THE SOCIAL CONTEXT OF GUIDELINES CIRCUMVENTION: THE CASE OF FEDERAL DISTRICT COURTS*

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Recent scholarship on criminal punishments increasingly highlights the importance of courtroom social contexts. Combining recent data from the U.S. Sentencing Commission (FY1997–2000) with aggregate data on federal districts, the current study examines interdistrict variations in the application of downward departures from the federal sentencing guidelines. Findings indicate that substantial variation exists in the probability of both prosecutor-initiated substantial assistance departures and judge-initiated downward departures. This variation is accounted for, in part, by organizational court contexts, such as caseload pressures, and by environmental considerations, such as the racial composition of the district. Additional evidence suggests that

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individual trial penalties and race disparities are conditioned by aggregate court contexts. Drawing on interviews with federal justice personnel, this article concludes with a discussion of future directions for research on federal guidelines departures.

Part of the glory of the federal system. . .is that you've got this one big organization, but it can be molded to different needs. . .

– An assistant U.S. attorney –

As Garland (1991: 119) has argued, the exercise of state-sponsored social control is "shaped by an ensemble of social forces and has a significance and range of effects that reach well beyond the population of criminals." Of particular interest is the way criminal punishments vary across social contexts. Empirical investigations of this issue have recently grown in prevalence, although insufficient attention remains devoted to at least two critical issues. First, relatively little remains known about contextual variations in criminal punishments in the federal justice system. Second, most research on the social context of sentencing remains limited to "traditional" sentencing outcomes such as the likelihood and length of incarceration. This issue is particularly true for the federal system. The current study addresses both these issues by systematically investigating contextual variations in guidelines departures across U.S. federal district courts.

Most research on social contexts in criminal punishment targets state-level systems (e.g., Myers and Talarico, 1987; Ulmer and Johnson, 2004; Wooldredge and Thistlethwaite, 2004). Considerably less empirical work examines contextual variation in the federal system, which is unfortunate given its prominent social, political, and symbolic role in society (Kautt, 2002). In all, more than 250,000 offenders are under the supervision of the federal system, which makes it slightly larger than any single state system (Bureau of Justice Statistics, 2005). Moreover, the federal system's visibility and legal prominence—coupled with its symbolic representation of national criminal justice policy—mean it often exerts both direct and indirect influences on the administration of justice at state and local levels.

Federal sentencing research focuses primarily on individual disparities in incarceration and on sentence lengths among different racial, ethnic, and gender groups (Albonetti, 1997, 1998; Mustard, 2001; Steffensmeier and Demuth, 2000). Research by Kautt (2002) and Waldfogel (1991) suggests that sentence lengths vary across contexts, but despite evidence that guidelines departures are among the strongest predictors of final sentence outcomes, few studies examine contextual variations in federal guidelines departures. The current work addresses this issue by providing a systematic, multilevel investigation of interdistrict variations in guidelines compliance across federal district courts. We focus particularly on the

understudied role that departures from the federal guidelines play in exacerbating interdistrict punishment disparities. Such an investigation increases our understanding of federal criminal court decision making along with the important role played by social contexts in the punishment process.

U.S. DISTRICT COURTS UNDER THE FEDERAL SENTENCING GUIDELINES

More than 30 years ago, Judge Marvin Frankel (1973: vii) raised the specter of "gross evils and defaults in what is probably the most critical point in our system of administering criminal justice, the imposition of sentence." That now famous treatise on lawlessness in sentencing served as a catalyst for the passage of the Federal Sentencing Reform Act in 1984, which established the United States Sentencing Commission (USSC) and mandated that it promulgate presumptive sentencing guidelines (hereafter Guidelines). On November 1, 1987, the Guidelines were formally enacted.[1]

The express goals of the Guidelines were to reduce disparity, assure certain and severe sentences, and increase rationality in federal punishment decisions. Importantly, the architects of the Guidelines specifically "sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders" (USSC, 2004: §1A1.1, p.s.: 2). To ensure this goal was met, the enabling legislation established a 25 percent rule such that the upper bound of the Guidelines' range cannot exceed the lower bound by more than 25 percent. Furthermore, the USSC established strict requirements for adherence to the narrow ranges. They have been notoriously recognized as the most rigid and complex guidelines ever promulgated (Stith and Cabranes, 1998), and they have been labeled by some as "the most controversial and disliked sentencing reform initiative in U.S. history" (Tonry, 1996: 72).

Because the federal criminal justice system represents a unified, national system, one might expect punishments to be relatively consistent across districts, especially given organizational pressures for uniformity. However, the spread of the federal justice system across a diverse array of

1. The constitutionality of the federal sentencing guidelines was subsequently upheld in 1989 in the Supreme Court case of *United States v. Mistretta*. However, following the *Blakely v. Washington* (2004) case, the Supreme Court ruled in *United States v. Booker/Fanfan* (2005) that in order to be constitutional, the federal guidelines must be advisory rather than presumptive guidelines. The full impact of this transformation has yet to be observed (see Frase, 2007; USSC, 2006), but the data used in the current study predates the *Blakely* and *Booker/Fanfan* decisions.

social contexts may result in localized justice meted out in context-specific ways. With few exceptions, research has yet to investigate this issue systematically. As Kautt (2002: 635) recently opined, empirical attention to jurisdictional variation in federal sentencing has been "inexplicably given short shrift by most studies of postguidelines sentencing."

The bulk of research on federal district courts has focused on the effectiveness of the Guidelines in limiting extralegal disparities in punishment among individual offenders. Much of this work has been conducted by the USSC itself (e.g., USSC, 1991a, 1991b, 2004) or by the U.S. Government Accounting Office (GAO, 1992; 2003). Although a sizeable legal literature debates various aspects of the Guidelines (e.g., Farabee, 1998; Weinstein, 1999; Weintraub, 1991), empirical research conducted by independent scholars is sparse. Existing literature primarily examines sentence differentials tied to offender characteristics, such as gender, race, and ethnicity, and often focuses on white-collar (e.g., Hagan, Nagel, and Albonetti, 1980; Wheeler, Weisburd, and Bode, 1982) or drug crimes (e.g., Albonetti, 1997; Hartley, Maddan, and Spohn, 2007; Kautt, 2002; Steffensmeier and Demuth, 2000). Only a few empirical studies examine more than one type of federal offense (e.g., Mustard, 2001; Rhodes, 1991). Collectively, this research identifies significant disparities in punishment, although individual offender characteristics exert much smaller effects than legal determinants like final offense and criminal history categories.

Importantly, one emerging conclusion from research on individual sentencing disparities is that they develop in large part from sentences that depart from Guidelines recommendations. Although it is difficult to account fully for warranted variations in departure provisions (e.g., differences in the willingness of offenders to offer substantial assistance to the government), evidence is persuasive that extralegal differences in punishment are tied to sentences that deviate from the Guidelines (Adams, 1998; Albonetti, 1997; Hartley, Maddan, and Spohn, 2007; Kempf-Leonard and Sample, 2001; Maxfield and Kramer, 1998; Mustard, 2001; Steffensmeier and Demuth, 2000). In fact, extant research that examines federal departures suggests that they may be the primary source of individual disparities in punishment (Albonetti, 1997; Kempf-Leonard and Sample, 2001; Mustard, 2001; Steffensmeier and Demuth, 2000).

Downward departures from the Guidelines can occur in one of two ways. First, under Federal Rule 5K1.1, defendants who are deemed to have rendered "substantial assistance" to law enforcement can receive a substantially reduced sentence than prescribed by the Guidelines. These "substantial assistance" departures, as we refer to them, require a formal motion from the prosecutor, but once granted, the sentencing judge retains discretion to determine the sentencing discount. Second, under Rule 5K2, a defendant can receive a sentence either below or above the

Guidelines range if the judge deems extenuating circumstances exist that were not adequately considered in the formulation of the Guidelines. These other "downward departures," as we label them, are controlled by the sentencing judge, although they are subject to appellate review initiated by either the prosecution or the defense.[2]

Contextual Variations among Federal Courts

Concern over interjurisdictional variation in federal sentencing is not new; yet interdistrict variation in such disparity remains seriously understudied. One common approach is to control for contextual variations with a series of dummy variables for broad geographic regions (Everett and Wojtkiewicz, 2002), federal circuits (e.g., Adams, 1998; Albonetti, 1997; Hartley, Maddan, and Spohn, 2007; Kautt and Spohn, 2002), or more rarely, circuits and districts (Steffensmeier and Demuth, 2000). It is also common for researchers to limit their investigation to a single federal circuit (Kempf-Leonard and Sample, 2001) or to a restricted sample of districts (Everett and Nienstedt, 1999; Farabee, 1998; Lacasse and Payne, 1999; Payne, 1997). The focus of this collective work is on controlling for jurisdictional variation rather than on investigating it.

Select governmental reports, however, have addressed intercourt variation in federal departures more explicitly. In their study of federal drug offenders, the GAO (2003: 4) concluded, "Our statistical analysis showed major variation among certain judicial circuits and districts in the likelihood of an offender receiving a substantial assistance departure, other downward departure, or a sentence falling below a mandatory minimum." The USSC's recent 15-year report on the state of the federal guidelines concurred and found that overall sentencing variations were largely the product of substantial assistance and other downward departures. Substantial assistance departures accounted for the most variation in sentence lengths, followed by downward and then upward departures (USSC, 2004).

Studies conducted by outside researchers support these conclusions. Early work by Heaney (1991) and Waldfogel (1991) and later work by Maxfield and Kramer (1998) and Weinstein (1999) all highlighted the importance of interdistrict variation in federal sentencing practices. Maxfield and Kramer (1998), for instance, concluded that substantial assistance departures "were not being consistently applied across federal

2. Technically, 5K1.1 substantial assistance departures and 5K2 discretionary judicial departures both are types of downward departure from the Guidelines. For ease of presentation, we refer to the first as substantial assistance departures and to the latter simply as downward departures.

districts" (Maxfield and Kramer, 1998: 20). More recently, Hartley, Maddan, and Spohn (2007) examined substantial assistance departures for crack and powder cocaine offenses and found the likelihood of their occurrence also varied significantly by federal circuit. Weinstein (1999: 563–64) has argued that federal departures are characterized by "wide variation in local practices and policies" that result in both "individual and district-to-district disparities" in punishments.

Select studies have examined the importance of context by conducting in-depth investigations of sentencing in a few federal districts. Nagel and Schulhofer (1992), in their well-known examination of federal guidelines circumvention, compared practices in three federal districts and concluded that "[i]n each district, the contextual environment influences the degree of guidelines circumvention—the jurisdiction makes a difference" (Nagel and Schulhofer, 1992: 554). As they acknowledged, however, their study "covered too few jurisdictions to determine the precise nature, correlates, and causes of these patterns" (Nagel and Schulhofer, 1992: 514). Most recently, Ulmer (2005) and Spohn (2005) both have extended this line of research. Ulmer (2005) examined sentencing in four federal districts and showed that the willingness and standards for granting Guidelines departures, along with the effects of individual offender characteristics, varied among districts. Similarly, Spohn's (2005) analysis of three federal districts found limited evidence of variations in incarceration and sentence lengths but concluded that significant differences characterized sentence discounts for downward and substantial assistance departures.

Notably, the findings of prior empirical work are consistent with interview data that we and our associates collected from federal justice personnel as part of a larger project on federal sentencing.[3] These interviews highlighted important variations in sentencing processes among federal district courts, particularly those leading to federal guidelines departures. Even in the face of organizational pressure for uniformity, district court actors seemed responsive to local pressures and concerns. As one U.S. attorney explained, "I personally measure my success . . . by considering what kind of impact I feel I am having on the community." When asked about the unifying influence of the Department of Justice, another federal prosecutor indicated that a more important "factor is local priorities—

3. As part of this larger project, we and other colleagues collected 314 semistructured interviews from federal judges, U.S. attorneys and their assistants, federal public defenders, federally practicing private attorneys, and federal probation officers. Our interviews covered eight federal districts that varied in size, circuit location, and Guidelines departure rates (NSF Grant SES – 0111774). Although space limitations prevent more than cursory reference, we draw on this qualitative data in several places to frame our investigation better and to assist in the interpretation of our quantitative findings.

there are local circumstances that affect the way we prioritize." Local priorities, established organizational practices, and environmental influences all seemed to contribute to unique courtroom sentencing processes related to Guidelines departures.

As Nagel and Schulhofer (1992) first suggested, the definition of "substantial assistance" to the government clearly varied by district. "Soft 5Ks" were sometimes used in one district to get an offender to a "just" outcome. Discussing a mandatory minimum of life imprisonment for a drug charge, an assistant U.S. attorney stated, "this guy is facing the mandatory minimum of life. Now, I would not hesitate to give a guy like that a Soft 5K. Right, sort of borderline substantial assistance." In another district, the Criminal Division Chief stated, "It's not a check list . . . you have to cooperate totally, truthfully, and completely . . . and if that little bit of information helps . . . they'll give you a substantial assistance motion. They're not going to punish you because they can't indict somebody." An assistant U.S. attorney in another district, however, described more stringent substantial assistance standards, stating, "To get a 5K1 motion around here usually means you have to produce a body. That means you have to provide information that leads to the indictment of somebody else." The minimum requirements for a substantial assistance departure clearly varied among district courts. Overall, then, prior research and our own qualitative data both offer evidence that the use of Guidelines departures varies across federal court contexts, but they stop short of investigating the sources of this variation.

Two studies speak indirectly to this issue: one that focuses on federal sentence lengths and the other that investigates departures in state court. Kautt's (2002) work used hierarchical models to examine contextual variation in sentence lengths for federal drug traffickers. Her results suggested these punishments varied by both district and circuit of adjudication, although few of the contextual measures she examined explained observed variations among districts. Only the departure rate of the court was a significant predictor, which suggests the need to examine more the role that departures play in contributing to jurisdictional variations in punishment. Johnson's (2005) research addressed this issue using data from state courts in Pennsylvania. Examining county-level predictors of guidelines compliance, he found that intercounty variations in departures were tied to structural court characteristics, including its size, guidelines compliance rate, caseload, and minority presence in the community. Although apposite, the applicability of these findings to the federal system is limited because the Pennsylvania guidelines share little in common with the federal sentencing guidelines.

Consequently, three crucial limitations characterize research in this area: 1) limited attempts to model contextual variations in federal punishments appropriately, 2) general lack of attention to the correlates of variations in Guidelines departures, and 3) failure to examine theoretically derived predictors of different types of federal departures specifically. The current work, therefore, offers a systematic investigation of the correlates and magnitude of district variations in Guidelines departures across the federal justice system. As such, it contributes to the growing interest in spatial variation in punishment and provides the first multilevel analysis of federal departures, while it examines seldom-captured aspects of the social and political environments of federal courts across a broad range of offense types.

CONTEMPORARY THEORETICAL PERSPECTIVES ON INTERCOURT SENTENCING VARIATION

Theoretically, one might expect little interdistrict variation in the federal criminal justice system. The USSC promulgates and monitors compliance with the U.S. Sentencing Guidelines, and it trains federal court officials in the Guidelines' use, interpretation, and case law. Similar organizational forces of uniformity are in place for U.S. attorneys. The U.S. Department of Justice establishes uniform policies, procedures, and conventions for U.S. attorney's offices and trains both new and experienced assistant U.S. attorneys. Politically, federal judges—unlike their state-level counterparts—are appointed for life terms, which limits the potential impact of local political and reelection concerns. Moreover, deep-seated normative themes that emphasize equal treatment before the law may provide additional incentives for uniformity in federal punishments.

Court community and focal concerns perspectives, however, depict courts as having distinctive and localized organizational, political, and legal cultures (see Dixon, 1995; Eisenstein, Flemming, and Nardulli, 1988; Ulmer and Kramer, 1996). Such theories expect local sociopolitical and court organizational factors such as court size, caseload, and political climate to influence case processing and sentencing. For instance, core theoretical arguments in the sociology of punishment historically argue for the importance of political influences in the punitive exercise of social control in society (Chambliss, 1994; Garland, 1990), and recent empirical work supports the link between politics and penal sanctions (e.g., Helms and Jacobs, 2002; Jacobs and Kleban, 2003).

Dovetailing with the organizational-level court community perspective, the focal concerns perspective offers a situational-level heuristic model of sentencing (Spohn and Holleran, 2000; Steffensmeier and DeMuth, 2000;

Steffensmeier, Ulmer, and Kramer, 1998).[4] It argues that three interpretively defined focal concerns of punishment—*blameworthiness, protection of the community,* and *practical constraints*—determine punishment decisions. Court actors use legal factors such as the offense seriousness and prior record as initial punishment benchmarks but then make situational attributions about defendants' character and risk based on more subtle, subjective decision-making schema.

Albonetti's (1991) uncertainty avoidance/causal attribution theory lays the foundations of this schema. She argues that prosecutors and judges face an uncertain decision-making environment. They therefore must engage in uncertainty management and "satisficing" behavior that attempts to balance these competing pressures. The result is that court actors make attributions from stereotypes based on ascribed characteristics of defendants to reduce decision-making uncertainty. Similar theoretical perspectives on the etiology of bias and labeling theory are consistent with this perspective (cf. Albonetti and Hepburn, 1996; Farrell and Holmes, 1991; Hawkins, 1981).

The important point for the current study is that the interpretation and prioritization of focal concerns is assumed to vary between courts because they are embedded in local court communities' organizational and cultural milieus (Ulmer and Johnson, 2004). The decision process that focal concerns and causal attribution describe is one in which legal, organizational, and extralegal considerations affect the interpretation and prioritization of focal concerns through local substantive rationality (Kramer and Ulmer, 2002; Savelsberg, 1992). This perspective suggests that the definitions of blameworthiness, community protection, and practical constraints are influenced by court community characteristics and sociopolitical environments.

From this perspective, the dramatic differences characteristic of federal court community social environments (Kautt, 2002) are likely to translate into meaningful differences in punishment processes and outcomes across courts. The inherent complexity of the U.S. Sentencing Guidelines (Kramer, 1999), and the ability to depart from them in certain situations, exacerbates the potential for interdistrict variation in sentencing. The use of Guidelines departures and the effects of key independent variables of

4. Several additional theoretical perspectives on extralegal and/or organizational influences in sentencing exist, each emphasizing different ways that specific factors affect punishment decisions. Among them are attribution theory, racial threat theory, and organizational efficiency theory (Albonetti, 1991; Blalock, 1967; Dixon, 1995). Rather than pit these related perspectives against one another, we use the focal concerns framework as a heuristic to integrate and organize their compatible propositions.

interest, therefore, should be expected to vary significantly among courts. Thus, the overarching propositions guiding our research are the following:

Proposition 1: Significant variation among district courts will exist in the likelihood and magnitude of federal guidelines departures, net of individual case characteristics.

Proposition 2: Significant variation will also exist in the effects of individual case-level predictors of downward departures across federal district courts.

Theoretical expectations suggest that intercourt variation in departures will be tied to the size of the court, its political environment, and caseload pressure. First, the court community perspective especially emphasizes the importance of court size and posits that variations in court size directly produce several crucial court community differences (Eisenstein, Flemming, and Nardulli, 1988: 285). Larger court communities are said to have reduced media visibility in routine case processing, greater bureaucratization of sponsoring agencies (e.g., U.S. attorneys' offices and federal public defenders), greater ease of plea bargaining, and a normative tolerance or desensitization of deviant/criminal behavior (Eisenstein, Flemming, and Nardulli, 1988; Ulmer, 1997). All these factors are expected to foster more lenient sentences in larger court communities.

Proposition 3: Larger courts will be more likely to grant downward departures, and when they do, these departures will be of greater magnitude than in smaller courts.

According to the organizational efficiency model of criminal case processing, efficient case disposition is an overriding organizational goal in criminal sanctioning (see Engen and Steen, 2000). Downward departures from the relatively severe U.S. Sentencing Guidelines are likely to be powerful inducements to plead guilty and thus expedite case processing. Therefore, one should expect a pattern of more generous departures accompanying guilty pleas, whereas trial conviction should reduce their likelihood and magnitude. Furthermore, this pattern may be exaggerated by court caseload pressure (Dixon, 1995). That is, the greater the caseload-to-personnel ratio, the greater the need to move cases efficiently and the greater the reliance on downward departures to expedite case processing. This pattern also implies that the effect of mode of conviction (guilty plea vs. trial) on departures should vary according to court caseloads. The negative effect of trial conviction on downward departures should be greater in districts with higher caseloads.

Proposition 4: Downward departures will be more common and of greater magnitude in districts with greater caseload pressure.

Proposition 5: Trials will decrease the likelihood and impact of departures, and this effect will be greater in districts with heavier caseloads.

In addition, district court political contexts are likely to shape sentencing practices (Eisenstein, Flemming, and Nardulli, 1988; Garland, 1990; Nardulli, Eisenstein, and Flemming, 1988). In the words of Helms and Jacobs (2002: 577), "punishment is an intensely political process." Although recent empirical research is mixed on this issue, some convincing evidence of a link between punishment and political contexts has been found (e.g., Jacobs and Carmichael, 2002; Jacobs, Carmichael, and Kent, 2005). On the one hand, some studies fail to find a relationship between measures of jurisdiction political context, such as percent Republican and sentencing (Fearn, 2005; Johnson, 2005, 2006; Ulmer and Johnson, 2004). On the other hand, percent Republican may be too imprecise a measure of political context. Overall, Helms and Jacobs (2002) argue that more research is needed to understand the influence of local court political environments and criminal sentencing.

Federal district political contexts could influence Guidelines departures in several ways. First, a more punitive political milieu regarding criminal justice practices might foster tougher sentencing overall in both state and federal courts. Second, recent conservative criminal justice ideology is skeptical of judicial discretion and fears that "liberal" judges may water down efforts by the criminal justice system to get tough on crime (Garland, 1990; Stith and Cabranes, 1998). U.S. senators are consulted traditionally in the nomination of federal judges and U.S. attorneys for the federal district courts in their states. Thus, conservative senators might push for the nomination of more conservative judges and U.S. attorneys, who are more deferential to the laws and the rules of other branches of government (such as the Guidelines, U.S. attorneys' offices, or the Department of Justice). If so, such districts are likely to be characterized by fewer downward departures, caused by greater judicial restraint, more punitive ideology, or both. We, therefore, suggest the following:

Proposition 6: Districts characterized by more conservative elected officials will exhibit less prevalent and less generous downward departures.

Finally, the economic and racial contexts of federal districts might affect conformity to the Guidelines. Economic threat theories (Quinney, 1970; Spitzer, 1975) predict that aggregate socioeconomic context (poverty and unemployment) will shape sentencing outcomes as the criminal justice system reflects underlying political, socioeconomic, and racial tensions (see recent reviews by Beckett and Sasson, 2000; Simon, 2007; Sutton, 2000). From a neo-Marxist perspective, socioeconomic stratification in society

exacerbates social conflict, which results in increased reliance on repressive criminal punishments (Chambliss and Seidman, 1971), which are visited disproportionately on the lower class and the powerless (Garland, 1990). Economically disadvantaged groups represent a potentially threatening and unstable surplus population that elites must control and contain. The criminal justice system, and the prison in particular, provides a useful institutional tool for controlling this surplus labor force (Reiman, 1995; Rusche and Kirchheimer, 1939). Similarly, Black (1976) argues that law is particularly punitive among low-status or low-resource groups and conciliatory or compensatory for high-status or high-resource groups.

Proposition 7: Districts with higher levels of socioeconomic disadvantage will be less likely to grant downward departures.

Racial group threat theories (Blalock, 1967; Blumer, 1955; Bobo and Hutchings, 1996; Bridges and Crutchfield, 1988) imply that the racial and ethnic composition of districts might also affect Guidelines departures. As Jacobs and Kleban (2003: 727) have argued, "threat based on the presence of subordinate racial and ethnic minorities or on heightened economic disparities may produce higher incarceration rates because threatened dominant groups may react by successfully demanding enhanced punishments." Large or increasing minority populations may induce trepidation among ascendant power groups in society, which then respond with increased penal severity. Fear of crime (Liska, 1992), negative racial attitudes (Bobo and Hutchings, 1996; Taylor, 1998), or both (Quillian and Pager, 2001) have been shown to be related positively to the size of local minority populations, as have expenditures on penal institutions (Jacobs and Helms, 1999). Furthermore, survey research shows that antiblack criminal stereotypes and fear of black crime are associated with support for more punitive criminal justice policies (Barkan and Cohn, 2005; Chiricos, Welch, and Gertz, 2004). The percentage of minorities in the population has been found to be associated positively with the size of local police forces (Kent and Jacobs, 2004), the number of black death penalty sentences (Jacobs, Carmichael, and Kent, 2005), and racial/ethnic disparities in adjudication (Bontrager, Bales, and Chiricos, 2005), incarceration (Myers and Talarico, 1987; Weidner, Frase, and Schultz, 2005), sentence length (Bridges and Crutchfield, 1988; Ulmer and Johnson, 2004), and Guidelines departures (Johnson, 2005).

If racial and ethnic group threat dynamics characterize federal sentencing, then we would expect that blacks and Hispanics would be disadvantaged in Guidelines departures and that this disadvantage should be conditioned by the proportions of minorities in a federal district. Thus:

Proposition 8: Blacks and Hispanics will be less likely to receive downward departures, and when they do, they will be of smaller magnitude than those

of whites. This minority disadvantage will be greatest in districts with larger proportions of minorities in the population.

The degree of racial and ethnic disparity in departures may also be conditioned by other district characteristics, such as district political contexts and aggregate socioeconomic conditions. First, any racial and ethnic disparities in downward departures that do exist may be mitigated in more liberal districts. For example, judges and U.S. attorneys appointed in these districts may be more sensitive to civil rights and more concerned about racial and ethnic discrimination. Federal court community participants in more liberal districts might be especially likely to view the Guidelines for drug and gun crimes as too harsh and as unfairly disadvantaging poor minority defendants (see Stith and Cabranes, 1998). However, racial and ethnic disparities might be aggravated in districts with relatively high levels of socioeconomic disadvantage. That is, racial and economic threat may be intricately tied to one another and may make black and Hispanic defendants more threatening in contexts of relatively high disadvantage. As Blumer (1958) suggested, part of racial prejudice involves a sense of proprietary claim to various goods and services, including economic resources. Disadvantaged contexts characterized by greater poverty and lower wages may exacerbate underlying racial tensions, increase punitiveness, and reduce the probability of favorable departures for racial and ethnic minorities in the justice system.

Proposition 9: Racial and ethnic disparities in downward departures will be mitigated in politically liberal districts and aggravated in socioeconomically disadvantaged districts.

DATA AND METHODS

To test these propositions, we employ 4 fiscal years of federal sentencing data compiled by the USSC (FY1997–FY2000) from presentence reports, court orders, and reports on sentencing hearings. These data were restricted to the 89 federal districts located within the United States and to cells in the Guidelines matrix where downward departures are possible, which resulted in a total sample of 169,561 federal criminal cases.[5] These

5. The original sample included 215,005 eligible cases. Omitting the U.S. Virgin Islands, Guam, Puerto Rico, the Marianna Islands, and the District of Columbia reduced the sample by just over 2 percent. It was necessary to restrict the data more to cases with valid information on key predictors, like offense severity and prior record. Cases missing this essential information are often problematic and need to be removed. Just over 5 percent of the data was missing on each of these variables. Subsequent analyses of departures identified 1,272 additional cases with erroneous data on Guidelines conformity (e.g., nonsensical values such as downward departures with sentences above Guidelines recommendations).

data were supplemented then with district-level information tabulated from various sources, including the Uniform Crime Reports, U.S. Census Bureau, Bureau of Justice Statistics Criminal Justice Sourcebooks, and Federal Court Management Statistics. Contextual information that was not available at the district level (e.g., crime rates) was aggregated from county-level sources. Table 1 provides a summary of the individual- and district-level variables employed.

DEPENDENT VARIABLES

The first dependent variable captures departure types in a four-category multinomial outcome composed of substantial assistance departure, downward departure, upward departure, and no departure. Because upward departures in the federal system are extremely rare, we limit our discussion to downward departures, but we retain the upward departure category in this dependent variable.[6] Cases in which no departure occurs serve as the reference category. The second dependent variable is the magnitude of departure. For offenders who receive departures, we examine the size of the sentencing discount separately for each type of downward departure. This magnitude is measured as the difference between the lower

These cases were also removed and thus produced a total sample size of 188,253 cases. Because the reported results focus on downward departures, analyses only include those cells in the sentencing matrix in which downward departures are possible (i.e., Zone A of the matrix is omitted because these cells have a presumptive minimum of 0 months—see appendix). This convention is consistent with prior analyses of Guidelines departures (e.g., Engen et al., 2003; Johnson, 2003; Kramer and Ulmer, 1996) and results in our final sample size for downward departures of 169,561 cases. Missing data on most individual variables was minimal and addressed on a case-by-case basis using a conservative coding scheme. Mode of conviction, for instance, was captured with a dummy variable that identified offenders convicted at trial. The less than 1 percent of cases missing data on this variable were by default grouped in the reference. This approach is justified given that over 90 percent of offenders plead guilty, and its effect, if any, is to produce slightly conservative estimates. One important exception occurred for type of counsel, which had missing data in nearly half the cases. Given the theoretical importance of this variable, we retained it in the analysis, but we included a dummy variable that identified missing cases to prevent their unnecessary deletion and to ensure that the estimates for the other variables in the model remained unbiased.

6. Less than 1 percent of federal cases result in upward departures (only 1,261 total cases), and some federal districts report no upward departures at all over the 4-year time frame. Supplemental results for upward departures based on the sample of 188,525 cases in all Guidelines cells (including Zone A) are available from the authors by request.

Table 1. Summary of Dependent and Independent Variables, USSC Data FY1997–2000

Variables	Coding Scheme	Description
Dependent Variables		
Downward departure	1 = departure	Offender received downward departure inititated by sentencing judge
Sub. assistance departure	1 = departure	Offender received 5K1.1 downward departure for substantial assistance to government
Downward departure length	Ln months	Natural log of the number of months below the adjusted sentencing guidelines minimum
Sub. assistance departure length	Ln months	Natural log of the number of months below the adjusted sentencing guidelines minimum
Individual-Level Independent Variables		
Sentence year	4 dummy variables	Dummy indicators for sentence year, with 1998 the omitted category
Presumptive guideline sentence	Months	Adjusted minimum months of incarceration recommended by sentencing guidelines
Criminal history	USSC scale	United States Sentencing Commission's scale rating prior criminal history from 1 to 6
Multiple convictions	1 = multiple	Dummy indicator for offenders convicted of multiple offenses
Offender age	Years	Age of offender at time of sentencing
Offender gender	1 = female	Dummy indicator for female offenders
Offender race	3 dummy variables	Dummy indicators for black, Hispanic, and other offenders, with white the omitted category
Citizenship	1 = Noncitizen	Dummy indicator for offenders who are not U.S. citizens
Dependants	1 = dependents	Dummy indicator for offenders with financial dependents
Education	1 = college	Dummy indicator for offenders with any post-high-school education
Type of attorney	1 = private	Dummy indicator for offenders represented by private counsel
Pretrial detainment	1 = detained	Dummy indicator for offenders detained prior to trial
Mode of conviction	1 = trial	Dummy indicator for offenders convicted at bench or jury trial
Offense type	7 dummy variables	Dummy indicators for offense types, with drug offense the omitted category
District-Level Independent Variables		
District size	Judgeships	Four-year average number of authorized federal district judgeships
Caseload pressure	Rate	Four-year average number of criminal cases/number of authorized judgeships/10
Trial rate	Percent	Four-year average percentage of cases convicted through trials in each district
Crime rate	Rate	Number of UCR Index Crimes per 1,000 people in district
Racial composition	Percent	Percent of district population that is African American
Political liberalism	ACLU score	Four-year average ACLU Liberalism Score for U.S. senators in the district
Socioeconomic disadvantage	*Z*-score scale	*Z*-scored scale of inverse median income per capita and percent below poverty

adjusted Guidelines range and the actual number of months of incarceration ordered.[7] Because the distributions for our departure length outcomes proved to be highly skewed, we examined models with and without a natural log transformation. Without exception, the logged outcomes produced significantly smaller deviance statistics, which indicates better model fit. We therefore log these measures. This transformation not only addresses the problematic skew in these data distributions but also provides for a useful substantive interpretation of our findings as the proportional increase in departure length associated with a unit increase in the independent variable (Bushway and Piehl, 2001; Kurlychek and Johnson, 2004).[8]

7. Sentence lengths and departure values were capped at 470 months. The federal sentencing commission identifies this value as representative of a life imprisonment sentence; we therefore use it to represent the longest sentence and greatest possible length of departure, which is a useful convention for removing potentially problematic outlier values (e.g., sentence lengths in excess of 80 years). Additionally, the calculation of departure magnitudes produced a few cases for which negative departure values occurred. Subsequent investigation revealed several causes. First, several cases that involved immigration offenses produced negative values, often because the offender was deported rather than incarcerated. Second, some cases that involved mandatory penalties were coded as departures when the sentence was greater than the standard Guidelines recommendation, although the mandatory trump produced a presumptive sentence greater than the actual sentence. Third, some cases in which substantial assistance departures were granted were still sentenced in the lower portion of the standard range, which resulted in negative values. And finally, some of these problematic cases were clearly because of data entry errors. This finding is not entirely surprising given that the departure variable provided by the USSC does not verify that cases coded as departures fall outside of the Guidelines (USSC, 2002: 15). These problematic observations, which represented less than .7 percent of all cases, were corrected or removed from the final analysis.

8. We also examined additional models that included a correction factor for selection bias. Because not all offenders receive Guidelines departures, coefficients for length of departure can be biased. Some researchers argue for inclusion of a correction term (Berk, 1983; Heckman, 1976), whereas others suggest it may introduce more bias than it corrects (Stolzenberg and Relles, 1997). To examine this issue, we created Heckman's correction using the Heckman two-step command in STATA 8.2 (StataCorp, College Station, TX) and then compared models with and without the correction by examining the condition number (Leung and Yu, 1996) as an indicator of problematic levels of collinearity (see Bushway, Johnson, and Slocum, 2007). In each case, the condition number rose dramatically with the inclusion of the correction (it ranged from 54 to 234 across outcomes), which clearly indicates problematic levels of collinearity. We therefore report all results without the correction. The consequence of this reporting is that we cannot account for potential selection processes into downward departures. Future research needs to begin incorporating exclusion restrictions in selection models to better address this common problem (Bushway, Johnson, and Slocum, 2007).

INDIVIDUAL-LEVEL INDEPENDENT VARIABLES

At the individual case level, the federal sentencing data offer rich and detailed information on offense characteristics, offender characteristics, and case-processing factors. The recommended Guidelines sentence is controlled with a measure of the presumptive sentence (Engen and Gainey, 2000) equal to the minimum months of incarceration recommended by the sentencing Guidelines (see appendix). This variable explicitly accounts for the 43-point offense severity level, the defendant's 6-point criminal history score, and importantly, any additional sentencing adjustments such as mandatory minimum sentencing requirements that trump Guidelines recommendations.[9] We also include a separate control for defendant's criminal history score because prior research suggests it carries additional weight beyond the presumptive sentence recommendation (Hofer and Blackwell, 2001). Supplemental investigation suggested this inclusion did not introduce collinearity because these two legal considerations were only modestly correlated ($r = .28$).

The type of crime is modeled with a series of dummy variables that distinguish violent, property, firearm, fraud, and immigration offenses from the reference category drug crimes. An additional legal control for cases that involve multiple counts of conviction (coded 1 for multiple counts and 0 otherwise) is also included along with select case-processing characteristics. Whether an offender was detained before trial is captured with a dummy variable coded 1 for detainment and 0 otherwise. The type of attorney is also examined, comparing offenders convicted with a privately retained attorney with offenders convicted with a public defender or court-appointed attorney. Finally, the mode of conviction is represented with a dummy variable coded 1 for offenders convicted through a bench or jury trial. Guilty pleas serve as the reference. Four dummy indicators of the sentencing year were also included to control for year-to-year fluctuations in federal sentencing practices, with cases sentenced in 1998 serving as the reference.

We also control for a broad range of relevant offender status characteristics. Age is coded in number of years at time of sentence. Gender is represented by a dummy variable with females coded 1. Information on

9. The final presumptive sentence also accounts for the two or three Guidelines-level sentencing discount that offenders can earn for "acceptance of responsibility." We therefore do not include a separate measure for acceptance of responsibility, both because it is captured by the presumptive sentence and because it is highly dependent on whether an offender pleads guilty ($r = .67$). Sensitivity analyses reexamining our models with a dichotomous measure of acceptance of responsibility produced equivalent findings for all effects except trial conviction, which, not surprisingly, was reduced by the addition of this measure.

race and ethnicity is represented by a series of dummy variables that distinguish black, Hispanic, and other race offenders from the reference category whites. Citizenship is additionally controlled, with non-U.S. citizens identified with a dummy variable coded 1. Offender education is captured with a variable coded 1 for offenders with any college education and 0 for those with a high-school degree or less. Family circumstances are captured with a measure of whether the offender has any financial dependents. Data on marriage and other personal circumstances were missing extensively and could not be included. Still, the available data on offender characteristics is superior to available data for most state systems.[10]

DISTRICT-LEVEL INDEPENDENT VARIABLES

To investigate the theoretical import of federal district social contexts, we supplemented the USSC data with aggregate district-level characteristics.[11] These characteristics include measures of the structural context of federal courts themselves and salient characteristics of their surrounding social environments. Court size is measured by the number of authorized judgeships in each federal district. Caseload pressure is measured as the average number of cases sentenced in a district in a year divided by the number of authorized judgeships. This number is subsequently divided by ten for ease of interpretability, meaning a one-unit change in caseload represents a difference of ten cases per judge. The trial rate is measured as the average number of trials per year divided by the average number of cases sentenced in each district per year. This quotient is multiplied by 100 to make the trial rate a percentage that represents the proportion of all cases convicted through trials in each federal district. The characteristics of the jurisdictions served by each district court may also be important. Minority

10. Several individual-level measures were simplified analytically in our final models. As one example, we started with a four-category measure of education (less than high school, high-school grad, some college, and college grad) and reduced it to a dichotomy (college vs. no college). This reduction was performed for two reasons. First, it was in the interest of parsimony. Preliminary model specifications that included more complex coding strategies indicated minimal gains in model fit, and parsimonious models are essential for hierarchical analyses because additional predictors can complicate error structures dramatically. Second, our theoretical focus is on explaining interdistrict variations in punishment, and the individual-level variables serve primarily as controls to ensure that observed jurisdictional differences are not because of differences in the types of cases encountered.

11. Ideally, circuit-level characteristics would be examined simultaneously as well. However, given that there are only 12 federal circuits, statistical constraints preclude this additional level of analysis. We do account for potential dependency problems among districts nested within the same circuit by analyzing three-level hierarchical linear models (HLM), but we cannot examine circuit-level predictors of sentencing variation at this higher level of analysis.

presence is measured with a variable that captures the percent of the population that is black in the district. The socioeconomic condition of the district is captured with a summed *z*-scale that combines the percent of the population living below the poverty level and the inverse median income per capita in the district (alpha = .62). The district-level crime rate is also included as an important control. It is aggregated from the county to the district level and measured as the total number of index crimes per 1,000 people in each district.[12]

Finally, for our district political context measure, we use average American Civil Liberties Union (ACLU) liberalism scores for the voting records of U.S. senators in the state where the district is located. This measure provides an indicator of the districts' ideological environment in terms of civil rights, due process, and crime-control issues. This measure is useful given that senators are popularly elected and exert important influence over the nomination and confirmation of federal judges and U.S. attorneys in their states (Eisenstein, 1978). One important limitation of this measure, however, is that it is only available at the state level. The practical consequence of this limitation is that variation in this measure is reduced, which is likely to make statistical significance tests more conservative. Correlations among level 2 predictors are presented in table 2.

12. As one anonymous reviewer pointed out, racial and economic threat hypotheses are evaluated typically with smaller units of analysis such as county courts within a single state. Federal districts are geographically and socially larger and more heterogeneous units. However, we believe that these are still meaningful geographical entities for evaluating racial and economic threat in the federal context for several reasons. First, federal districts are the smallest distinct unit of jurisdictional authority in the federal system, serve a clear constituency, and encompass a distinct geographical location. The social and political boundaries of federal courts are defined by districts, which makes them meaningful social units characterized by distinct population characteristics. Second, although some aggregation bias is bound to exist, we see little theoretical reason to impose narrow geographical limitations on racial and economic threat perspectives. Notably, racial and economic threat hypotheses have been tested in prior work on punishment at the federal-district level (Kautt, 2002), state level (Jacobs and Carmichael, 2002; Jacobs, Carmichael, and Kent, 2005), and even cross-nationally (Sutton, 2000). As Kautt (2002: 641) argued, through the lens of the court community perspective, "the federal districts become analogous to state counties, while the circuits . . . are parallel to the state itself." We see no compelling reason why the relationships predicted by these perspectives should be limited to smaller city- or county-level units. Third, the true test of the theoretical relevance of these factors is at least partially an empirical issue: If racial or socioeconomic characteristics of districts meaningfully shape federal court communities, then we should observe evidence of this in their effects. As discussed below, racial and economic contexts condition individual racial disparities in important and theoretically meaningful ways.

Table 2. Correlation Matrix for Level 2 Contextual Predictors

	Size	Caseload	Trial Rate	Crime Rate	Race	Liberalism	SES
Size	1.00						
Caseload	–.01	1.00					
Trial Rate	–.21	–.25	1.00				
Crime Rate	.17	.16	–.02	1.00			
Race	.18	–.10	.27	.43	1.00		
Liberalism	.25	.01	–.18	–.13	–.29	1.00	
SES	.43	.26	.15	.18	.30	–.47	1.00

N = 89.

ANALYTIC APPROACH

To account for multiple influences across levels of analysis, we employ multilevel modeling procedures. Because individual criminal cases are nested within federal district courts that are nested within federal circuits, three separate levels of analysis characterize the current data. We estimate three-level hierarchical linear (HLMs) and generalized linear models (HGLMs), with all variables centered at their grand means.[13] Hierarchical models correct misestimated standard errors caused by data clustering, provide properly adjusted statistical significance tests, and offer analytical advantages such as the parceling of variation across levels of analysis, the modeling of heterogeneity in regression coefficients, and the proper estimation of cross-level interactions effects. These advantages and others are delineated in prior work on contextual sentencing effects (see Britt, 2000; Johnson, 2005, 2006; Kautt, 2002; Ulmer and Johnson, 2004).

Because contextual predictors are often highly related to one another and because random effects quickly complicate multilevel models, conclusions drawn from hierarchical analyses can be sensitive to modeling specifications. It is therefore essential to restrict statistical conclusions to carefully selected, robust predictors that demonstrate consistent effects across specifications. Our analyses begin with descriptive results that highlight intercourt variations in social contexts. Then unconditional models are discussed briefly before turning to our contextual analyses. We begin by examining types of departures, followed by separate analyses of lengths of departure. Lastly, we examine select theoretical predictions regarding cross-level interactions between individual- and district-level factors in sentencing.

13. Grand mean centering provides a useful statistical convention for facilitating model estimation and for providing substantively meaningful model intercepts (Raudenbush and Bryk, 2002: 31–35).

FINDINGS

Descriptive Analyses

Table 3 presents descriptive statistics for the variables in our analysis. Federal courts vary in the size and composition of their constituencies, the social and political environments they operate in, and the routine caseloads they encounter. Several federal districts have only 1 or 2 authorized judgeships, whereas others have as many as 28. This difference coincides with differences in trial rates and caseloads. The proportion of trial cases in federal districts varies extensively along with court caseloads. On average, about 7 percent of cases are convicted through trials, but this varies between 1 percent and 16 percent among districts. Caseload pressure ranges from less than 25 cases per judge to more than 325 cases. Caseload compositions also vary dramatically. Texas, Arizona, and California, for instance, have heavy caseloads driven by immigration offenses, whereas districts in Wisconsin and North Dakota sentence almost no immigration cases. Similar, although less pronounced, interdistrict variation occurs for other offense types as well. Overall, federal criminal court caseloads differ dramatically in size and type.

Federal districts serve varying constituencies as well. Several districts are composed of less than 1 percent blacks, whereas some southern districts, like central Georgia, serve populations that are 40 percent black. The economic and political qualities of district environments are also diverse. Per capita income remains below $20,000 in a few districts, such as northern Mississippi, whereas it exceeds $50,000 in others, like southern New York. Poverty rates vary similarly, ranging between 8 percent and 20 percent. Sociopolitical environments also vary, with average ACLU scores of congressional liberalism ranging from below 20 in Nebraska to over 80 in Rhode Island. Finally, crime itself fluctuates noticeably, ranging from a low of 11 crimes per 1,000 in New Hampshire to about 83 crimes per 1,000 in south Florida. This diversity corresponds with important variations in the use of federal departures. Downward departure rates range from only 2 percent in the northern district of West Virginia to 64 percent in Arizona, with a grand mean of 16 percent. Departures for substantial assistance demonstrate similar variation, ranging from 7 percent to 52.5 percent across federal district courts.

Unconditional Models of Guidelines Departures

Additional evidence of interdistrict variation in departures is provided by the unconditional HLM models in table 4. The significant variance components at level 2 for each outcome offer evidence of district-level variations in punishments. Interestingly, circuit-level variation is limited, except in the case of downward departures initiated by the judge. This

Table 3. Descriptive Statistics for USSC Federal Sentencing Data, FY1997–2000

	N	Mean	SD	Min.	Max.
Dependent Variables					
Sub. assistance departure	169,561	.21	.41	0	1
Downward departure	169,561	.16	.37	0	1
Sub. assistance departure length	35,209	47.61	51.39	0	469
Downward departure length	27,358	20.91	27.52	0	470
Individual-Level Variables (*N* = 169,561)					
Year 1996		.05	.22	0	1
Year 1997		.22	.42	0	1
Year 1998		.24	.43	0	1
Year 1999		.27	.44	0	1
Year 2000		.22	.41	0	1
Presumptive sentence		64.65	77.49	0	470
Criminal history		2.39	1.71	1	6
Multiple counts		.21	.41	0	1
Age		34.33	10.73	16	98
Female		.13	.34	0	1
White		.33	.47	0	1
Black		.27	.44	0	1
Hispanic		.37	.48	0	1
Other race		.04	.19	0	1
Non-U.S. citizen		.32	.47	0	1
Dependants		.64	.48	0	1
Education		.23	.42	0	1
Private attorney		.11	.32	0	1
Detained		.19	.39	0	1
Trial		.06	.24	0	1
Violent		.06	.23	0	1
Property		.04	.19	0	1
Drug		.46	.50	0	1
Fraud		.20	.40	0	1
Firearms		.06	.23	0	1
Immigration		.14	.35	0	1
Other crime		.04	.21	0	1
District-Level Variables (*N* = 89)					
District size		7.04	5.45	1.50	28.00
Caseload pressure		75.54	52.05	24.75	329.24
Trial rate		6.92	2.82	1.11	16.41
Crime rate		45.74	13.41	10.76	83.75
Racial composition		12.33	10.80	.36	38.72
Political liberalism		43.17	14.55	18.67	83.33
Socioeconomic disadvantage		0.00	1.70	–4.30	3.99

finding is not surprising given that federal circuits establish unique case law that governs the standards of reversal for judicial departures on appeal. The large level 3 variance component for this outcome suggests that different circuits have established varying standards of appeal, which influences the likelihood of these downward departures across federal circuits.

Table 4. Unconditional HGLM and HLM Models of Downward Departures

Downward Departures							
Downward Departure				**Downward Departure Ln Length**			
Fixed Effects	***b***	**SE**		**Fixed Effects**	***b***	**SE**	
Intercept	–2.00	.17***		Intercept	2.69	.03***	
Random Effects	s^2	**SD**	ρ	**Random Effects**	s^2	**SD**	ρ
Level 1	—	—		Level 1	.95	.97	
Level 2	.39	.62***	27.0%	Level 2	.04	.17***	3.6%
Level 3	.28	.53***	19.3%	Level 3	.00	.06	.3%
N = 169,561				*N* = 27,358			
Substantial Assistance Departures							
5K1.1 Sub Asst. Departures				**5K1.1 Sub Asst. Departure Ln Length**			
Fixed Effects	***b***	**SE**		**Fixed Effects**	***b***	**SE**	
Intercept	–1.12	.09***		Intercept	3.33	.04***	
Random Effects	s^2	**SD**	ρ	**Random Effects**	s^2	**SD**	ρ
Level 1	—	—		Level 1	1.11	1.06	
Level 2	.34	.58***	24.5%	Level 2	.10	.32***	8.4%
Level 3	.04	.20*	2.9%	Level 3	0	.05	.2%
N = 169,561				*N* = 35,209			

*p = .05; **p = .01; ***p = .001.

The intercept in the unconditional models represents an estimate of the overall probability or average length of downward departure. The variance components represent the degree to which each outcome varies across federal districts. The estimated probability of an offender receiving a downward departure is 12 percent. However, this likelihood varies considerably across federal districts. For about two thirds of federal districts (i.e., 1 standard deviation), the probability fluctuates between 7 percent and 20 percent.[14] Similar variation is observed for substantial assistance departures, which varies between 15 percent and 37 percent across two thirds of district courts.

Notable variations occur across federal districts in the magnitude of departures as well. For downward departures, the average magnitude is

14. This overall probability is calculated as follows:

$$\left(\frac{e^{-2.00}}{1+e^{-2.00}}\right) = .12$$

(see Agresti and Findlay, 1997: 588). Estimates of the variation in this estimate are obtained by adding and subtracting 1 standard deviation to the average effect (e.g., –2.00 ± .62) before repeating the above calculation:

$$\left(\frac{e^{-1.38}}{1+e^{-1.38}}\right) = .20 \quad \text{and} \quad \left(\frac{e^{-2.62}}{1+e^{-2.62}}\right) = .07.$$

Similar procedures are used for other comparisons throughout our discussion of the results.

about 15 months (2.7 logged months), although for two thirds of the jurisdictions, this value varies between 12 and 17 months.[15] Substantial assistance departure lengths vary more starkly, with an average of 28 months (3.3. logged months) and a standard deviation that ranges from 20 to 39 months. This variation indicates that the discount for cooperating with the government is about twice as great in some districts. Overall, the descriptive and unconditional analyses provide convincing support for our first proposition, which predicts significant variation in the use of departures across federal district courts. The remaining analyses attempt to explain these variations using a combination of individual characteristics and contextual measures of federal district court environments.

Guidelines Departures Across Federal Courts

Table 5 presents the results from multinomial, generalized hierarchical models comparing the probability of different types of departure with the referent, no departure. These results include both the individual- and the district-level findings because individual findings were little changed with the inclusion of district-level characteristics. Individual predictors of federal departures are discussed first, followed by the contextual findings. It is important to note first, however, that the results for the random effects (not shown) for individual-level predictors provided unqualified support for proposition 2. The effects of virtually all individual-level sentencing considerations demonstrated significant variation across federal district court contexts.[16]

In general, individual correlates of departure are consistent with theoretical expectations and prior work. The presumptive sentence has a small positive effect on both types of departure, which indicates that more serious offenders are slightly more likely to receive sentences below Guidelines recommendations. Offenders convicted of multiple counts, however, are less likely to receive downward departures. The type of offense is also an important correlate of departure decisions. Immigration cases are more than twice as likely as drug offenses to receive downward departures from judges. Drug cases (the reference category), however, are by far the most likely to receive departures for substantial assistance. This likelihood may

15. These estimates of departure lengths underestimate the true variability in these measures. Because they are derived from the logged measures, extreme values in the data have been constricted. The consequence of this constriction is that these estimates are more conservative than those produced with unlogged measures. Empirically, they more closely resemble median rather than mean values.

16. In the interest of space, we focus our discussion on the fixed effects for the full, three-level model including level 2 predictors. However, complete results for the individual-level analyses, including random effects, are available from the authors by request.

Table 5. Three-Level Multinomial HGLM Random Coefficient Models of Downward Departures, FY1997–2000

	Down vs. No Depart			Sub Asst. vs. No Depart		
	b	SE	Exp(b)	*b*	SE	Exp(b)
Individual-Level Effects						
Constant	–2.09	.11	— ***	–1.54	.08	— ***
Year 1996	–.05	.04	.95	.01	.03	1.01
Year 1997	–.04	.02	.96	.04	.02	1.04 *
Year 1999	.06	.02	1.07 **	–.03	.02	.97
Year 2000	.27	.03	1.31 ***	.05	.02	1.05
Presumptive sentence	.00	.00	1.00 ***	.01	.00	1.01 ***
Criminal history	–.04	.01	.96 **	–.10	.01	.90 ***
Multiple counts	–.39	.04	.68 ***	–.27	.04	.77 ***
Age	.01	.00	1.01 ***	–.01	.00	.99 ***
Female	.52	.04	1.69 ***	.31	.03	1.36 ***
Black	–.30	.04	.74 ***	–.37	.04	.69 ***
Hispanic	–.19	.04	.83 ***	–.40	.04	.67 ***
Other race	–.19	.05	.83 ***	.01	.04	1.01
Non U.S. citizen	.03	.05	1.04	–.31	.04	.73 ***
Dependants	.00	.02	1.00	.11	.01	1.11 ***
Education	.21	.03	1.23 ***	.16	.02	1.17 ***
Private attorney	–.03	.05	.98	.23	.04	1.25 ***
Detained	–.39	.05	.68 ***	–.40	.04	.67 ***
Trial	–.36	.07	.70 ***	–3.88	.14	.02 ***
Violent	.22	.07	1.23 **	–1.42	.07	.24 ***
Property	–.07	.08	.94	–1.26	.09	.28 ***
Fraud	.15	.06	1.15 *	–.78	.07	.46 ***
Firearms	.26	.07	1.29 ***	–1.09	.06	.34 ***
Immigration	.89	.11	2.43 ***	–1.39	.09	.25 ***
Other crime	.48	.07	1.62 ***	–1.08	.08	.34 ***
District-Level Effects						
District size	.001	.008	1.001	.008	.010	1.008
Caseload pressure	.016	.007	1.016*	.025	.008	1.025**
Trial rate	–.006	.016	.994	–.015	.017	.986
Crime rate	.000	.003	1.000	.005	.004	1.005
Racial composition	–.001	.004	.999	.013	.005	1.013*
Political liberalism	.010	.003	1.010**	.003	.004	1.003
Socioeconomic disadvantage	–.067	.024	.935*	–.047	.034	.955
Individual *R*-squared		—			—	
District *R*-squared		.22			.05	
Circuit *R*-squared		.42			.15	
N		169,561			169,561	

*p = .05; **p = .01; ***p = .001.

reflect the fact that drug offenses often involve multiple defendants, which results in greater opportunity for offenders to provide relevant information or other assistance to the prosecution.

Several case-processing factors are also important predictors of guidelines departures. Pretrial detainment multiplies the odds of downward and

substantial assistance departures by .68 and .67, respectively. Having a private attorney has no effect on downward departures but increases the odds of a substantial assistance departure by 25 percent. As expected, trial conviction reduces the odds of both types of downward departure, but its effect on substantial assistance is immense, virtually precluding the possibility of receiving that type of departure for offenders who exercise their right to trial.

Individual offender characteristics also influence federal departure outcomes. Blacks and Hispanics are .74 and .83 times as likely to receive judicial departures and .69 and .67 as likely to receive departures for substantial assistance, respectively. Female offenders consistently benefit from Guidelines departures, being 69 percent more likely to receive a judicial departure and 36 percent more likely to receive substantial assistance. Finally, financial dependents increase the odds of substantial assistance modestly.

Table 5 also presents results for contextual predictors of intercourt variations in federal departures. In judging the substantive importance of these effects, it is important to recognize that although their coefficients may seem to be small, their cumulative impact across districts can be very substantial. To capture these cumulative effects, we discuss the findings for our continuous measures of social context in terms of multiple-unit and/or 1-standard-deviation changes, which better reflect the full diversity of district court environments. Because statistical tests for the district-level variables are based on a sample of only 89 districts, p values for these effects are much more stringent than for the individual effects based on the large number of individual cases.

Table 5 provides no evidence that larger district courts are more likely to grant downward departures. However, the caseload pressure of the court is significantly associated with an increased probability of both downward departures from the judge and substantial assistance departures from the prosecutor. Increasing the caseload by 100 cases increases the odds of downward and substantial assistance departure by about 18 percent and 28 percent, respectively, which results in important differences between districts. Pressing caseloads may necessitate downward departures as a means for expediting case processing. The effects for trial rates were in the opposite direction but failed to reach statistical significance.

Select environmental characteristics of federal districts are also associated with federal departure outcomes. Districts with poorer socioeconomic conditions are significantly less likely to award downward departures, whereas more liberal political environments exhibit higher odds of downward departure. A 1-standard-deviation increase in disadvantage reduces the odds of downward departure by a factor of .89, whereas a 1-standard-deviation increase in liberalism increases the odds

by 15 percent. Lastly, district-level racial composition was also associated with increased use of substantial assistance departures.[17] The complete model explains about 22 percent of the total between-district variation in judicially imposed downward departures, but it accounts for only about 5 percent of the variation in the use of substantial assistance.[18]

Departure Lengths Across Federal Courts

Table 6 presents the results from models that examine the magnitudes of sentence reductions, conditional on receipt of a Guidelines departure.[19] Legal considerations are strong predictors. Longer Guidelines sentence recommendations are associated with much larger downward departures, whereas extensive criminal histories and multiple convictions result in shorter departure lengths. Notable differences also emerge across crime types, with violent crimes receiving the smallest departures and drug crimes earning especially large discounts for substantial assistance. With regard to offender characteristics, females receive discounts just under 20 percent longer than males for both departure types. Black offenders, however, receive sentence reductions that are about 4 percent shorter than whites. The Hispanic disadvantage is of similar magnitude but limited to substantial assistance. College education increases departure lengths slightly, whereas non-U.S. citizenship results in shorter departures. Finally,

17. Because racial demographics are associated with geographical variations, it is theoretically possible that this measure taps into spatial differences in punishment beyond racial threat influences. Specifically, large black populations are disproportionately concentrated in southern districts. To examine this influence, we reestimated our models and replaced percent black with a dummy indicator for southern districts. Although the two predictors were highly correlated (r = .70), the south variable was not a statistically significant predictor of either downward or substantial assistance departures.

18. Estimates of explained variation are computed as proportionate reduction in error measures from the unconditional models in table 3. Individual-level R-squared values are not computed for multinomial models in table 5 because they do not have a meaningful level 1 error variance. Circuit-level R-squared values are not computed for the linear models in table 6 because these outcomes did not vary significantly across federal circuit courts. These estimates are based on random intercept rather than on random coefficient models that include the same set of level 1 and level 2 predictors (Snijders and Bosker, 1999: 99–109).

19. Unlike the multinomial departure models, the effects of several level 1 predictors of departure lengths did not vary significantly across federal districts. The effects that consistently varied for both downward and substantial assistance departure lengths included the presumptive sentence, criminal history, multiple counts, offender age, citizenship, pretrial detainment, trials, violent offenses, and fraud offenses. Full results for these random effects are available by request. Predictors that failed to vary across contexts were specified as fixed rather than as random coefficients in their respective models.

Table 6. Three-Level HLM Random Coefficient Models of Downward Departure Lengths, FY1997–2000

	Down Depart Ln Length			Sub Asst. Depart Ln Length		
	b	SE	Exp(b)	*b*	SE	Exp(b)
Individual-Level Effects						
Constant	2.55	.02	— ***	3.32	.03	— ***
Year 1996	–.06	.02	.94 **	.00	.01	1.00
Year 1997	–.02	.01	.98	.00	.01	1.00
Year 1999	.04	.01	1.04 **	.00	.01	1.00
Year 2000	.10	.02	1.10 ***	.07	.01	1.07 ***
Presumptive sentence	.73	.02	2.08 ***	.85	.01	2.34 ***
Criminal history	–.07	.01	.93 ***	–.09	.00	.91 ***
Multiple counts	–.19	.02	.83 ***	–.11	.01	.90 ***
Age	.01	.00	1.01 ***	.00	.00	1.00 ***
Female	.17	.02	1.19 ***	.16	.01	1.17 ***
Black	–.04	.02	.96 *	–.04	.01	.96 ***
Hispanic	–.02	.02	.98	–.04	.03	.96 **
Other race	.06	.03	1.06 *	–.01	.02	.99
Non U.S. citizen	–.16	.04	.85 ***	–.06	.02	.95 ***
Dependants	.00	.01	1.00	.00	.01	1.00
Education	.07	.01	1.07 ***	.03	.01	1.03 ***
Private attorney	.04	.02	1.04 **	.02	.01	1.02
Detained	–.16	.03	.85 ***	–.15	.02	.86 ***
Trial	–.13	.04	.88 **	–.23	.08	.79 **
Violent	–.19	.03	.82 ***	–.41	.03	.66 ***
Property	.10	.03	1.11 **	–.16	.02	.85 ***
Fraud	.00	.03	1.00	–.14	.02	.87 ***
Firearms	–.07	.03	.93 **	–.19	.02	.83 ***
Immigration	–.05	.05	.95	–.34	.02	.71 ***
Other crime	.03	.02	1.03	–.07	.03	.93 **
District-Level Effects						
District size	.003	.002	1.003	.010	.003	1.010***
Caseload pressure	–.006	.002	.994***	.018	.024	1.019
Trial rate	–.013	.007	.988	.003	.005	1.003
Crime rate	–.001	.001	.999	.004	.001	1.004**
Racial composition	.002	.001	1.002	–.004	.002	.996*
Political liberalism	.001	.001	1.001	.001	.001	1.001
Socioeconomic disadvantage	.015	.009	1.015	–.001	.011	.999
Individual *R*-squared		.45			.69	
District *R*-squared		.65			.78	
Circuit *R*-squared		—			—	
N		27,358			35,209	

*p = .05; **p = .01; ***p = .001.

case-processing factors are also influential. Trial conviction reduces sentencing discounts for downward and substantial assistance departures by .88 and .79, respectively, and pretrial detainment additionally reduces them by about 15 percent.

Turning to the contextual effects, greater departure lengths for substantial assistance are associated with larger court communities. An increase of 10 judgeships is associated with substantial assistance departures that are

about 10 percent longer. Downward departure lengths are significantly associated with caseload pressure. Shorter average departure lengths occur in districts with higher caseloads. This occurrence, however, may reflect a selection effect. Downward departures are more likely to be meted out in these contexts—high caseloads encourage greater use of downward departures, which may lead to their use in less exceptional cases, which results in shorter average discounts. A similar phenomenon may characterize the influence of racial composition. Districts with high proportions of blacks have higher probabilities of substantial assistance, which may contribute to shorter mean discounts for these departures. Substantial assistance departures, on average, are reduced by 4 percent as racial composition increases by 1 standard deviation.

Among the other environmental influences, the crime rate of the district is mildly associated with the length of substantial assistance. A 1-standard-deviation increase in the crime rate results in substantial assistance departures that are 5 percent larger. Although the effect for crime rates may seem counterintuitive, it is possible that larger substantial assistance departures reflect judicial attempts to address district-level crime concerns—larger discounts could be used as a crime-control technique to encourage greater cooperation with the government in their attempt to build criminal cases against other federal offenders. The complete models explain about 65 percent of the interdistrict variation in downward departure lengths and about 78 percent of this variation in substantial assistance discounts.

Cross-Level Interactions

In addition to the direct main effects of district context, several of our propositions suggest that contextual influences will moderate the effects of individual sentencing considerations. Table 7 presents our findings for select cross-level interactions that examine the likelihood of downward and substantial assistance departures.[20] First, courtroom efficiency perspectives suggest the individual trial tax will be aggravated by pressing

20. We limit our discussion of cross-level interactions to the receipt rather than to the length of departures because our hypotheses largely dealt with the effects of race and ethnicity, and these two key variables did not vary significantly across districts for one or both departure length outcomes (see footnote 19). Supplemental analyses of interactions for sentence length outcomes demonstrated the only significant race interaction to emerge was for the ethnicity gap in substantial assistance, in which the negative effect of Hispanic ethnicity was mitigated slightly in more liberal districts (Hispanic × Liberal b = .002; standard error = .001). Examination of the trial × caseload interaction also revealed a significant interaction for downward departure length. The negative effect of trial conviction was exacerbated in districts with heavy caseloads (Trial × Caseload b = -.015; standard error = .004). The full results of these additional models are available by request.

caseloads in a district. In line with this expectation, the negative effect of trial conviction on downward departures significantly increases (i.e., becomes more negative) as caseloads distend. A 1-standard-deviation increase in caseload pressure additionally reduces the odds of downward departure by a factor of .88 for trial cases. For substantial assistance, this interaction is in the same direction, but it is not statistically significance (p = .10). It seems as though pressing caseloads likely raise the premium on efficient case disposition, which results in reduced judicial reliance on downward departures for trial cases.

Table 7. HGLM Cross-Level Interaction Models of Downward Departures, FY1997–2000

	Down vs. No Depart			Sub Asst. vs. No Depart		
	b	**SE**	**Exp(b)**	***b***	**SE**	**Exp(b)**
Trial/Caseload Interaction						
Intercept	–2.09	.107	— ***	–1.54	.078	— ***
Caseload pressure	.018	.007	1.018**	.024	.008	1.024**
Trial	–.342	.069	.710***	–3.866	.144	.021***
Trial × caseload	–.025	.005	.975***	–.026	.016	.974
Race/Racial Composition Interaction						
Intercept	–2.09	.105	— ***	–1.54	.070	— ***
%Black	–.005	.006	.995	.010	.005	1.010
Black	–.289	.037	.749***	–.373	.036	.689***
Black × %Black	–.007	.003	.993*	.001	.003	1.001
Hispanic	–.196	.042	.822***	–.402	.041	.669***
Hispanic × %Black	–.013	.004	.987**	–.008	.003	.992*
Race/Politics Interaction						
Intercept	–2.09	.106	— ***	–1.54	.073	— ***
Liberalism	.010	.004	1.011**	.002	.004	1.002
Black	–.300	.038	.741***	–.369	.035	.692***
Black × Liberalism	.004	.002	1.004	.001	.002	1.001
Hispanic	–.188	.044	.829***	–.401	.038	.669***
Hispanic × Liberalism	.000	.003	1.000	–.004	.002	.996
Race/SES Interaction						
Intercept	–2.09	.107	— ***	–1.54	.078	— ***
Socioeconomic disadvantage	–.097	.032	.908**	–.039	.035	.962
Black	–.306	.038	.736***	–.368	.035	.692***
Black × SES	–.037	.018	.964*	.003	.018	1.003
Hispanic	–.223	.042	.800***	–.397	.037	.672***
Hispanic × SES	–.083	.018	.920***	.033	.018	1.034

*p = .05; **p = .01; ***p = .001.

Both black and Hispanic offenders are less likely to receive downward departures in districts with large black populations, and Hispanics are also

less likely to receive substantial assistance in these contexts.[21] A 1-standard-deviation increase in percent black additionally reduces the odds of downward departure for black defendants by a factor of .92. For Hispanics, an equivalent change reduces the odds by an additional factor of .87. This finding offers some evidence for racial threat perspectives that emphasize increased punishment for minority offenders in threatening contexts. Little evidence was uncovered for the overall conditioning influence of political context, although the interaction between black and liberalism just failed to reach statistical significance ($p = .06$), which suggests that racial disparity in downward departure may be slightly mitigated in more liberal districts. Future research is needed, however, to substantiate this possibility.

Evidence for the importance of economic conditions was much stronger, which suggests that socioeconomic disadvantage substantially exacerbates racial disparity in downward departures. A 1-standard-deviation increase in disadvantage additionally reduces the negative odds of downward departure for black offenders by .94 and for Hispanics by a factor of .87. Overall, these results suggest that racial disparities in downward departures are more pronounced in districts with higher socioeconomic disadvantage and larger minority populations. Judicial departure decisions seem to be embedded in local court contexts that significantly condition the effects of individual considerations at sentencing. Notably, however, these influences are most pronounced for discretionary departures meted out by federal judges rather than for substantial assistance decisions controlled by U.S. attorneys.

DISCUSSION

The federal criminal justice system applies a single set of federal statutes that are governed by uniform rules of procedure and enforced through a complex but identical system of sentencing presumptions. However, it does so in the face of the full diversity that characterizes the people, culture, and politics of the United States. The legal contours of federal sentencing, therefore, are likely to be shaped by district-specific social environments. The findings from this study are consonant with that notion. Federal courts differ in their propensity to grant downward departures, and they also differ in the weight attached to key predictors of those departure decisions (propositions 1 and 2). These findings support the

21. Models that examine the influence of percent Hispanic for the ethnicity interaction could not be reliably estimated because of collinearity between percent Hispanic and other predictors like court size and caseload pressure. We therefore use percent black to represent racial threat dynamics in the district for both black and Hispanic offenders although we recognize this is an imperfect measure.

view that district courts vary in the degree to which their organizational cultures tolerate or even encourage Guidelines departures. Although court size did not influence the likelihood of departure, it did affect the magnitude of the discount for substantial assistance departures (proposition 3). The absence of stronger effects for court size, as found in some prior work on state systems (e.g., Johnson, 2005), may reflect the fact that federal court districts are geographically much larger than county court jurisdictions. As such, common differences tied to court size at the state level, such as urbanization, may not easily translate to the federal court community context. Other dynamics of court size, such as the familiarity and stability of court actor social networks and interorganizational relations at the federal level, should be explored in future work.

We found support for the organizational efficiency hypothesis in that caseload pressure significantly increased the probability of both types of downward departure (proposition 4). High caseloads were also associated with slightly shorter downward departures. As expected, trial convictions were negatively associated with both types of departure, with profound consequences for the receipt of substantial assistance. For downward departures, the trial penalty was exacerbated by the caseload pressure of the court (proposition 5). Overall, these results support arguments by Dixon (1995), Engen and Steen (2000), and others and provide strong support for the importance of organizational efficiency concerns as practical constraints that influence downward departures in federal district courts. The effects of trial conviction on departure chances also may suggest the value of guilty pleas for uncertainty reduction regarding convictions and projected sentencing outcomes, especially for federal prosecutors.

Our findings also speak to recent calls for more attention to the role of politics in criminal punishment (e.g., Garland, 1990; Helms and Jacobs, 2002; Jacobs, Carmichael, and Kent, 2005). The political context of federal districts significantly influences judicial use of downward departures, with more politically liberal districts being more likely to grant these departures (proposition 6). This finding is consistent with the interpretation that court community participants' definitions of focal concerns in sentencing are at least partially shaped by the ideological culture of their surrounding district-level political environments. It may also suggest that judicially imposed downward departures are subject to greater political influences than prosecutor-controlled use of substantial assistance, which provides an interesting avenue for future research. We also found some limited support for the economic threat hypothesis in proposition 7. Judges in more disadvantaged districts were less likely to use downward departures, although these contexts did not significantly influence the use of substantial assistance or departure lengths.

Our findings regarding the direct and interactive effects of race and ethnicity were particularly interesting. Consistent with proposition 8, black and Hispanic offenders were less likely to receive both substantial assistance and other downward departures compared with whites, and they generally received slightly shorter sentencing discounts. These findings paint an overall picture of minority disadvantage in the application of downward departures and suggest that federal guidelines circumvention may contribute to racial and ethnic disparities in federal sentencing. These results comport with contemporary theorizing in focal concerns, causal attribution, and racial threat perspectives that emphasize the importance of racialized assessments of offender dangerousness and/or culpability. Our results also suggest that racial dynamics are operative at the district level. Individual-level racial and ethnic effects were exacerbated in socioeconomically disadvantaged districts and in districts with larger minority populations. These findings were manifest for judicially imposed downward departures but not for substantial assistance, which offers selective support for propositions 8 and 9.

Additional Insights and Caveats

Although the current results highlight several ways that departure provisions vary across contexts, it is important to recognize that these analyses capture but a single mechanism through which district court communities can tailor federal punishments. The qualitative work we alluded to earlier suggests that the preferred method of Guidelines circumvention may vary by district and in ways not always captured by quantitative data. Some districts readily employed judicial (5K2) downward departures, and others relied heavily on substantial assistance (5K1.1) motions; still others, however, used alternative methods to reach similar substantive outcomes. Specifically, Rule 35(b) of the Federal Criminal Rules allows the government to move for a sentence reduction for substantial assistance *after* the initial sentencing proceeding. This post hoc resentencing represents a different structural mechanism for getting around the presumptive Guidelines sentence. Unfortunately, data on these resentencings are not reported with sufficient regularity to allow for quantitative analysis (USSC, 2003), but the interviews we conducted revealed that Rule 35 sentences were abundant in one district in our qualitative sample, although they were virtually nonexistent in others. A federal public defender from that district explained, "there're two avenues to make somebody's sentence go down. If you look at the Rule 35's, we'll lead the country. The reason being is we don't let people cooperate before they plead guilty . . . the ultimate reduction in sentence is higher than most places in the country, but it's done with a different vehicle, not 5K1, but through Rule 35." Because different districts employ varying methods for circumventing the Guidelines, our

comparison of types of departures, although informative, underestimates the full variation that occurs in federal sentencing practices (see Farabee, 1998; Richman, 1998).

Districts that have low overall departure rates may invoke "hidden departures," such as those associated with charge or fact bargaining practices, to achieve Guidelines circumvention (Schulhofer and Nagel, 1997). As the USSC has explicitly acknowledged, "There are many different ways in which similar sentencing outcomes below those prescribed by a strict application of the sentencing guidelines can be achieved" (USSC, 2003: 70). For example, an assistant U.S. attorney in one district told us, "What [judges are] doing is not so much downward departures. It's the adjustments within the range—not getting the full [monetary] loss, things that aren't even identified by the parties as a dispute. It's safer from the judge's perspective to trim from the guidelines. You don't have to come up with a downward departure rationale." The process of "trimming" from the Guidelines is difficult to capture in quantitative analyses of sentencing practices because these concessions are not formally recorded as part of the punishment process. Such insights highlight the use of sensitizing quantitative findings with qualitative work, and they offer an important caveat for the current conclusions: Our results clearly indicate that reliance on formal departure mechanisms varies dramatically across district courts, but they cannot explicitly address how the use of charging practices or other "hidden" mechanisms for crafting sentencing outcomes offset or amplify these differences. It is imperative for future research to address these additional mechanisms of Guidelines circumvention to elucidate the full subtleties and complexities of the federal punishment process.

Future work is also needed to evaluate the impact of departmental policies of U.S. attorney's offices on variations in federal punishments. Additional research that examines jurisdictional variations in the reasons for and standards of downward departures would be invaluable (e.g., Hofer, 2007). Almost half of nonsubstantial assistance departures are supported by the prosecution (USSC, 2003: 46). Research that examines distinctions among downward departures for government-initiated reasons (e.g., early plea, deportation, procedural waivers, and fast track) versus downward departures that are clearly judge-initiated (e.g., family ties, aberrant behavior, as well as mental and emotional conditions) would advance our understanding of the federal guidelines circumvention and offer an important opportunity to parcel the influence of prosecutorial and judicial discretion in the production of federal guidelines departures. The current research attempts to provide a foundation for such future endeavors.

CONCLUSION

In their evaluation of the federal sentencing guidelines in two districts, Lacasse and Payne (1999: 268) concluded that their results "point to systematic differences among district courts," which led them to call for "analysis of differences in practices across district courts" (Lacasse and Payne, 1999: 268). The current research answers this call for additional scholarship on interjurisdictional variation in punishment by examining the use of federal departure provisions across district court environments. It offers the first multilevel study of federal guidelines circumvention and sheds new light on the role Guidelines departures play in jurisdictional variation in sentencing disparities across court contexts.

This study has some consequential limitations that require acknowledgment. First, we lack data on earlier stages of case processing, such as arrest and charging decisions that almost certainly affect final punishment dispositions (Bushway and Piehl, 2007; Piehl and Bushway, 2007). Important selection biases may be involved in these earlier decisions that are not captured in the current analyses. These biases may well vary by district, with individual offender characteristics influencing federal charging practices in ways that differentially expose defendants to more or less serious Guidelines ranges. These earlier decisions ultimately may influence the relative likelihood of receiving a downward Guidelines departure. Unfortunately, current data limitations preclude examination of such scenarios. Our analysis also cannot capture important selection effects that may influence our estimates of departure magnitudes. We elected not to include a selection bias correction factor in our models of departure length because of problematic levels of multicollinearity. Our estimates for departure length outcomes, therefore, are not corrected for this potential bias and should be judged accordingly (see Bushway, Johnson, and Slocum, 2007 for a useful discussion of such bias). We also lack data on several potentially important predictors of sentencing, including offender characteristics, like family background and employment history, measures of strength of evidence, and judge characteristics. The latter two characteristics may be particularly important given that they have been shown to influence prosecutorial decision making (e.g., Albonetti, 1987) and sentencing (e.g., Johnson, 2006) in other contexts. Finally, it is important to recognize that our quantitative analyses do not capture the types of alterative mechanisms for circumventing federal guidelines recommendations identified in our qualitative interview data. Many of these limitations echo the sentiments of Wellford (2007:400), who recently opined, "Our understanding of sentencing has been limited by what is available from the sentencing database." Qualitative research can begin to identify other

important sentencing considerations, but the next step that must be taken is to collect additional information on these often-overlooked influences.

With these limitations in mind, our overall findings indicate that individual-level case and offender factors predict departures most strongly, but substantial interdistrict variation exists in the probabilities of both substantial assistance and other downward departures. This between-court variation is in part explainable by organizational characteristics, like caseload pressure, and by environmental considerations, such as racial composition and political milieu. Importantly, trial penalties and racial and ethnic disparities in departures are also conditioned in part by the aggregate federal court contexts.

Given the landmark decisions in *U.S. v. Booker/Fanfan* (2005), the future of federal criminal sentencing remains uncertain (Frase, 2007). This decision transformed the federal guidelines into an advisory rather than a mandatory sentencing schema. Although both defendants and the government maintain the power to appeal federal sentences, the standard of review now relies on the reasonableness of the sentence rather than on the correct application of the Guidelines. This change has the potential to alter patterns of Guidelines circumvention significantly in coming years (Hofer, 2007; USSC, 2006). Thus, the issue of interdistrict variation in departures and their role in producing unwarranted sentencing disparities will likely become even more important.[22]

As a matter of policy, it is difficult to assess the degree to which departures from the Guidelines and variation between courts in such departures constitute warranted versus unwarranted disparities. That is, departures may well be necessary to ensure the fair and equal treatment of offenders who differ in ways not accounted for by the Guidelines. Guidelines and departures from them are a major example of the dilemma between formal and substantive rationality in sentencing described by Savelsberg (1992) and others. Substantial assistance and other downward departures may be necessary for federal court participants to avoid meting out what they see as inappropriately severe Guidelines sentences to offenders whom they see as less blameworthy or less dangerous or whose situations present special practical consequences. Furthermore, definitions of blameworthiness, community protection, and practicalities vary among courts and court participants. However, the opportunity to depart from the

22. Two recent rulings by the Supreme Court illustrate the uncertainty surrounding federal sentencing practices and standards for Guidelines departures. *Rita v. United States* (2007) established a nonbinding presumption of reasonableness for sentences falling within advisory Guidelines ranges. *Kimbrough v. United States* (2007), however, established that federal judges may consider the disparity between the Guidelines treatment of crack and powder cocaine offenses as a reason for sentencing offenders below the advisory Guidelines ranges.

Guidelines also reintroduces opportunities for unwarranted sentencing disparities to emerge and raises the specter of potentially unfair treatment before the law. Our findings here suggest that interdistrict disparities may be linked to the structural characteristics of different federal court communities and to the ways they are embedded in their surrounding sociopolitical environments.

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APPENDIX. THE FEDERAL SENTENCING GUIDELINES GRID

Sentencing Table (in months of imprisonment)

SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B	10	6-12	8-14	10-16	15-21	21-27	24-30
Zone C	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
Zone D	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life