

Dependent variable	Decision type	Coding	Modal sentence term
Scenario 1: Burglary	Incarceration	Probation = 1 Prison = 0	Probation
	Sentence length	Modal = 1 Non-modal = 0	3 years
Scenario 2: Forgery and Uttering	Incarceration	Probation = 1 Prison = 0	Probation
	Sentence length	Modal = 1 Non-modal = 0	3 years
Scenario 3: Armed Robbery	Incarceration	Probation = 0 Prison = 1	Incarceration
	Sentence length	Modal = 1 Non-modal = 0	Prison, 5 years Ext. supervision, 5 years
Scenario 4: Delivery of Cocaine	Incarceration	Probation = 1 Prison = 0	Probation
	Sentence length	Modal = 1 Non-modal = 0	3 years
Scenario 5: Sexual Assault 2 <sup>nd</sup> degree	Incarceration	Probation = 0 Prison = 1	Incarceration
	Sentence length	Modal = 1 Non-modal = 0	Prison, 20 years Ext. supervision, 10 years

## Appendix K

### *Coding of Independent Variables*

Independent Variable	Coding	Survey Items
Sex of judge	Male = 1 Female = 2	Part 4, item 14
Race of judge	White = 1 Non-white = 2	Part 4, item 15
Age of judge	Continuous years	Part 4, item 16
Prior occupation (each examined as a single item)	Prosecutor = 1 Public defender = 2 Private defense = 3 Municipal judge = 4 Other = 5	Part 4, item 17
Years on Circuit Court	Continuous years	Part 4, item 18
Social conservatism	Scale 0 to 12	Part 4, items 1 to 12
Bureaucratization - Cases	Only criminal = 1 Both criminal and civil = 3	Part 4, number 21
Bureaucratization – Calendar	Individual = 1 Non-individual = 2	Part 4, number 22
Professional Information	Scale 0 to 30	Part 3, number 1

Independent Variable	Coding	Survey Items
Non-professional Information	Scale 0 to 50	Part 3, number 1
Professional Opinion	Scale 0 to 30	Part 3, number 2
Non-professional Opinion	Scale 0 to 50	Part 3, number 2
Workgroup Stability	Scale 0 to 12	Part 3, number 4
Going Rate	Yes = 1 No = 2	Part 3, number 5
Professional Favorable View	Scale 0 to 3	Scenarios 1 to 5 (table)
Non-professional Favorable View	Scale 0 to 5	Scenarios 1 to 5 (table)
Favorable Identity	Scale 0 to 50	Part 2, Tasks 1 to 5
Courtroom Cooperation	Scale 0 to 50	Part 2, Tasks 1 to 5



## Appendix L

### *Univariate Statistics of Judicial and Organizational Characteristics*

Characteristics		Mean	Median	Mode	Std. Dev.	Range	n
Judicial	Sex (1 = male, 2 = female)	1.15	1.00	1	.361	-	54
	Age (years)	54.65	58.50	62	14.554	38 to 68	54
	Race (1 = non-white, 2 = white)	1.98	2	2	.140	-	54
	Time as judge (years)	10.79	10.00	3	9.601	0 to 35	54
	Conservatism (1 = conservative, 2 = liberal)	1.66	2	2	.479	-	47
	Conservatism Scale	20.11	21	22	2.672	14 to 24	49
Organizational	District (1 to 10)	-	-	10	4.078	-	54
	Type of court cases	2.81	3.00	3	.585	-	54
	Type of calendar	1.83	2.00	3	1.788	-	54

## Appendix M

### *Judges Years in Prior Occupations*

Occupation	Mean	Median	Mode	Std. Dev.	Actual Range	n
Prosecutor	8.93	5.5	2 and 5	7.786	1 to 26	22
Public defense atty.	9.8	12	~	6.496	2 to 17	5
Private defense atty.	11.62	10	5	7.867	1 to 32	28
Law enforcement	-	-	-	-	-	0
Municipal Court Judge	12.50	12.50	n/a	16.263	1 and 24	2
Other	17.42	18.00	20	10.177	1 to 40	33

Responses are not mutually exclusive

~ All responses were provided once

## Appendix N

### *Judicial Socialization*

Type of Aid	% Yes	Mean %	Median %	Std. Dev.	Range %
Formal state training	100	31.5	25	23.166	5 to 100
Formal county training	11.1	.48	0	2.546	0 to 10
Formal education	57.4	9.9	5	14.912	0 to 75
Other Trial judges	98.1	24.0	20	15.542	0 to 65
Court clerks	48.1	3.9	0	5.899	0 to 25
Other court staff	26.9	2.0	0	4.830	0 to 20
Prosecutors	70.4	5.7	5	5.772	0 to 25
Defense attorneys	68.5	5.3	5	5.46	0 to 20
Other	46.2	14.4	0	20.558	0 to 70
Responses are not mutually exclusive, n = 54					

## Appendix O

### *Judges' Sources of Courtroom Workgroup Information*

Information sources	Mean	Stan. Dev.	Actual Range
Other Judges	31.66	36.64	0 to 100
Prosecutors	92.13	13.2	33.3 to 100
Defense Attorneys	90.73	14.16	38.8 to 100
Probation Officers	52.5	27.64	9.08 to 100
Court Clerks	14.99	24.36	1.03 to 98.97
Victims	71.11	25.72	5.3 to 100
Defendants	84.78	21.18	5.15 to 100
Citizens/Constituents	17.64	22.05	1.03 to 92.78
Possible response range 0 to 100, n = 57			

## Appendix P

### *Judges' Value of Courtroom Workgroup Opinions*

Opinion sources	Mean	Stan. Dev.	Actual Range
Other Judges	55.9	39.68	0 to 100
Prosecutors	74.6	15.86	29 to 100
Defense Attorneys	72.26	17.6	20 to 100
Probation Officers	67.66	20.21	18.6 to 100
Court Clerks	14.81	22.63	0 to 70.6
Victims	74.45	19.9	15.6 to 100
Defendants	67.01	27.21	2.2 to 100
Citizens/Constituents	33.93	31.95	1.03 to 100
Possible response range 0 to 100, n = 57			

## Appendix Q

### *Courtroom Workgroup Scales*

Scale	Mean	Median	Mode	Std. Dev.	Alpha	Actual Range	Possible Range	n
Professional Info	214.52	203.1	200	42.207	.054	102 to 300	0 to 300	57
Non-Professional Info	241.02	249.48	232	68.734	.468	105 to 386	0 to 500	57
Professional Opinion	202.74	200.00	200	46.846	.041	94 to 300	0 to 300	57
Non-Professional Opinion	257.86	252.4	300	70.074	.65	80 to 400	0 to 500	57

## Appendix R

### *Stability among Courtroom Workgroup Members*

Variable	Mean	Median	Mode	Std. Dev.	Possible Range	Actual Range	n
Prosecutors	2.12	2	2	.758	-	-	57
Defense Attorneys	2.54	3	3	.709	-	-	57
Court Clerks	1.93	2	2	.892	-	-	56
Probation Officers	2.91	3	3	.800	-	-	55
Stability Scale	9.49	9	9	1.884	4 to 20	6 to 15	55

Higher values = lower stability, 1 = always the same to 5 = never the same

## Appendix S

### *Judges' Cooperation/Competition Descriptions of Courtroom Workgroup Members*

Courtroom Members	Mean	Median	Mode	Std Dev	Actual Range	Possible Range	n
Other Judges	4.15	4.00	4	1.58	1 to 7	1 to 7	59
Prosecutors	2.89	3.00	3	1.46	1 to 6	1 to 7	60
Defense Attorneys	3.25	3.00	2	1.435	1 to 6	1 to 7	58
Court Clerks	4.93	5.00	4	1.57	1 to 7	1 to 7	55
Probation Officers	4.42	4.00	4	1.36	1 to 7	1 to 7	56
Scale	19.71	20.00	20	4.531	6 to 30	5 to 35	55

Higher values suggest cooperation



## Appendix T

### *Judges' Unfavorable/Favorable Descriptions of Courtroom Workgroup Members*

Courtroom Members	Mean	Median	Mode	Std Dev	Actual Range	Possible Range	n
Other Judges	1.96	2.00	1	1.27	1 to 4	1 to 7	57
Prosecutors	2.85	3.00	2	1.34	1 to 7	1 to 7	59
Defense Attorneys	2.5	2.16	3	1.04	1 to 6	1 to 7	58
Court Clerks	2.23	2.00	4	1.34	1 to 4	1 to 7	55
Probation Officers	2.48	2.09	3	1.35	1 to 6	1 to 7	56
Scale	16.76	16.00	16	3.963	5 to 29	5 to 35	55

Lower values suggest favorability

## Appendix U

### *Judges' Perceived Favorable Attitudes towards Sentencing Decisions*

Courtroom Member	Scenario 1 % (n)	Scenario 2 % (n)	Scenario 3 % (n)	Scenario 4 % (n)	Scenario 5 % (n)
Other Judges	91.3 (63)	86.6 (58)	85.1 (57)	87.9 (58)	84.4 (54)
Prosecutors	85.5 (59)	86.6 (58)	79.1 (53)	90.9 (60)	84.4 (54)
Defense Attorneys	95.7 (66)	92.5 (62)	61.2 (41)	93.9 (62)	50.0 (32)
Court Clerks	87 (60)	85.1 (57)	86.6 (58)	90.9 (60)	85.9 (55)
Probation Officers	95.7 (66)	92.5 (62)	89.6 (60)	90.9 (60)	87.5 (56)
Victims	55.1 (38)	70.1 (47)	73.1 (49)	77.3 (51)	67.2 (43)
Defendants	91.3 (63)	92.5 (62)	47.8 (32)	92.4 (61)	40.6 (26)
Citizens	76.8 (53)	74.6 (50)	74.6 (50)	80.3 (53)	81.3 (52)

## Appendix V

### *Judges' Perceived Courtroom Workgroup Favorability Scales*

		Mean	Std. Dev.	Actual Range	Possible Range	n
Professional	Scenario 1	3.08	.275	3 to 4	3 to 6	62
	Scenario 2	3.07	.256	3 to 4	3 to 6	58
	Scenario 3	3.49	.571	3 to 5	3 to 6	57
	Scenario 4	3.02	.131	3 to 4	3 to 6	58
	Scenario 5	3.56	.536	3 to 5	3 to 6	55
Nonprofessional	Scenario 1	5.59	.768	5 to 7	5 to 10	59
	Scenario 2	5.47	.804	5 to 8	5 to 10	57
	Scenario 3	5.98	.900	5 to 8	5 to 10	59
	Scenario 4	5.13	.444	5 to 7	5 to 10	52
	Scenario 5	6.04	1.068	5 to 9	5 to 10	57
Lower values demonstrate perceived favorability						

# Appendix W

## *Crime-specific Scenarios for incarceration and sentence length decisions*

Scenario	Modal Sentence	Incarceration Decision	Probation Length (months)	Prison w/Ext Supervision (months)	In modal LENGTH category	n
1 Burglary	Probation 36 months	Probation 100% n = 71	Mean 33 Median 33 Mode 36 Range 5 to 60	N/A	38.7% n = 29	71
2 Forgery and Uttering	Probation 36 months	Probation 100% n = 69	Mean 26.9 Median 24 Mode 24 Range 12 to 60	N/A	38.7% n = 21	69
3 Armed Robbery	Incarceration 120 months	Probation 25% n = 17 Prison 75% n = 50	Mean 40.2 Median 36 Mode 36 Range 24 to 72	Mean 61.4 Median 60 Mode 72 Range 20 to 120	2.7% n = 2	67
4 Delivery of Cocaine	Probation 36 months	Probation 100% n = 65	Mean 30.4 Median 33 Mode 36 Range 15 to 60	N/A	37.3% n = 28	65
5 Sexual Assault	Incarceration 360 months	Probation 11% n = 7 Prison 89% n = 58	Mean 48 Median 48 Mode 48 Range 36 to 60	Mean 97.6 Median 96 Mode 60 and 96 Range 36 to 240	0% n = 0	65

## Appendix X

### *Scenario 1 – Burglary – Independent T-Tests*

	Independent Variable	df	T <sub>obtained</sub>	T <sub>critical</sub>	Mean difference	Std. error difference	Significance (2-tailed)
Judicial characteristics	Age	52	.931	±2.000	3.788	4.068	.356
	Time as judge	52	.494	±2.000	1.334	2.700	.623
	Conservatism scale	45	-.722	±2.000	-.597	.827	.474
Courtroom workgroup	Professional info.	55	-.213	±2.000	-2.471	11.583	.832
	Nonprofessional info.	55	-.278	±2.000	-5.242	18.857	.782
	Professional opinion	55	-.251	±2.000	-3.222	12.854	.803
	Nonprofessional opinion	55	-.274	±2.000	-6.019	21.968	.785
	Stability	53	.779	±2.000	.409	.525	.439
Situated identity	Cooperation scale	50	.280	±2.000	.369	1.317	.781
	Favorability scale	49	.557	±2.000	.652	1.169	.580
	Professional favorable view	60	-1.818	±2.000	-.126	.069	.074+
	Nonprof. favorable view	57	-.058	±2.000	-.012	.204	.954

+significant at 0.1 level with critical value of ±1.671 (used relaxed level of significance due to small sample size)

## Appendix Y

### *Scenario 2 – Forgery and Uttering – Independent T-Tests*

	Independent Variable	df	T <sub>obtained</sub>	T <sub>critical</sub>	Mean difference	Std. error difference	Significance (2-tailed)
Judicial characteristics	Age	52	.866	±2.000	3.763	4.348	.391
	Time as judge	52	.429	±2.000	1.236	2.884	.670
	Conservatism scale	45	-.804	±2.000	-.704	.875	.425
Courtroom workgroup	Professional info.	55	-1.053	±2.000	-12.656	12.015	.297
	Nonprofessional info.	55	.763	±2.000	15.006	19.659	.449
	Professional opinion	55	-1.196	±2.000	-15.900	13.298	.237
	Nonprofessional opinion	55	.049	±2.000	1.117	23.023	.961
	Stability	53	-.327	±2.000	-.179	.546	.745
Situated identity	Cooperation scale	50	1.717	±2.000	2.294	1.336	.092+
	Favorability scale	49	-.502	±2.000	-.616	1.227	.618
	Professional favorable view	56	.266	±2.000	.019	.073	.791
	Nonprof. favorable view	55	.019	±2.000	.004	.235	.985

+significant at 0.1 level with critical value of ±1.671 (used relaxed level of significance due to small sample size)

## Appendix Z

### *Scenario 4 – Delivery of Cocaine - Independent T-Tests*

	Independent Variable	df	T <sub>obtained</sub>	T <sub>critical</sub>	Mean difference	Std. error difference	Significance (2-tailed)
Judicial characteristics	Age	52	-1.495	±2.000	-5.869	3.927	.141
	Time as judge	52	-1.953	±2.000	-4.987	2.553	.056+
	Conservatism scale	45	.690	±2.000	.542	.786	.494
Courtroom workgroup	Professional info.	55	-1.381	±2.000	-15.430	11.176	.173
	Nonprofessional info.	55	-.956	±2.000	-17.562	18.361	.343
	Professional opinion	55	-1.606	±2.000	-19.801	12.332	.114
	Nonprofessional opinion	55	-.304	±2.000	-6.546	21.549	.762
	Stability	53	1.577	±2.000	.797	.505	.121
Situated identity	Cooperation scale	50	1.088	±2.000	1.373	1.263	.282
	Favorability scale	49	-.242	±2.000	-.272	1.126	.810
	Professional favorable view	56	.838	±2.000	.029	.035	.406
	Nonprof. favorable view	50	1.088	±2.000	.138	.126	.282

+significant at 0.1 level with critical value of ±1.671 (used relaxed level of significance due to small sample size)

# Appendix AA

## Scenario 3 – Armed Robbery – Independent T-Tests

	Independent Variable	df	T <sub>obtained</sub>	T <sub>critical</sub>	Mean difference	Std. error difference	Significance (2-tailed)
Judicial characteristics	Age	52	1.331	±2.000	5.971	4.487	.189
	Time as judge	52	1.149	±2.000	3.415	2.973	.256
	Conservatism scale	45	1.094	±2.000	.976	.892	.280
Courtroom workgroup	Professional info.	55	1.301	±2.000	16.790	12.908	.199
	Nonprofessional info.	55	2.226	±2.000	45.497	20.441	.030*
	Professional opinion	55	.180	±2.000	2.615	14.541	.858
	Nonprofessional opinion	55	.425	±2.000	10.537	24.822	.673
	Stability	53	.190	±2.000	.118	.621	.850
Situated identity	Cooperation scale	50	-1.223	±2.000	-1.815	1.484	.227
	Favorability scale	49	-.328	±2.000	-.432	1.320	.745
	Professional favorable view	55	-1.012	±2.000	-.178	.176	.316
	Nonprof. favorable view	57	1.455	±2.000	.397	.273	.151

\*significant at the 0.05 level



## Appendix BB

### *Scenario 2 – Forgery and Uttering and Type of Court Contingency Table*

		Individual calendar	Non-individual calendar	Total
Non-modal	Count	14	24	38
	% within court calendar	58.3	82.8	71.7
Modal	Count	10	5	15
	% within court calendar	41.7	17.2	28.3
Total	Count	24	29	53
	% within court calendar	100.0	100.0	100.0

## Appendix CC

### *Scenario 4 – Delivery of Cocaine and Type of Court Contingency Table*

		Individual calendar	Non-individual calendar	Total
Non-modal	Count	9	19	28
	% within court calendar	37.5	65.5	52.8
Modal	Count	15	10	25
	% within court calendar	62.5	34.5	47.2
Total	Count	24	29	53
	% within court calendar	100.0	100.0	100.0

## Appendix DD

### *Scenario 4 – Delivery of Cocaine and Prior Experience as a Prosecutor*

		Prosecutor experience	No experience	Total
Non-modal	Count	8	21	29
	% within experience	36.4	65.6	53.7
Modal	Count	14	11	25
	% within experience	63.6	34.4	46.3
Total	Count	22	32	54
	% within experience	100.0	100	100.0

## Appendix EE

### *Scenario 4 – Delivery of Cocaine and Prior Experience as Other Occupation*

		Other experience	No experience	Total
Non-modal	Count	22	7	29
	% within experience	66.7	33.3	53.7
Modal	Count	11	14	25
	% within experience	33.3	66.7	46.3
Total	Count	33	21	54
	% within experience	100.0	100.0	100.0

## Appendix FF

### *Scenario 4 – Delivery of Cocaine and Conservative Ideology*

		Conservatism	Liberalism	Total
Non-modal	Count	5	20	25
	% within ideology	31.3	65.5	53.2
Modal	Count	11	11	22
	% within ideology	68.8	35.5	46.8
Total	Count	16	31	47
	% within ideology	100.0	100.0	100.0

## Appendix GG

### *Scenario 1 – Burglary - Chi-square Test of Independence*

Variable	$X^2$ obtained	$X^2$ critical	Sig.
Court calendar	.001	3.841	.974
Prosecutor experience	.064	3.841	.801
Defense attorney experience	.001	3.841	.975
Other experience	.009	3.841	.924
Conservatism	.084	3.841	.772
Going rate	.266	3.841	.606

## Appendix HH

### *Scenario 2 – Forgery and Uttering – Chi-square Test of Independence*

Variable	$X^2$ obtained	$X^2$ critical	Sig.	$\Phi$
Court calendar	3.861	3.841	.049*	.27
Prosecutor experience	.099	3.841	.753	n/a
Defense attorney experience	1.196	3.841	.274	n/a
Other experience	1.181	3.841	.277	n/a
Conservatism	1.174	3.841	.279	n/a
Going rate	.004	3.841	.947	n/a

\*significant at the .05 level

## Appendix II

### *Scenario 4 – Delivery of Cocaine – Chi-square Test of Independence*

Variable	$X^2$ obtained	$X^2$ critical	Sig.	$\Phi$
Court calendar	4.137	3.841	.042*	.279
Prosecutor experience	4.490	3.841	.034*	.288
Defense attorney experience	.827	3.841	.363	n/a
Other experience	5.735	3.841	.017*	.326
Conservatism	4.691	3.841	.030*	.316
Going rate	.007	3.841	.933	n/a

\*significant at the .05 level



## Appendix JJ

### *Scenario 3 – Armed Robbery – Chi-square Test of Independence*

Variable	$X^2$ obtained	$X^2$ critical	Sig.
Court calendar	.045	3.841	.832
Prosecutor experience	.198	3.841	.657
Defense attorney experience	.424	3.841	.515
Other experience	.847	3.841	.358
Conservatism	.587	3.841	.444
Going rate	.720	3.841	.396