THE SIGNIFICANCE OF LEGAL AND EXTRA

LEGAL VARIABLES IN PREDICTING SENTENCING

OUTCOMES UNDER OKLAHOMA'S COMMUNITY

SENTENCING ACT

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CHAPTER I

INTRODUCTION

Disparity in sentencing outcomes has long been a point of contention among scholars and practitioners alike (Langan 1985; Mauer 2004). Studies of sentencing differences date to the 1920s and continue into the twenty-first century. Well over one hundred studies have considered the effect of various legal and extra legal factors on sentencing (Hagan 1974; Kleck 1981; Spohn 2000, 2002; Spohn and Holleran 2000; Steffensmeier, Ulmer and Kramer 1998; Zatz 2000). While there is a plethora of research considering the disparate outcomes in sentencing, considerable disagreement as to the cause and consequence remain.

The increased use of confinement as a criminal penalty beginning in the late 1970s stimulated interest in sentencing discrepancies between groups. The growing disparate representation of minorities in the criminal justice population (Blumstein 1982; Spohn 2000; Zatz 2000) gave rise to a public outcry demanding the justice system examine its policies and practices (Rottman, Casey, and Efkeman 1998). The allegation of racism in the American criminal justice system found proponents on both sides of the argument. Disparity in the representation of minorities was seen by one camp to suggest overt racial discrimination while

others considering the same information explained the situation as being the consequence of inadequate statistical and methodological controls.

The response of many jurisdictions to these concerns was the implementation of structured sentencing systems (Rosich and Kane 2005). By design, these guideline systems were expected to reduce the opportunity for disparity in sentencing. With this change in sentencing practice, research considering the divergence in sentencing outcomes focused on the individual characteristics of defendant being sentenced. In particular investigation was concerned with the overrepresentation of racial and ethnic minorities in the criminal justice system (Spohn and Cederblom 1991; Spohn and DeLone 2000; Spohn and Holleran 2000; Steffensmeier and Demuth 2000, 2001; Welch, Spohn and Gruhl 1985; Zatz 1987) and the sentencing differences experienced by women and men (Sharp, Braley and Marcus-Mendoza 2000; Steffensmeier, Ulmer and Kramer 1998; Steffensmeier, Kramer and Streifel 1993; Zatz 2000). Underpinning this scholarly inquiry is a question of fairness in the nations social institutions. More specifically, are the disparate outcomes found in the criminal justice system a symptom or a consequence of larger social issues in the United States.

The apparent unequal effect of criminal justice processes on minority group members prompted the study of a broad set of factors thought to contribute to sentencing decision making. To explain the disparate representation of minorities in the criminal justice system much of the earliest work (Clancy et al 1981; Hagan 1974; Kleck 1981, 1985; Langan 1985) focused

on a single legal or extra legal attribute, such as offense severity or defendant's race. Often criticized (Hagan 1974; Kleck 1981) for questionable methodological approaches or narrowly constructed hypotheses, this early analysis provided inconsistent outcomes. Though some of the early work purports to show a race effect, it is often argued that they do so through questionable statistical methods and inaccurate interpretation of data analysis (Spohn 2000; Steffensmeier and Demuth 2001). This individual approach has been challenged by other scholars (Ulmer and Johnson 2004; Ulmer and Kramer 1996) whose focus is the effects of court communities on sentencing decisions. These scholars concentration on organizational and structural issues argues that embedded bureaucratic and political processes predispose the system to particular sentencing outcomes.

With the advent of "get tough" criminal justice policies, the research emphasis shifted almost exclusively to examine the consequence of sentencing guidelines and determinant sentencing policies (Albonetti 1997; Clancy et al 1981; Hofer, Blackwell and Ruback 1999; Johnson 2003; Kramer and Ulmer 2002; Steffensmeier and Demuth 2000). In most instances this recent literature considers various legal (prior criminal record and offense) and extra legal (race, gender, age, education, economic standing) factors in the context of the in/out decision of incarceration (Albonetti 1997; Spohn 2002; Spohn and Holleran 2000; Steffensmeier and Demuth 2000, 2001; Steffensmeier et al 1998). Most often, these studies were focused on a single state or jurisdiction and the sentencing system enacted there.

The interrelatedness of factors of more recent studies contemplates the differential treatment of criminal defendants in a context beyond that of race and ethnicity (Spohn and DeLone 2000; Welch et al 1985). Some scholars report that the race effect largely disappeared with the indeterminate sentencing systems only to reappear when interaction effects are considered (Steffensmeier et al 1998). Studies considering the impact of legal and extra legal factors in combination tend to produce statistically significant evidence of disparity under certain circumstances but not under all situations.

The majority of the research conducted in the last twenty years has concentrated on outcomes under sentencing guidelines and determinate sentencing (Albonetti 1997; Kramer and Steffensmeier 1993; Kramer, and Ulmer 2002; Steffensmeier and Demuth 2000, 2001; Steffensmeier et al 1998; Steffensmeier et al 1993; Steffensmeier et al 1995; Ulmer and Kramer 1996). This work centers on the in/out incarceration decision with some scholars also considering, as a separate indicator, variance in the length of sentences imposed (Spohn and DeLone 2000; Steffensmeier and Demuth 2001). Though this research examines in/out decisions, the discussion is dominated by the incarceration decision. Absent in the conversation is a discussion of cases that do not lead to incarceration such as probation and alternative sentences like community sentencing. This void raises questions about whether factors identified as important in decisions to incarcerate are also significant predictors for other sentencing outcomes. The relevance of this gap in the research is especially important when taken into account along with the move to structured

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sentencing. In many jurisdictions alternative sentencing schemes were implemented along side sentencing guidelines as a means to divert certain offenders from incarceration (Tonry 1999; Tonry and Lynch 1996; Wooldredge and Gordon 1997).

Within the decision making literature attributions such as the defendant's ability to do time and their amenability to treatment, along with a number of legal and extra legal factors are considered as the basis for sentencing outcomes. Since the majority of the current research concerns itself with the in/out incarceration decision whether or not, to what degree, and in what context legal and extra legal factors are relevant to decisions to use an alternate sentencing scheme is unknown. The impact of attributes on court actor's decision to endorse the use of alternative sentencing options may yield entirely different results than are generated when the consideration is whether to incarcerate.

Analysis of sentencing outcomes under alternative sentencing systems is largely missing from the literature. One notable exception is the study of alternative sentences under Washington State's guideline system (Engen et al 2003). In their study of Washington State's guideline system Engen and his colleagues consider the use of discretionary departures and structured sentencing alternatives. These authors assert that the considerations that lead judges to impose structured departures are different from those associated with their decision to apply a specific alternative sentence. They suggest that the importance of legal and extra legal factors may vary depending on the specific alternative sentence being considered and specific characteristics of the offender

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being sentenced. They argue that the differential relevance of factors to these decisions may not only provide opportunities for bias but may even encourage considerations that disadvantage certain groups.

The only other work known to this author that considers alternative sentencing is a study by Wooldredge and Gordon (1997) which asks judges' to estimate their own use of alternatives and their willingness to use alternatives for particular offenses. These authors focus their inquiry on structural aspects of the court systems in which the participating judges work. Such things as prison crowding, legislative policies and court characteristics within the jurisdiction provide the basis on which judges' perceived use of alternative sentencing are compared. These authors conclude that "judges who use alternatives to incarceration less frequently were more likely to reside in states with crowded prisons" (Wooldredge and Gordon 1997:140). Attributing this finding to the implementation of more structured sentencing practices Wooldredge and Gordan note that while alternatives to incarceration may reduce overcrowding, sentencing policies which reduce judicial discretion may blunt the expected impact of these options.

Decision making under alternative sentencing systems is significant in at least three ways. First, most jurisdictions implementing alternative sentencing systems do so to divert certain prison bound offenders by providing viable alternatives. To explain disparity in sentencing outcomes without considering consequences beyond the in/out incarceration decision presents a limited, one-sided perspective on the issue. As described by Engen (2003) patterns of

disparity occur in different arrangements under alternative sentencing schemes suggesting that the weight given to legal and extra legal characteristics differ in such arrangements. Secondly, the consequence of prior incarceration on the prospect of future incarceration is well documented (Andrews and Bonta 2003; Steffensmeier et al 1998). If prior record is significant to future sentencing consequence then sentencing outcomes other than the decision to incarcerate must also be considered significant. Excluding certain groups from alternative sentencing may set in motion implication that affect not only current but also future criminal consequences. Finally, evidence suggests that sentencing outcome disparity is most often seen in less serious cases (Albonetti 1991). Intermediate sanctioning initiatives target offenders who have committed less serious offenses, thus sentencing outcomes under such schemes may provide unique insights into the overall sentencing decisions making process.

Because community penalties punish defendants in less restrictive environments, disparity in their application can contribute to a defendant's future sentencing outcome. This study begins to address the absence of literature discussing sentencing decisions under alternative sentencing schemes. The current project adds to the study of sentencing outcomes by applying Focal Concerns Theory (Steffensmeier et al 1998; Steffensmeier et al 1993) in an untapped venue, defendants being considered for alternative sentencing. In addition, in light of the growing support for applying formal assessment processes in sentencing systems, the consideration of the assigned risk score as

an additional predictor in sentencing outcomes will provide insights into the usefulness of one such instrument.

Attributes of Focal Concern Theory include blameworthiness, protection of the community and practical constraints. The usual absence of complete information from which to make sentencing decisions has resulted in a complex interplay of the characteristics of focal concern theory with the defendant's personal attributes, race/ethnicity, gender, and age. The emergence of this "perceptual shorthand" and focal concerns framework have been supported in a numerous studies of sentencing outcomes (Albonetti 1991; Spohn 1991; Steffensmeier 1998, 1993)

Oklahoma's community penalty legislation presents a unique opportunity to consider the impact of intermediate sanctioning programs. Having maintained a position among the top users of incarceration, (Beck and Gilliard 1995; Harrison and Beck 2005) as a criminal penalty, Oklahoma's implementation of community penalties through the passage of the Oklahoma Community Sentencing Act (Okla. Stat. Tit. 22 § 988.1 et sec) was substantially related to the need to alleviate prison overcrowding. Since the sentencing outcome research suggests that the greatest disparity is found in cases involving less serious crimes (Albonetti 1991; Steffensmeier and Demuth 2001) it is anticipated that sentencing outcomes under alternative sentencing schemes will also reflect a pattern of disparity.

Oklahoma's Community Sentencing Act (Okla. Stat. Tit. 22 § 988.1) includes crime specific and legally significant criteria which must be met by

defendant's considered eligible for sentencing under the Act. The language of this legislation contains explicit limitations and requirements designed to preclude net widening and to target offenders deem most likely to benefit from an alternative sentence.   Like structured sentencing, this scheme requires all offenders meet the criteria.

Specific legal limitations in the legislation include a requirement that the charge not be one of a number of ineligible offenses, that the defendant is eligible for a deferred or suspended sentence and that the defendant score on a standardized assessment tool be within the "moderate" range. Excluded offenses are violent personal and property crimes enumerated in the Oklahoma Statutes (Okla. Stat. tit. 21 § 13.1.). In addition, persons charged with any of a number of other offenses described by Oklahoma law (Okla. Stat. tit. 57 § 571) as violent are ineligible unless participation is specifically approved by the district attorney (Okla. Stat. tit. 22 § 988.1 et sec).   Eligibility for a suspended or deferred sentence enables the defendant to be punished in the community. These criteria and restrictions create a unique pool of eligible participants in which this research will be considered.

Adding to the current knowledge of sentencing outcomes, this project will consider sentencing decisions in all Oklahoma jurisdictions participating in sentencing under the Oklahoma Community Sentencing Act. Oklahoma does not have a guideline system, providing an opportunity to consider focal concern theory within a limited but unstructured sentencing system. This project will consider effect of the factors of focal concern theory separately for sentence

outcomes of community sentence, probation and incarceration. In addition, through the application of the Level of Service Inventory Revised (LSI – R), the assessment process used to establish eligibility for consideration under the Act, additional and consistent information is available to court actors responsible for sentencing decisions. The availability of this ancillary information addresses specifically assertions that bias and stereotyping become more prevalent when reliable information is lacking (Albonetti 1991; Steffensmeier 1998). By taking into account the consistent and uniform information provided as requirement of the imposition of the community sentencing option, the evaluations of sentencing in this study also offers an opportunity to weigh the impact of more complete and consistent information on sentencing outcomes.

CHAPTER II

REVIEW OF LITERATURE

The desire to predict and explain the processes of sentencing decision-making has a long history. Much of the earliest work focused on the race of perpetrators of serious violent crime (Hagan 1974). These studies emphasize the role of the extra legal attributes of offenders in relationship to sentencing outcomes. While many of the earliest authors assert that their evidence supports racial discrimination in sentencing, both Hagan (1974) and Kleck (1981, 1985) argue that the methods and analysis in the majority of these studies lacks the analytical rigor necessary to support such assertions.

 Kleck (1981, 1985) identifies forty (40) studies of non capital cases and seventeen (17) studies of capital cases undertaken before 1980. Hagan (1974) evaluates twenty (20) pre 1975 studies, some of which are also included in Kleck's review. Significant in both reviews is an absence of control for prior criminal record and offense severity, two legal variables whose influence is almost universally accepted. In large part, these early studies relied on individual variables to support their assertions. A focus on extra legal offender attributes such as race, sex, age and socioeconomic status without sufficient controls for legally relevant characteristics is, according to Hagan (1974), responsible for much of the variance in outcomes. Similarly, Kleck (1981) asserts that when

prior record is considered the accepted hypothesis of discrimination against black defendants was generally unfounded. At best, the outcomes of this early research must be termed mixed. The conflicting outcomes found among these early studies and the substantial criticism they attract marks the beginning of a debate over sentencing decision making that persist today.

In a slightly later review Zatz (1987) divides the studies of sentencing disparity into what she identifies as four waves of research. In the first wave, which includes studies conducted prior to the mid-1960, she concurs with Hagan (1974) and Kleck (1981, 1985) noting that these works are indeed methodologically flawed. The second wave of research includes studies conducted during the late 1960s and throughout the 1970s. In these studies, which Zatz conceded were more methodologically sound, no direct race effect was found. This fact lead to a presumption that the sentencing disparity reported earlier either never existed or had disappeared as a result of the civil rights movement. Some researchers argued that the overrepresentation of minorities in the criminal justice system was a consequence of their greater propensity to engage in criminal activity rather than system bias (Hindelang 1978).   Third wave studies, those occurring during the late 1970s and 1980s, began a move toward a more methodologically sophisticated approach to sentencing decision making research. The scholars of this era introduced the idea that racial bias in sentence outcomes can be found in indirect effects. In these situations, characteristics such as race or economic status operate together to influence sentencing outcomes.   Such an example is found in LaFree's (1985) study of

court processes in Tucson and El Paso where bail status is found to effect sentencing outcome. This less favorable pretrial release status had a disparate effect for minority defendants who are more often poor, even though no direct race effect was found. Evidence also exists to suggest that while minorities may have statistically non-significant effects at a single point in the criminal justice system, these small impacts accumulate across the various stages to create a cumulative disadvantage. Employing more sophisticated methods of analysis, the findings of Spohn, Gruhl and Welch (1981) demonstrate the significance of the interaction effect of variables in mitigating or eliminating the race effect. This wave of scholarship considered a variety of distinct variables, legal and extra legal, which when combined showed disparate outcomes for certain groups of individuals. These studies, as had their predecessor, failed to produce a consensus as to the source of disparity. The forth wave of research identified by Zatz (1987) continues today. Both technological advances in data analysis and improved data collection systems have impacted the work of this phase. These studies began at a time when states were moving to determinate sentencing. Designed primarily to limit disparities in sentencing of earlier eras sentencing guidelines and determinate sentencing systems simply shifted the locus of discretion to other court actors. Although the overarching question driving this research seems to be whether race or ethnicity is a significant determinant in sentencing outcomes, these forth wave studies support the interaction of factors that began to emerge with third wave studies. Legal, extra legal, and structural variables applied in various circumstances and combinations evaluate their

impact on sentencing outcomes. Zatz points to two areas in which the forth wave literature had begun to elucidate limitations in the literature. The question of who gets probation and who gets prison according to Zatz has not been adequately considered. A second issue concerns the structural circumstances that may predispose some groups more than others to inclusion in the criminal justice process.

On the surface, it appears that the discussions of disparity are concerned only with the racial inequality in sentencing outcomes. Willbanks (1987), a preeminent critic of the racism in criminal justice explanation, suggests that what some scholars report as race effect is nothing more than unexplained variance that has been improperly labeled. At the core of Wilbanks' discussion is the definition of racism and a question of a "double standard" in its application.   The double standard in this explanation refers to the fact that the level of moral outrage associated with acts that appear to disadvantage members of minority groups are not seen as racism if the victim is a majority group member. While Willbanks does not deny that racial prejudice and discrimination have had and continue to have an impact on outcomes in the criminal justice system, he also claims that there is no evidence that these characteristics are systematic.

In her analysis of disparity and discrimination in the criminal justice system Spohn (2002) notes that the statistical evidence of disparity in sentencing when comparing black and Hispanic offenders to whites is compelling but alone this data does not identify the source of these differences. Whether this disparity represents racial discrimination and how that discrimination is introduced in the

criminal justice system is not readily evident. Spohn provides four explanations

for racial disparities in sentencing outcomes, not all of which reflect racial

discrimination. First, there is some suggestion that black and Hispanic

defendants commit more serious crimes and have more extensive prior records

than whites. These factors are responsible for the more serious penalties

minority defendants receive. While this situation can be the source of racial

disparity, it does not represent racial discrimination. A second explanation

suggests that the lower socio economic status, a fact that is more likely to be

represented among black and Hispanic defendants, results in secondary

consequences such as pretrial detention and unemployment which may result in

more harsh sentences. This situation according to Spohn suggests indirect

discrimination. A third explanation involves direct racial discrimination resulting

from judges and other court actors personal bias or prejudice. Finally, Spohn

notes that disparities may occur in some instances and not in others. Evidence

of this subtle or contextual discrimination appears to depend on such things as

the nature of the crime, the type of jurisdiction in which the crime was committed,

the age and gender of the defendant and a number of other circumstances.

While all of these are plausible explanations for the differential treatment of racial

and ethnic minorities at sentencing, Spohn warns that over simplification may

miss the more important point, "When does race matter?"

As the literature evolves, the evidence suggests that disparity occurs as

factors interact.   The original impetus for study in this arena was an allegation of

racial discrimination but the larger question concerns disparity and the causal

factors related to the inconsistency in sentencing outcomes in general. The focus of the research and the complexity of the response to the question of sentencing disparity have developed over time.

In a recent review of forty sentencing studies Spohn (2000, 2002) documents the indirect and interaction effects of variables in explaining sentencing disparity. This work makes clear the complexity of the disparity question, stressing the importance of testing both interactional and additive models when considering the question of sentencing outcomes. Referencing the earlier reviews of Hagan (1974) and Zatz (1987), Spohn points out that the absence of race effects cannot be presumed to signify a race neutral criminal justice system. Rather, Spohn (2000, 2002) identifies four (4) themes to answer the question "When does race matter?"

The first pattern Spohn (2000, 2002) identifies asserts that race/ethnicity combined with other offender characteristics such as age, gender, employment status, income and education creating more serious sentencing disparity than race/ethnicity alone.   The research results considering these attributes singularly produce mixed results, however, in combination the negative consequence to minority offenders is routinely confirmed. Studies, looking at both in/out prison decisions and length of sentence, support the assertion that the effect of race is conditioned by other offender characteristics (Spohn and Holleran 2000; Steffensmeier et al 1998).

The second theme forwarded by Spohn (2000, 2002) suggests the interaction of process related factors with race. Under this explanation, unequal

sentencing outcomes are tied to elements of the criminal justice process. Studies focused on the consequence of plea vs. trial (Ulmer 1997; Ulmer and Kramer 1996), hired versus appointed counsel,(Spohn 2000b) and whether or not a defendant is subjected to pretrial detention are said to condition sentencing outcomes when combined with the defendant's race/ethnicity. The lack of economic means results in an increased reliance on public defender representation and decreases opportunity for pretrial release (Zatz 2000). Both of these factors tend to have consequences at sentencing. These economic limitations are found to occur most often among minority defendants who are more likely to be unemployed. Singularly and in combination, these circumstances provide white defendants a better position at sentencing.

The third theme Spohn (2000, 2002) reports involves the interaction between the race of the offender and the race of their victim. In her review, Spohn explains that the differential sentencing consequence results when the victim's race and the offender race are not the same. As with earlier studies of death penalty cases, punishment is found to be contingent on the race of the victim as well as the race of the offender. Neither the offender's race nor the race of the victim singularly influences sentencing outcome, however, the interaction of the two seems to result in more serious sentencing outcomes under some specific circumstances.

Spohn's (2002) final pattern suggests that the nature of the offense has an indirect, interactional effect on sentencing outcome. This pattern references studies in which sentencing disparity is more evident in less serious crimes

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(Crawford, Chiricos and Kleck 1998; Spohn and DeLone 2000). "Moral panic" emanating from the war on drugs associates drug abuse and the crime related to acquiring drugs with minority populations (Mauer 2003) predisposing minorities charged with drug offenses to more serious consequences (Albonetti 1997; Kramer and Steffensmeier 1993; Spohn and DeLone 2000). Spohn and Cederblom (1991) assert that in more serious crimes judicial discretion is limited allowing little opportunity for race to be considered. Conversely, less serious offenses are open to more sentencing options and courtroom process are more flexible, presenting opportunities for extra legal factors to be considered.

These analyses of the extant literature provide insight in to the evolution of the investigation of sentencing decisions. The inconsistent findings and the number of competing approaches to the question of sentencing disparity are evidence of the yet unresolved nature of this discussion. Not only is it obvious that there exists significant disagreement as to the extent and circumstances in which disparity in sentencing may be found but also whether disparity exists at all.

For the purposes of this study, the literature review will concentrate on post 1980 analysis of sentencing decision making in non capital cases. This researcher has identified four (4) broad categories that define the dominant orientation of these studies. Discussions of these works will lay the foundation for the theoretical orientation of this research project.

Bias and Stereotyping

There is general agreement that court processes require that decision maker's act without benefit of complete information. Both time constraints and inability to secure complete and accurate information about a defendant place judges in a position to render sentencing decisions with something less than complete information. Using a survey of hypothetical cases Clancy and his colleagues (1981) articulate three principal objectives for their study: to determine the extent of sentencing disparity, to examine the effect of specific case characteristics on sentencing and to determine the effect of various attributes of the judge and the court environment on sentencing. In each of sixteen scenarios, participants were asked to prescribe the sentence they deemed appropriate for the circumstance. In a separate process judges were asked to rate the influence of several elements on sentencing outcome. In a second set of questions, the judges are asked to consider the goal of the sentence being imposed, a factor which was found to be highly influential in the actual sentence imposed. Divergent opinions of appropriate sentencing goals were also found to contribute to disparity in sentencing outcome, as were judicial attitudes toward sentencing and the judicial environment.   Clancy and his colleagues (1981) found that individual differences between judges do influence sentencing outcomes. Such things as personal value orientation, goals of sentencing, perceptions of crime seriousness and sentence severity, and a predisposition to be harsh or lenient all contribute to disparity in sentencing. A second set of questions asked judges to consider the goal of the sentence being

imposed. The identified goals were found to be highly influential in the actual sentence imposed. Incongruous opinions of appropriate sentencing goals were found to contribute to disparity in sentencing outcome. Effectively, differing opinions of what a particular sentence was to accomplish was reflected in the final sentencing outcome. This study also supported the significance of judicial attitude toward sentencing and the judicial environment as contributing to divergent sentencing outcomes. Clancy and his colleagues found that individual differences between judges do influence sentencing outcomes. In this study such things as personal value orientation, goals of sentencing, perceptions of crime seriousness and sentence severity, and a predisposition to be harsh or lenient all contributed to disparity in sentencing outcomes.

Addressing legal decision making from a social and cognitive frame Farrell and Holmes (1991) explain the usefulness of court community stereotyping. In their analysis, these authors assert that stereotypes make possible the expeditious handling of "normal crimes" (Sudnow 1965). Exceptional cases, on the other hand, require an atypical response. Farrell and Holmes (Farrell 1991) suggest that when standard information processing strategies fail the significance of defendant characteristics or case attributes are aligned with existing perceptions to create a more or less favorable outcome than is deserved. These authors point out several other ways in which exceptional cases may be negatively affected. For example, in cases involving unusual or less routine circumstances, it is more difficult for court actors to achieve a consensus view of the crime and the defendant thus these cases are more likely to go to trial than

be resolved through plea negotiation. The more careful consideration given such cases would seem to provide a more reliable assessment, but instead court actors are inclined to reinterpret information to fit prevailing expectations. These authors are primarily concerned with the internalized stereotypes held by court actors and the proxy position given these stereotypes in a system constrained by limitations on time and resources. In the final analysis, they assert that "although objective qualities may support crime stereotypes, the subjective interpretation of the offender and offense is more critical to understanding legal outcomes" (Farrell and Holmes 1991:533).

Testing a hypothesis of cognitive heuristics in legal decision making, Guthrie and his associates (2001) approach judicial error as a consequence of cognitive heuristics. These authors explain that while such "mental shorthand" will generally produce good judgment, it can also produce systematic error. The uncertain, time pressured conditions under which judges make decisions create an environment that encourages reliance on mental shortcuts. Guthrie asserts that by depending on cognitive illusions errors in judgment are often produced. The study considers the influence on judicial decision making of five (5) cognitive illusions: anchoring, framing, hindsight bias, representativeness and egocentric biases. Each influence was evaluated through response of 167 federal magistrate judges to questions relevant to hypothetical sentencing scenarios. While Guthrie and his colleagues concede that the courtroom decision making process will differ substantially from that of the study, they also suggest that it is

unlikely that judges can avoid the effects of cognitive illusions when deciding cases.

Though it is difficult to specifically document bias and stereotyping in the sentencing process, considerations inherent in the court process as documented by these authors suggests that there are routine practices which encourage reliance on "perceptual shorthand." Sentencing decision making processes are impacted by the value orientation of court actors as they relate to both crime and criminal sanctions. These considerations are reach beyond the characteristics of the case and the offender involved to include the characteristics of the judge and other court actors involved in the process (Clancy et al 1981).

Structural and Process Explanations

A number of scholars argue that disparity in sentencing is a consequence of organizational attributes of the court and the community. Several scholars (Britt 2000; Kautt 2002; Spohn and DeLone 2000; Welch et al 1985) have identified the physical location of the court as one of the major explanations for variance in sentencing outcomes. Other proponents of structural explanations of sentencing disparity cite the extent of court bureaucratization (Dixon 1995), political influence (Helms, Ronald and David Jacobs 2002), and specific court processes (Engen and Steen 2000; Engen et al 2003; Johnson 2003; Kramer and Ulmer 2002). Still others assert that these and a number of other characteristics operate as additive or interacting court community variables to produce variance in sentencing outcomes (Ulmer 1997). Though all of these scholars present evidence of structural and process related influences in

sentencing outcomes, as with other discussions of sentencing disparity this discussion continues.

Three studies (Britt 2000; Kautt 2002; Spohn and DeLone 2000) consider court location as a significant determinate in sentencing outcome. These scholars consider sentencing in jurisdictions in which guidelines and determinate sentencing have been implemented. In a forth and the earliest of the studies the authors (Welch et al 1985) uses data from 1975-1978 to evaluate the sentencing outcomes across six geographically diverse jurisdictions. In addition to geographic distinctions, Welch and her colleagues (1985) consider divergence in outcomes based on the mode of sentencing. In this study, guilty pleas are found to occur more often among white defendants across all jurisdictions and though pleas are generally associated with lighter penalties, in all locations blacks that plead guilty were incarcerated more often than white defendants who entered pleas. This same disparity was not found to occur with Hispanic defendants. Higher rates of incarceration for black male defendants were found in three of the six jurisdictions. Welch concludes that these jurisdictional differences may be evidence of regional bias. According to these authors, significant limitations exist for the generalizability of sentencing research.

The later works of Spohn and DeLone (2000), Kautt (2002) and Britt (2000) all offer evidence of a significant jurisdictional influence across venues and methodologies. Spohn and DeLone (2000) report a complex relationship between race/ethnicity and sentencing decisions. Their work attempts to respond to the single jurisdiction limitation of earlier research by considering

sentencing outcomes for defendants from courts in three regionally distinct metropolitan jurisdictions.   Analyzing case date from Cook County, Illinois, Dade County, Florida and Jackson County, Missouri this study found that race interacted with other legal and extra legal attributes in various ways and to varying degrees depending on jurisdiction. In addition to variance attributable to race/ethnicity of the defendant, offense severity, prior criminal record and the defendant's employment status were considered as factors in deciding whether the defendant was sentenced to prison and the length of the sentence he received. Though race/ethnicity influenced the decision to incarcerate in at least two locations, the authors make clear that charge seriousness and defendant's prior record were the primary determinants of sentence severity. This finding is consistent with a plethora of earlier research documenting the salience of legal factors, but adds to the discussion the magnitude of extra legal variables on sentencing outcomes after legal variables are considered.   Despite the fact that this evidence does not provide a consistent pattern of affect for all offenses and all offenders, it does provide statistically significant evidence of direct effects in some jurisdictions and less significant effects in the others. This evidence is a testament to the importance of individual decision makers even under structured sentencing.

Since sentencing guidelines were expressly intended to minimize sentencing outcomes Kautt (2002) argues that federal sentencing jurisdictions should be especially interested in variations in sentences by geographic location. In response to the absence of an analysis, which considers the influence of

environmental and contextual factors under federal sentencing guidelines, Kautt undertakes a multilevel approach to federal drug-trafficking cases. Using case, district and circuit level data the analysis found that federal guidelines notwithstanding, the application of sentencing guidelines in drug trafficking cases does vary both by district and circuit of adjudication. As Kautt (2002: 658) explains "[V]irtually all legally relevant case-level factors vary substantially in their effect from one district to the next, and the influence of both guideline axes (offense seriousness and criminal history) varies from circuit to circuit". The organizational influences of the circuit courts on the federal district courts under their purview emanates from the policy and rulemaking that occurs as normal business practice within the circuit. Together with other extralegal factors of the cases, this study finds that these district and circuit court processes condition the sentencing outcome. In this study the two primary factors that underpin sentencing guidelines, offense severity and prior criminal record, did not explain the variance between cases. In the final analysis, "the results suggest that the district effects are not simply functions of population context, organizational maintenance, or political rationality but instead reflect variation in the judicial embeddedness of the structured sentencing criteria" (Kautt 2002: 665). Without question, the federal sentencing guidelines have been unable to eliminate the influence of legally irrelevant factors from the sentencing process.

Britt (2000) approaches the question of sentencing disparity from the perspective of four (4) distinct elements: urbanization, racial threat, economic threat and crime control. He believes these elements link disparity to social

context. Using Pennsylvania Sentencing Commission data, this study extends the earlier social context work by considering variations in the effects of offender and case characteristics along with jurisdictional differences. In general, punishment severity and racial disparities vary from court to court, even when case and offender characteristics are controlled. Even so, no statistically significant contextual effects are found. Britt (2000) suggests that current theoretical explanations attempt to apply macro level responses to micro level events which may account for the inconsistent findings of earlier research. A presumption that all decision makers respond in the same way to a given set of characteristics fails to consider a significant source for potential variance. Citing the "racial threat hypothesis" which relies on a criminal justice system level perception of threat, Britt explains that it is likely that individual judges in the same jurisdiction may have very different perceptions of the threat of crime and thus would respond very differently when sentencing.

These three studies illustrate the failure of sentencing reform to eliminate discretion and the resulting sentencing disparity. Though these scholars (Britt, 2000; Kautt 2002; Spohn and DeLone 2000) considered sentencing in distinctly different locations and under distinctly different sentencing criteria, they each concluded that variance from jurisdiction to jurisdiction continues. Furthermore, they agree that such variance can be the source of disparity.

Political and Organizational Influence

Dixon (1995) approaches the question of sentencing disparity from three theoretical perspectives: formal legal theory of sentencing, substantive political

theory, and organizational maintenance theory. She integrates these theories into what she refers to as an "organizational context perspective on sentencing." Recognizing the varying outcomes of previous studies, Dixon (1995) suggests that the organization of judicial and prosecutorial activity account for the divergence in sentencing outcomes. Dixon establishes the level of bureaucratization of judicial and prosecutorial activities based on the complexity of the division of labor and the extent to which decision making is decentralizes, thus tying them to particular theoretical perspectives. In this study, theoretical perspective notwithstanding, the effects of legal variables were found to be significant. Measures such as race/ethnicity, age and gender, however, tend to vary depending on the organizational context in which they are considered. Jurisdictions were assigned one of two levels of bureaucratization, low and high, to consider the variance in the affect of extra legal factors on the decision to incarcerate and the length of sentence imposed.   Under a low degree of bureaucratization, formal legal theory was supported while organizational maintenance theory was supported in jurisdictions with high degrees of bureaucratization.   In Dixon's assessment, the variance in sentencing outcomes found to exist under these separate theories suggests a need to develop approaches to study sentencing outcome that consider and measure organizational and contextual influence. A failure to consider local context in sentencing research may be responsible for the erroneous and inconsistent conclusions of earlier studies. Dixon (1995) urges the examination of legal,

social and processing factors, as well as court contexts in the study of sentencing decisions.

In another study Helms and Jacobs (2002) address the question of political influence on criminal sentencing through an analysis of the relationship between offender characteristics and county indicators in seven states. Consistent with earlier work, these scholars found a positive relationship between legal variables such as prior record and current offense on sentence severity. In this analysis consideration of jurisdictional contextual variables such as percent republican, percent urban, violent crime rate, unemployment rate and percent black population provides a significant control for unwarranted effects of age, race and gender. The influence of community standards on sentencing decisions is important. Women to men sentence severity treats women more leniently in conservative courts. Courts in communities with higher violent crime rates were found to impose more serious punishment. Cited as their most important result Helms and Jacobs find that "African Americans face longer sentences in court environments where the vote for a law-and-order Republican is greatest" (Helms and Jacobs 2002:596). The significance of this study is grounded in its presentation of the contingent processes which predispose courts to inequality.

Interaction of Legal and Extra Legal Factors

Though an extensive body of research considering the effects of legal and extra legal factors on sentencing outcome has been undertaken, a universally accepted conclusion as to the cause of sentencing disparity has yet to be achieved. To a large extent the latest studies fail to evidence a direct race effect,

however, indirect or interaction effects are found in almost all of the studies. This evidence and the persistent disagreement in the research findings has challenged scholars to further explore the consequence of the interaction of elements in relationship to defendant's criminal justice system involvement.

The complexity of the criminal justice process and the demands on the court leave the judiciary and other court actors wanting for information. To suggest that sentencing decisions are entirely factually based is unrealistic. In fact, the information the court actors rely on about both the offense and the defendant is seldom complete (Steffensmeier et al 1998). In this absence of complete information, decision making relies on perceptual assumptions and attributions (Albonetti 1991). Consideration of race, gender, age and other individual and system attributes thus become intertwined in the more formal decision making process. To make up for the limitations in available information, judges are said to develop a "perceptual shorthand" to mitigate these gaps (Steffensmeier, Ulmer and Kramer 1998). Judgments about such things as who is dangerous and who is not become more a function of perception than facts. Steffensmeier and his colleagues (1998) explore this shorthand system to answer how decision making is linked to race, gender and age attributions. Relying on the findings of the general race and stratification literature, these scholars posit that race, age and gender intertwine with attributes like the defendant's blameworthiness, the extent to which the defendant threatens public safety, and the needs of the organization or individual court actors. The interplay of these three attributes, which Steffensmeier and his colleagues refer to

collectively as focal concerns, are impacted by race, age and gender attributions to affect sentencing decisions. Officials like others in the community stereotype based on age, race and gender statuses and in the absence of complete information apply these stereotypes to the decision making process. Statuses and attributes that are conceived of as indicators of criminality are projected on defendants and in this way influence sentencing outcomes.

The extent to which this process affects sentencing severity has been found to differ based on types of offenders and case. According to Steffensmeier and his colleagues (1998) this phenomenon is particularly evident in cases termed "serious but not necessarily dangerous." The differential effect of extra legal attributes when comparing outcomes for violent and capital crimes (Spohn and Cederblom 1991; Steffensmeier et al 1993) with lesser chargers is notable. At least in part the presence of such disparities in less serious crime may be explained as a function of the increased likelihood that such cases are settled through plea agreements and bench trials as opposed to more structured and scrutinized jury trial. The lower court system demands of plea agreements and bench trials leave cases and defendants open to the perceptions of individual court actors.

Along with Steffensmeier and his colleagues (1998), Zatz (2000) and others (Spohn 2000; Spohn and DeLone 2000; Welch et al 1985) concur that much of the ambiguity and disagreement in the literature about the race effect can be blamed on the single source approach many of the studies have taken. Steffensmeier and his colleagues note specifically that "prior sentencing research

fails to contextualize race effects by age and gender" (1998:763) and explaining that their work suggests that while judges base their decisions for the most part on legally relevant information, race, gender, and age will influence sentencing outcomes independently and in combination.

Other literature frequently alludes to the affect of court processes and context on sentencing outcome. Guilty pleas and plea-bargaining are shown to have a significant impact on sentencing outcomes. Studies by Ulmer (1997), Ulmer and Kramer (1996), Albonetti (1991), Welch, Spohn and Gruhl (1985) and Zatz (1985) discuss the impact of trial versus plea on sentencing outcome. Because data is simply not available in cases where plea bargains are not accepted we are left to speculate as to the consequence the system may have for these defendants. However, white defendants have been shown to plead guilty more often than black defendants in similar situations. Since guilty pleas are associated with lighter sentences, the implication of the lower incidence of pleas among black defendants is material to the overall sentencing outcomes they experience. Again, we are left to speculate as to the reason for the disparity in the incidence of pleas between these groups. Perhaps the proportion of white defendants who are actually guilty of the charge for which they are arrested is greater than for black arrestees or perhaps the plea bargains offered white defendants are more acceptable than those offered black defendants. Whatever the difference, the interaction of pleas with the defendant's race/ethnicity creates significant implication for sentencing decisions (Welch, Spohn, and Gruhl 1985).

Structural explanations such as this, supply significant evidence that though changes in sentencing systems have occurred, disparate sentencing outcomes persist. To reinforce this consistency of the evidence Spohn (2000) points out that offender and case characteristics combine with racial factors to present a significant disadvantage for the minority defendants. Though disparity is not evident across all cases, certain types of racial minorities "may be perceived as more threatening, more dangerous, and more culpable; as a consequence, they may be punished more harshly than similarly situated whites" (Spohn 2000:478). Attributes of the court system itself have been credited with much of the responsibility for these disparities.

Theoretical Approach

Among the most widely researched interaction propositions explaining sentencing decision making is "focal concerns theory." Forwarded by Steffensmeier and his colleagues (1998; 1993) "Focal Concerns Theory" identifies three characteristics which are seen as dominant influences in sentencing decisions of judges and other criminal justice actors. According to this perspective offender blameworthiness, protection of the community, and practical implications of the sentencing decision guide sentencing decisions of judges and other court actors. Blameworthiness is associated with offender culpability and the retributive philosophy of sentencing. Considerations of the seriousness of the current offense, which is generally dictated by law and the defendant's prior criminal history along with mitigating and aggravating circumstances of the offense, are dominant in establishing blameworthiness.

The offender's role as a leader or follower in the crime or his own victimization are characteristics found to aggravate or mitigate blameworthiness.

Protection of the community, the second focal concern identified by Steffensmeier (1998), focuses on the need for both specific and general deterrence. Like blameworthiness, community protection considers offense characteristics but in this instance, the focus is on the perceived dangerousness and likelihood that the defendant will reoffend. The nature of the offense, whether violent, property, or drug; the specific circumstances of the case, together with the offender's prior history and personal characteristics such as community ties, marital status, education and employment are relied upon to estimate the danger or threat the offender may pose. The uncertainty of the risk prediction process, according to Albonetti (1991) forces court actors to make decisions that depend on their own perceptions.

The third focal concern, practical consequences and organizational constraints, involves the overarching criminal justice system concerns which exist at the organizational level (Steffensmeier et al 1998). Such things as jail and prison overcrowding, the extent and acceptable limits of court delays, along with local political and community norms concerning crime and recidivism impact the decision making process. For the offender "practical consequences" involve personal concerns such as family disruption, health and mental health condition of the offender as well as perceived ability of the defendant to do time (Johnson 2003; Kramer and Ulmer 2002; Steffensmeier and Demuth 2001; Steffensmeier, Ulmer and Kramer 1998). Together, the interaction of these three focal concerns

are seen by Steffensmeier and his colleagues (1998; 1993) as central to the sentencing decision making process.

The court system is composed of actors who meet more or less routinely to resolve issues, the responses and concurrence of task group members, most often judges, defense bar, prosecutors and other court actors is critical to the outcome of court proceeding's. Not only does the regularity of the encounters of the court community members make maintaining an amiable working relationship an important goal but also, the sheer volume of each judge's caseload encourages the weighing of other task group participants views in the judge's construction of his or her decision. If the system is to accomplish its task, orderly and consistent case flow is required. All participants are thus dedicated to the collective establishment of an environment within which the entire group can coexist peacefully.

The degree to which these elements converge and the weight each focal concern is given in the overall sentencing decision varies with each case. The demands of the system coupled with the incomplete information available to court actors encourages attributions based on the defendant's gender, race and social class. The research applying this theoretical approach is dominated by the investigation associated with in/out incarceration decisions and to a lesser degree sentence length.

Focal concerns theory has been applied to a variety of circumstances by Steffensmeier and his colleagues (1998; 1993) as well as several other scholars (Johnson 2003; Kramer and Ulmer 2002; Sharp et al 2000; Spohn and Holleran

2000; Steffensmeier and Demuth 2000, 2001; Ulmer and Johnson 2004) (Table 1.). Steffensmeier, Kramer and Streifel (1993) identify several shortcomings in earlier research, a fact that had also been noted by Zatz (1987) and Spohn (2000, 2002) among others. Consistently, these authors argue that effects are the result of interactions which are engaged a various points depending on other factors that are also at work.

Using Pennsylvania sentencing data from 1989 –1992 Steffensmeier, Ulmer and Kramer (1998) consider the interactive effect of race, gender and age in the focal concern framework. They conclude that perceptions about these and other characteristics of the defendant can lead to conclusions about and offender's amenability to treatment or their threat to the community. For example, the sentencing advantage often shared by women and older offenders can be related to their potential greater financial burden to the criminal justice system, their stronger ties to the community, a perceived increased potential for their victimization if incarcerated and their lesser threat to community safety. These findings supporting the focal concern framework show the attribution of individual characteristics impacts blameworthiness, community risk and organizational consequences. Independently and in combination, these factors influence sentencing outcomes.

Kramer and Ulmer (2002) test the focal concerns theory by considering situational and contextual circumstances under which serious violent offenders are sentenced. Using sentencing guideline data from the Pennsylvania Sentencing Commission, these scholars consider a combination of legally

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prescribed, case-processing, offender related and county context factors to investigate downward departures. The study found no differences between white and black defendants and a slight advantage for Hispanic defendants. Female defendants were twice as likely to be granted a downward departure. Interviews with judges from the participating courts affirm their reliance on focal concerns in sentencing decision making. The defendant's perceived dangerousness, community protection and perceived blameworthiness were identified as key considerations in downward departure. Practical constraint was identified as especially important to plea considerations.

If as Steffensmeier, Kramer and Streifel (1993) assert, "the effects that various attributes, such as gender, have on sentencing outcome may depend strongly on the decision being made" then the implication for these traits in the decision to use alternative sentencing options may differ from the outcome found when applying this theory to incarceration decisions.

Table 1. Studies Testing Focal Concern Theory

Study	Jurisdiction	Time Period	Dependent Variables	Independent Variables
Steffensmeier, Kramer and Streifel 1993	Pennsylvania	1985-1987	In/Out Jail/Prison Sentence Length	Offense severity, Criminal History, Offense, Race, Gender, Age, Judicial Workload, type of disposition, Jurisdictional Makeup
Steffensmeier, Ulmer, and Kramer 1998	Pennsylvania	1989-1992	In/Out Prison Length of Incarceration	Age, Race, Gender, Offense Severity, Offense Type, Multiple Convictions, Criminal History, Mode of Conviction, Court Size, Sentencing Year,
Sharp, Braley, and Marcus-Mendoze 2000	Oklahoma	1997[1]	Sentence Length	Race, Age, Educational Level, Employment Status at Arrest, Prior Conviction, Prior Incarceration, Type of Trial/Conviction, Types of Drugs Used
Steffensmeier and DeMuth 2001	Pennsylvania	1991-1994	In/Out Prison Decision Sentence Length	Race/Ethnicity, Age Group, Offense Severity, Criminal History, Multiple Convictions, Mode of Conviction, Offense Type
Kramer and Ulmer 2002	Pennsylvania	1997-1999[2]	Guideline Departures	Offense Severity, Offense Type, Criminal History, Prior Record, Mandatory Minimum Applied, Age, Gender, Race/Ethnicity, Type of Conviction, Court Size
Johnson 2003	Pennsylvania	1996-1998	Guideline Departures	Mode of Conviction, Race/Ethnicity, Age, Gender, Offense Gravity Score, Prior Record Score, Court Caseload, Percent Black, Percent Republican, Percent Population 18-24, Percent Urban
Ulmer and Johnson 2004	Pennsylvania	1997-1999	In/Out Prison Decision Sentence Length	Severity of current offense, offense type, prior criminality, guideline sentence recommendation and presence/absence of mandatory minimums, race/ethnicity, gender, age, mode of conviction, court size, judicial caseload, trial rate and county incarceration capacity, percent black and Hispanic, county poverty rates, index crime rate, percent violent, property and drugs offenses

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[1] Includes 144 female prisoners at 2 institutions responding to a questionnaire
[2] Restricted to serious violent offenses as defined by Pennsylvania's "three strikes" act

Study Focus

This research proposes to assess the tenets of Focal concern theory in the context of Oklahoma's Community Sentencing Act. Oklahoma's community sentencing system provides a unique opportunity in which to consider the tenets of focal concern theory, blameworthiness, community protection and practical constraint, in the context of non-prison sentencing decisions. The absence of research applying focal concerns theory for such dispositions encourages the exploration of the decisions concerning these defendants. By applying the attributes of focal concern theory to contextualize the case information of defendants eligible for sentencing under the Community Sentencing Act this author is challenged to evaluate not only the theory's applicability with this population but to consider the discreet differences in attributes that are shown to be predictive in various sentencing outcomes.

Extra legal factors are said to influence sentencing outcomes most when information about the defendant and the offense is incomplete (Albonetti 1991; Steffensmeier 1998). This use of "perceptual shorthand" is said to be especially pervasive when the case involves a less serious offense (Albonetti 1991). The Oklahoma Community Sentencing Act requires the that certain information generally considered to be relevant to a defendant's risk of future criminal behavior be considered to establish offender eligibility for and community sentence (Andrews 1994). The sentencing decisions made in cases in this study places court actors in a preferred position, having more complete and consistent information from which to decide the case. With this, sentencing decisions

considered as a part of this study may illuminate both the issue of bias in the context of limited information and the pervasiveness of bias for less serious offenses.

The very limited research documenting non prison sentencing decisions suggests that variations found in such cases may be impacted in different ways than those documented in decisions to incarcerate (Engen 2003). Sentencing outcomes considered in this study provide an opportunity to further evaluate these possibilities. Though a defendant is found to be eligible for community sentencing the final disposition remains the discretion of the court. The study population includes defendants with sentencing outcomes of a community sentence as well as other options available to the court. For the purposes of this study, eligible offenders with sentencing outcomes of a community sentence, probation and incarceration, will be considered.

Considering the attributes of Focal Concern Theory and other extra legal factors this study will explore the following hypotheses.

H_1: Sentencing dispositions for offenders eligible for community sentencing vary based on age, race and gender of the defendant.

H_2 Offense category is a significant determinant in the imposition of a community sentence.

H_3 The population unit in which the disposition is rendered is significantly associated with the decision to grant a community sentence.

H_4 LSI total risk score is not a significant predictor of the decision to grant a community sentence.

H_5 The addition of extra legal variables increases the prediction of sentencing outcome over the variables associated with Focal Concern Theory alone.

CHAPTER III

METHODOLOGY

The purpose of this study is to provide an analysis of sentencing decisions related to the application of community penalties and to assess the usefulness of a standardized risk instrument in determining sentencing outcomes. Relying on the data collected in conjunction with the assessment of criminal defendants' eligibility for sentencing under the Oklahoma Community Sentencing Act (Okla. Stat. tit. 22 § 988.1 et sec), characteristics deemed pertinent in earlier studies of criminal penalty decision making are considered in the evaluation of sentencing outcomes for community sentencing eligible offenders. Offenders eligible for sentencing under Oklahoma's Community Sentencing Act (Okla. Stat. tit. 22 § 988.1 et sec) are identified through a standardized assessment process that provides an overall risk score and a need profile. It is suggested that even though a formal assessment process is in place, interactive relationships between the individual characteristics of the defendant (extra legal variables) and case characteristics (legal variables) will function to produce distinctively different outcomes.

The study includes the entire population of defendants considered and found to be eligible for sentencing consideration under the Oklahoma Community

Sentencing Act and for whom a disposition of community sentence (n = 7905), probation (n = 2328), or incarceration (n = 1164) was entered by the court between July 1, 2000 and June 30, 2005 (N = 11,397). Analysis consists of logistic regression using two models to test the hypotheses set out above. Each of the two models considers dispositions in five offense categories for each of the three included disposition options.

Data

Data for this research is drawn from the Oklahoma Department of Corrections ASSESS database. This data set provides individual level data for each of fifty-four (54) items contained in the Level of Service Inventory – Revised (LSI - R) as well as demographic and criminal felony case data regarding the subject's current offense. The study considers the entire population of offenders determined to be eligible for sentencing under the Oklahoma Community Sentencing Act and for whom a final case disposition resulting in a community sentence, probation or incarceration was entered between July 1, 2000 and June 30, 2005.

To be determined eligible under the Oklahoma Community Sentencing Act a defendant may, following a determination of guilt but before sentencing, be referred for assessment for a community sentence. Defendants referred for assessment should be eligible for probation as provided by Oklahoma statutes (Okla. Stat. tit. 22 § 991a et sec) and are generally charged with nonviolent crimes. An exception to these criteria is provided in the Act whereby defendants not otherwise eligible for consideration may be referred for assessment with the

specific written approval of the district attorney. This provision is most often

applied in instances of offenses that are categorized as violent but are factually

of a lesser nature. This provision accounts for the inclusion of the violent offense

category in the study population. Offenders found to score in the moderate range

(19-28) of the LSI – R may be considered for sentencing under the provisions of

the Oklahoma Community Sentencing Act. Eligibility itself does not guarantee a

sentencing under the statute but rather provides a guideline for inclusion.

Assessment Tool

To effect the implementation of the Community Sentencing Act (1999) the

Department of Corrections was required to select an assessment instrument for

use by the courts in establishing offender eligibility. The selection of the Level of

Service Inventory – Revised (LSI-R) was based in large part on the instruments

usefulness in predicting offender risk to reoffend. Research suggests that the

lack of complete and consistent information presents an opportunity for personal

bias to be introduced in the sentencing decision making process (Steffensmeier

et al 1998). Given this assumption the more complete information made

available as a result of the assessment should impact sentencing decisions.

In selecting an instrument to assess community sentence eligibility the

Department of Corrections sought to consider well researched, validated risk

assessment instruments.   The Department of Corrections took steps to assure

court communities; especially judges and prosecutors, were oriented to the

empirical evidence supporting the LSI – R's use. Strict training and quality

control procedures were instituted for persons administering the assessment to

make certain that the assessment results provided to the court were reliable by the Department of Corrections implemented. Only persons trained and certified through Department of Corrections approved training programs are involved in the assessment process.   It is acknowledged, however, that even with the standardized training and certification procedures this data is limited by the quality of the assessor.

Pursuant to the requirements of the Oklahoma Community Sentencing Act (Okla. Stat. tit. 22 § 988.1 et seq.), the Level of Service Inventory – Revised (LSI-R) was selected by the Department of Corrections as the uniform assessment tool. Perhaps the most theoretically based offender assessment tool available, the LSI-R consists of fifty-four items divided into ten (10) domains which correspond with elements found to be predictive of offender risk. The areas considered are those identified in extensive theoretical work of Andrews and Bonta (1994) and their colleagues (Gendreau et al1996).

Grounded in social learning theory (Bandura 1977), the LSI-R, unlike most other offender assessment tools, employs both static and dynamic factors in its prediction scheme. Static factors are those offender attributes and situations which are unchangeable. For instance, once a prior criminal record is established it exists in perpetuity. In contrast, dynamic risk factors are those which are changeable such as antisocial attitudes, criminal associates, alcohol or drug use and the like. Although Andrews and Bonta (1995) recognized that static factors such as criminal history are good predictors of risk to offend, they also note that dynamic factors have a significant role in the individual offender's

judgment concerning criminal behavior.   Dynamic factors have been shown to mitigate or aggravate the impact of static risk factors. By combining static factors with dynamic factors these authors found that the ability to predict risk improves. In fact, in a meta analysis of predictors of adult offending Gendreau and his colleagues (1996) found dynamic factors to be slightly better predictors of criminal behavior than static factors.

Assessment Tool Validation Studies

Tests of the predictive validity of the LSI have been undertaken in a number of jurisdictions and with offenders involved at various stages in the criminal justice system (Bonta 2002; Coulson 1996; Lowenkamp 2001a; Lowenkamp 2002a, 2002b; Lowenkamp 2001b; Loza 1994; Motiuk 1986; O'Keefe 1998; Simourd 2004; Woller 2005) These studies consistently support the predictive validity of the instrument.

Canadian Studies. The original validation research was conducted by Andrews and his associates for Correctional Services Canada. The LSI – R Manual authored by Andrews and Bonta (Andrews 1995) provides an overview of nearly fifteen years of research. This manual discussed the instrument's reliability for both inter-rater reliability and test/retest reliability. Inter-rater reliability was evaluated by varying the rater or the rater and the time at which the assessment was administered. The authors reported high reliability with an absolute difference in scores of five or less in all cases. Reliability remained high with increasing time intervals but decreased when different raters were sampled.

Because most of the items considered by the LSI – R are dynamic, test/retest correlations result in an expected difference in scores over time.

A second measure of reliability considered the internal consistency of the LSI – R.   Across eight studies (Andrews 1995) the sub scale total correlations and alpha values reported for the LSI – R were consistent with those of earlier research.   Items in the LSI – R were consistently found to measure what the authors' term "propensity for rule violations." In these eight studies conducted between 1985 and 1992 the mean subcomponent total correlations was .53 and the average Cronbach's Alpha was .78. Overall, the internal consistency reported in these studies for subscales was also high.

Factor analysis of the LSI – R subscales provided inconsistent results in the Canadian studies. Both two and three factor solutions have been analyzed in multiple studies without significant consistency.   Andrews and Bonta (Andrews 1995) suggest that the discrepancies may emanate from differences in sample size and procedures used for factor extraction. In light of this, the authors urge the emphasis remain on the LSI-R total score and that item scores be used only as they relate to sub scales used in the "risk" and "needs" categories to which they are classified.

Validation studies of the LSI – R have consistently found the instrument to assess constructs that have strong explanatory and predictive utility (Andrews 1995)). In their analysis of predictive factors, Andrews and Bonta (1994, 2003; Bonta 1993) and their colleagues (Gendreau, Little, and Goggin 1996; Motiuk 1993) identify four characteristics which they recognize as the "Big Four"

predictors contributing to criminal behavior – antisocial attitudes, antisocial associates, a history of antisocial behavior and antisocial personality. As research has progressed, four additional components have emerged as equally significant risk factors. Making up what is now referred to as the "Big Eight" are, the original "Big Four" and problematic home situations, problematic circumstances at school or work, problematic leisure circumstances and substance abuse (Andrews and Bonta 2003).   Since the predictive ability of an assessment has been seen to improve with the increased number and variety of the risk factors considered, the predictive ability of the LSI is enhanced by the diversity of the domains it assesses.

The evaluation of the psychometric properties of the LSI – R at the earliest stages of the instrument's use found the total score to be most strongly associated with measures of generalized rule violation. The various sub components considered in a variety of studies have found high correlations between the LSI –R and other relevant measures (Andrews 1995). In a study comparing the outcomes for the Megargee MMPI-based Typology and the Level of Supervision Inventory, analysis showed that variance in outcomes under the LSI system were well above chance while the Megargee Typology was found to have only limited utility in predicting offender behavior with the same population (Motiuk 1986). In another study the predictive validity of the Psychopathy Check List – Revised (PCL – R) was compared to that of the LSI – R (Gendreau 2002). These authors report that whether predicting general recidivism or violent recidivism the LSI – R produced greater r values than the PCL – R, the

instrument currently touted as the "unparalleled measure of offender risk prediction"(Gendreau 2002):397).

The LSI – R was developed and most often studied using male populations thus the instruments application with female offenders has been the source of considerable dialogue. A 1996 study (Coulson 1996) considered the LSI's predictive validity among Canadian adult females who, at a 2 year post release follow up, had "failed" to meet the requirements of their respective release mechanism, e.g. parole, halfway house or discharge.   While means of release was not a significant predictor of risk with this population there were significant differences in recidivism depending on the strength of the total score. The recidivism probability of study subjects with high LSI scores was significantly higher than those of defendants with low scores lending credence to the predictive ability of the assessment. Once again, these results seem to confirm once the LSI's versatility.

U.S. Studies. Since the original assessment norms and cut off scores were created using samples from the population of the Canadian prisons, as the LSI – R became popularized in the United States questions of its applicability for the U.S. populations were raised. As jurisdictions adopted the instrument many also began to collect data to evaluate its utility. The results of much of the U.S. research has been synthesized and published in 2003 as the LSI-R U.S. Norms Manual Supplement (Andrews 2003a). When compared to Andrew's original validation study the U.S. data for both inmates and community offenders shows a high intercorrelation. The internal consistency from the U.S. studies was

generally at an acceptable level producing alphas ranging from .27 to .98

(Andrews 2003a). Total LSI – R scores produced relatively high internal

consistencies across all studies, similar to those reported for the Canadian data.

Validation studies conducted in Washington State and several other

unidentified jurisdictions (Andrews 2003a) support a strong association between

LSI – R total score and recidivism. Analysis of the LSI – R across genders,

found the LSI – R risk score to be "the strongest predictor of recidivism"

(Lowenkamp 2001a:554). When other extra legal considerations (race and age)

were included in the analysis only risk score and time at risk significantly

contribute to the prediction of recidivism, with risk score remaining the strongest

predictor. While this study's focus on offenders from a single jurisdiction in a

Midwestern state limits its generalizability it does support the validity of the LSI –

R with yet another population.   Research undertaken in Alaska (Lowenkamp

2001b), Idaho (Lowenkamp 2002b), and North Dakota (Lowenkamp 2002a)

further supports the predictive validity of the LSI – R with diverse populations.

These authors found that the LSI – R is not only valid for predicting recidivism for

U.S. populations but is also a valid measure of criminogenic risk for both male

and female offenders, across diverse racial and ethnic groups and over the adult

lifespan.

Oklahoma Validation. As in other jurisdictions the LSI – R was found to be

a good predictor of recidivism for Oklahoma offender populations (Woller 2005).

Statistically significant positive correlations between LSI – R total score and

recidivism were found to exist for the total population as well as sub groups

which considered male and female inmates and male and female community sentenced/probation offenders separately. These authors assert that their "robust findings demonstrate an association between criminogenic needs and risks and recidivism" in support of Oklahoma's use of the LSI – R as its uniform offender assessment instrument (Woller 2005):5.

Assessment Instrument Domains

The ten (10) domains of the LSI-R provide a means to identify the areas of risk existing in an individual offenders situation and provide a direction for interventions to be developed. Through the evaluation of the sub scale scores and the interaction between the scales, it is possible to identify criminogenic behavior patterns and to target those behaviors for intervention. To further clarify the significance of the subscales the following brief descriptions are provided. The descriptions provided here rely entirely on information contained in the LSI Users Manual (Andrews and Bonta 1995) and the trainer's manual (Bogue, 1996).

The first domain, the Criminal History subscale, considers static factors related to antisocial behavior linked with rule breaking. The onset, versatility, stability and frequency of criminal behaviors are the focus of the items in this subscale. Criminal history is one of the largest subscales with ten (10) questions all of which are historic in nature.

The second section Education/Employment is also one of the larger subscales with ten (10) items. Education and employment serve as primary socialization structures and as such, interaction and experience at work and

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school suggest skill deficits and provides insight into attitudes toward convention. Positive relationships with authorities and strong peer cohesion provide pro social models and support. Individuals lacking in these areas tend to be at higher risk for criminal behavior.

The Financial subscale, though consisting of only two (2) items provides significant insight into the offender's ability to support a prosocial lifestyle. Financial stability, money management and opportunities for legitimate material success suggest the degree to which financial stressors are present. Problems in this area can precipitate inappropriate means of obtaining money.

Family/marital subscale provides insight into the values and modeling to which the offender was exposed. Positive family/marital support correlates negatively with criminal risk. The quantity and quality of family support is a source of behavioral reinforcement. Criminal behaviors and attitudes supportive of crime modeled for an offender reinforce criminal behavior. Prosocial family interaction, on the other hand, provides prosocial reinforcement.

The accommodation subscale is a measure of stability. Dissatisfaction related to ones living situation can be tied to other antisocial behaviors. Living situation also provides insight into the type and extent of modeling available in the living environment.

Leisure and Recreation subscale is concerned with how the offender uses free time. How one chooses to spend free suggests how they choose to reinforce themselves. Involvement in prosocial leisure activities tends to

constrain individuals from criminal activities. Excessive discretionary time is seen as a risk dimension.

The companions subscale contains five (5) items which reveal the offender's social network. The extent of prosocial or pro criminal associates and friends is reflective of the extent of prosocial or pro criminal modeling. Friends are those persons with whom the offender spends leisure time and whose opinions and values are respected. Pro criminal associates and friends are a significant risk factor.

The alcohol/drug problems subscale is one of the larger scales with nine (9) items. The items in this section consider time frames, frequency, and intensity of substance using behavior as well as the offenders' recognition of problem behavior and readiness to change. While not all substance dependent individuals engage in criminal activity, alcohol and drug use places the individual at higher likelihood of engaging in risky behaviors.

The emotional/personal subscale considers the extent of mental health concerns. An inability to cope with even mild anxiety or depression can increase risk of criminal behavior. At the extreme, characterological or personality disorders that may come to light during the interview can signal a significant risk when combined with other predictors.

The final subscale, attitudes/orientation explores the offenders endorsement of conventional views. Expressions of an end/means orientation or thrill seeking suggest criminal value orientation which are strongly associated with future criminal behavior.

Of these fifty-four (54) items, those endorsed by the defendant are added to produce a total risk score. The higher the total score the higher the defendant's risk to reoffend. Each of the ten (10) subscales is also considered individually by calculating a standard percentage score. These percentage subscale scores are considered together to make up an offender needs profile.

In the context of Oklahoma's Community Sentencing Act, offenders assessed for eligibility must score in the moderate range, a total score of 19-28 in the possible range of 0-54, to be eligible for state funded community punishment (Okla. Stat. tit. 22 § 988.1 et sec). All felony offenders except those convicted of or having entered a plea to any of the exceptions to the "nonviolent offenses" enumerated in the statutes (Okla. Stat. tit. 21 § 13.1) and who are eligible for a suspended or deferred sentence may be granted a community sentence.   The offenders granted a community sentence benefit from state funded program opportunities that are not extended to those who receive standard suspended or deferred sentences. For example, a community sentenced offender identified to have a substance abuse problem could be placed in a treatment program at state expense while an offender sentenced to probation with a similar substance dependency, might be encouraged to seek treatment but would receive only be subjected to surveillance at state expense. The substance dependent defendant sentenced to incarceration might never receive treatment. Community Sentencing offers the court actors a means to differentiate defendants by their risk to reoffend and to provide treatment and program options that are not generally available in other settings.

Before the first community sentences were imposed several training seminars were offered to assure that the judges, prosecutors, and in some cases the defense bar were aware of the opportunity community sentencing afforded the criminal justice system (Oklahoma Department Corrections 2001; Schrantz 1997). The stated purpose of the Community Sentencing Act was to adequately supervise community sentenced offenders while providing a continuum of sanctions that could be assigned based on the individual offender's assessed needs (Okla. Stat. tit. 22 § 988.1 et sec; Schrantz 1997). If, as suggested by Steffensmeier and his colleagues (Steffensmeier 1998), the lack of complete and consistent information provides the opportunity for "perceptual shorthand" to enter the decision making process, then it seems reasonable to expect that the inclusion of an actuarially based assessment score as a factor in sentencing decisions would result in a more consistent application of sentencing options. In addition to the total risk score produced through the LSI assessment, the three identified "focal concerns", blameworthiness, community protection and practical constraint (Steffensmeier et al 1998) will be considered as predictors of sentencing outcome.

The first focal concern, blameworthiness, is associated with the defendant's culpability. According to Steffensmeier and his colleagues (Steffensmeier and Demuth 2001; Steffensmeier, Ulmer and Kramer 1998), the concept of blameworthiness is established through the combined influences of the severity of the presenting offense, offender biographical attributes and the defendant's role in the crime. These characteristics are often associated with

"just deserts" or retributive justice approaches to punishment. The assessment of offense severity derives from the law and is generally a reasonably clear-cut legal construct such as the use of a matrix where crimes have been ranked based on severity. Biographical attributes include criminal history or the defendant's own victimization. Criminal history is seen as aggravating the defendant's blameworthiness and risk while prior victimization at the hand of others serves to mitigate blameworthiness.   Finally, the defendant's role in the offense has been identified as a consideration in establishing blameworthiness. Defendant's who are leaders or organizers are seen as being more blameworthy than those having a lesser role.

The second focal concern is protection of the community. While considering many of the same items that are considered in establishing blameworthiness, protection of the community is oriented toward the need to incapacitate and deter further criminal behavior. This focal concern is especially troubling since the ability to predict future behavior of a defendant is uncertain. As Steffensmeier and his colleagues (Steffensmeier et al 1998) explain, this lack of a definitive means to predict future behavior results in court actors relying on attributions associated with the crime to decide the risk a defendant presents. As with blameworthiness, the concern addressing protection of the community is drawn from the nature of the offense, the offender's criminal history, the circumstances of the crime e.g. the use of a weapon and offender characteristics which may include drug dependency, educational level, employment or family history.

Practical constraints and consequences, the third concern, addresses organizational and individual considerations in a system context. This concern focuses on administrative considerations such as the need to move cases through the court system and fiscal considerations associated with particular sentencing decisions. Political considerations may also play a part in the sentencing outcome a defendant receives. Community norms tend to be reflected in the final sentencing outcome. Consideration may also be given to the defendant's personal characteristics e.g. the extent of family disruption caused by the defendant's imprisonment or extenuating circumstances such as health concerns or special needs that increase the cost to the state.

Study Variables

Dependent Variable. Sentencing outcome is identified as one of three categories: incarceration, standard probation, or community sentencing. Sentencing dispositions are those recorded as a part of the Oklahoma Department of Corrections ASSESS database. Defendants recorded as having a disposition other than one of these three have been excluded from the study population. Excluded groups include those defendants receiving a split sentence, delayed sentence, or those sentenced to another alternative sentencing program such as drug court, dui court or mental health court. Those whose disposition was listed as private community corrections or other were also excluded from the population as were those for whom the disposition was recorded as dismissed or pending or for whom the disposition was outside the study period of July 1, 2000 to June 30, 2005. Of the original 28,420 cases

included in the original dataset this study includes 11,397 cases in the identified outcome categories, community sentence (N = 7905), probation (N = 2328) and incarceration (N = 1164).

The risk assessment protocol was instituted as a part of Oklahoma's community sentencing legislation, thus this research seeks to explain the variance in each of the three sentencing outcomes, community sentence, probation and incarceration, for equally eligible offenders. For the purposes of this study, incarceration and standard probation are both seen as more severe outcomes than a community sentence. A sentence to incarcerations, the most severe of these punishments is established by law, as the prescribed penalty for violation of criminal laws and the ultimate consequence for violation of any lesser punishments. Standard probation, considered the second most severe penalty in the group, includes both deferred and suspended sentences in which the court orders the defendant to supervision. Under this option, unlike a community sentence only his record of prior convictions limits a defendant's eligibility. The imposition of a deferred or suspended sentence is generally available regardless of the charge for which the defendant is being sentenced. While the court has, at it's discretion, the ability to impose many of the same sentencing conditions with probation that are available through community sentencing, probation does not by definition constitute an effort to reduce the defendant's risk to reoffend. By contrast, the statutory provisions for community sentencing are significantly more restrictive in their eligibility criteria. Participation is generally limited to offenders charged with crimes identified by Oklahoma statute as "non violent." An

exception to this provision is available in instances in which the district attorney waives such restriction to allow participation for certain individuals who may meet all other criteria, generally defendants charged with a "violent" offense but in which mitigating circumstances exist. In addition, certain violent crimes requiring defendant's to serve a minimum of eighty-five percent of the imposed sentence are entirely ineligible for sentencing under the Oklahoma Community Sentencing Act . Eligibility considers both inclusionary and exclusionary criteria beyond the criminal history of the defendant. Community Sentencing prescribes interventions specific to the identified needs of the participant offenders and proposes to improve the criminal justice system by providing additional treatment and punishment options through public private collaborations.

The purpose of the Community Sentencing Act is to provide the court a range of sentencing options that assure public safety while promoting prosocial behaviors among assigned offenders. Community Sentencing employs a continuum of sanctions for violation as opposed to revocation to confinement, the typical response with standard probation. Though many of the programs available under this alternative sentencing scheme are also available with standard probation, the orientation of the court is distinctly different when choosing between a community sentence and standard probation. This distinction defines standard probation as a more severe penalty than community sentencing. While this may not be a universally accepted severity ranking the present Oklahoma sentencing structure does supports this distribution.
Independent Variables

Elements of Focal Concern Theory. Variables consistent with the attributes of focal concern theory were extracted from the LSI assessment and other areas of the ASSESS database.

Blameworthiness, the first of the focal concerns, is related to offender culpability. This variable is dominated by legal characteristics such as the defendant's prior criminal record and the seriousness of the current offense. To evaluate blameworthiness, a variable was created using the responses to Questions 1, 2 and 3 from the Criminal History Subscale of the LSI – R. These three questions assess the extent of the respondent's prior record. The responses to these questions were combined to create a prior record scale ranging from 0-3 with 3 representing 3 or more prior convictions and continuing on a scale to 0 representing no prior record or the defendant's first offense.

A second measure of blameworthiness considers the offense for which the sentence was imposed. The standard categorization of offenses available as a part of the ASSESS database was accepted as the offense group. Offense categories include "alcohol", "drug", "property", "violent" and "other". The alcohol offense category is dominated by driving offenses but also includes offenses related to the illegal sale and possession of alcoholic beverages. Offenses identified in the "drug" category represent the widest range of crimes including possession, manufacture, cultivation, distribution, and trafficking in a wide range of both prescription and illicit drugs. Burglary, larceny, theft, fraud, embezzlement, and forgery account for the offenses classified in the "Property" category. Sex crimes, murder, robbery, and weapons offenses make up the

"violent" crime category. Defendants included in the study population assigned to this category are generally charged with lesser crimes such as outraging public decency or battery and for which the specific circumstances of the crime are seen to mitigate the offense.   Arson, child endangerment, escape, eluding and perjury represent offenses included in the "other" category. As with the included offenses in the "violent" offense category, inclusion of offenses in the "other" offense group are generally lesser offenses in which there exists mitigating circumstances associated with either the crime itself, the defendant, or both. To assure consistency of this data, the specific statutory offense codes associated with each record were reviewed and inconsistencies modified such that all representations of a statutory code are associated with the same offense category.

Community protection, the second focal concern, considers many of the same elements that are considered when establishing blameworthiness but instead of individual risk, these elements are considered in the context of the risk the defendant presents to the community. In addition to offense and criminal history contemplated in establishing blameworthiness, other considerations also suggest a defendant's potential risk to community safety. To address this focal concern the defendant's employment, education, marital status and current drug and alcohol involvement are evaluated.   Data for each of these areas is drawn from responses to questions on the LSI – R assessment. Question 11 assesses the defendant's employment status at the time of the interview. This item uses a

0 – 1 coding scheme with 1 indicating the current unemployed status of the defendant.

Questions 15 and 16 are the LSI's measure of basic education. Responses to these questions make accommodations for nontraditional education such as GED or education completed in nontraditional settings such as detention facilities or alternative schools. The scores for these two items are summed and recoded to produce a measure of education. This scale ranges from 0 – 1 with 1 indicating the completion of a high school degree or its equivalent and 0 representing the absence of a high school degree or equivalent.

Marital statuses recorded during the interview process, was recoded as a dichotomous variable with one being single and all other statuses combined as not single. The literature suggests that family attachment and responsibilities contribute positively to reducing risk of criminal behavior (Andrews 1994). This variable will evaluate the consequence of being single in sentencing decisions.

The final measures of community protection considers the current drug and/or alcohol use of the defendant. Questions 39 and 40 of the LSI – R evaluate the current alcohol and drug involvement of the defendant along a continuum of 0 –3 with three signifying no history of a problem and 0 representing a current problem which creates significant life disruption.   Each of these questions has been recoded as a dichotomous variable by combining previous codes of 1, 2, and 3 as "1", no current problem, the existence of a current problem as "0", as originally coded. Current drug use and current alcohol use are evaluated as two distinct items in the analysis.

The third focal concern, practical constraint, considers the organizational needs of the criminal justice system in which the case is heard. Court load, community standards, culture, and sociopolitical environments are among the measures believed to impact practical constraint. For the purposes of this study two measures have been created to consider the influence of practical constraint. To evaluate the impact of the community culture and court workload a population measure was constructed. The assumption is being made that larger urban areas will experience larger caseloads. Each of the counties in Oklahoma was assigned to one of three levels based on population and proximity to urban centers. Population as reported to the U.S. Bureau of Census was relied upon to make these assignments. The categorization of a jurisdiction as "urban" was given to counties with populations of 100,000 or more. "Urban contiguous" designations were assigned to counties which bordered urban jurisdictions and which had populations equal to or greater than 50,000. The identification of a jurisdiction as urban contiguous was made to account for the spill over effect that is common when populations live and work in distinct jurisdictions. A "non-urban" designation was given to the remaining counties in the state. This measure allows for an approximation of court load and public attitude, both factors found to be relevant to sentencing outcome.

A second measure of practical constraint considers the length of time the district attorney in the district has been in office. The district attorney's influence in deciding how a case is disposed of is significant. The district attorney has a major role in a variety of court related activities. This is especially true with

regard to community sentencing decisions. The inclusion of a defendant charged

with one of several restricted offenses is, by statute , entirely at the discretion of

the District Attorney. Also, because the imposition of a community sentence is a

condition of a deferred or suspended sentence and most deferred and

suspended sentences result from plea bargains, the role of the district attorney in

the application of a community sentence is considerable.

To distinguish the role of district attorney's in the decision making process

the length of time in office was considered as a determinant. District attorney's

were assigned to one of four categories: those experiencing transition in the

office during the study period are categorized as "new", those serving their "first

term", those serving their "second term" and those having served "three or more

terms." Since prosecutors in Oklahoma are elected the length of time in office

seems a relevant measure of organizational constraint. It is also worth noting

that those District Attorney's assigned to the longest group would have had the

advantage of training and orientation to the community sentencing laws not

afforded D.A.'s taking office after that time.

Independent Variables – Extra Legal

To provide a basis on which to consider the influence of demographic

differences on sentence outcome three (3) variables are considered. The

defendant's gender is included using the code from the original data, female (1)

and male (2). A dummy variable is created to consider the significance of race

on sentencing outcomes for "white" (1) and "nonwhite" (2) defendants.

Race/Ethnicity designations of Black, American Indian Hispanic/Latino,

Asian/Pacific Islander and other are included in the "nonwhite" variable. The

defendant's age was categorized to construct an "age group" variable applying

age ranges consistent with those used by the Bureau of Justice Statistics, 18-24,

25-34, 35-44 and ≤ 44. All of these variables rely on information recorded in the

ASSESS database.

LSI – R Total Score. The introduction of the LSI-R as the assessment tool

designated to measure offender eligibility for participation in community

sentencing established scores between 19 and 28 as those eligible for

sentencing consideration under the Oklahoma Community Sentencing Act(1999).

These scores, identified as the moderate range, were seen as including those

offenders who were most likely to benefit from alternative sentencing. The LSI –

R assessment provides the foundation for intervention planning and program

assignment along with the numerical risk assessment. Across the eligibility

range the higher scores are indicative of a higher risk to reoffend. This variable

is included as a scale using the numerical values assigned at the completion of

the individual assessments. The significance of the LSI – R score in the ultimate

sentencing decision is unknown, however, it is presented as a viable tool for

assessing risk which presumably is the driving factor in sentencing decisions

making.

Data Analysis

Tests of each of the study five hypotheses are accomplished using logistic

regression. Two models have been constructed for each of the five offense

groups considered for the three sentencing outcomes to which defendants in the

study population were assigned. In predicting the likelihood of each of the three sentencing disposition, community sentence, probation and incarceration, Model 1 includes only the independent variables which have been identified for the purposes of the study as attributes of focal concern theory. Each of the five offense groups in which the offenses of the study subjects were categorized, have been analyzed to consider the probability of receiving a community sentencing compared to all others, standard probation compared to all others or incarceration compared to all others. Model 2 involves a second logistic regression which includes, in addition to the factors of Model 1, the extra legal factors of the age group, race, and gender and the subject's calculated LSI –R total risk score. These additional independent variables provide a means to assess the relevance of the extra legal factors in sentencing dispositions for offenders identified as eligible for sentencing under the Oklahoma Community Sentencing Act. As with Model 1, the subjects are assigned to their respective offense group. The logistic regression is then conducted for each sentence outcome in each of the five offense groups, a community sentence compares to all others, standard probation compared to all others and incarceration compared to all others. Odds for each outcome consider the various circumstances of the defendants in each group.

CHAPTER IV

FINDINGS

Descriptive Statistics

The descriptive statistics for the entire study population are contained in Table 2 of the Appendix. Since this study's focus is the factors relevant to sentencing decisions for defendants deemed eligible for sentencing under Oklahoma's Community Sentencing Act (Okla. Stat. Tit. 22 § 988.1 et seq) it is to be expected that offenders receiving a community sentence will represent the largest number of subjects in the study population 69.4% (7905). Defendants sentenced to standard probation and incarceration in the study population represent 20.4% (2328) and 10.2% (1164) respectively. The significantly higher representation of community sentence and probation sentences found in this distribution compared to the 2002 felony sentencing data reported by the Oklahoma Sentencing Commission (Moon 2003) reinforces the fact that the data for this study includes only the population that was being considered for community sentencing. This distinction, as expected, shows a much stronger proportion in the community sentence group.

The distribution of offenders across offense group categories likewise reflects the orientation of community sentencing in that offenders presumed most

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likely to benefit from such an alternative sentencing option represent a larger portion of the study population. Offenders in the alcohol (19.3%), drug (51.5%) and property (20.5%) offense groups are most prevalent in the community sentenced group. A similar distribution of cases by offense group is also found for probation and incarceration sentencing outcomes in the study population again supporting the targeting of defendants for inclusion in alternative sentencing programs. The 2004 Report of Felony Sentencing completed by the Oklahoma Sentencing Commission (Moon 2004) shows a distribution of offenses with 83.6% of all offenders being sentenced for nonviolent crimes. Alcohol and drug offenses accounted for 51.7% of those nonviolent convictions. Within the study population categories of violent and other crimes, as expected, are more highly represented in dispositions of incarceration and probation with 16.7% of those sentenced to incarceration having a violent crime, while the representations for probation and community sentencing dispositions are 11.6% and 5.8% respectively. In the Sentencing Commission's report of sentencing dispositions 13.7% of all offenders were sentenced for a violent crime and 52.3% of those received a prison sentence (Moon 2004).

Within the study population the largest percentage of offenders for all sentencing outcomes are found to have three or more prior convictions. As would be expected, the largest proportion of offenders having three or more prior convictions are found in the population receiving a sentence of incarceration (52.8%) with smaller proportion shown for those receiving probation (40.2%) and community sentences (42.5%) dispositions. Offenders with no prior record are

the second largest group in community sentence and probation, representing 21.5% and 25.0% respectively. Probation and community sentence dispositions show a declining representation for the one and two prior groups while the incarceration disposition by contrast are more evenly distributed in each of the prior record groups. The larger number of violent crimes may explain this distribution of offenders in the incarceration sanction in that certain crimes, regardless of the defendant's prior record, may carry a higher likelihood of sentences to confinement.

The extra legal factors used to measure the community protection focal concern show very little variance across disposition groups. The most divergent representation is found in the percent of defendants unemployed at the time of assessment. Those sentenced to probation were most likely to be unemployed (55.2%), with unemployment representing a somewhat lower percentage of those sentenced to incarceration (53.4%) and community sentencing (48.7%). Representations across all three dispositions shows only slightly more than 3% differentiation for educational level, marital status and current drug and current alcohol use at the extremes. Both current drug use and current alcohol use were most highly represented among those sentenced to community sentence followed by those sentenced to incarceration, with those sentenced to probation least likely to report current use.

The jurisdictional distribution of cases shows the highest number of dispositions occurring in urban population units. The higher proportion of cases in urban designations is as would be expected. The assumption being that more

densely populated areas will equate with larger numbers of cases being

processed through the courts. Consistent with the overall distribution of cases

the largest proportion in each category is attributed to sentence outcomes

generated in the urban population designation. Comparing sentence outcomes

by population designation across categories shows a higher proportion of cases

with outcomes of community sentence or probation in both rural and urban

contiguous groups. The proportion of offenders receiving a sentence to

incarceration is significantly larger in urban designations (14.9%) than either rural

(4.1%) or urban contiguous (5.8%) population units. Various explanations can be

proffered to account for this difference but in doing so it is important to recall that

all subjects in the study have been assessed as eligible for a community

sentence. With this in mind it seems unlikely that the greater frequency of

serious crimes occurring in urban areas can be an acceptable justification for this

difference. Rather, it seems that other court process explanations such as

greater familiarity with the defendants or better screening of potential candidates

must be explored as possible sources of difference..

The length of time a prosecutor has served provides inconsistent

differentiation in the types of sentence imposed. The most significant distinction

is seen in community sentences granted by first term district attorney's (62.3%)

and those of D.A.'s serving their third or more terms (79.0%). A similar pattern is

found with these two groups use of incarceration, first term prosecutors

sentenced 14.6% of the cases they considered to prison while D.A.'s in their third

or more term sentenced only 5.7% of their cases to prison. Prosecutors in the

"first term" used probation and incarceration options more often than any other group of D.A.'s. While the frequencies of cases in the third and more terms category of District Attorney's are significantly smaller, their use of non prison options more than 94% of the time maybe evidence of the tendency for prosecutors to become accustom to the operation and demands of the court community over time thereby achieving a more coherent sentencing position.

Extra legal variables not associated with the attributes of focal concern theory are included in the study. Three demographic variables identify the age group, race and gender of offenders included in the study population. The distribution of this population is generally consistent with the overall Oklahoma criminal justice population. Consistent with the findings of the 2003 Community Sentencing Act Annual Report (Oklahoma Department of Corrections 2004), offenders receiving a community sentence are more likely to be male than female. Because males represent a significantly larger proportion of the study population it is important to consider the sentencing outcomes across sentencing outcomes. Males (67.5%) in the study population receive a community sentence somewhat less often than females (73.9%) and receive a prison sentence almost twice as often as females 11.7% and 6.4% respectively. Notably, however, the imposition of probation for the two groups is quite similar, males 20.8% verses 19.7% of female cases. This distribution of cases is generally consistent with conventional wisdom which asserts that women are punished less harshly. The similar proportion of cases in the probation category, however, bears further investigation.

When considering the race, the frequency of white defendants is significantly higher. This can easily be explained by the fact that whites represent a larger proportion of the population of the state than do nonwhites. Significant to the distribution of offenders by race is the greater representation of nonwhites (11.6%) in the incarceration group compared to whites (9.4%). The representation of nonwhites in the study population though greater than the representation of nonwhites in the general population of the state is smaller than their representation in the overall criminal justice population. (Moon 2004) By contrast, the representation of white is equal to or greater than their overall representation in the criminal justice population of the state. Because community sentencing eligibility involves referral for assessment and voluntary participation the disparity in nonwhites representation requires further investigation.

The Total LSI Score considers the range (19-28) for offender eligibility for sentencing consideration under the Community Sentencing Act. The distribution of scores for defendants receiving a community sentence offers a general declining representation from lowest to highest score, scores of 27 and 28, however fail to follow this pattern. This spike in the proportion of the population found with 27 and 28 LSI total scores is consistent with the Department of Corrections earlier reviews of the scoring distributions (Moon; Woller 2005). Whether these increased representations are an anomaly or the consequence of scoring irregularities is unknown.

The representation of the study population across all variables is for the most part consistent with the representations in the Oklahoma criminal justice

population. In instances of deviation the differences can generally be attributed to the unique process associated with establishing eligibility for community sentencing and consequently the establishment of the study population.

The age distribution of defendants in the study population indicates that nearly 60% of the defendants are between 18 and 34 years of age (Table 2). The average age of members of the study population is 32.91 (Table 3) somewhat younger than the average prison population (36.6) reported by the Criminal Justice Resource Center but consistent with the mean age of 32 reported for prison receptions from 2000 to 2004 (2005). Because the study population involves defendants prior to sentencing the age at reception is a better source for comparison. Where race is concerned, criminal justice data often represents race based on the view of the person reporting rather than that reported by the defendant. While there are multiple explanations that could account for differences in population cited here, the study population is generally consistent with the community sentencing population described in the Community Sentencing Division's 2003 Annual Report to the Legislature (Corrections 2004).

The Total LSI Score presents the range for offender eligibility for sentencing consideration under the Community Sentencing Act. The range of scores 19 – 28 represent the "moderate range" the range in which offenders must be assessed to be determined eligible for a community sentence. The mean score for the population is 23.30 with a standard deviation of 2.928 (Table 3). The distribution of scores for defendants receiving a community sentence

offers a general declining representation from lowest to highest score (Table 2), scores of 27 and 28 fail to follow this pattern. This spike in the proportion of the population found with 27 and 28 LSI total scores is consistent with the Department of Corrections earlier reviews of the scoring distributions (Moon n. d.; Woller 2005).

The distribution of Total Scores for those receiving a sentencing outcome of probation is quite similar to that for community sentenced offenders with the exception of a spike at 26. As would be expected the distribution of scores for those receiving a sentence to incarceration is opposite that of the other two sentencing outcomes, with the greatest number of defendants scoring at the high end of the range (Table 2). As with the descending nature of scores for community sentence and probation outcomes the percentage representations of incarcerated dispositions does not follow a purely ascending pattern. Whether these increased representations are an anomaly or the consequence of scoring irregularities is unknown. One might speculate, however, that increased representation of scores at the high end of the range are associated with the desire to have a defendant deemed eligible for the purposes of community sentencing.

The representation of the study population across all variables is generally consistent with the representations in the Oklahoma criminal justice population. Because community sentencing eligibility requires a referral for assessment and voluntary participation the assessment process much of the disparity in representation may be attributed to the absence of consistent access for

defendants. Differences in court processes and attitudes about community sentencing may also explain some of the variance found in the study population and the overall criminal justice population. In instances of deviation the differences can be attributed to these unique process associated with establishing eligibility for community sentencing and consequently are expected within the study population.

Table 4 presents the correlation coefficients for the variables of the study. In each of the three sentence outcomes in the study population significant correlation is found for a number of the independent variables. Correlations coefficients for the variables violent offense group, unemployment, population unit and the total LSI score are found to be significant in all three sentencing outcomes. Though consistent in their significant correlation with each of the sentence outcome categories, the effect size is small for all of these variables.

For the sentence outcome community sentence significant relationship is found for offense groups alcohol r = .043, drug r = .048, violent r = -.126, and other r = -.026 (all p < .01). Extra legal focal concern variables of unemployment r = -.054, marital status r = .026, population unit r = -.161 and DA term r = .042 also are significantly correlated with a community sentence outcome (all p < .01). Race r = .031, gender r = -.062 and total LSI score r + -.036 are also significantly related to a sentencing outcome of community sentence (all p < .01).

Sentence outcomes of probation show fewer significant correlations with independent variables than either community sentence or incarceration. Offense groups of alcohol r = -.054 and violent r = .065 are significantly correlated with a

sentencing outcome of probation as is prior record r = -.037 (all p < .01). A

significant relationship is also found for unemployment r = .048, marital status r =

-.029 and population unit r = .061 and a probation sentence outcome (all p < .01).

For sentence dispositions of incarceration significant relationships are

found for drug r = -.062 and violent r = .106 offense groups and prior record r =

.067 (all p < .01). Population unit r = .165 and DA term r = -.039 are also

significantly correlated with a sentencing outcome of incarceration (all p < .01).

Extra legal variables race r = -.034, gender r = .078 and total LSI score r = .084

are also significantly related to an incarceration outcome (all p < .01).

The nature of the variables in this study presupposes some correlation.

The point at which collinearity is problematic and the harm it may cause

continues to be debated (Mason 1991). Collinearity at .30< , the level generally

agreed to be reportable, is found only in Alcohol offense and priors (.344),

Alcohol Offense and alcohol use (.428) Alcohol offense and drug use (-.373);

drug offense group and drug use (.445); and priors and age group (.403). There

are other significant correlations but they none exceed .30.

Because the analysis in this study involves a very large study population

care must be exercised in drawing conclusions from these correlations. Though

significant, the large population can create significant though unimportant effects.

Logistic Regression General Findings

To determine which predictors are important to the sentencing decision for

defendants assessed to be eligible to receive an alternative sentence as defined

by the Oklahoma Community Sentencing Act factors identified as attributes of

focal concern theory (Steffensmeier 1998) have been considered singularly and in combination with extra legal factors in two logistic regression models. Model 1 estimates the predictive quality of those variables identified in each of the three domains of focal concern theory. Model 2 considers these focal concern variables along with extra legal variables of age group, race, gender and total LSI – R score, the eligibility assessment score. Both models evaluate the sentencing outcomes of incarceration, probation and a community sentence for each of five offense categories. Results of these analyses are available in Tables 5, 6, 7, 8, and 9 of the Appendix. The model fit criteria for both Models 1 and 2 support the variables included as significant predictors of sentencing outcomes. Both models are significant at $P > .001$ in all five offence groups and across all three sentencing outcomes. Cox & Snell R-square suggests improved predictive ability of Model 2 over Model 1 in all five offense groups for all three sentencing outcomes.

General Findings Community Sentence Dispositions

For community sentenced offenders offense is found to be a significant predictor in both Models 1 and 2 for four of the five offence categories. Significance at $P \leq .001$ exists for alcohol, drug, and violent crimes, while other is significant at $P \leq .01$ (Table 5A, 6A, 7A, 8A). For the alcohol and drug groups offense is positively associated with the likelihood of receiving a community sentence. Offenses categorized as violent and other decrease the odds of a community sentence being granted. Offense is an insignificant predictor for the property crime in both models (Table 5A).

The predictive value of prior record for community sentence outcomes is significant only in Model 1 of the alcohol (P< .01) and violent (P < .05) offence groups (Tables 5A, 7A) and in both instances increased criminal history decreases the odds of a community sentence outcome.

Unemployment is a significant predictor in both Model 1 and Model 2 for all offense groups with community sentence dispositions. The odds of being granted a community sentence decline in all instances when the defendant is unemployed. (Tables 5A, 6A, 7A, 8A, 9A). Education is a significant predictor of a community sentence outcome in all offense groups in Model 1. In instances where education is significant a positive relationship exists between having completed high school and receiving a community sentence. Education does not provide significant prediction in any offense group in Model 2.

The variable current alcohol use is significant only for Model 1 and 2 of the alcohol offense group and Model 1 of the property, violent and other offense groups. In all instances where current alcohol use is significant the influence is negative. The likelihood of a decision to grant a community sentence increases with current alcohol use.   Current drug use is a significant predictor only in the alcohol offense group where P ≤ .001 for both Model 1 and Model 2. The odds of a community sentence disposition decrease for members of the alcohol offense group reporting current drug use. Marital status is found to be an insignificant predictor in the decision to impose a community sentence for all offense groups and both models. Population unit is a significant predictor in all offense groups and in both Model 1 and 2.   The relationship is negative in all instances thus

cases handled in urban and urban contiguous areas are less likely than those disposed of in rural courts to receive a community sentence outcome. The DA term is not a significant predictor in either model for any of the offense groups in the community sentence outcome.

Extra legal variables are included only in Model 2. For dispositions of a community sentence neither age nor race of the offenders in the study population is a significant predictor. Gender by contrast is a significant predictor for community sentence in all five offense groups (Table 5A, 6A, 7A, 8A and 9A). The association of gender to a community sentence outcome is negative thus indicating that the probability of such a disposition is better for male than female defendants. Total LSI score is significant for all offense groups except violent. With significance at the $P \leq .05$ level, higher total LSI score correspond with reduced likelihood of a community sentence outcome.

The Cox & Snell pseudo R^2 for the disposition of community sentence suggests that the variance is reduced by the inclusion of independent variables in Model 1 from between 3.2% and 4.4% depending on the offense category. The inclusion of extra legal factors in Model 2 improves the model's explanatory ability. For Model 2 the range of Cox & Snell R^2 is 3.8% for property and other offense categories, 4.8% for violent offenses and 4.0% for alcohol and drug offense categories.

General Findings for Probation Dispositions

The offense group is a significance predictor of probation sentence outcome in offense groups for alcohol and violent crimes only. Offence group is

significant at P<.001 (Table 5 B) for alcohol offenses both Models 1 and 2, however the association is negative indicating that the odds of being granted probation decline for defendant's changed with an alcohol offense. The violent offense group is also significant at the P <.001 level, but in this instance the association is positive, indicating that the likelihood of a probation sentence increase when the charge is in the violent crime category. Offense group provides no significant influence for any of the other offense groups in either model when sentence disposition is probation.

Prior record influences sentencing decisions for probation in both models of all offense categories except the alcohol offense group where it is not significant for either model. Significance for prior record is found at the P <.001 level for Model 1 of drug and property offense groups (Tables 6B and 7B) and at the P < .01 of Model 2 of drug, property, and other offense groups and Model 1 of violent and other offenses (Table 6B, 7B, 8B and 9B). Prior record in Model 2 of the violent offense group is significant at the P <.05 (Table 6B).   In all instances where prior record is found to be significant the relationship is negative. A more extensive criminal history reduces the likelihood of a sentencing decision of probation.

Employment status is a significant determinant in sentences to probation in all but Model 1 of violent offense group. Under both models for alcohol, drug, property and other offense groups and Model 2 of violent crime group, unemployment is significant at P < .001. Being employed positively impacts the likelihood of receiving a probation disposition in all offense groups in which

employment is significant. Education was not found to be a significant determinant in either Model 1 or 2 for any offense group where the sentencing disposition is probation.

When the sentencing outcome is probation current alcohol use is significant only for alcohol related crimes. Significance of current alcohol use is P <.001 in both Model 1 and Model 2.   The presence of a positive relationship for current alcohol use indicates that the absence of current alcohol use increases the likelihood of a probation sentence. The significance of current drug use as a predictor for probation sentencing outcome in both models of the alcohol offense group where it is significant at P<.001 in Model 1 and P< .01 in Model 2 (Table 3B). In Model 1 of property and other offenses groups' significance of current drug use is found at P>.05 is indicated (Table 5B and 7B). In all instances where current drug use is found to be significant the relationship to a sentencing outcome of probation is negative. Thus, defendants reporting active drug abuse are less likely to be granted probation. Marital status does not impact on sentencing decisions for probation in a significant way for any offense group in either model.

The population unit in which the case is heard effects the probability of receiving a sentence to probation in all offense categories for both Model 1 and 2. Significance at P <.001 is found in all instances. The relationship is positive indicating that the odds of receiving a sentence to probation increase as the population density of the sentencing jurisdiction increases (Table 5B, 6B, 7B, 8B and 9B). The term of office for the district attorney prosecuting the case is not

found to be significant in any offense group or either model when sentencing outcome is probation.

Of the extra legal factors found in Model 2 neither age nor race is significant in any offense group. Gender is found to be significant at P< .05 in all offense groups except the violent offense group. The relationship of gender is positive indicating that odds of receiving a sentence of probation are greater for female defendants in all offense groups in which gender is found to be a significant predictor. The final extra legal variable, Total LSI Score, is significant in all offense categories. For the alcohol and violent offense groups LSI score is significant at P < .001 and for drug, property and other offense groups at P <. 01. In all instances an increasing Total LSI score is associated with declining likelihood of a sentence outcome of probation.

Cox & Snell for sentence outcomes of probation suggest the study variables in Model 1 explain on average, less than 1% of the variance. The inclusion of extra legal variables in Model 2 improves the prediction over that of Model 1 by .2% (Tables 5B, 6B, 7B, 8B, and 9B).

Sentence to Incarceration General Findings

Sentencing decisions to incarcerate are significantly influenced by offense in the drug and violent offense groups with significance at P <.001 in both Model 1 and Model 2. Offense is also significant at the P< .05 in both Model 1 and Model 2 of the other offense group. For alcohol and property offense groups no significant influence is noted. Offense is positively associated in violent and other offense groups suggesting that conviction of offenses in these two groups

increases the odds of being sentenced to incarceration. Conversely, the relationship of offense for drug crimes is negative indicating that convictions in this offense category are less likely to result in incarceration.

Prior record is a significant determinant in both Model 1 and Model 2 for all offense groups in which the sentencing outcome is incarceration. Significance at the <.001 level was found in both Model 1 and Model 2 of all groups except the drug crime where the significance declines to P <.01 in Model 2. Prior record is shown to have a positive relationship to the sentencing outcome in all instances thus indicating that as the number of prior convictions for a defendant increases so does the likelihood of the defendant being sentenced to incarceration.

In Model 1 unemployment is significant for all offense groups at P <.001. The significance of unemployment drops to P < .05 in all offense groups for Model 2. In all instances the association is positive indicating that employment enhances the prospect of incarceration.

Education is not significant in any offense category in Model 2. In Model 1, however, education is significant in all offense groups except drug. The significance of education is found at the P <.05 for alcohol, property, violent and other offense groups. The relationship is negative in all instances indicating that having less than high school completion increases the likelihood of sentence outcome of incarceration.

There is no significance found for current alcohol use in Model 2 for any offense group.   Only in the alcohol offense group of Model 1 is current alcohol use significant for the incarceration outcome and then only at P <. 05.   In this

instance the relationship is positive indicating that current use increases the likelihood of a sentence of incarceration.

The significance of current drug use follows a pattern similar to that of current alcohol use in that current drug use is found to be significant in the incarceration outcome only in Model 1 of the drug offense group. The significance is $P < .001$ with a positive influence indicating that current use increases the odds of a sentence incarceration.

Marital status is not found to be a significant determinant in any offense group in Model 1 where sentencing dispositions were incarceration. In Model 2 marital status is significant at $P < .05$ for all offense groups. In all instances the odds are positive suggesting that being single increases the likelihood of a sentence of incarceration.

Population unit is significant predictor in sentencing decisions of incarceration for all offense categories in both Model 1 and Model 2. Significance at $P < .001$ is found in all instances. The positive odds found in each instance of both models indicate that the likelihood of a sentencing outcome of incarceration increases as the population density increases, thus a sentence to incarceration is more likely in urban jurisdictions. The probability of sentencing to incarceration is not influenced by the prosecutor's time in office. DA term is found to be an insignificant predictor in both Model 1 and Model 2 for all offense groups where sentencing outcome is incarceration.

Extra legal variables of age and race included in Model 2 are insignificant to sentencing decisions of incarceration in all offense groups. By contrast gender

is significant at P < .001 for all offense groups. The positive odds indicate that males are more likely than females to receive a sentence of incarceration. Total LSI score is also significant at P <.001 for all offense groups when the sentencing decision was incarceration. The positive odds in this instance indicate that as total score increases so does the likelihood of a sentencing outcome of incarceration.

Using Cox & Snell Pseudo R^2 between 3.6% and 4.5% of the variance in sentencing decision for incarceration is explained by the variables considered in Model 1 (Tables 5C, 6C, 7C, 8C, and 9C).   The addition of extra legal factors in Model 2 increased the explained variance to between 4.7% and 5.3% for sentence outcomes of incarceration.

CHAPTER V

CONCLUSION

Discussion

This study was undertaken to illuminate the decision making process associated with the sentencing of offenders found eligible under the Oklahoma Community Sentencing Act. A significant body of literature related to sentencing decisions to incarcerate exists but decisions to sentence to alternatives that involve the defendant remaining in the community have been the subject of limited study (Engen 2003; Wooldredge 1997). Oklahoma presents a unique situation in which to consider sentencing decisions in the context of an alternative sentencing scheme and to extend the work that has been accomplished thus far.

The Oklahoma Community Sentencing Act created a system in which offenders deemed eligible based on an assessment process and who met specific criteria, could receive a community sentence enabling them to be supervised in the community and to benefit from programs tailored to reduce their risk to reoffend. This study considers the sentencing decisions rendered in the cases of that offender population found eligible for sentencing under the Community Sentencing Act between July 1, 2000 and June 30, 2005. In this

study, of the defendants found eligible to receive a community sentence, nearly one third were given a more severe punishment, either probation or incarceration. To explore this phenomenon the attributes of focal concern theory (Steffensmeier 1998) have been applied to the sentencing decisions made in the cases of the study population. Within the eligible population variables associated with sentencing outcomes in focal concern theory are considered. Cases with sentences outcomes of community sentence, probation, and incarceration are evaluated across five offense groups, alcohol, drug, property, violent and other. Inconsistencies were found in the variables informing the decision making process both within and across sentencing outcomes. Significant predictors tend to vary based on both the type of sentence outcome and the type of offense. Only the population unit in which the case is considered is found to be a significant predictor in all cases. Though the analysis does not wholly support the significance of the attributes of focal concern theory the study results do provide useful and interesting insights into the considerations significant to sentencing decisions for community sentence eligible offenders.

The legal variables found to dominate sentencing decision making in earlier research involving in/out incarceration decisions were not found to be primary determinants for the community sentence outcome. In both incarceration and probation decisions, however, prior record was almost always significant. The distinction found in these sentencing decisions may be explained by the distinct orientation of the community sentence outcome to reducing future risk to reoffend. In contrast to the reasoning related to decisions of probation and

incarceration, community sentencing requires a philosophical shift that involves a major orientation toward a supervision plan that is focused on mitigating future risk to offend. The effects of this orientation may also be evident in the significant positive influence found for the alcohol and drug offense groups and the significant negative influence of violent and other offenses in community sentence dispositions. These findings may reflect the commonly held attitude that treatment can be beneficial with alcohol and drug dependency. The less familiar strategies for dealing with criminal behavior generally may explain at least some part of the difference seen for the violent offense group where the viability of mitigating criminal behavior would likely be least accepted. The community sentence option also relies on processes which require a commitment on the part of court actors to consider materials and to handle both initial sentencing and case management in a way which necessitate involvement beyond the routine. The value and impact of this orientation does not lend itself to the rigid adherence common to plea agreements most often applied in both of the other two outcomes. Indeed, a community sentence requires that the defendant be granted either a suspended or deferred sentence, as they would be in standard probation, but in the case of the community sentence attention must also be given to the individualized program plan that is being recommended. Research considering departures under sentencing guidelines has found a similar decline in the influence of legal variables in favor of extra legal considerations (Engen 2000; Johnson 2003). What this may mean is that by creating a distinct identity for the offender and disrupting the bureaucratized

sentencing system, court actors do consider information beyond that associated with the routine plea bargaining processes.

Only the population unit in which the case is considered is found to be a significant predictor across all sentence outcomes and all offense groups. Population unit was included in this study as a proxy for court load, the assumption being that population density is associated with the extent and demands on the court systems. As with earlier research (Britt 2000; Kautt 2002; Spohn 2000a) this study found that sentencing outcome are impacted by the court in which the case is heard. Regardless of offense a community sentence was found to be more likely in rural jurisdictions. This difference may speak to the degree to which of court processes are imbedded. Less crowded court dockets found in rural jurisdictions are associated with greater opportunity for informal resolutions. Also, in rural population units there is a increased likelihood that the defendant is familiar to court actors beyond his current reference in the court community which may also impact the court's willingness to grant a community sentence.

It is also possible that individual attitudes of court actors are responsible for the difference seen here. In rural areas there is an increased likelihood that a single judge and a single district attorney handle all cases for the jurisdiction. In this way the individual attitudes of court actors will have an increased impact on the sentencing outcomes. Clearly, additional research is needed to evaluate these relationships.

As with earlier research (Spohn 2000a; Steffensmeier 1998; Zatz 2000) findings for extra legal variables in this study were inconsistent. Only gender was found to be a significant predictor of sentence outcome in both models and in all offense categories. The unexpected direction of the influence of gender on community sentence outcomes warrants further study. One explanation worth considering may be that the limited availability of programs for women, especially in rural areas. Complicating this problem is the prevalence of women with primary responsibility for children which may further limit their participation in the program especially if they must leave their home area to do so. This increased burden of participation thus reduces the viability of a community sentence for females.

Yet another explanation may be that women have through an earlier involvement with the court, been given an opportunity to benefit from treatment and programs, either "off the books" or through another alternative sentence, thus the court is disinclined to extend this alternative and imposes probation instead. The finding are is in keeping with current thinking in that women are less likely to receive a prison sentence and more likely to be given probation, however, further study is needed to clarify the affects in a community sentence decision.

Though this analysis does not wholly support the significance of the attributes of focal concern theory, the study results do provide useful and interesting insights into the sentencing decisions for community sentence eligible offenders. There are definite inconsistencies across offense groups and type of

sentencing outcome, as a general consideration one or both of the determinates for blameworthiness were significant in almost all sentencing decisions. Similarly, though no consistent pattern emerged, at least one variable in community protection was found to be a significant predictor in every instance. And, as has already been established population unit, a measure of practical constraint is a significant predictor in all iterations.

Sentence outcomes which involve the defendant remaining in the community, community sentence or probation, tend to show a higher reliance on the factors identified with community protection. Employment status and current substance use whether alcohol or drug are meaningful in outcomes of community sentence and probation. While marital status is not significant in these decisions being single does significantly impact the likelihood of a prison sentence. These characteristics are all associated with commonly held attitudes concerning normative behavior as well as being predictive of offender risk (Andrews 1994, 2003b; Bonta 2002; Steffensmeier 1998). The relationship of current drug and alcohol use to outcome is predictably associated with the offense. The direction of the significance of unemployment in probation and community sentence dispositions documents once again the philosophical difference in the two dispositions. Unemployment contributes to the likelihood of a community sentence suggesting that this status may be seen as a contributing factor in the defendant's criminal behavior or that unemployment has in some way impacted the defendant's ability to address other issues. By contrast, unemployment reduces the likelihood of a probation sentence causing one to consider the

significant role employment may play in deciding between prison and probation. Though not within the scope of this study this question warrants further study.

The utility of focal concern theory as a means to understand sentencing decisions when the penalty results in the defendant remaining in the community provides useful guidance, however, this analysis would suggest that there are distinct differences in the importance of factors depending on the specific sentencing outcome even when both involve the offender remaining in the community. The decision making processes for community sentences and probation in this study document distinct differences in "what matters" in these two forms of community supervision. The philosophical uniqueness of probation and community sentence as criminal penalties seem to influence the sentencing outcome. Differences are also evident when considering the variables significant to decisions to incarcerate.

Hypotheses

H_1: Sentencing dispositions for offenders eligible for community sentencing vary based on age, race and gender of the defendant.

The significance of extra legal factors in determining sentencing outcome has been a major point of contention among researcher (Sharp 2000; Spohn 2000a; Spohn 2000b; Steffensmeier 1998; Zatz 1987). Within this study two models are applied to analyze the affect of certain variables on sentencing outcomes, the inclusion of extra legal factors of age group, race and gender in the second model distinguish the two. Across all sentencing outcomes and for all offense groups, gender is a significant predictor in all sentence outcomes of

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probation except where the offense category is violent. The odds of receiving a sentence of probation improve for women while a community sentence and incarceration are more likely for males. The fact of increased imposition of sentences to prison for male offenders is commonly accepted as is the odds that women will receive probation. Age and race do not share this level of significance but in part this may be explained by the nature of the process through which subjects are included in the study population. Because this population is purposefully oriented toward a community sentence outcome, age will naturally be a less significant determinant. Conceptually alternative sentences also may attract an overall younger population. Since the orientation of community sentencing is toward risk reduction through programs and treatment, it is quite likely that younger offenders will be referred for assessment more often. Together these considerations may have an impact on the significance of age in this context.

The absence of a race effect should not be construed to suggest that the process has muted the impact of race in the sentence outcomes. Consideration must be given to the fact that nonwhites are included in the study population at a proportion significantly lower than their inclusion in the overall criminal justice population. This difference may be the result of the disadvantage nonwhite defendants encounter in the system (Walker 2007; Zatz 1985, 2000). Participation in community sentencing assessment is voluntary and since court processes are not entirely friendly to options that disrupt the routine flow of cases the option may not be equally available to all defendants. If consideration for the

community sentence option is only possible for those who can make a particularly convincing case the process itself may disadvantage certain groups.

A second possibility is that aggregating all racial and ethnic groups into a single nonwhite category suppresses the race effect. This concern may be especially significant in Oklahoma where the nonwhite population includes a larger representation of Native Americans than is commonly found. The absence of a significant race effect thus should not be seen as evidence that further investigation is needed. While this hypothesis was not supported in its entirety, the evidence is informative and provides guidance for further work.

H_2 Offense category is a significant determinant in the imposition of a community sentence.

The significance of offense in the sentencing decision making remains one of the most universally accepted determinants for sentence outcome (Spohn 2002; Steffensmeier 1998; Zatz 1987). Consistent with these findings the decision to impose a community sentence is also significantly predicted by the offense group. In all offense groups except property crimes, offense is significant for sentencing outcomes of community sentence. Decisions to sentence to probation or to incarcerate do not share the same level of significance of offence group as is found for the community sentence disposition. The increased odds of community sentence dispositions for alcohol and drug offense groups suggests that the philosophy of risk reduction may be more likely for these crimes than for crimes in the other three categories. Since treatment for alcohol and drug dependency is common in the mainstream court actors are more familiar with

and more accepting of the idea that these programs can be beneficial in addressing criminal behavior that they associate with the defendant's involvement with drug and alcohol. Interventions available for other types of criminal behavior do not share this same community standard and are therefore less familiar.

The process used to identify defendants for assessment may be responsible for the significance of offense category in probation and incarceration sentence outcomes. By prescreening offenders, those included in the assessment pool should have a naturally higher likelihood of receiving a community sentence than either of the other sentencing options regardless of offense. At the same time this referral process is likely to exclude those offenders who have other factors which preclude the sentence. While offense category provides important insights about the role of offense group in sentencing decisions making, more specific, less categorical offense data could provide significantly different outcomes.

H_3 The population unit in which the disposition is rendered is significantly associated with the decision to grant a community sentence.

Discussions of the relevance of court communities in sentencing outcome suggest that organizational attributes of the court as well as the actual location of the court are major factors in explaining sentencing disparity (Britt 2000; Kautt 2002; Spohn 2000a; Welch 1985). The findings of this study support the importance of the court location as a significant determinant in sentencing outcome. The variable population unit is included as a proxy for court size and

court load thus a material finding for this variable is seen as supporting the significance of the court community as determinant in sentencing outcome. The odds for a community sentence outcome in this study are improved in rural jurisdictions. Several circumstances may contribute to this fact.

Because consideration for a community sentence requires that the defendant participate in an assessment procedure which must be ordered by the court, participation increases the workload of the court, a fact that is likely to be problematic in urban jurisdictions where the court load is already more burdensome. Not only is the court involved in issuing an additional order but community sentence assessments themselves produce more paperwork for the district attorney, the court clerk, and potentially the probation officer. In addition, cases receiving a community sentence are also require different post sentence procedures. These special procedures may add to the reluctance of some court actors toward imposing community sentences. In many instances courts have become systematized with court actors familiar with what can be expected for given charges thus allowing for easy disposition of cases through plea agreements. The implementation of procedures involved with determining eligibility for a community sentence disrupts this system. Interruptions are especially significant in large jurisdictions where disruption to the "going rate" system would have the greatest impact. Thus the court community in urban areas may be disinclined to grant community sentences in the hope that they will discourage its further use. A look at the proportion of cases referred to

community sentencing assessment across jurisdictions might provide useful insights into this issue.

H_4 LSI total risk score is not a significant predictor of the decision to grant a community sentence.

The implementation of the Oklahoma Community Sentencing Act (1999) required that an assessment be conducted to establish a defendant's eligibility for sentencing under the Act. The assessment not only provides a means to determine eligibility but also identifies needs of the assessed offender. Serving a dual function for the court the assessment also provides the foundation for the development of an individualized supervision plan that is also required by the statute. The advantages gained through the use of the assessment instrument are thought to provide judges with a guide for sentencing decision making. In this writer's experience, the court's acceptance of the assessment and assessment report, as a viable source of information has not been achieved thus the utility of the total LSI score in prediction sentencing outcomes of a community sentence is of interest. The data suggests that the total LSI score is a significant predictor of a community sentence outcome in all but cases in the violent crime category.

The lack of predictive significance for the LSI total score for cases in the violent offense group can be explained in terms of the impact that a violent crime can have on the total score versus the nature and circumstances of offenses in the violent category that might be considered for a community sentence. Higher total scores are inherent to violent crimes because by their nature violent charges

lead to additional scored items which in turn increases the total score. For example, the "official record of violence" is automatically scored when the charge is violent regardless of the case specifics. Though the violent cases considered for a community sentence are categorically the same as those sentenced to other options their inclusion in the community sentence referral is generally a response to mitigating circumstances of the offense. This, however, does not impact the total LSI score, thus the odds for receiving a community sentence cannot be predicted by the total LSI score when the offense is violent. In all offense groups other than violent lower total scores are associated with improved likelihood of receiving a community sentence.

H_5 The addition of extra legal variables increases the prediction of sentencing outcome over the variables associated with Focal Concern Theory alone.

Variables related to focal concern theory address the aspects of blameworthiness, community protection and practical constraint. Model 1 of this study considers the affect of only these variables on sentencing outcome. Model 2 includes all variables in Model 1 as well as extra legal variables of age, race, gender and total LSI score. In all sentencing outcomes for all offense groups Model 2, which includes the extra legal variables, has an improved predictive ability over Model 1. Significant extra legal variables are gender and total LSI score while race and age are not found to be significant in this analysis. The improvement in predictive ability occurring with the inclusion of extra legal factors is sufficient persuasion to continue to explore the impact that extra legal variables have on sentencing outcomes.

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Gender as a predictor of sentence outcome is not surprising, however, Oklahoma's position among the states with the highest female incarceration rate makes the value of this finding more significant. Indeed the negative relationship between being female and receiving a community sentence was unexpected. A possible explanation may be that female defendants benefit from unofficial sanctions in earlier contact with the criminal justice system so that when they are officially engaged their options are more punitive, hence they are given probation. A second explanation may be found in the fact that program availability for females is generally limited and when the female's primary responsibility for childcare is added, probation becomes the preferred sentencing option. Both proximity to scarce treatment resources and constraints associated with children may have an unmeasured influence on the consequences for female offenders. This circumstance demands further investigation especially in light of the extremely high female incarceration rates in Oklahoma.

Overall, this study provides some insight into factors that may be important to the sentence outcomes under the Oklahoma Community Sentencing Act. The inclusion of sentencing outcomes of probation and incarceration along with community sentence provide a means to evaluate not only the factors that are relevant to decisions making for community sentences but also to weigh the distinctions in relevant predictors found in each of the various sentencing outcomes. This study provides useful knowledge in the exploration of sentencing decision making. The importance of the population unit, which emerged as a

significant sentencing predictor, demands further study as does the impact of interactions between legal and extra legal factors.

Limitations of the Study

In considering the finding from this study it is important to recall that this study population is a specific subset of the larger criminal justice population. Inclusion in this population is a function of a referral process for which no data is available, thus the results found here speak only to those defendants who were able to avail themselves of the system. Participation in the community sentence assessment process is generally voluntary, a factor which further limits the generalizability of the findings.   This study is also impacted in a broader context, as is almost all criminal justice research, by the lack of data for many discretionary aspects associated with the criminal justice process. These data are commonly recognized as missing from the conversation but are rarely considered as a significant determinant in the decision making process. In situations such as the granting of a community sentence the fact of a referral to assessment and the nature of the plea agreement offered can be major determinants in sentencing outcome. The absence of available data related to these processes impacts the outcomes and thus further limits the findings of the research.

In designing this study the inclusion of all community eligible offenders was elected to assure that the findings were representative for all jurisdictions. However, the large study population may have resulted in anomalies in the data analysis that would not be present had a smaller data sample been used. The

coding of large populations of variables into general categories may mask

significant differences that would be evident were the data disaggregated.

Important differences, for instance, may exist in the handling of crimes in broad

categories or by combining jurisdictions of similar size under a single heading.

The possible differences in race and ethnicity, population unit and offense groups

could limit critical insights.

The analytical approach used in this study does not address the

interaction effects that have commonly been noted as important determinants in

the findings of recent sentencing decision literature (Spohn 2000b; Steffensmeier

1998; Zatz 2000). To consider interaction effects will necessarily require that the

data be reconfigured to enable the comparisons of outcomes. As has been

shown in earlier research, the impact of extra legal variables may be present in

some instances and not in others. Interaction of legally irrelevant factors have

been shown to effect sentencing outcomes where contemplating the same

variables singularly have no effect. By considering the interaction effect of

variables the explained variance may be increased.

This study produced a disappointingly low explanation of variance in both

Model 1 and Model 2 when compared to the findings reported in earlier studies

(Johnson 2003; Steffensmeier 2000, 2001; Steffensmeier 1998, 1993).   These

studies consistently report explained variance at 50% and upward in studies

considering sentencing to incarceration and sentences under guidelines systems.

A much lower explained variance is found, however, in Engen and his

colleagues' (Engen 2003) work considering departures under structured

sentencing alternatives such as intermediate punishments, community-based sanctions and rehabilitation programs. This study and Engen's work produce similar but much lower explained variance. This difference in outcome suggests that factors beyond those standardly included may impact sentencing outcomes where alternative sentencing is the goal. As with the community sentence, defendant eligibility plays a role in alternative sentencing considered by Engen.

Future Research Focus

Recognizing that the study involves a specific sub group of the broad criminal justice population it is important that future research for this population consider the referral process as a significant determinant in sentencing outcome. This is especially so when considering alternative sentencing where inclusion is discretionary thus giving the fact of referral standing as a potential determinant in the outcome. While this study's focus, only those eligible to receive a community sentence, provides a view of the factors important to outcomes for that population a more inclusive population could be beneficial. Consideration of all defendants referred for assessment will provide an additional perspective on the issue as would consideration of all offenders sentenced. By extending the study to include the populations of all assessed more generalizable insight concerning sentencing practices will become apparent. To incorporate the whole sentenced population even greater insights will be possible. At the same time, distinctions and disparities across sentencing outcomes will also become evident.

Further research should also be undertaken to better analyze the effects of various traits and characteristics. Disaggregating data in order that more

specificity may be considered in areas such as race and ethnicity, offense and sentencing jurisdiction will allow for more specific outcomes relative to these factors. In addition, the interaction effects of variables must be addressed. The addition of variables which address aspects such as representation by private counsel versus a public defender, the significance of pre trial detention or the economic status of the defendant should be considered to extend the study of decision making for alternatives. While the current alternative sentencing literature is limited it is sufficient to suggest that decision making for alternative sentencing may involve the consideration of elements beyond those found significant to research concerning decisions to incarcerate.

Since the community sentencing alternative grants the district attorney a major role in deciding which defendant is given this sentencing option. Because plea bargains play an important role in defendant's remaining in the community the prosecutor holds substantial power over the decision making process. Very little is known about the prosecutor's precise role in the process. Priority should be given to incorporating the discretionary powers of prosecutors in future research.

Missing in all sentencing outcome research is the perspective of those making sentencing decisions. Expanding the study to incorporate interviews with court actors, especially judges, prosecutors and defense attorneys, can extend the research in an insightful way. By incorporating qualitative analysis the process itself can be informed. The consideration that emerge as significant in any qualitative undertaking can be seen as improving the overall understanding

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of the decision making process. Court cultures and individual attitudes and

orientations are accessible only through individual interactions. These factors

are significant determinants in the decision making process which elude the

quantitative research process.   To contextualize the quantitative research

findings within a qualitative frame can provide a deeper more complete

understanding of the decision making process.

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APPENDICES

Table 2
Descriptive Statistics

Dependent Variable

	Frequency	Percent
Community Sentence	7905	69.4
Probation	2328	20.4
Incarceration	1164	10.2
Total	11397	100.00

Independent Variables

Blameworthiness

	Community Sentence		Probation		Incarceration	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Offense Group						
Alcohol (1)	1525	19.3	328	14.1	219	18.8
Drug (2)	4074	51.5	1144	49.1	475	40.8
Property (3)	1622	20.5	498	21.4	231	19.8
Violent (4)	461	5.8	270	11.6	194	16.7
Other (5)	223	2.8	88	3.8	45	3.9
Prior Record						
No Priors	1698	21.5	583	25.0	181	15.5
One Prior	1548	19.6	412	18.1	197	16.9
Two Priors	1297	16.4	387	16.6	171	14.7
Three or More Priors	3362	42.5	937	40.2	615	52.8

Community Protection

	Community		Probation		Incarceration	

	Sentence					
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Currently Unemployed						
No (0)	4052	51.3	1042	44.8	542	46.6
Yes (1)	3853	48.7	1286	55.2	622	53.4
Education						
Less than High School (0)	4353	55.1	1317	56.6	675	58.0
High School Completion (1)	3552	44.9	1011	43.4	489	42.0
Marital Status						
Single (1)	3407	43.2	1092	46.9	514	44.2
Not Single (2)	4478	56.8	1235	53.1	650	55.8
Current Drug Use						
No (0)	2243	28.4	703	30.2	341	29.3
Yes (1)	5662	71.6	1625	69.8	823	70.7
Current Alcohol Use						
No (0)	4279	54.1	1271	54.6	623	53.5
Yes (1)	3624	45.9	1057	45.4	541	46.5

Practical Constraint

Population Designation	Community Sentence		Probation		Incarceration	
	Frequency	**Percent**	**Frequency**	**Percent**	**Frequency**	**Percent**
Rural (1)	2776	35.2	622	27.1	145	12.5
Urban Contiguous (2)	1267	16.0	269	11.7	94	8.1
Urban (3)	3853	48.8	1402	61.1	921	79.4
DA Term						
New During Study (1)	3613	45.8	973	42.4	471	40.6
First Term (2)	2359	29.9	875	38.2	551	47.5
Second Term (3)	790	10.0	226	9.9	56	4.8
Third and More Terms (4)	1134	14.4	219	9.6	82	7.1

Extra Legal Variables

	Community Sentence		Probation		Incarceration	
	Frequency	**Percent**	**Frequency**	**Percent**	**Frequency**	**Percent**
Age Group						
18-24 (1)	2161	27.4	661	28.4	294	25.3
25-34 (2)	2479	31.4	726	31.2	351	30.2
35-44 (3)	2086	26.4	602	25.9	337	29.0
≤45 (4)	1166	14.8	337	14.5	180	15.5
Race						
Non White (0)	2828	35.8	876	37.6	485	41.7
White (1)	5077	64.2	1452	62.4	679	58.3
Gender						
Female (1)	2395	30.3	637	27.4	209	18.0
Male (2)	5497	69.7	1689	72.6	953	82.0

Extra Legal Variables

Total LSI Score	Community Sentence		Probation		Incarceration	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
19	947	12.0	294	12.6	90	7.7
20	895	11.3	260	11.2	91	7.8
21	885	11.2	255	11.0	96	8.2
22	846	10.7	257	11.0	106	9.1
23	743	9.4	231	9.9	112	9.6
24	734	9.3	193	8.3	118	10.1
25	696	8.8	196	8.4	110	9.5
26	654	8.3	232	10.0	133	11.4
27	723	9.1	211	9.1	150	12.9
28	782	9.9	199	8.5	158	13.6

Table 3
 Mean, Standard Deviation, and Range of Interval Variables

Variable	Mean	Std. Deviation	Range
Age	32.91	10.301	18 - 78
LSI Score	23.30	2.928	19 - 28

Table 4
Pearson Correlation of Variables

	Community Sentence	Probation	Incarceration	Offense Group Alcohol	Offense Group Drug	Offense Group Property
Community Sentence						
Probation	-.762**					
Incarceration	-.507**	-.171**				
Offense Group Alcohol	.043**	-.054**	.006			
Offense Group Drug	.048**	-.008	-.062**	-.471**		
Offense Group Property	-.004	.010	-.007	-.240**	-.509**	
Offense Group Violent	-.126**	.065**	.106**	-.140**	-.297**	-.152**
Offense Group Other	-.026**	.019*	.014	-.085**	-.179**	-.092**
Prior Record	-.011	-.037**	.067**	.344**	-.162**	-.091**
Unemployed	-.054**	.048**	.019*	-.157**	.040**	.094**
Education	.018	-.009	-.016	.047**	.030**	-.059**
Current Alcohol Use	.001	-.004	.004	.428**	-.257**	-.104**
Current Drug Use	.015	-.015	-.003	-.373**	.445**	-.081**
Marital Status	.026**	-.029**	-.001	.113**	.023*	-.128**
Population Unit	-.161**	.061**	.165**	-.051**	.050**	-.029**
DA Term	.042**	-.018	-.039**	.129**	-.056**	-.037**
Age	-.003	-.012	-.019*	.270**	-.013	-.204**
Race	.031**	-.009	-.034**	.008	.046**	-.018*
Gender	-.062**	.012	.078**	.157**	-.109**	-.069**
Total LSI Score	-.036**	-.022*	.084**	-.080**	.037**	.015

** 0.01
* 0.05

	Offense Group Violent	Offense Group Other	Prior Record	Unemployed	Education	Current Alcohol Use	Current Drug Use
Community Sentence							
Probation							
Incarceration							
Offense Group Alcohol							
Offense Group Drug							
Offense Group Property							
Offense Group Violent							
Offense Group Other	-.053**						
Prior Record	-.035**	-.028**					
Unemployed	.003	.008	-.223**				
Education	-.020*	-.021*	.089**	-.002			
Current Alcohol Use	.020*	.002	.216**	-.154**	.069**		
Current Drug Use	-.138**	-.046**	-.169**	.000	.042**	-.161**	
Marital Status	-.019*	.010	.158**	-.076**	.069**	.019*	-.061**
Population Unit	.046**	-.035**	.048**	-.033**	.001	-.115**	.040**
DA Term	-.024*	-.004	.025**	-.043**	.019*	.040**	-.052**
Age	-.036**	-.030**	.403**	-.100**	.184**	.104**	-.136**
Race	-.069**	.000	-.028**	-.044**	.014	-.037**	.051**
Gender	.072**	.013	.221**	-.149**	.003	.192**	-.076**
Total LSI Score	.024*	-.003	.120**	.292**	-.127**	.085**	.203**

** 0.01
* 0.05

	Marital Status	Population Unit	DA Term	Age	Race	Gender	Total LSI Score
Community Sentence							
Probation							
Incarceration							
Offense Group Alcohol							
Offense Group Drug							
Offense Group Property							
Offense Group Violent							
Offense Group Other							
Prior Record							
Unemployed							
Education							
Current Alcohol Use							
Current Drug Use							
Marital Status							
Population Unit	-.089**						
DA Term	.024*	-.233**					
Age	.444**	.024*	.022*				
Race	.130**	-.074**	.086**	.055**			
Gender	-.104**	.018	-.005	-.011	-.042**		
Total LSI Score	-.009	-.007	-.040**	-.006	-.009	-.042**	

** 0.01
* 0.05

Table 5 A
Community Sentence
Alcohol Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Alcohol (1)	.385***	1.469	.402***	1.496
Prior Record	-.053**	.948	-.010	.990
Community Protection				
Unemployed	-.273***	.761	-.265***	.767
Education	.090*	1.094	-.078	1.082
Current Alcohol Use	-.202***	.817	-.147**	.867
Current Drug Use	.158***	1.171	.172***	1.188
Marital Status	.019	1.019	-.003	.997
Practical Constraint				
Population Unit	-.430***	.651	-.427***	.652
DA Term	-.012	.988	-.017	.953
Extra Legal Variables				
Age			-.035	.965
Race/Ethnicity			.050	1.052
Gender			-.357***	.700
Total LSI Score			-.016*	.984
Model - 2 Log Likelihood	13530.984		13459.079	
Cox & Snell Pseudo R²	.034		.039	

*** P<.001
**P<.01
*P<.05

Table 5 B
Probation
Alcohol Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group				
Alcohol (1)	-.456***	.634	-.503***	.605
Prior Record	-.038	.962	-.042	.959
Community Protection				
Unemployed	.189***	1.208	.264***	1.302
Education	-.017	.984	-.061	.941
Current Alcohol Use	.173***	1.189	.196***	1.217
Current Drug Use	-.217***	.805	-.159**	.853
Marital Status	-.059	.943	-.084	.920
Practical Constraint				
Population Unit	.187***	1.206	.184***	1.202
DA Term	.012	1.012	.012	1.012
Extra Legal Variables				
Age			.054	1.055
Race			.007	1.007
Gender			.128*	1.136
Total LSI Score			-.031***	.969
Model - 2 Log Likelihood	11287.200		11254.847	
Cox & Snell Pseudo R^2	.011		.013	

*** P<.001
**P<.01
*P<.05

Table 5 C
Incarceration
Alcohol Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Alcohol (1)	-.099	.906	-.054	.948
Prior Record	.204***	1.227	.112***	1.119
Community Protection				
Unemployed	.298***	1.347	.146*	1.158
Education	-.190**	.827	-.086	.918
Current Alcohol Use	.153*	1.166	-.015	.985
Current Drug Use	.023	1.024	-.122	.885
Marital Status	.061	1.063	.153*	1.166
Practical Constraint				
Population Unit	.767***	2.152	.770***	2.160
DA Term	.022	1.022	.034	1.035
Extra Legal Variables				
Age			-.017	.984
Race			-.121	.886
Gender			.650***	1.915
Total LSI Score			.094***	1.099
Model - 2 Log Likelihood	7064.198		6931.175	
Cox & Snell Pseudo R^2	.036		.047	

*** P<.001
**P<.01
*P<.05

Table 6 A
Community Sentence
Drug Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Drug (2)	.241***	1.272	.231***	1.260
Prior Record	-.022	.978	.019	1.020
Community Protection				
Unemployed	-.289***	.749	-.275***	.760
Education	.087*	1.091	.071	1.074
Current Alcohol Use	-.066	.936	-.008	.992
Current Drug Use	-.038	.963	-.019	.981
Marital Status	.019	1.019	-.008	.992
Practical Constraint				
Population Unit	-.429***	.651	-.426***	.653
DA Term	.006	1.006	.002	1.002
Extra Legal Variables				
Age			-.026	.974
Race			.058	1.060
Gender			-.340***	.712
Total LSI Score			-.019*	.981
Model - 2 Log Likelihood	13538.169		13470.745	
Cox & Snell Pseudo R^2	.034		.038	

*** P<.001
**P<.01
*P<.05

**Table 6 B
Probation
Drug Offense Group**

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group				
Drug (2)	-.017	.984	-.023	.977
Prior Record	-.067***	.935	-.069**	.933
Community Protection				
Unemployed	.206***	1.229	.273***	1.314
Education	-.020	.980	-.054	.947
Current Alcohol Use	.064	1.066	.073	1.076
Current Drug Use	-.107	.898	-.045	.956
Marital Status	-.075	.928	-.085	.919
Practical Constraint				
Population Unit	.184***	1.202	.182***	1.199
DA Term	-.005	.995	-.006	.994
Extra Legal Variables				
Age			.032	1.032
Race			-.004	.996
Gender			.113*	1.120
Total LSI Score			-.027**	.973
Model - 2 Log Likelihood	11321.479		11295.485	
Cox & Snell Pseudo R^2	.008		.009	

*** P<.001
**P<.01
*P<.05

Table 6 C
Incarceration
Drug Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group				
Drug (2)	-.522***	.594	-.493***	.611
Prior Record	.183***	1.201	.094**	1.099
Community Protection				
Unemployed	.303**	1.354	.155*	1.168
Education	-.185	.831	-.087	.917
Current Alcohol Use	.039	1.040	-.112	.894
Current Drug Use	.266***	1.304	.104	1.109
Marital Status	.089	1.093	.170*	1.185
Practical Constraint				
Population Unit	.774***	2.167	.776***	2.172
DA Term	.005	1.005	.020	1.020
Extra Legal Variables				
Age			.001	1.001
Race			-.126	.882
Gender			.639***	1.895
Total LSI Score			.092***	1.097
Model - 2 Log Likelihood	7012.197		6885.218	
Cox & Snell Pseudo R²	.041		.051	

*** P<.001
**P<.01
*P<.05

Table 7 A
Community Sentence
Property Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Property (3)	-.020	.980	-.045	.956
Prior Record	-.029	.971	.012	1.012
Community Protection				
Unemployed	-.288***	.750	-.271***	.763
Education	.092*	1.096	.073	1.076
Current Alcohol Use	-.109*	.896	-.050	.951
Current Drug Use	.066	1.068	.081	1.085
Marital Status	.032	1.033	-.004	.996
Practical Constraint				
Population Unit	-.426***	.653	-.425***	.654
DA Term	.002	1.002	-.003	.997
Extra Legal Variables				
Age			-.020	.980
Race			.60	1.062
Gender			-.347***	.707
Total LSI Score			-.020*	.981
Model - 2 Log Likelihood	13563.755		13493.414	
Cox & Snell Pseudo R^2	.032		.036	

*** P<.001
**P<.01
*P<.05

Table 7 B
Probation
Property Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Property (3)	.011	1.011	.035	1.036
Prior Record	-.066***	.936	-.068**	.934
Community Protection				
Unemployed	.206***	1.229	.272***	1.312
Education	-.020	.980	-.054	.947
Current Alcohol Use	.067	1.070	.080	1.083
Current Drug Use	-.114*	.893	-.051	.950
Marital Status	-.075	.928	-.084	.920
Practical Constraint				
Population Unit	.184***	1.202	.182***	1.200
DA Term	-.005	.996	-.005	.996
Extra Legal Variables				
Age			.033	1.123
Race			-.004	.996
Gender			.116*	1.123
Total LSI Score			-.027**	.973
Model - 2 Log Likelihood	11321.541		11295.324	
Cox & Snell Pseudo R^2	.008		.009	

*** P<.001
**P<.01
*P<.05

Table 7 C
Incarceration
Property Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Property (3)	.025	1.025	.040	1.041
Prior Record	.198***	1.219	.109***	1.115
Community Protection				
Unemployed	.301***	1.352	.146*	1.158
Education	-.190**	.827	-.085	.918
Current Alcohol Use	.130	1.138	-.026	.974
Current Drug Use	.050	1.051	-.106	.899
Marital Status	.059	1.061	.155*	1.168
Practical Constraint				
Population Unit	.766***	2.151	.770***	2.161
DA Term	.018	1.018	.032	1.033
Extra Legal Variables				
Age			-.016	.984
Race			-.123	.884
Gender			.651***	1.917
Total LSI Score			.095***	1.099
Model - 2 Log Likelihood	7065.111		6931.222	
Cox & Snell Pseudo R^2	.036		.047	

*** P<.001
**P<.01
*P<.05

Table 8 A
Community Sentence
Violent Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group				
Violent (4)	-.867***	.420	-.822***	.439
Prior Record	-.044*	.957	-.008	.992
Community Protection				
Unemployed	-.296***	.744	-.292***	.747
Education	.090*	1.094	.081	1.084
Current Alcohol Use	-.101*	.904	-.053	.949
Current Drug Use	-.018	.982	-.008	.992
Marital Status	.027	1.027	-.006	1.006
Practical Constraint				
Population Unit	-.417***	.659	-.415***	.660
DA Term	-.002	.998	-.004	.996
Extra Legal Variables				
Age			-.025	.975
Race			.032	1.032
Gender			-.304***	.738
Total LSI Score			-.013	.988
Model - 2 Log Likelihood	13421.124		13368.470	
Cox & Snell Pseudo R^2	.044		.047	

*** P<.001
**P<.01
*P<.05

Table 8 B
Probation
Violent Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Violent (4)	.455***	1.576	.475***	1.608
Prior Record	-.059**	.943	-.057*	.944
Community Protection				
Unemployed	.209	1.232	.283***	1.327
Education	-.019	.982	-.059	.943
Current Alcohol Use	.062	1.064	.080	1.083
Current Drug Use	-.068	.934	.000	1.000
Marital Status	-.072	.930	-.090	.914
Practical Constraint				
Population Unit	.176***	1.193	.174***	1.190
DA Term	-.003	.997	-.004	.996
Extra Legal Variables				
Age			.035	1.036
Race			.012	1.012
Gender			.089	1.093
Total LSI Score			-.031***	.969
Model - 2 Log Likelihood	11289.983		11262.089	
Cox & Snell Pseudo R^2	.010		.013	

*** P<.001
**P<.01
*P<.05

Table 8 C
Incarceration
Violent Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Violent (4)	.982***	2.671	.848***	2.336
Prior Record	.222***	1.249	.137***	1.147
Community Protection				
Unemployed	.308***	1.360	.168*	1.183
Education	-.190**	.827	-.095	.909
Current Alcohol Use	.123	1.131	-.018	.983
Current Drug Use	.160*	1.174	.005	1.005
Marital Status	.071	1.073	.146*	1.158
Practical Constraint				
Population Unit	.758***	2.135	.763***	2.144
DA Term	.021	1.022	.032	1.032
Extra Legal Variables				
Age			-.010	.990
Race/Ethnicity			-.084	.920
Gender			.596***	1.815
Total LSI Score			.086***	1.089
Model - 2 Log Likelihood	6964.649		6857.950	
Cox & Snell Pseudo R^2	.045		.053	

*** P<.001
**P<.01
*P<.05

Table 9 A
Community Sentence
Other Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group				
Other (5)	-.337**	.714	-.322**	.725
Prior Record	-.030	.970	.010	1.010
Community Protection				
Unemployed	-.289***	.749	-.272***	.762
Education	.091*	1.095	.072	1.075
Current Alcohol Use	-.108*	.898	-.048	.954
Current Drug Use	.061	1.063	.079	1.082
Marital Status	.036	1.036	.001	1.001
Practical Constraint				
Population Unit	-.428***	.652	-.426***	.653
DA Term	.002	1.002	-.003	.997
Extra Legal Variables				
Age			-.019	.981
Race/Ethnicity			.060	1.062
Gender			-.342***	.710
Total LSI Score			-.016*	.981
Model - 2 Log Likelihood	13555.663		134866.637	
Cox & Snell Pseudo R^2	.032		.037	

*** P<.001
**P<.01
*P<.05

Table 9 B
Probation
Other Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Other (5)	.205	1.227	.209	1.232
Prior Record	-.066**	.936	-.067**	.935
Community Protection				
Unemployed	.207***	1.229	.273***	1.314
Education	-.019	.981	-.054	.947
Current Alcohol Use	.067	1.069	.077	1.080
Current Drug Use	-.111*	.895	-.051	.950
Marital Status	-.077	.926	-.087	.916
Practical Constraint				
Population Unit	.185***	1.204	.183***	1.201
DA Term	.004	.996	-.005	.995
Extra Legal Variables				
Age			.032	1.032
Race			-.004	.996
Gender			.112*	1.119
Total LSI Score			-.027**	.979
Model - 2 Log Likelihood	11319.155		11293.151	
Cox & Snell Pseudo R^2	.008		.009	

*** P<.001
**P<.01
*P<.05

Table 9 C
Incarceration
Other Offense Group

	Model 1		Model 2	
	B	**Exp (B)**	**B**	**Exp (B)**
Blameworthiness				
Offense Group Other (5)	.409*	1.506	.370*	1.448
Prior Record	.200***	1.221	.111***	1.117
Community Protection				
Unemployed	.302***	1.352	.147*	1.159
Education	-.189**	.828	-.084	.919
Current Alcohol Use	.127	1.136	-.029	.972
Current Drug Use	.057	1.059	-.101	.904
Marital Status	.055	1.057	.150*	1.162
Practical Constraint				
Population Unit	.769***	2.159	.774***	2.168
DA Term	.018	1.019	.033	1.033
Extra Legal Variables				
Age			-.017	.983
Race			-.124	.884
Gender			.646***	1.908
Total LSI Score			.095***	1.099
Model - 2 Log Likelihood	7059.835		6927.082	
Cox & Snell Pseudo R^2	.037		.047	

*** P<.001
**P<.01
*P<.05

Oklahoma State University Institutional Review Board

Date: Thursday, July 20, 2006

IRB Application No: AS06118

Proposal Title: The Significance of Legal and Extra Legal Variables in Predicting Sentencing Outcomes Under Oklahoma's Community Sentencing Act

Reviewed and   Exempt
Processed as:

Status Recommended by Reviewer(s): Approved   Protocol Expires: 7/19/2007

Principal
Investigator(s):

Joy Hadwiger   John Cross
1923 S. Florence Place   004 CLB
Tulsa, OK 74104   Stillwater, OK 74078

The IRB application referenced above has been approved. It is the judgment of the reviewers that the rights and welfare of individuals who may be asked to participate in this study will be respected, and that the research will be conducted in a manner consistent with the IRB requirements as outlined in section 45 CFR 46.

☐ The final versions of any printed recruitment, consent and assent documents bearing the IRB approval stamp are attached to this letter. These are the versions that must be used during the study.

As Principal Investigator, it is your responsibility to do the following:

1. Conduct this study exactly as it has been approved. Any modifications to the research protocol must be submitted with the appropriate signatures for IRB approval.
2. Submit a request for continuation if the study extends beyond the approval period of one calendar year. This continuation must receive IRB review and approval before the research can continue.
3. Report any adverse events to the IRB Chair promptly. Adverse events are those which are unanticipated and impact the subjects during the course of this research; and
4. Notify the IRB office in writing when your research project is complete.

Please note that approved protocols are subject to monitoring by the IRB and that the IRB office has the authority to inspect research records associated with this protocol at any time. If you have questions about the IRB procedures or need any assistance from the Board, please contact Beth McTernan in 415 Whitehurst (phone: 405-744-5700,
beth.mcternan@okstate.edu).

Sincerely,

Sue C. Jacobs, Chair
Institutional Review Board

VITA

Joy Hadwiger

Candidate for the Degree of

Doctor of Philosophy

Thesis: THE SIGNIFICANCE OF LEGAL AND EXTRA LEGAL
VARIABLES IN PREDICTING SENTENCING OUTCOMES UNDER
OKLAHOMA'S COMMUNITY SENTENCING ACT

Major Field: Sociology

Biographical:

   Education: Bachelor of Arts, University of Central Oklahoma, Edmond,
      Oklahoma 1972; Master of Science, Oklahoma State University,
      Stillwater, Oklahoma 1976; Completed the requirements for the
      Doctor of Philosophy in Sociology at Oklahoma State University,
      Stillwater, Oklahoma in July, 2007.

   Experience: Rogers State University, Claremore, Oklahoma, Assistant
      Professor (current position), Oklahoma State University,
      Stillwater, Oklahoma, Graduate Teaching Assistant,

   Professional Memberships: American Society of Criminology, Academy
      of Criminal Justice Sciences, American Sociological Association,
      Southwestern Association of Criminal Justice, Oklahoma
      Sociological Association

Name: Joy Hadwiger

Date of Degree: July, 2007

Institution: Oklahoma State University

Location: Stillwater, Oklahoma

Title of Study: THE SIGNIFICANCE OF LEGAL AND EXTRA LEGAL
VARIABLES IN PREDICTING SENTENCING OUTCOMES
UNDER OKLAHOMA'S COMMUNITY SENTENCING ACT

Pages in Study: 139

Candidate for the Degree of Doctor of Philosophy

Major Field: Sociology

Scope and Method of Study: This study applies focal concern theory to identify
factors important to the sentencing decision making of offenders eligible
for sentencing under Oklahoma's Community Sentencing Act. Legal and
extra legal factors associated with sentencing decisions under other
sentencing structures are applied to the Oklahoma data using two logistic
regression models.

Findings and Conclusions: The general tenets of focal concern theory are
supported by the analysis; however, outcomes for community sentenced
offenders show less consistent patterns. In addition to distinctions related
to offense, court location, and gender are found to be significant predictors
of sentence outcome. In addition, the relevance factors associated with
community protection speaks to the distinct philosophy associated with
sentencing that allows the offender to remain in the community.

ADVISER'S APPROVAL: Dennis Brewster, PhD