

SOCIAL CONTEXT AND PROSECUTORIAL CHARGING DECISIONS: A
MULTILEVEL ANALYSIS OF CASE- AND COUNTY-LEVEL FACTORS

By

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To the Faculty of Washington State University:

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Chair

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Abstract

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Researchers have recently recognized the importance of social context for developing a more complete understanding of the sentencing process where community characteristics help to account for variation in sentencing practices from one legal jurisdiction to the next. Similar developments, however, have been nearly absent in the study of prosecutorial decision making. This is particularly important in light of recent sentencing reforms (e.g., sentencing guidelines) that have essentially acted to reduce judicial discretion while simultaneously increasing prosecutorial discretion. Given the fact that prosecutors have the authority to determine whether defendants will face criminal charges, what those charges will be, the number of charges to pursue, and whether charges will be discontinued, it is critical to expand our understanding of how social context might influence not only judicial discretion, but also prosecutorial discretion.

To accomplish this task, the current research has identified several connections between prosecutorial decision making and community context. Each connection was derived from existing theoretical frameworks, including racial and economic threat theories, the crime control hypothesis, the organizational efficiency hypothesis, the political conservatism hypothesis, and the southern subculture of punitiveness hypothesis. The potential links between prosecutorial discretion and community context were tested

using a sample of 15,669 felony defendants processed in 39 of the nation's 75 largest counties; specific measures of community context were provided by a county-level data set with relevant information for each of the 39 jurisdictions. The results of hierarchical generalized linear models indicate that an important prosecutorial outcome—case dismissal—varies across the counties included in the analysis and community context is, in fact, important for understanding this variation. Theoretical, research, and policy implications of the current findings are discussed at length.

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Dedication

This dissertation is dedicated to my loving and supportive wife Cortney.

CHAPTER ONE

INTRODUCTION

Prior to the sentencing reforms that began to emerge in the mid-1970s, the criminal justice system relied predominantly on the use of indeterminate sentencing (see Cullen & Gilbert, 1982; Friedman, 1993; Rothman, 1980; Walker, 1993) where judges sentenced offenders to a range of time in prison with a minimum and maximum length that often varied substantially between individuals. Once the minimum time was served, the fate of offenders was left to parole boards who decided, with considerable discretion, when inmates were prepared to re-enter the community (for an historical account of parole boards, see Rothman, 1980). The significant discretion afforded judges in the sentencing decision and parole boards in the release decision was a key component of the correctional system for most of the 20 century (Cullen & Gilbert, 1982; Cullen & Gendreau, 2000). During this time, the guiding correctional philosophy was that of rehabilitation, and successfully changing law-breakers into law-abiders was considered a process that varied greatly from one offender to the next (Rothman, 1980). The use of indeterminate sentences provided the correctional system with the time flexibility necessary to rehabilitate offenders who were believed to commit crime for a variety of different biological, psychological, and environmental reasons (Rothman, 1980; Friedman, 1993; Cullen & Gilbert, 1982).

In the mid-1970s, the rehabilitative ideal and its reliance on the indeterminate sentence came under heavy fire from both conservative and liberal critics (Cullen & Gendreau, 2000). Liberals, specifically those subscribing to the equity-oriented justice

model, viewed the sentencing process as providing too much discretion to judges and parole boards who abused their power in seemingly arbitrary and often discriminatory ways. Critics argued that lower class and minority offenders often served longer sentences than similarly situated middle- and upper-class whites (Cullen & Gilbert, 1982; Walker, 1993). Conservatives, on the other hand, believed that the excessive discretion possessed by judges and parole boards resulted in overly lenient treatment of offenders who rarely served their full terms in prison. In the end, liberals' general distrust in the government to benevolently and fairly rehabilitate offenders, combined with conservatives' general belief that the system was too lenient, led to the virtual abandonment of rehabilitation as the guiding correctional philosophy, and of particular interest, to the abandonment of indeterminate sentencing as an important feature of court outcomes (Cullen & Gilbert, 1982; Cullen & Gendreau, 2000; Friedman, 1993; Spohn, 2000; Walker, 1993). In due course, sentencing reforms brought about determinate sentencing, the specification of statutory sentencing guidelines, and a variety of mandatory sentences which promised not only fair and equal treatment as sought by the justice model but also harsher sentences to satisfy conservatives. In the end, judicial discretion at the sentencing stage was substantially curtailed by a variety of statutes and detailed guidelines specifying the length of time for which offenders could be incarcerated.

The pervasive reform to sentencing policies has attracted a great deal of public attention and, as a result, scholars have shifted much of their focus to the sentencing stage of the criminal justice process. Essentially, researchers were interested in whether or not equitable sanctions had actually been achieved by the introduction of the various sentencing reforms. Reviews of this now substantial body of literature (e.g., Spohn, 2000;

Zatz, 2000) indicate that certain disparities, particularly with regard to race and ethnicity, have become far less pronounced under guideline-based systems. Despite this apparent improvement in the equity of the sentencing process, researchers have learned that the direct or overt influences of extralegal factors have in many cases evolved into more subtle and discreet forms (see Zatz, 2000 for a discussion). Consequently, researchers testing for direct effects of age, race, and sex on sentencing decisions may discover the absence of a relationship, or at the very least inconsistent findings (e.g., Gibson, 1978; Klein, Petersilia, and Turner, 1990; Kramer & Ulmer, 1996; Pratt, 1998). To better understand the current dynamic between extralegal factors and sentencing, recent empirical work has recognized the importance of testing for more subtle indirect and interaction effects in addition to overt direct effects (e.g., Albonetti, 1997; Crawford, Chiricos, & Kleck, 1998; Dixon, 1995; Kramer & Ulmer, 1996; Steffensmeier, Ulmer, & Kramer, 1998; Spohn, DeLone, & Spears, 1998; Spohn & Spears, 2000; Ulmer, 1997; Walsh, 1987; Wooldredge, 1998). Even more recent research (Britt, 2000; Fearn, 2005; Kautt, 2002; Ulmer & Johnson, 2004) demonstrates the importance of also considering the social context in which sentencing decisions are made.

THE SOCIAL CONTEXT OF SENTENCING DECISIONS

More than two decades ago researchers began to recognize the importance of considering how the social context of a community might influence judicial decision making, particularly with regard to sentencing outcomes (e.g., Myers & Talarico, 1986, 1987; Peterson & Hagan 1984). Researchers have drawn our attention to the possible

influence of the racial composition, racial income inequality, age structure, unemployment rates, and crime rates of the communities where judges operate (Crawford, Chirocos, & Kleck, 1998; Kramer & Steffensmeier, 1993; Myers & Talarico, 1987; Steffensmeier, Kramer, & Streifel, 1993). For example, judges working in high crime communities may sentence offenders to lengthier stays in jail and/or prison as compared to judges working in communities with little crime. Along these same lines, judges may sentence black men more harshly than white men in communities with higher crime rates due to the relatively prevalent stereotype of the black male criminal (see Russell, 1998; Steffensmeier, Ulmer, & Kramer, 1998 for a discussion). Myers and Talarico's (1987) work as well as that of others (Crawford, Chirocos, & Kleck, 1998; Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993) have provided initial support for this hypothesis.

Nevertheless, much of the earlier research focusing on the social context of court decision making was limited by the small number of jurisdictions explored. For example, Ulmer and Kramer (1996) studied judicial decision making in three different jurisdictions, as did Eisenstein and Jacob (1977). These and similar studies (e.g., Eisenstein, Flemming, & Nardulli, 1988; Dixon, 1995) are certainly beneficial in that they provided in-depth and insightful analyses, though they lack a larger and more representative sample required to make broader generalizations with confidence. Further, they do not tell us, specifically, which aspects of the community context influence sentencing (i.e., they are unable to provide direct tests between community-level factors and individual case-level factors). Instead, these studies simply told us whether or not the sentencing process appeared to differ across the few communities examined. This was generally accomplished by

including a dummy variable for each jurisdiction included in the analysis or by simply running separate models for each jurisdiction (see Fearn, 2005 for a discussion).

Other studies (e.g., Crawford, Chirocos, & Kleck, 1998; Kramer & Steffensmeier, 1993; Myers & Talarico, 1987; Steffensmeier, Kramer, & Streifel, 1993) have examined the direct influence of social context on individual cases across a larger number of jurisdictions; while these studies represent an improvement over earlier work, they also suffer from some important limitations. For example, they failed to account for the hierarchical structure of the data being analyzed (e.g., individual cases nested with jurisdictions). Their analyses were conducted at a single level (as is the case with OLS and logistic regression techniques) despite the measurement of variables at multiple levels (some at the community-level and others at the individual case-level); this type of analysis can lead to inferential problems such as the ecological fallacy that call into question the findings of the research (see, Bryk & Raudenbush, 2002 for an explanation). Further, these studies are unable to tell us how contextual factors, such as the crime rate or racial composition of the community, differentially influence sentencing outcomes within individual communities due to the pooling of cases across jurisdictions (see Britt, 2000 for a discussion). In sum, the small body of earlier research has certainly contributed to our understanding of criminal sentencing, yet statistical shortcomings and methodological limitations have left several important questions yet to be answered in a convincing way.

Only recently have advances in the sentencing literature begun to address systematically the underdeveloped knowledge of how and why the social context of communities may influence or condition judicial sentencing decisions. A handful of researchers (Britt, 2000; Crow & Johnson, 2008; Fearn, 2005; Kautt, 2002; Ulmer &

Johnson, 2004; Weidner, Frase, & Pardoe, 2004; Weidner, Frase, & Schultz, 2005) have conducted more advanced analyses appropriate for multilevel or nested data structures. Using hierarchical linear and generalized linear modeling (HLM and HGLM), this latest wave of research is able to tell us whether or not sentencing outcomes vary from one jurisdiction to the next and, even more importantly, *which* community contextual factors, specifically, are responsible for this variation. Even further, the latest sentencing research is able to identify whether or not legal and extralegal case factors (such as crime seriousness, offender prior record, offender race, offender sex, and so on) operate differently from one jurisdiction to the next, and whether or not these differences can be explained by the broader community context (see Britt, 2000). All of these considerations mark powerful advances in the sentencing literature and further our understanding of how community conditions influence judicial decisions at the sentencing stage.

THE INFLUENCE OF SENTENCING REFORMS ON PROSECUTORIAL DISCRETION

One consequence of modern sentencing reforms is that researchers have become somewhat preoccupied with studying the sentencing stage of the criminal justice process, with much less emphasis being placed on earlier stages (e.g., arrest, pretrial release, prosecution). Given the powerful changes to the landscape of criminal sentencing, it is quite reasonable that researchers quickly moved to assess the new methods by which equity was being sought. The sentencing stage is also a formal and highly visible aspect of the courtroom process (see Spohn, Gruhl, & Welch, 1987; Walker, 1993) which remains

open to public scrutiny and, in a sense, represents the state's final outcome in its effort to produce justice. Moreover, the sentencing decision summarizes the fate of criminal offenders and raises questions about whether or not the end result was, in fact, just. Thus, studying sentence length and incarceration decisions is certainly of great contemporary importance given the dramatic changes made to the judicial process in recent decades, and will undoubtedly remain an interesting subject matter to many researchers for years to come.¹

The importance of fully understanding judicial sentencing decisions cannot be understated, though an equally if not more important issue surrounds *prosecutorial* decision making. Less visible prosecutorial decisions (e.g., the decision to prosecute, the decision to carry charges forward in the post-indictment phase) may attract less attention than highly visible sentencing outcomes, yet such decisions are paramount in defining an offender's experience within the criminal justice system. Moreover, the already prominent role of the prosecutor has recently become even more pronounced in the criminal justice process. This is due to a second, but unintended, consequence of modern sentencing reforms—the “hydraulic displacement” of discretion from judges to prosecutors (Albonetti, 1997; Engen & Steen, 2000; Free, 2001, 2002; Knapp, 1987; Ulmer, 1997). Reformers seeking equal justice for all offenders—irrespective their age, race, sex, class, or socioeconomic status—realized that judges possessed substantial discretion in their ability to sentence. This discretion was viewed as a clear threat to equal treatment since any biases operating in the court setting could easily color judicial decisions, resulting in discriminatory or disparate practices. Taking aim to reduce judicial discretion, then, was a

¹ It should be noted that a recent Supreme Court decision overturned the mandatory nature of the federal sentencing guidelines, redefining their status as only an advisory tool for the courts (for a discussion of this change, see Hofer, 2007).

seemingly logical solution to the perceived problem of unfair and/or overly lenient sanctions.

The sentencing reforms that followed, however, failed to address the inevitable shift of discretion from judges to prosecutors (Engen & Steen, 2000; McCoy, 1984; Meithe, 1987; Nagel & Schulhofer, 1992; Tonry, 1996). More specifically, many states adopted sentencing guidelines, mandatory minimums, or some variation of a “three strikes” statute where the type and severity of sanctions would be primarily determined by two factors: (1) the specific charge for which an offender is convicted and (2) the offender’s prior criminal record. As a result, while judges working under these conditions possess considerably less control over sentencing outcomes, prosecutors possess considerably more control over the fate of offenders passing through the criminal justice system. Prosecutors dictate whether defendants will be charged, the number of charges to be filed, what they will be charged for, and whether or not a plea bargain will be offered to the defendant. All of these decisions are made with the foreknowledge of sentencing guidelines and relevant mandatory sentences, giving prosecutors the ability to fit each case to the sentence they desire. Once an offender progresses to the sentencing stage, the judge is generally limited to assigning a predefined sentence based on the charges and the defendant’s criminal history. In the end, prosecutors are left with substantial control over sentencing outcomes and, in effect, have the ability to negate or subvert legislative efforts to regulate the sentencing process.

Engen and Steen (2000) provided empirical evidence that sentencing reforms have, in fact, been partially undermined by subsequent changes in prosecutorial charging decisions. Their research found significant changes in the severity of charges following

each observed reform in the relevant sentencing laws. Their findings suggest that prosecutors essentially adjusted charges to achieve the sentence length they deemed appropriate as opposed to simply charging offenders with the crimes they committed. These findings highlight the importance of studying prosecutorial decision making rather than concentrating efforts too heavily upon the sentencing stage. As noted by Engen and Steen (2000):

One implication of this finding is that if those charging decisions and adaptations are related to offenders' status characteristics, such as sex, race, or ethnicity, the effects of those characteristics on punishment may be underestimated by research that focuses exclusively on the sentencing stage. (p. 1387)

Consequently, researchers and practitioners who gauge the level of success attained in the equal treatment of offenders by studying sentencing outcomes may be misinformed in the absence of information about earlier stages in the criminal justice process.

CONSIDERING THE SOCIAL CONTEXT OF PROSECUTORIAL DECISIONS

Prosecutors' ability to undermine sentencing reforms should be no small concern to those seeking equity in the criminal justice system. With a heightened focus on criminal sentencing, researchers have begun to consider the importance of social context on judicial decision making; unfortunately, similar developments are nearly absent from the study of prosecutorial decision making (for a recent exception, see Ulmer, Kurlychek, & Kramer, 2007). Essentially, healthy developments have continued to emerge from the more dominant sentencing literature while other, potentially more important, areas of court

research have remained underdeveloped. For example, a recent review by Free (2002) noted the absence of research on the influence of external factors (those beyond the courtroom environment) on courtroom actors, particularly prosecutors. Considering that initial research demonstrates variation in judges' sentencing decisions across counties (i.e., similar offenders receive different sentences from one jurisdiction to the next) as well as significant variation in the influence of legal and extralegal factors on sentencing decisions (e.g., race may influence sentencing outcomes in one jurisdiction while having no effect in another), it is important to study this dynamic in the context of prosecutorial decision making as well.

Similar to judges, most prosecutors do not operate in complete isolation from the communities wherein they serve. Consequently, there are several plausible reasons that explain *why* prosecutors might be influenced by their external communities, as well as specifically *how* they might be influenced. To understand why prosecutors might be influenced by their respective communities, it is helpful to consider the nature of their position. First, the overwhelming majority of local prosecutors are elected officials and, as a result, the very essence of their local government position requires them to consider the will of the people who elect them to public office (Gordon & Huber, 2002). Thus, prosecutorial decisions are filtered through an understanding of various public interests and concerns, providing a clear avenue for the outside community to influence their decision making and, in turn, the decision making of deputy and assistant prosecutors. Second, it is likely that prosecutors reside within the same communities they serve, providing an additional avenue for external factors to influence their decisions. As community members, prosecutors may develop their own understanding of local problems and

conditions, and this too may influence how they perform their work. In the end, each prosecutorial decision is made within the context of a larger community, and given the public nature of the position, it is plausible indeed that community factors might influence these decisions.

Since prosecutorial decision making is open to broader community influences, it is important to consider specifically how these decisions may be affected. Several existing macro-level theories may shed light on this issue. For example, *racial threat theory* (see Blalock, 1967; Britt, 2000; Myers & Talarico, 1987) suggests that racial minorities are perceived as more dangerous, threatening, and criminally prone than whites, and as a consequence communities with higher proportions of racial minorities will respond more punitively to minority crime. When applied to prosecutorial decision making, this hypothesis suggests that prosecutors will treat minorities more harshly (through charging and plea bargaining decisions) in communities where they represent a larger proportion of the population. Likewise, *economic threat theory* suggests that the criminal justice system will respond more harshly toward criminals in areas facing poor economic conditions. This is based on the view that conditions of economic deprivation will increase the size of the criminal population (Britt, 2000; Jacobs, 1979; Liska, Lawrence, & Benson, 1981; Myers & Talarico, 1987). In such locations, prosecutors may be more inclined to charge criminal suspects heavily and less inclined to offer plea bargains entailing dropped charges.

For these and other theoretical reasons to be elaborated in the following chapter, it is plausible that prosecutors will be influenced by the social context of the communities in which they work. As a result, research emphasizing the effects of case-level factors such

as defendant age, race, sex, criminal history, and crime seriousness may provide a useful but incomplete picture of prosecutorial decision making. On the other hand, a more accurate depiction of prosecutorial decisions will likely include characteristics of the outside community in addition to defendant and case characteristics.

THE CURRENT FOCUS

Given the importance of prosecutorial decisions and the expansion of prosecutorial discretion as a result of sentencing reforms, the purpose of the current research is to extend recent developments in the sentencing literature—namely, the simultaneous consideration of case- *and* community-level factors—to the study of prosecutorial decision making. A more complete approach to the study of legal decision making should not only consider the influence of case and defendant characteristics, but also the influence of the characteristics of the communities in which these decisions are made (e.g., Britt, 2000; Fearn, 2005; Free, 2001; 2002; Kautt, 2002; Ulmer & Johnson, 2004). It is this gap in the empirical literature that the current research attempts to fill.

To accomplish this goal, two critical issues will be addressed. First, this study will determine whether or not community context influences the likelihood of a key prosecutorial decision—the decision to dismiss criminal charges during the post-indictment phase—after controlling for important case and defendant characteristics. This decision has powerful effects on the final outcome of the criminal justice process; thus, understanding whether or not external community factors influence this decision is of particular importance. Second, this study will determine whether or not key community

factors condition the effects of case and defendant characteristics on prosecutorial decisions, with particular attention being directed toward defendant race. This will help identify the conditions under which certain legal and extralegal factors have more or less influence over prosecutorial decisions. Addressing both of these issues will significantly improve our understanding of the dynamics underlying key prosecutorial decisions.

THE PLAN OF THE DISSERTATION

Given the objectives of the present study, Chapter 2 discusses what is currently known about prosecutorial decision making at the case level and draws theoretical links between these decisions and the communities in which they are made. More specifically, theoretical and empirical developments surrounding the influence of case, defendant, and victim characteristics on prosecutorial decision making are discussed. Next, several theoretical perspectives are introduced to explain how community characteristics might affect prosecutors' likelihood to charge criminal cases. In accordance with theoretical and empirical developments, several hypotheses are proposed.

Chapter 3 provides a detailed explanation of the methodological and statistical approach to the current research. Specifically, this chapter addresses the sample used for analysis, the measurements developed for the dependent, independent, and control variables, and the specific research strategy employed for accomplishing the objectives of the study. Chapter 4 presents the results of the analysis in two distinct stages. First, the direct and indirect effects of community contextual factors on prosecutorial decision making will be reported. Second, the cross-level interaction effects between community

contextual factors and defendant characteristics will be presented. Finally, Chapter 5 summarizes the key findings from the analysis, provides a discussion of theoretical and policy implications, and addresses further developments to guide future research.

CHAPTER TWO

THEORETICAL FRAMEWORK

This chapter addresses how case-level theoretical and empirical research has informed our knowledge of prosecutorial discretion (which will guide the present analysis at the case level), and then moves forward to establish important theoretical connections between prosecutorial decision making and community context (which will guide the present analysis at the community or contextual level). In doing so, several case-level theories will be introduced and discussed along with the relevant empirical literature testing their hypotheses. More specifically, the current chapter will discuss Albonetti's (1986, 1987) uncertainty avoidance framework of prosecutorial decision making, which largely implicates legal factors as guiding charging decisions. Next, theoretical frameworks that highlight the potential influence of extralegal factors in prosecutorial decision making will be discussed. Particular attention will be paid to the chivalry/paternalism and racial discrimination hypotheses, which implicate gender and race, respectively, as important predictors of prosecutorial charging decisions. Finally, a *focal concerns perspective* of prosecutorial decision making will be introduced (see Beichner & Spohn, 2005; Spohn, Beichner, & Davis-Frenzel, 2001) and discussed as a more complete view of prosecutorial decision making, implicating the influence of both legal and extralegal factors. Rather than discussing focal concerns theory as a competing framework, the current research shares the position of Curry, Lee, and Rodriguez (2004) who argued that focal concerns theory functions as a broader perspective capable of integrating a variety of narrower theories and hypotheses under a single umbrella.

Once the current case-level theoretical and empirical literature has been reviewed, the remainder of the chapter will establish theoretical links between community factors and the individual charging decisions made by prosecutors, highlighting the need for a contextual analysis of prosecutorial charging. Five specific theoretical frameworks and hypotheses, all of which have been used to explain formal punishment decisions and outcomes, will be introduced. These include the racial threat theory, the economic threat theory, the crime control hypothesis, the organizational efficiency hypothesis, and the punitive attitudes hypothesis. Each of these frameworks will be mapped out and explained in the context of criminal justice decision making, and the related empirical literature will be discussed. Moreover, some of the specific implications for prosecutorial charging decisions will be identified. By establishing a variety of theoretical links between community context and prosecutorial decision making the current chapter will provide the groundwork necessary to inform the present contextual analysis of prosecutorial charging decisions.

CASE-LEVEL THEORETICAL AND EMPIRICAL RESEARCH

Uncertainty Avoidance Theory

Though several perspectives or theoretical frameworks for understanding prosecutorial decision making have emerged in the literature over the past few decades, one of the earlier and more dominant frameworks is the uncertainty avoidance perspective introduced by Albonetti (1986, 1987). Stemming from her earlier work (Albonetti, 1984), Albonetti (1986, 1987) proposed that prosecutors attempt to avoid uncertainty in their

decision making, particularly with regard to the initial screening process and the later decision to continue charges post-indictment. In essence, prosecutors use their substantial discretion to manage and reduce uncertainty in such a way that is favorable to their desired outcome—successful convictions should the cases go to trial (Albonetti, 1986, 1987).

To further clarify the uncertainty avoidance perspective, it is helpful to review the theoretical work underlying its basic supposition (March & Simon, 1958; Thompson, 1976). According to March and Simon (1958), decision makers seek to create rationality in decision making through various structural factors such as standard operating procedures, formal training, a hierarchy of authority, the division of labor, and so on. Given the frequent absence of complete information in many decision making environments (which is required for truly rational choices), these structural factors help to avoid uncertainty and impose what March and Simon (1958) refer to as bounded rationality. As elaborated by Albonetti (1986), decision makers, and particularly prosecutors, develop structures for reducing uncertainty surrounding desirable outcomes. In the end, these structures promote routinized decision making for satisfactorily managing desired case processing outcomes under conditions of scarce resources.

According to Thompson (1976), decision makers operating in highly discretionary situations (such as prosecutors) tend to consider two salient issues: 1) preferences among possible outcomes and 2) beliefs about cause and effect relationships. Each of these key dimensions in decision making is often constrained by various degrees of uncertainty. For example, in the case of prosecutors, the preference among possible outcomes is clearly defined as a successful prosecution or conviction. As Albonetti (1986) pointed out, there is little uncertainty concerning what the preferred outcome is, but more importantly, there

often exists substantial uncertainty in whether or not the desired outcome will be achieved should a case be prosecuted. It is this uncertainty in achieving a successful conviction that prosecutors attempt to minimize. Constraints surrounding cause and effect relationships in the criminal justice system are also characterized by uncertainty. Albonetti (1987) argued that:

Constraints on specifying the cause and effect relations underlying technical operations in the criminal justice system (i.e., case processing) exist owing to either incomplete knowledge of the most appropriate techniques for transforming the raw material of a charge into conviction or the decision maker's inability to control the transformation process itself. (p. 294)

Since prosecutors often rely on the behavior of victims, witnesses, members of the jury, and defense counsel throughout the process of transforming a charge into conviction, ample opportunity arises for uncertainty. Thus, even in the case of an experienced prosecutor who fully understands the technical processes required for bringing about the desired effect (i.e., the transformation of a charge into conviction), unpredictable behavior by others involved in the process introduces uncertainty. Prosecutors attempt to predict the behavior of witnesses, victims, jury members, judges, and defense counsel, yet doing so with perfect accuracy is virtually impossible.

In sum, Albonetti (1986, 1987) has suggested that a primary concern of prosecutors is the removal of uncertainty from their key points of decision making. Moreover, prosecutorial decision making, which often occurs in the absence of complete information (i.e., prosecutors rarely have a full and unbiased understanding of the alleged criminal situation), attempts to achieve a measure of bounded rationality through structural factors

that have proven to provide satisfactory results in the past. Bounded rationality creates a decision making process grounded in routine responses to certain conditions. Thus, when prosecutors are faced with cases clouded by high levels of uncertainty, they will likely use their substantial discretion to dismiss the case or discontinue prosecution. In the end, excessive uncertainty stimulates the basic response of case rejection or dismissal and serves to produce what prosecutors view as “satisficing” (March & Simon, 1958) behavior for achieving acceptable outcomes. Though such behavior may not result in the optimal treatment of each case (e.g., guilty offenders may have their criminal charges dismissed), it creates the necessary conditions for achieving broad administrative goals, particularly the achievement of a high rate of prosecution (Albonetti, 1986).

With uncertainty avoidance at or near the center of prosecutorial decision making, Albonetti (1986, 1987) argued that a variety of legally relevant factors will influence the assessment of convictability. According to this uncertainty reduction perspective, then, evidentiary factors are of primary concern for reducing uncertainty in case processing. For example, if exculpatory evidence is introduced by the defense counsel, prosecutors should be less likely to continue with criminal charges than if no such evidence is present. By its very nature, exculpatory evidence challenges the supposition that a crime did, in fact, occur or that the suspect is actually linked to a particular crime. In the presence of exculpatory evidence, it is usually assumed that an error occurred at the prior stage of police arrest, and in such cases substantial uncertainty about convictability is raised. In contrast, cases accompanied by the presence of corroborative and/or physical evidence reduce uncertainty associated with prosecution and should be more likely to be prosecuted than cases lacking such evidence. Physical evidence is generally considered the strongest form of evidence

for establishing both the existence of a crime and a link between the crime and the defendant.

While evidentiary strength provides a clear avenue for influencing prosecutorial perceptions of uncertainty, managing victims and witnesses provides an additional source of uncertainty surrounding conviction. According to Albonetti (1986), prosecutors should encounter less uncertainty in cases where several witnesses exist than where few if any witnesses are available. Such cases should be more resilient to defense tactics than cases where only a single witness was present or in cases where the victim was the only witness. Moreover, prosecuting attorneys are likely to consider the relationship between the victim and the offender. In cases where the victim and offender are related (e.g., family, friends, acquaintances), significant uncertainty will arise concerning the victim's longevity of commitment to the prosecution of a possible friend or family member. This may be particularly problematic after feelings of victimization, anger, and being wronged diminish over time.

Empirical Status of the Uncertainty Avoidance Theory

To test the assertions of the uncertainty avoidance theory of prosecutorial decision making, Albonetti (1986, 1987) examined the influence of uncertainty on the initial decision to charge a case as well as the later decision to continue charges in the post-indictment phase. In her earlier work, Albonetti (1986) found that the decision to continue criminal charges post-indictment was, in fact, influenced by prosecutorial concerns for avoiding uncertainty. More specifically, legally relevant factors such as the presence of physical evidence increased the likelihood of continued prosecution. Given the legal

relevance of case evidence, its relationship to the decision to continue criminal charges is of little surprise. More interestingly, however, issues surrounding victim and witness management, including the number of witnesses and the defendant/victim relationship, appeared as significant sources of extralegal influence.

Albonetti (1986) reported that alleged offenses between strangers were 9 percent more likely to be prosecuted than alleged offenses between acquaintances. Even further, in cases where only one witness was present or where the victim was the only witness, the likelihood of prosecution decreased by 10 percent. Some factors predicted to reduce uncertainty, however, failed to yield a significant effect on the decision to carry charges forward. For example, the presence of exculpatory or corroborative evidence and whether or not the victim provoked the offense did not appear to influence the decision to discontinue charges. In sum, Albonetti's (1986) work provided initial support for the uncertainty avoidance theory, where important legal (evidentiary strength) and extralegal (victim and witness management) sources of uncertainty demonstrated a significant influence over the post-indictment decision to continue forward with criminal charges (net of other legal and extralegal case and defendant factors).

Furthering support for her theory, Albonetti's (1987) work extended the application of the uncertainty avoidance framework to the initial decision to prosecute offenders. Similar to the findings surrounding the decision to continue charges post-indictment, she found that uncertainty surrounding victims and witnesses significantly influenced the initial decision to charge. Specifically, prosecutors were 64 percent less likely to file charges in cases with one or no witnesses as compared to cases with multiple witnesses, 18 percent more likely to file charges in cases where the victim and offender were strangers as

compared to acquaintances, and 59 percent less likely to file charges in cases where the victim appeared to have provoked the offense. In addition, it was discovered that the presence of exculpatory and corroborative evidence, while failing to influence post-indictment charging in her earlier study (Albonetti, 1986), did significantly influence the initial decision to file criminal charges. The presence of exculpatory evidence decreased the probability of prosecution by 34 percent, while the presence of corroborative evidence increased the probability of prosecution by 15 percent. Thus, Albonetti's (1987) application of the uncertainty avoidance perspective to the initial decision to prosecute provided additional support for her theoretical framework, demonstrating the importance of witness, victim, and evidentiary strength factors for understanding the initial prosecutorial decision to bring criminal charges.

Several additional studies also lend support to the uncertainty avoidance perspective (e.g., Adams & Cutshall, 1987; Baumer, Messner, & Felson, 2000; Beichner & Spohn, 2005; Spears & Spohn, 1997; Spohn & Holleran, 2001; Spohn, Beichner, & Davis-Frenzel, 2001). Spohn and Holleran (2001) found in a study of sexual assault cases that the presence of physical evidence increased the likelihood of prosecution by eight times. Similar results were replicated by Beichner and Spohn (2005), where the presence of physical evidence was again found to influence the decision to charge in sexual assault cases, but the effect was present only in one of the two jurisdictions studied. In a sample of shoplifting cases, Adams and Cutshall (1987) found moderate support for the uncertainty avoidance perspective where prosecutors were increasingly less likely to continue prosecution as the number of witnesses decreased. Moreover, several studies have demonstrated the importance of victim characteristics, such as having provoked the

offense, or having a family or friendship relationship to the offender. For example, Baumer, Messner, and Felson (2000) found that cases where homicide victims reportedly engaged in physical provocation of the offense were significantly less likely to be prosecuted. In addition, cases where victims engaged in disreputable conduct at the time of the offense were less likely to be carried forward by the prosecutor in the post-indictment phase. Both of these issues appear to raise noteworthy uncertainty about the crime itself and/or how the jury might respond should the case reach trial.

In the context of sexual assault, Spohn, Beichner, and Davis-Frenzel (2001) found that victim-related uncertainty also influenced the initial decision to prosecute. Specifically, this team of researchers discovered that risk-taking behavior and questions concerning the victim's moral character significantly reduced the likelihood of prosecution. Further qualitative analysis by the authors revealed that, at least in the area of sexual assault, the victim's credibility is often the key factor in deciding to prosecute. Similar results were found by Spears and Spohn (1997), where questions about the victim's moral character (see also Spohn & Spears, 1996) and risk-taking behavior at the time of the offense were two primary predictors of the prosecutor's decision to file charges. It should be noted, however, that the victim's behavior does not appear to influence prosecutorial charging decisions in all rape cases. Spohn and Holleran (2001) reported that the victim's moral character and her behavior at the time of the incident did not have a significant effect on charging decisions for stranger rapes, but did significantly influence acquaintance rapes. In the case of a stranger rape, there is arguably less doubt about whether or not a crime actually occurred, reducing levels of uncertainty about how a jury would respond. Acquaintance rape differs in that questions arise more easily about

whether or not the incident was consensual, raising levels of prosecutorial uncertainty appreciably.

In sum, Albonetti's (1986, 1987) uncertainty avoidance theory has garnered considerable empirical support. Issues of uncertainty do seem to drive prosecutorial charging decisions, and this is with good reason. As Albonetti (1986, 1987) pointed out, it is widely understood that nearly everywhere prosecutorial performance is evaluated politically on the basis of conviction rates. Thus, criminal cases characterized by high levels of uncertainty pose a significant threat to upward mobility and overall career success. As a result, prosecutors rely on their discretion to dismiss or discontinue cases clouded by uncertainty in an effort to achieve common organizational goals of case management and to project a public image of confidence and success in the courtroom.

The uncertainty avoidance framework certainly provides a useful lens for viewing and understanding prosecutors' decisions, yet it fails to incorporate how and why factors unrelated to uncertainty might influence charging decisions. Albonetti (1986) acknowledged this important shortcoming when she discovered that gender significantly influenced prosecutors' decision to carry charges forward after the indictment stage of the criminal process. Specifically, females were seven percent less likely than males to have their charges carried forward, providing a clear advantage for women. In light of this finding, Albonetti (1986) tested the assertion that gender was related to uncertainty factors which, in turn, reduced the likelihood of prosecution for women. This hypothesis was not supported, however, leading to the conclusion that the influence of gender operates outside the scope of the uncertainty avoidance theory. Moreover, the possible influence of race, which has been discovered to influence prosecutorial decision making (e.g., Adams &

Cutshall, 1987; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Curran, 1983; Myers, 1982; Nagel, Cardascia, & Ross, 1982; see also Free 2001, 2002 for reviews), also operates outside the uncertainty avoidance framework. Consequently, other theoretical perspectives are needed to supplement the incomplete nature of the uncertainty avoidance theory.

Chivalry and Paternalism Hypotheses

To understand why actors of the criminal justice system (e.g., police, prosecutors, or judges) might treat women more leniently than men, earlier scholars looked to the chivalry hypothesis first introduced by Pollak (1950). The general assumption of this perspective is that men are unwilling to inflict harm on women who are generally viewed as in need of male protection (Belknap, 2001; Crew, 1991; Daly & Tonry, 1997; Edwards, 1989; Moulds, 1978; Pollak 1950). Curry, Lee, and Rodriguez (2004) pointed out that traditional stereotypes about women “promulgate a sexist view that women are passive creatures who are physically and emotionally weak compared to men and are therefore dependent on men for their safety and well-being” (p. 322). Given the male-dominated nature of criminal justice occupations, then, ample opportunity arises for the male protection of female offenders, ultimately resulting in more lenient treatment for women as compared to men. In the case of prosecution, specifically, the chivalry hypothesis suggests that prosecutors will be less likely to pursue criminal charges against women as compared to similarly situated men, and when charges are filed the offenses cited will be less serious.

The paternalism hypothesis draws similar conclusions regarding the treatment of women in the criminal justice system, though for slightly different reasons than that of the

chivalry hypothesis. As clarified by Moulds (1981), paternalism suggests that women are childlike, and due to this ascribed status they require protection and are not fully responsible for their actions, even when deemed criminal. Despite the differences between the chivalry and paternalism hypotheses, many contemporary researchers treat them as a single framework for the purpose of analysis, largely due to the similar outcomes predicted by each hypothesis (see Crew, 1991). Both the chivalry and paternalism hypotheses, then, predict that the male-dominated criminal justice system will be less willing to inflict harm on women—whether it is in the form of physical harm or formal punishment through the criminal justice system—as compared to other men.

The chivalry/paternalism hypothesis offers a rather simplistic way of understanding the relatively lenient treatment of females by the criminal justice system, though some scholars have pointed out that understanding chivalry also requires an understanding of gender role compliance (Crew, 1991; Koons-Witt, 2002). More specifically, this perspective argues that women will not receive more lenient treatment “across the board.” Rather, only some women will receive favorable treatment, while others will be treated similarly or possibly even more harshly than men. The key to understanding this phenomenon is grounded in the belief that only women who engage in traditional gender roles will be afforded leniency, while those who violate such roles (e.g., engaging in violent crime, child neglect, or other unfeminine behavior) will not be afforded leniency (Koons-Witt, 2002; Nagel & Hagan, 1982).

Empirical Status of the Chivalry/Paternalism Hypothesis

The majority of the empirical literature examining the chivalry/paternalism

hypothesis has focused on the later stages of the criminal justice process (e.g., sentencing), despite the fact that earlier decisions (filing formal charges, dismissal of charges) are less formally guided, and as a consequence, leave ample room for disparate treatment (Albonetti, 1986). Of the few studies that have examined earlier decision making points, particularly prosecutorial charging decisions, results appear to be rather mixed; some studies found that men and women were treated equally (Albonetti, 1987; Baumer, Messner, & Felson, 2000; Bernstein, Cardascia, & Ross, 1979; Nagel, Cardascia, & Ross, 1982) while others found that women were treated more leniently (Adams & Cutshall, 1987; Albonetti, 1986; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Gruhl, Welch, & Spohn, 1984; Myers, 1982; Spohn & Beichner, 2000; Spohn, Gruhl, & Welch, 1987). Yet other studies have reported that the lenience afforded women was dependent upon whether the initial decision to prosecute or the later decision to dismiss charges was analyzed (e.g., Baumer, Messner, & Felson, 2000).

Albonetti (1986) found that even after controlling for other pertinent defendant and case characteristics (including age, race, type of crime, prior criminal history, and a variety of evidentiary measures), the defendant's sex was a significant predictor of case dismissal in a sample of male and female felons. Due to the possibility of contextual differences in male and female cases, Albonetti (1986) explored the relationship between gender and crime type, as well as gender and evidentiary factors. Her analysis revealed that gender was not related to either of these key variables, thus ruling out the hypothesis that male and female cases were systematically different in character. In the end, Albonetti's (1986) work has provided strong support for the chivalry/paternalism hypothesis. Myers (1982) reported similar results, where women were more likely to have their cases dismissed as

compared to men. This finding held constant across both misdemeanor and felony cases. The strength of the gender/dismissal relationship, however, was much weaker in the sample of felony cases, possibly due to the increased importance of legal factors in more serious criminal cases.

Adams and Cutshall's (1987) study of shoplifting cases produced additional support for the chivalry/paternalism hypothesis. Specifically, their analysis reported a strong relationship between gender and case dismissal, net of important controls. In fact, gender was the third strongest predictor in their model, behind prior criminal history and the number of charges. The leniency afforded women was further demonstrated by the interaction between gender and the value of stolen merchandise. For men, those who stole more valuable items were less likely to have their cases dismissed as compared to those who stole less valuable items. This relationship did not, however, translate to the women in the sample. Women who stole more were no less likely to have their cases dismissed than women who stole less.

Some researchers have found that the relationship between gender and case dismissal was dependent upon the defendant's criminal history. For example, Pope (1976) discovered that women charged with burglary were more likely to have their cases dismissed than similarly situated men, but only when comparing defendants without a prior record. For those men and women who did have a prior criminal record, the gender/dismissal relationship disappeared. Such evidence implies that the chivalry hypothesis may be less straightforward than originally conceived. It is possible, for example, that prosecutors may be less likely to view women through a chivalrous or paternalistic lens due to their criminal status. Having already been formally warned, as

indicated by previous encounters with the criminal justice system, prosecutors may instead view these women as less deserving of protection.

Reports of prosecutorial gender bias have also been discovered by more recent research (e.g., Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Spohn & Spears, 1997). In a sample of felony drug defendants, Barnes and Kingsnorth (1996) tested the relationship between gender and case rejection or dismissal. They found that, with the exception of heroin cases, prosecutors were more likely to reject or dismiss charges against female defendants as compared to male defendants. Spears and Spohn (1997) also discovered evidence of female leniency in a sample of violent felony cases. Despite the expectation that women who commit violent crimes, and thus violate norms of femininity, would not be afforded leniency, results indicated that women were more likely than men to have their charges dismissed. Further analysis revealed that this treatment was reserved for white women and did not extend to African-American women. As pointed out by the researchers, this finding highlights the potential intersection of gender and race in predicting charging decisions. Finally, Baumer, Messner, and Felson (2000) conducted an analysis of homicide cases across 33 large urban counties and discovered that women were more likely than men to have their cases dismissed, even after controlling for several defendant, victim, and case characteristics.

Despite the apparent support for the chivalry/paternalism hypothesis, some studies have reported that prosecutors are inclined to treat men and women equally. In a study of approximately 3,000 criminal defendants charged with a variety of crimes, Nagel, Cardascia, and Ross (1982) found that women were no more or less likely than men to have their cases dismissed by the prosecutor. Although Albonetti (1986) reported that

women were treated more leniently than men when analyzing the post-indictment dismissal decision, this finding was not replicated in a later study of the initial charging decision (Albonetti, 1987). After controlling for important defendant, case, and evidentiary factors, Albonetti (1987) found that women were no more likely than men to have their cases rejected. Baumer, Messner, and Felson (2000) found similar results after studying disparities across multiple stages of the criminal justice system. Women were treated more leniently than men at the post-indictment dismissal decision, yet this same lenience was not extended to women during the initial decision to file criminal charges. These results suggest that prosecutors may not be overly concerned with the chivalrous or paternalistic treatment of women at the initial decision to file charges. Instead, concerns for such considerate treatment may be reserved for the later dismissal decision when prosecutors have become more familiar with the case details and the likelihood of a formal sanction becomes more certain (i.e., dismissals that occur during the post-indictment phase represent the last chance to drop the charges prior to trial).

A few studies have tested the assumption that only women who conform to traditional gender roles are treated more leniently than men (see Belknap, 2001; Bickle & Peterson, 1991; Daly, 1987 for a discussion). For example, Koons-Witt (2002) found that women who adhered to the traditional role of a mother were sentenced more leniently than those women who did not conform to this traditional gender role. Other researchers have also demonstrated the importance of motherhood and marital status in understanding sentencing disparities between men and women (Bickle & Peterson, 1991; Daly, 1987). It should be noted, however, that these studies have examined the effect of gender role compliance in the context of sentencing decisions. To date, little to no research has tested

the influence of gender role compliance in determining the treatment of women during earlier stages of the criminal justice system, particularly prosecutorial charging decisions. As a result, it remains unclear whether prosecutors reserve their chivalrous or paternalistic treatment for those women they perceive to fit the traditional definition of what it means to be a woman.

In sum, the empirical evidence appears to lend overall support to the longstanding chivalry/paternalism hypothesis with regard to prosecutorial charging decisions. A few studies have found that prosecutors treat men and women equally, though the majority of evidence identifies a gender bias leading to more favorable treatment for women (e.g., Adams & Cutshall, 1987; Albonetti, 1986; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Gruhl, Welch, & Spohn, 1984; Myers, 1982; Spohn & Beichner, 2000; Spohn, Gruhl, & Welch, 1987). It also appears that the chivalrous or paternalistic attitudes of prosecutors play a less important role during the initial decision to file charges as compared to the later decision to dismiss charges (see Albonetti, 1986, 1987; Baumer, Messner, & Felson, 2000). It should be noted, however, that the majority of studies have examined a single jurisdiction, limiting the generalizability of the research findings (for an exception, see Baumer, Messner, & Felson, 2000). Thus, more generalizable research is needed to better understand the dynamics between defendant gender and various prosecutorial charging decisions.

Racial Discrimination Thesis

To understand why the criminal justice system may treat racial minorities more harshly than whites, scholars have pointed to the likelihood of racial discrimination (Free,

2001; 2002; Spohn, 2000; Zatz, 1987, 2000). A simple racial discrimination thesis suggests that minorities are punished more severely than similarly situated whites because of prejudice. According to this view, the disparate rates of imprisonment which are commonplace in the United States cannot simply be attributed to the differential involvement of whites and racial/ethnic minorities in crime, as a small group of scholars would contend (e.g., Blumstein, 1982, 1993). Instead, the overrepresentation of minorities in arrest and imprisonment statistics is attributed to the presence of systematic racial discrimination (Mann, 1993). The end result is a criminal justice system characterized by some unjust and oppressive operations targeting minority offenders.

To better understand why criminal justice actors might target minorities for harsher treatment, especially African Americans, Steffensmeier, Ulmer, and Kramer (1998) identified the prevalence of particular racial stereotypes. These researchers argued that many criminal justice actors, to one degree or another, subscribe to a crime-prone stereotype of minorities. According to Gibbs (1982) the focus of this stereotyping centers around young, black, males who are often portrayed by the media as delinquent, crime-prone individuals. Other researchers have suggested that this stereotype is also extended to Hispanic males (see Ulmer & Johnson, 2004). Consequently, the white-, male-dominated criminal justice system is more likely to respond harshly to African Americans, Hispanics, and other minority offenders as compared to white offenders who are viewed as less threatening (Steffensmeier, Ulmer, & Kramer, 1998). Moreover, some scholars suggest that criminal justice actors hold stereotypes of minorities as being less amenable to rehabilitation and more adaptable to the prison environment as compared to whites (Albonetti, 1991; Kramer & Steffensmeier, 1993). These commonly entertained

stereotypes act to justify the harsher treatment of minority offenders, whatever their actual level of dangerousness or threat to society.

Empirical Status of the Racial Discrimination Thesis

The influence of race on the processing of criminal offenders has been a topic of significant debate throughout the recent history of the criminal justice system. Some scholars have argued that racial discrimination is not an accurate characteristic of the criminal justice system (e.g., Wilbanks, 1987). Others have argued the opposite, suggesting that the criminal justice system is entrenched in racial bias, preventing fair treatment for minority offenders (e.g., Mann, 1993). This debate has led to a large body of empirical research testing the racial discrimination thesis. Much of this research has centered around two criminal justice outcomes occurring during the later stages of the criminal justice process—the in/out decision (or the incarceration decision) and the sentence length decision (Demuth, 2003; Free, 2001, Pratt, 1998). The significant amount of discretion afforded prosecutors during the early stages of the criminal justice process, however, highlights the importance of testing the influence of race on prosecutorial charging decisions. For the few studies that have attempted to address this issue, results appear mixed. For example, some researchers have found that race does not influence the decision to prosecute or dismiss a case (e.g., Albonetti, 1986, 1987; Baumer, Messner, & Felson, 2000; Bernstein, Kick, Leung, & Schulz, 1977; Ghali & Chesney-Lind, 1986; Myers, 1982; Spears & Spohn, 1997; Welch, Gruhl, & Spohn, 1984) while others have found that race does in fact influence these decisions (e.g., Adams & Cutshall, 1987; Baumer, Messner, & Felson, 2000; Myers, 1982; Spohn, Gruhl, & Welch, 1987). Further

complicating the issue, some researchers have discovered unexpected race effects where minority defendants were treated more leniently than similarly situated white defendants (e.g., Barnes & Kingsnorth, 1996).

In a sample of shoplifters, Adams and Cutshall (1987) reported a statistically significant relationship between the defendant's race (white vs. African American) and the prosecutor's decision to dismiss the case. White shoplifters were more likely to have their cases dismissed, even after controlling for prior criminal history, the number of charges, the severity of the offense, and other important case factors. Moreover, the researchers found that in cases involving two or more witnesses to the alleged crime, African-American defendants became even less likely than whites to have their cases dismissed. Similarly, Myers' (1982) analysis revealed that African Americans were less likely than whites to have their cases dismissed for misdemeanor charges, but this finding was not replicated for felony charges. These results suggest that racial bias may be more pronounced in less serious cases where increased discretion exists as compared to more serious cases that are more closely monitored by outside interests.

Further supporting the racial discrimination thesis, Spohn, Gruhl, and Welch (1987) found race to be a significant factor in the prosecutors' decision to file criminal charges. Hispanic and African-American male defendants were significantly less likely than white male defendants to have their cases rejected during the initial decision to prosecute. When analyzing the subsequent decision to dismiss criminal charges, however, the researchers discovered that race was not a significant factor. Baumer et al. (2000) also found support for the racial discrimination thesis, but unlike Spohn, Gruhl, and Welch (1987), race was a significant predictor of the later decision to dismiss charges; however, race was not a factor

in the earlier decision to file charges. The opposite findings reported by these researchers may be attributed to methodological differences in the studies. While Baumer et al.'s (2000) analysis was based on criminal cases from 33 jurisdictions across the nation, Spohn et al.'s (1987) analysis was based on a single jurisdiction. As a result, the possibility of unique contextual factors associated with the jurisdiction studied by Spohn et al. (1987) may account for the differing influences of race at different stages of the criminal justice process. Such a possibility once more highlights the need for a contextual analysis of prosecutorial decision making.

A substantial amount of the empirical evidence challenges the idea that racial bias influences prosecutorial charging decisions. Albonetti (1986) reported that race did not influence the prosecutor's decision to dismiss charges, net of relevant controls. In a later study, Albonetti (1987) also discovered that race did not influence the earlier decision to file criminal charges. Both of these studies reported that legal case factors were the primary predictors of prosecutorial decision making. Welch, Gruhl, and Spohn (1984) reported that white and African-American felony defendants were equally as likely to have their cases dismissed. Ghali and Chsney-Lind (1986) found similar results in a sample of defendants charged with UCR Part I offenses, where race was not a significant predictor of case dismissal.

Findings challenging the racial discrimination thesis have also been discovered more recently in the context of sexual assault (e.g., Beichner & Spohn, 2005; Spears and Spohn, 1997; Spohn & Holleran, 2002) and domestic violence (e.g., Worrall, Ross, & McCord, 2006). In a case study of Detroit prosecutors, Spears and Spohn (1997) found that defendant race did not influence the prosecutors' decision to charge for sexual assault

cases. Instead, victim characteristics were the most important predictors of the initial charging decision. Similar results were discovered by Spohn and Holleran (2001) who analyzed approximately 500 sexual assault cases that occurred in Kansas City (Missouri) and Philadelphia. Defendant race did not influence the decision to file charges for sexual assaults involving strangers, acquaintances, or partners. Likewise, Beichner and Spohn (2005) reported the absence of a race effect in the decision to file criminal charges in a sample of sexual assault cases processed in Kansas City (Missouri) and Miami. Finally, in the context of domestic violence, Worrall et al. (2006) found that race (operationalized as white vs. other) did not affect the decision to file criminal charges, net of other suspect, case, and victim characteristics. It should be noted, however, that their operationalization of race as white versus other introduces a potential bias in favor of the nondiscrimination thesis (see Pratt, 1998 for a discussion).

Further challenging the racial discrimination thesis, a few studies have reported findings on charging outcomes favoring minority defendants over whites. For example, although Myers (1982) found support for the racial discrimination thesis in the context of misdemeanor shoplifting cases, whites were less likely than African Americans to have their cases dismissed in felony shoplifting cases. Barnes and Kingsnorth (1996) uncovered a similar finding in a study of 1,379 felony drug defendants in California. African Americans were significantly more likely to have their cases dismissed as compared to whites and Latinos, directly contradicting the premise of the racial discrimination thesis. This apparent minority advantage was again replicated by Wooldredge and Thistlethwaite (2004, p. 442) who reported that “the significant race effects found here result in greater advantages for African Americans relative to whites in decisions related to charging, full

prosecution and the length of incarceration.” According to Free (2002), however, findings such as these may easily lend themselves to misinterpretation. The apparent advantage afforded minorities may simply be a result of racial disparity or bias occurring at the earlier arrest stage of the criminal justice process. For example, minorities may be arrested with both less and poorer quality evidence than whites, resulting in the advantage reported by Barnes and Kingsnorth (1996) and Wooldredge and Thistlethwaite (2004). Even further, police may bring more serious but less substantiated charges against minorities as compared to similarly situated whites. Such practices might result in more dismissals for minorities charged with more serious crimes (felonies as opposed to misdemeanors), as discovered by Myers (1982).

In sum, the prosecutorial literature examining the racial discrimination thesis is less than unanimous in its findings. While some studies report that racial discrimination is likely, others suggest that it does not occur. Still others suggest that racial bias may actually benefit minorities. Unfortunately, much of the literature ignores what has become commonplace for researchers studying disparities in sentencing (see Steffensmeier, Ulmer, and Kramer, 1998); specifically, the majority of the research on prosecutorial decision making fails to consider how race might interact with other legal and extralegal factors (for exceptions see Baumer et al., 2000; Wooldredge & Thistlethwaite, 2004). As discussed by Zatz (2000), it is possible that the direct effects of race have disappeared in favor of more subtle, indirect effects. In addition, the majority of studies examining the effect of race on prosecutorial decisions are conducted within two or fewer jurisdictions, making it impossible to draw generalizable conclusions with confidence from the limited evidence at

hand. Clearly, more research is needed to further clarify the relationship between race and prosecutorial charging decisions.

A Focal Concerns Theory of Prosecutorial Decision Making

Originally introduced to explain judicial sentencing decisions, focal concerns theory was first developed by Steffensmeier (1980), and later the theory was elaborated by Steffensmeier and colleagues (e.g., Steffensmeier & Demuth, 2001; Steffensmeier, Ulmer, & Kramer, 1998; Ulmer, 1997). According to this analytical framework, judicial sentencing decisions are shaped by three key factors or *focal concerns*: (1) the blameworthiness of the offender, (2) the protection of the community, and (3) the practical constraints and consequences faced by courts and correctional facilities. Judges presented with these rather pressing focal concerns rarely have sufficient information to make a thoroughly informed or purely rational decision. Instead, as Albonetti (1991, 1997) has persuasively argued, judges are forced to make decisions on a bounded rationality basis where complete information is nearly always unavailable. Specifically, judges are not always equipped with the necessary background information or a clear picture of the defendant's character. To deal with a high volume of cases in light of the relative uncertainty concerning the future behavior of offenders, judges develop a perceptual shorthand that can be applied quickly to each case (Steffensmeier, Ulmer, & Kramer, 1998). Of particular importance is the fact that this perceptual shorthand may be tied to a variety of stereotypes concerning the age, race, and sex of the offender. In this sense, the focal concerns apparent in judicial decision making are potentially informed by both legally relevant *and* irrelevant variables. Even when there is substantial information

concerning a particular offender, judges may not have sufficient time to fully consider the information, and even if they do have ample time, predicting future criminal behavior remains an uncertain enterprise where the aid of a perceptual shorthand is still likely to be employed by judges (Ulmer & Johnson, 2004).

Moving beyond judicial sentencing decisions, collaborations by Spohn, Beichner, and Davis-Frenzel (2001) and Beichner and Spohn (2005) have extended the focal concerns theory to prosecutorial charging decisions in sexual assault cases. According to these scholars, prosecutors also have particular focal concerns that guide their decision making. Specifically, prosecutors are typically concerned with what Steffensmeier, Ulmer, and Kramer (1998, p. 767) refer to as “practical constraints and consequences.” Although judges and prosecutors share similar concerns, prosecutors differ in that they are primarily concerned with the convictability of the defendant as opposed to the social costs associated with formal punishment (Beichner & Spohn, 2005). Because prosecutors are unable to control the final disposition of fully prosecuted cases, they must carefully predict how judges and jurors will respond. This creates a prosecutorial decision making framework characterized by inherent uncertainty. To manage this uncertainty, prosecutors, like judges, develop a perceptual shorthand that relies at least in some measure on stereotypes of what Beichner and Spohn (2005, p. 466) refer to as “real crimes and credible victims.” The outcome is that prosecutorial charging decisions are not only influenced by legally relevant case factors (e.g., evidentiary strength) but also extralegal factors (e.g., age, race, and gender of the defendant and victim).

While the focal concerns perspective provides a vehicle by which extralegal factors may influence charging decisions, other frameworks are helpful in understanding the

means by which perceptual shorthands are formulated. As Curry, Lee, and Rodriguez (2004) argued, the chivalry/paternalism hypothesis may account for stereotypical views of gender held by criminal justice actors (including prosecutors) which then manifest themselves through focal concerns. In short, stereotypical views of women as passive, weak, and in need of protection may influence (through the development of perceptual shorthands) how prosecutors assess convictability. This same logic can be applied to the racial discrimination thesis (see Ulmer & Johnson, 2004), where stereotypical views of minorities may influence perceptions about criminal behavior and who will likely be viewed as a believable offender (Blalock, 1967; Crawford, Chiricos, & Kleck, 1998; Crawford, 2000). In the end, the focal concerns framework serves to explain *how* prosecutors employ various stereotypes in charging decisions (primarily for assessing convictability), while other frameworks, such as the chivalry/paternalism hypothesis and the racial discrimination thesis, explain *why* prosecutors may ascribe to such beliefs which, in turn, influence their focal concerns.

Empirical Status of Focal Concerns Theory

To date, only two empirical studies of prosecutorial charging decisions have grounded their analysis in a focal concerns perspective (Beichner & Spohn, 2005; Spohn, Beichner, & Davis-Frenzel, 2001). Spohn et al. (2001) found that in the context of sexual assault, prosecutors were primarily guided by the practical constraints and consequences of their decisions. More specifically, prosecutors were concerned with reducing uncertainty and securing convictions. As a result, prosecutors were more likely to file charges when the victim suffered serious harm, when the crime was serious, and when the evidence was

strong. Thus, legal case factors were particularly important for understanding charging decisions on sexual assault. Particular to such cases, Spohn et al. also found that victim credibility was a primary concern of prosecutors, and to this end stereotypes about genuine rape victims became important for understanding charging decisions. Extralegal factors, such as the moral character of the victim and whether or not she engaged in risk-taking behavior (e.g., walking alone at night, alone at the bar, hitchhiking, using drugs), were significant predictors. These findings were later confirmed by Beichner et al. (2005), where prosecutors were more likely to file charges in cases with strong evidence, a serious offense, and a stereotypically satisfying victim.

Other studies provide support for the focal concerns theory of prosecutorial decision making, though their analyses did not set out to test hypotheses specifically derived from this theory. For example, several researchers found that prosecutors were more likely to reject or dismiss cases with female defendants, even after controlling for important legal and extralegal variables (e.g., Adams & Cutshall, 1987; Albonetti, 1986; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Gruhl, Welch, & Spohn, 1984; Myers, 1982; Spohn & Beichner, 2000; Spohn, Gruhl, & Welch, 1987). In such cases, it is plausible that prosecutors have developed a perceptual shorthand for identifying what they believe to be real crimes and real criminals. This perceptual shorthand may very likely be influenced by stereotypes stemming from the chivalry/paternalism hypothesis. For this reason, prosecutors may be less likely to view women as real criminals which, in turn, may shape their perceptions of convictability.

By this same logic, studies reporting evidence that minority and/or younger defendants are more likely to be charged than whites and/or older defendants (e.g., Adams

& Cutshall, 1987; Baumer, Messner, & Felson, 2000; Myers, 1982; Spohn, Gruhl, & Welch, 1987) also provide additional support for a focal concerns perspective. This is particularly the case since stereotypes identifying minorities and youth as crime-prone individuals (see Steffensmeier, Ulmer, & Kramer, 1998) may also influence prosecutors' perceptions of what it means to be a real criminal, subsequently affecting assessments of convictability.

In the end, the focal concerns theory appears to be a useful tool for organizing the various ways in which prosecutors' charging decisions may be influenced. Albonetti's (1986, 1987) uncertainty avoidance theory highlights the importance of legal case factors (e.g., crime seriousness, evidentiary strength) in prosecutorial decision making, yet it does not accord sufficient theoretical space for the influence of various extralegal factors (e.g., race, gender). The result is an informative but incomplete view of prosecutorial charging decisions. Similarly, both the longstanding chivalry/paternalism hypothesis and the equally ubiquitous racial discrimination thesis only offer partial views of the charging process, neglecting to incorporate various legal factors. To address these various shortcomings, the focal concerns theory recognizes the importance of both legal and extralegal factors, and offers a clear understanding of how these factors shape perceptual shorthands and ultimately influence the focal concerns (e.g., practical constraints and consequences surrounding convictability) of prosecutors.

Implications for the Study of Prosecutorial Decision Making

The existing theoretical and empirical research provides several important implications for the study of prosecutorial charging decisions. Albonetti's (1986, 1987)

uncertainty avoidance theory highlights the clear importance of considering both legal and extralegal case factors related to certainty of conviction. When possible, researchers should include measures of evidentiary strength, victim credibility, and the character of the defendant-victim relationship. Although prior criminal record, gender, and race are not hypothesized by the uncertainty avoidance theory to affect charging decisions, other frameworks treat each of these factors as important considerations. According to the chivalry/paternalism hypothesis, studies of prosecutorial decision making must consider the possibility that women will be treated more leniently than men. As such, researchers should incorporate a measure of gender into analyses of prosecutorial decision making. Moreover, the racial discrimination thesis suggests that measures of race and/or ethnicity are pertinent for modeling prosecutorial decisions. Some studies fail to support the contention that race is a factor in prosecutors' decisions, yet few of these studies consider how race might interact with other legal and extralegal factors. As a result, analyses should not only test for the direct influence of race on prosecutorial decision making, but they should also test for interaction effects. Specifically, studies should consider the possible interactions between race and gender, age, prior criminal history, crime seriousness, and other potentially important factors. Finally, by employing focal concerns theory, each of the above theories/hypotheses and their associated measures can be incorporated into the analysis and understood through a single framework of prosecutorial decision making. In addition, the focal concerns theory provides a mechanism by which a variety of stereotypes concerning real crimes, criminals, and victims (e.g., the young, black, male criminal or the genuine rape victim) are used to form perceptual shorthands for assessing convictability. Accordingly, important measures that remain unconsidered by

the uncertainty avoidance theory, chivalry/paternalism hypothesis, and racial discrimination thesis should be incorporated into analyses of prosecutorial decision making. Specifically, analyses should include the defendant's age and prior criminal history as these measures may influence the degree to which he/she is viewed as a real criminal.

LINKING COMMUNITY CONTEXT WITH PROSECUTORIAL DECISIONS

Though informative, the existing prosecutorial literature suffers from a clear shortcoming—to date, only one empirical study has assessed how external or community contextual factors might influence the individual decisions made by prosecutors from one jurisdiction to the next (Ulmer, Kurlychek, & Kramer, 2007). Though informative, Ulmer, Kurlychek, and Kramer's (2007) work is limited in that it only considers two measures of community context (i.e., the racial composition of the community and the violent crime rate). In a recent review of 68 studies of the pretrial process (including charge and dismissal decisions), Free (2002) noted that very little is known about how "outside" influences affect important justice-related outcomes. Thus, the present study aims to address this shortcoming by considering the potential influences of several contextual factors. To ensure a meaningful analysis, however, it will first be necessary to establish theoretical links between prosecutors' charging decisions and the communities in which they live and work. Accordingly, the following sections will discuss a variety of related frameworks, including the racial and economic threat theories, the crime control

hypothesis, the organizational efficiency hypothesis, and the political conservatism hypothesis. By discussing each of these frameworks and their implications for prosecutorial decision making, important measures of community context will be identified for inclusion in the present study.

Racial Threat Theory

The racial threat theory argues that racial and ethnic minorities are often viewed as objects of fear and, thus, seen as threatening to those in positions of power and privilege (Blalock, 1967; Blumer, 1958; Eitle, D'Alessio, & Stolzenberg, 2002; Liska, Lawrence, & Sanchirico, 1982; Quinney, 1974). This perspective is grounded in the broader framework of conflict theory which argues that dominant groups take advantage of state power to control subordinate groups who threaten their interests (Blalock, 1967). In the specific context of race/ethnicity, this power differential translates into the potential oppression of minority racial/ethnic groups through formal institutions, including the criminal justice system (see Quinney, 1974; Schur, 1971). The oppression or containment of racial minorities is believed to be directly related to the relative size of the minority population as compared to the dominant (white) population. Where perceptually threatening minority groups constitute a substantial proportion of the population, the racial threat theory predicts that the white-dominated criminal justice system will respond by treating minority group members more harshly than non-minority offenders.

As pointed out by Britt (2000), criminal stereotypes portrayed by the media likely exacerbate the perception of fear experienced by whites in power. For example, African Americans are often ascribed the status of the typical street criminal, and this image is

regularly reinforced through the broadcast media and dramatic portrayals. This point is further clarified by Demuth (2003) who pointed out that conceptualizing crime as an underclass problem acts to reinforce the stereotype of racial and ethnic criminality. African Americans are often the target of such stereotypes, though recent research indicates that Hispanics, too, have been ascribed similar stereotypes, including those of being crime-prone and dangerous individuals (Anderson, 1995; Demuth, 2003; Steffensmeier & Demuth, 2001). The end result is that racial and ethnic minorities are often feared by whites and viewed as particularly threatening. This perceived threat, then, is presumed to produce harsher criminal justice outcomes for minorities in general, and in areas with significant minority populations these outcomes should become even harsher. Once the minority population reaches a numerical majority, however, the perceived threat is predicted to decline since at this point the majority interest lies in the hands of racial and/or ethnic minorities (Blalock, 1967; Britt, 2000).

Of particular importance to the present study is how racial threat theory might influence prosecutorial charging decisions. When determining whether to file criminal charges or to dismiss a case, prosecutors are clearly concerned with convictability as clarified by uncertainty avoidance and focal concerns theories. If prosecutors are working in communities with substantial minority populations, increased perceptions of racial threat may influence their subsequent perceptions of convictability for two reasons. First, stereotypical views of minority group members (e.g., dangerous, criminally-prone) may increase the likelihood that prosecutors will believe particular defendants are guilty and deserving of formal punishment. This belief, in turn, may increase their confidence in charging and/or moving forward with cases involving minorities. Second, when

prosecutors assess convictability, they may be more confident that jurors will believe a minority defendant is guilty as compared to a similarly situated white defendant. Since prosecutors are forced to consider the possibility of a jury trial, their predictions of how jurors might perceive the defendant become essential for determining convictability. In the end, the proportion of the minority group population may influence perceptions of threat, and thus, convictability. In areas with larger minority populations, stereotypes of the criminally-prone and dangerous minority may be more prevalent and deeply embedded into society and formal social institutions, such as the criminal justice system. Thus, prosecutors may assess minority cases as more convictable in areas where racial threat is perceived to be more serious.

The racial threat theory has been applied to a variety of aggregate criminal justice outcomes, including arrest rates (Brown & Warner, 1992; Liska & Chamlin, 1984; Liska, Chamlin, & Reed, 1985), police use of force rates (Chamlin, 1989), incarceration rates (Myers, 1990; Tittle & Curran, 1988), and execution rates (Phillips, 1986). A few studies have also examined the influence of minority populations on individual sentencing decisions (e.g., Crawford, Chiricos, & Kleck, 1998; Kramer & Steffensmeier, 1993; Myers & Talarico, 1987; Steffensmeier, Kramer, & Streifel, 1993). In general, many of these studies support the contention that a larger minority population (usually operationalized as the proportion of African Americans) is associated with increased formal social control directed toward minorities. More recent multilevel studies, however, challenge this finding, reporting that the proportion of African Americans in the population does not influence either individual sentencing outcomes (Britt, 2000) or arrests (Stolzenberg, D'Allessio, & Eitle, 2004) as predicted by the racial threat theory.

The most recent multilevel assessment of the racial threat theory was conducted by Crow and Johnson (2008). The researchers tested the effect of the racial/ethnic composition of the communities (operationalized as percent black and percent Hispanic) on the application of habitual-offender sentencing statutes in Florida. It was reported that as the percentage of the Hispanic population increased, the odds of all eligible offenders being processed under the statute increased. The magnitude of the relationship, however, indicated that the reported relationship was meaningless (odds = 1.01). When examining the cross-level interaction between the percentage of the population that was Hispanic and the individual measure of ethnicity, it was discovered that Hispanics were less likely to have the statute applied in communities with higher percentages of Hispanics. Although this finding is contrary to that predicted by the racial threat hypothesis, the magnitude of the interaction was also minimal (odds = .99).

To date, one study has tested the racial threat theory in the context of prosecutorial discretion. Ulmer, Kurlychek, and Kramer (2007) assessed the effect of the proportion of the African-American population on individual prosecutorial decisions to impose mandatory minimum sentences. The researchers reported that the relationship between racial composition of the population and prosecutorial discretion was more complex than hypothesized by the racial threat theory. Specifically, as the percent of the African-American population increased, the odds of receiving a mandatory minimum decreased for all offenders, despite their race. It was noted, however, that the apparent advantage afforded offenders in communities with higher percentages of African Americans was conditioned by race. That is, though everyone was less likely to receive a mandatory minimum in these communities, this advantage was more pronounced for whites as

compared to African Americans. Unfortunately, no study has attempted to clarify the potential influence of racial composition of the population on the prosecutor's decision to dismiss criminal charges, further highlighting the importance of the the present study.

Economic Threat Theory

Similar to racial threat, conceptions of economic threat are also derived from broader notions of conflict arising between dominant and subordinate groups (D'Alessio, Eitle, & Stolzenberg, 2005; Myers, 1987). Economically deprived populations are viewed as threatening to the interests of more powerful and dominant groups who are primarily concerned with maintaining the status quo, or more specifically, their hegemonic position in society (Myers, 1987, Turk, 1969). Moreover, dominant groups often view subordinate groups (e.g., the poor) as particularly threatening since they have little to lose with regard to material possession and only stand to gain by promoting the redistribution of resources, even if achieved through violence (see Jacobs & Carmicheal, 2001). Thus, the economic threat theory suggests that economically disadvantaged groups pose a serious threat to economic elites, and in the interest of power maintenance these dominant groups promote the use of state power to uphold their position in society (D'Alessio, Eitle, & Stolzenberg, 2005). This economic inequality promotes the use of formal state control over the economically disadvantaged, leading to more punitive treatment of poorer individuals by the criminal justice system (Blalock, 1967; Britt, 2000; Myers, 1987; Myers & Talarico, 1987).

In addition, the economic threat theory suggests that increases in the proportion of the disadvantaged poor population will subsequently lead to increases in the size of the

criminally-prone population (Britt, 2000). From this point of view, economically deprived areas are viewed as breeding grounds for criminal dispositions, and thus represent a threat to the broader society. To alleviate perceptions of economic threat, the criminal justice system is expected to operate in such a way that treats disadvantaged offenders (those lacking a stake in the status quo) more harshly than middle/upper class offenders (Britt, 2000; Myers, 1987; Myers & Talarico, 1987). As argued by Britt (2000), communities afflicted with poverty, income inequality, and high rates of unemployment may also respond more punitively to racial/ethnic minorities who are stereotypically less well off than whites. Minorities are more likely to be perceived as part of the criminally-prone economic underclass, and for this reason they may be viewed as particularly threatening by the white-dominated criminal justice system. The end result is that minorities may be treated more harshly than whites in areas where economic conditions are depressed.

The majority of research that has tested the economic threat theory has done so in the context of incarceration rates (e.g., Arvanites & Asher, 1995, 1998; Jacobs & Carmichael, 2001; Myers, 1990, 1993; Ruddell, 2005; Weidner & Frase, 2003). The findings from this literature have provided only mixed support for the economic threat hypothesis, with some studies suggesting that measures of economic threat do, in fact, lead to more punitive responses by the criminal justice system and others suggesting that measures of economic threat fail to provide insight into the use of formal punishment. Arvanites and Asher (1998) conducted a cross-sectional study of imprisonment rates across all fifty states in 1993 and reported that after controlling for crime rates, measures of economic inequality did not significantly predict rates of incarceration. In an earlier study, however, the same researchers (Arvanites & Asher, 1995) found that income inequality

was significantly related to imprisonment rates after controlling for arrest rates. Arvanites and Asher (1995) also discovered a significant positive relationship between poverty and incarceration rates. Contrary to this finding, McCarthy (1990) and Weidner and Frase (2001) found that measures of poverty did not influence incarceration rates when operationalized at the county level.

A few researchers have also tested the economic threat theory in the context of individual incarceration and/or sentencing decisions (e.g., Britt, 2000; Fearn, 2005; Myers, 1987; Myers & Talarico, 1987; Weidner, Frase, & Pardoe, 2004). In a multilevel analysis of individual sentencing decisions across 67 Pennsylvania counties, Britt (2000) found that racial income inequality (i.e., the difference between the average black and white incomes) significantly influenced the mean risk of incarceration. Thus, as the difference between blacks' and whites' incomes increased, the overall risk of being incarcerated decreased. Myers and Talarico (1987) reported similar findings where economic differences between blacks and whites reduced the overall likelihood of incarceration. Both Myers and Talarico (1987) and Britt (2000) interpreted this finding as support for the economic threat hypothesis. Once the economic differences between the dominant (white) and subordinate (black) groups became heavily pronounced, the perceived economic threat declined and, as a result, formal punishments became less severe. When the level of economic threat was operationalized as the percent of unemployed individuals, it should be noted that these researchers (Britt, 2000; Myers & Talarico, 1987) as well as others (e.g., Weidner, Frase, & Pardoe, 2004) found no support for the theory. This finding is possibly due to measurement error, where unemployment rates only capture those individuals receiving compensation from the state and not those who remain unemployed but are no longer

eligible for assistance. Thus, the manner in which economic threat is operationalized appears to be important for understanding its potential influence on sentencing decisions.

Though several studies have considered the possible influence of economic threat theory on the use of imprisonment and the length of prison sentences, no empirical research has considered how this theoretical perspective might inform our understanding of prosecutors' charging decisions. Specifically, prosecutors may assess the convictability of defendants through an economic threat lens where those who are believed to be members of the poor disadvantaged class will be perceived as more convictable. The stereotypical criminal is generally considered to be a minority, but also a poor and disadvantaged member of society. As a result, jurors may be more likely to respond punitively to those they believe to be members of the stereotypically criminally-prone poor underclass (through conviction) in communities suffering from greater economic distress. Moreover, because economic status is often associated with race, jurors will likely assess minorities as belonging to the economically disadvantaged underclass. The end result is that prosecutors may be more likely to assess those who appear to be economically disadvantaged (especially minorities) as more convictable in communities suffering from greater economic deprivation. Tests of the economic threat theory, then, should consider both the direct and interaction effects of economic disadvantage.

Crime Control Hypothesis

The crime control hypothesis assumes that the criminal justice system will respond more punitively in areas where crime is considered to be more problematic (Britt, 2000; Liska & Chamlin, 1984; Myers & Talarico, 1987). This hypothesis is broadly grounded in

assumptions about effective crime control through methods of deterrence (Liska & Chamlin, 1984). The fundamental premise of the deterrence perspective argues that increasing the unpleasant experience associated with crime (through increased arrests, prosecutions, convictions, and formal punishment) will subsequently lead to deterrence; thus, future offending will be reduced and crime rates will decline (Cullen et al., 2002; Gibbs, 1975; Pratt et al., 2006; Pratt & Cullen, 2005; Walker, 2006; Wilson, 1975). Consequently, the police, prosecutors, and judges should act to increase the severity of punishment for all criminal offenders in communities where crime rates are elevated.

Research has also suggested that higher crime rates will lead to more punitive treatment specifically directed toward minorities as opposed to whites (Britt, 2000; Liska & Chamlin, 1984; Liska, Lawrence, & Benson, 1981; Myers & Talarico, 1987).

According to Swigert and Farrell (1976), whites and authorities tend to ascribe criminal stereotypes to non-whites and their differing lifestyles. Even further, research by Lizotte and Bordua (1980) demonstrated that whites tend to assess levels of neighborhood crime by the proportion of non-white residents. Where more non-white residents were present, crime was perceived to be higher. As a result, high crime rates are likely to generate disproportionately punitive effects on minority offenders who are stereotypically viewed as predominantly responsible for the crime problem. Thus, communities afflicted with serious crime will likely feature a local criminal justice system that responds harshly to all offenders, but even more so to minorities.

Most relevant to the present analysis, a few studies have considered the effect of crime rates on individual criminal justice outcomes, including incarceration and sentence length decisions (e.g., Britt, 2000; Crawford, Chiricos, & Kleck, 1998; Fearn, 2005; Myers

& Talarico, 1987; Ulmer & Johnson, 2004). Though no studies have attempted to determine the influence of macro-level crime rates on micro-level prosecutorial decisions, the above research sheds some light on how crime influences punitive decision making within the framework of the criminal justice system. For example, Myers and Talarico (1987) reported that higher crime rates did not affect judges' decision to incarcerate offenders, but it did lead to more punitive sentences where offenders in higher crime jurisdictions were given longer prison terms. Crawford, Chiricos, and Kleck (1998) also found that violent crime rates were related to increased punishment severity. Offenders convicted in counties with higher violent crime rates were more likely to be sentenced as "habitual" offenders and thus received longer sentences. Britt (2000), on the other hand, found that violent crime rates did not influence judicial sentencing decisions for all offenders considered simultaneously; however, black offenders were treated more harshly in communities with more violent crime. Ulmer and Johnson (2004) failed to provide evidence for a crime rate effect, though the possible interaction between the crime rate and the offender's race/ethnicity was not considered. More recently, Fearn (2005) found that offenders convicted in higher crime jurisdictions were more likely to be sentenced to prison as opposed to jail, further demonstrating the potential influence of crime rates on decisions made by key actors in the criminal justice system.

Similar to judges' incarceration and sentencing decisions, prosecutors' charging decisions might also be influenced by the crime conditions of the communities in which they operate. For example, prosecutors may feel increased pressure arising from the outside community to prosecute more offenders when the crime problem is perceived to be relatively high or increasing. Moreover, prosecutors may assess defendants to be more

convictable in communities where potential jurors are likely dissatisfied and frustrated with high levels of crime. The effect of higher crime rates may also lead to the increased prosecution of cases involving minority offenders who are stereotypically perceived as responsible for high levels of street crime (e.g., African Americans, Hispanics). The emerging evidence that crime rates influence judicial sentencing decisions, at least under certain circumstances (e.g., Britt, 2000; Crawford, Chiricos, & Kleck, 1998; Fearn, 2005; Myers & Talarico, 1987), and the theoretical link between community crime rates and prosecutorial decision making demonstrates the need for an empirical analysis testing whether—and the degree to which—jurisdictional crime levels influence prosecutorial charging outcomes.

Organizational Efficiency Hypothesis

Along with concerns for convictability (Albonetti, 1986, 1987) some researchers have argued that maintaining organizational efficiency is a powerful concern affecting case processing decisions within the criminal justice system (e.g., Blumberg, 1967; Dixon, 1995; Engen & Steen, 2000; Hagan, 1989; Packer, 1968; Ulmer & Johnson, 2004). In fact, the emphasis placed on organizational efficiency is argued to extend beyond the attention accorded both formal and substantively rational goals (see Engen & Steen, 2000; Dixon, 1995). That is, the importance of maintaining an efficient organization supersedes the importance of maintaining a process guided by formal rational principles (e.g., relying purely on the use of legally relevant case factors for decision making) or even informal substantive principles (e.g., relying on extralegal stereotypes about real crime and real criminals for decision making).

Dixon (1995) traced the organizational efficiency perspective to the early work of Roberto Michels (1915) wherein “Michels’s law” was established in the literature. According to this perspective, overwhelming concerns for organizational maintenance deflect the criminal justice system from seeking formal rational goals, resulting in the development of operating goals by elite members of the system (Dixon, 1995; Michels, 1915). As argued by Dixon (1995):

When Michels’s law is applied to the sentencing process, the organization of sentencing is perceived to be an organizational maintenance process created by courtroom elites. Because a complex network of ongoing informal relationships among court actors is formed, a cooperative effort to efficiently dispose of cases evolves, with effects not envisioned by the substantive political or formal legal models. (p. 1192)

Thus, key criminal justice actors, including prosecutors, defense attorneys, and judges, develop informal relationships with a common interest of quickly and efficiently disposing of criminal cases. Moreover, this shared interest results in a criminal justice process that is not simply guided by legally relevant and politically-motivated case factors, but also by factors associated with organizational efficiency. The end result is that prosecutors, defense attorneys, and judges will make decisions in the interest of enhancing organizational efficiency when it is reasonable to do so.

The organizational efficiency hypothesis has been most extensively applied to plea bargaining decisions and their subsequent influences on sentencing outcomes where prosecutors engage in bargaining practices to reduce the likelihood of proceeding to time-consuming trials (e.g., Brereton & Casper, 1981/1982; Dixon, 1995; Johnson, 2003;

Uhlman & Walker, 1980). Essentially, defendants are offered incentives (e.g., a reduced sentence) to plead guilty, and this practice is justified in the interest of maintaining organizational efficiency (i.e., quick case disposal). This contention is generally supported by a large body of empirical literature where those who plead guilty received shorter sentences than similarly-situated offenders who exercise their right to a jury trial (e.g., Brereton & Casper, 1981/1982; Dixon, 1995; Johnson, 2003; Uhlman & Walker, 1980; Ulmer & Johnson, 2004). For example, Ulmer and Johnson (2004) recently reported that the mode of conviction had a powerful effect on judges' incarceration and sentence length decisions. Specifically, exercising the right to a trial increased the odds of incarceration by 1.77 times and resulted in a sentence that was on average six months longer than similarly-situated offenders who plead guilty. This finding has also been replicated in a recent analysis of the federal court system (Kautt, 2002). Using multilevel statistical techniques, Kautt (2002) found that offenders sentenced in federal court received significantly longer sentences than those who plead guilty, after controlling for a variety of legal and extralegal factors.

Implications of the organizational efficiency hypothesis are not limited to the plea bargaining decision. In fact, there are strong theoretical implications for understanding the prosecutors' initial decision to file criminal charges as well as their later decision to dismiss or carry charges forward in the post-indictment phase. To maintain organizational efficiency, it is theoretically plausible that prosecutors will alter their charging decisions according to court caseload. Specifically, courts located in high crime jurisdictions that generate large numbers of police arrests may face increased difficulty in maintaining efficiency. In the face of such conditions, prosecutors may be less likely to file criminal

charges and more likely to dismiss filed charges at the post-indictment stage, particularly when cases appear difficult to convict. As a result, prosecutorial charging decisions may vary according to the caseload pressure created by jurisdictions with substantial crime problems and stressed prosecutorial resources. It is also possible that increasing arrest rates will upset the level of organizational efficiency achieved by a given court. In such jurisdictions, prosecutors, defense attorneys, and judges will be faced with the added difficulty of managing a growing caseload. Thus, prosecutors may respond with increased selectivity when choosing which cases should be given the formal attention of the heavily burdened criminal justice process.

Punitive Attitudes Hypotheses

Prior research has indicated that certain groups within the general population tend to hold quite punitive attitudes toward criminals (Chiricos & Crawford, 1995; Fearn, 2005; Snell, 2006; Taggart & Winn, 1993; Weidner & Frase, 2003) which may translate into harsher treatment of law violators. For example, particular groups, such as conservatives and those who live in the American South, are generally more supportive of incarceration and the death penalty as compared to liberals and those who live in other regions of the United States (Chiricos & Crawford, 1995; Snell, 2000). The following sections introduce two distinct punitive attitudes hypotheses, and highlight their theoretical importance for the understanding of criminal justice decision making generally, and prosecutorial decision making specifically.

Political Conservatism Hypothesis. Given the public nature of criminal justice processes, the political conservatism hypothesis argues that elected officials such as judges

and prosecutors (though some are appointed) will be responsive to the political sentiments of their respective communities (Carp & Stidham, 1996; Helms & Jacobs, 2002; Jacob, 1995; Weidner & Frase, 2003). Specifically, judges and prosecutors operating in more conservative political jurisdictions should respond more punitively as compared to those operating in more liberal electoral settings (Taggart & Winn, 1993; Weidner & Frase, 2003; Fearn, 2005). Moreover, communities that are predominantly characterized by conservative political views will likely select judges and prosecutors who share this perspective. Thus, the political nature of the criminal justice system provides an opportunity for external community-level influences to affect the processes by which justice is managed within any given community. The open nature of the system, then, requires researchers to consider criminal justice outcomes in light of the broader political context.

Generally speaking, conservative views are more consistent with a strong focus on punishment as compared to liberal views, and this difference arises from incongruent beliefs about crime and criminality and the propensities that lead to criminal behavior. Conservatives often dismiss the social circumstances surrounding criminal lifestyles and emphasize the individual decisions and choices made by offenders (Helms & Jacobs, 2002; Thorne, 1990; Walker, 2006). From their viewpoint, criminality and deviant behavior, then, represent a problem rooted in poor decision making, and efforts to reduce crime should focus on deterrence and incapacitation for modifying decision making processes and isolating criminals from society (see Cullen et al., 2002; Gibbs, 1975; Wilson, 1975). Both of these crime control methods rely predominantly on punishment (e.g., probation, jail, prison) as a solution to the bad decisions made by problematic members of society.

Liberals, on the other hand, subscribe to a different view of criminality—instead of placing the individual at the apex of the crime problem, they generally point to the surrounding social structural environment and circumstances that shape individuals' decisions (Jacobs & Carmichael, 2001). This different understanding of criminal behavior results in crime control methods that focus more on structural changes to society and the rehabilitation of offenders to reverse the ill effects of a criminogenic societal environment. In the end, liberals' focus on the environment as a cause of crime generally leads to their less punitive outlook toward criminals as compared to their conservative counterparts.

Studies testing the political conservatism hypothesis have found support for the notion that conservative political environments lead to increased punishment for criminal offenders (Huang et al., 1996; Kuklinkski & Stanga, 1979; Nardulli, Fleming, & Eisenstein, 1988). Huang et al. (1996) analyzed sentencing data across a variety of counties in Georgia and found that offenders received longer sentences in the most conservative counties. In an earlier study by Kuklinkski and Stanga (1979), the results indicated that drug sentences were reduced in counties where the voting constituency supported more liberal drug laws. Other studies have demonstrated that increased levels of conservatism at the state and national levels have led to an expansion in police forces and the overall size of the incarcerated populations (Jacobs & Helms, 1996, 1997). In a study of state incarceration rates, Jacobs and Carmichael (2001) reported evidence that the growth in the adherents to the Republican Party and their associated conservative values subsequently led to increases in state prison populations. In the end, theoretical and empirical support for the political conservatism hypothesis highlights the potential

importance of considering how the political context might influence criminal justice system outcomes.

Though empirical research has generally considered how political context tends to influence imprisonment rates and average sentence lengths (e.g., Fearn, 2005; Huang et al., 1996; Jacobs & Carmichael, 2001; Jacobs & Helms, 1996, 1997; Kuklinkski & Stanga, 1979; Nardulli, Fleming, & Eisenstein, 1988), less attention has been afforded the possible influence of political context on individual prosecutorial charging decisions, despite important implications stemming from the political conservatism hypothesis. Like judges, local prosecutors operating in a conservative jurisdiction will likely ascribe to the conservative ideals of crime control (i.e., deterrence and incapacitation) and identify with the conservative pressures of the community within which they reside and work. Consequently, prosecutors working in conservative communities may be more likely to file criminal charges and less likely to dismiss the charges at the post-indictment stage than prosecutors in more liberal communities. This is likely for two primary reasons. First, prosecutors operating in conservative conditions might feel increased pressure to bring forth criminal charges and sustain such charges through conviction to avoid a “soft on crime” public reputation. Second, and similar to other community-level influences (e.g., racial and economic threat), political conservatism may affect prosecutors’ perceptions of defendant convictability. That is, in communities with predominantly conservative ideologies, juries may be more predisposed to assign blame and view criminal defendants as deserving of punishment in the interest of maintaining a “law and order” approach to criminality. Therefore, prosecutors may feel increased confidence in bringing forth criminal charges when operating in more conservative jurisdictions as compared to more

liberal political settings. Such theoretical implications demonstrate the importance of empirically assessing the influence of political context on individual prosecutorial charging decisions.

The Southern Subculture of Punitiveness Hypothesis. The harboring of punitive attitudes is not limited to those individuals identified as politically conservative. To be sure, other groups have also been shown to hold increasingly punitive attitudes toward criminals. According to the southern subculture of punitiveness hypothesis, southerners are more likely than citizens of other regions to approve the use of physical retaliation (e.g., capital punishment, physical confinement) as a means of formal social control (see Borg, 1997; Fearn, 2005). Research examining a related hypothesis, the southern subculture of violence, has indicated that southerners are more likely than non-southerners to condone the use of violence, but only in specific circumstances (Ellison, 1991a). These circumstances are often characterized by interpersonal threats, unwarranted aggression, malicious behavior, and personal affronts to honor (Borg, 1997; Ellison, 1991a, 1991b). The accepted use of violence in these types of situations is referred to by Reed (1982) as violence for cause, since they represent specific, rather than random, circumstances. It is within this context of directed violence or violence for cause that the southern subculture of punitiveness hypothesis emerges. If southerners are more likely to support the use of directed violence in specific cases, particularly those where individuals are unduly wronged, it would seem logical that they would also be more likely to support stringent punishments for those who violate the law (Borg, 1997). Consistent with this notion, rates of execution and imprisonment are higher in the South as compared to other regions of the United States (Borg, 1997; Snell, 2006).

The southern subculture of punitiveness hypothesis also has specific implications for African Americans. Much research has documented the unique race relations characteristic of the South (see Schuman, Steeh, & Bobo, 1985; Tuch, 1987 for discussions). Research has demonstrated that southerners (specifically, native White southerners) are more likely than non-southerners to exhibit racial intolerance (Ellison, 1991b), and this intolerance is manifested in criminal proceedings. As discussed by Keil and Vito (1992) and elaborated by Borg (1997), executions in the South have consistently and disproportionately targeted African Americans. Consequently, the southern subculture of punitiveness hypothesis suggests a harsher response to criminals generally, but to African-American offenders, specifically.

Research testing the southern subculture of punitiveness hypothesis has been conducted in the context of capital punishment (Borg, 1997) and sentencing decisions (Fearn, 2005). Borg's (1997) research revealed that there was little variation in attitudes towards the use of capital punishment between southerners and non-southerners. Further analysis, however, revealed that the southern region conditioned the effects of important factors such as racial prejudice. Specifically, racial prejudice arising from negative stereotypes about African Americans positively influenced support for capital punishment in the South but not in other regions. Fearn (2005), however, did not find support for the southern subculture of punitiveness hypothesis when testing for the influence of southern region on both incarceration decisions (e.g., prison vs. probation, prison vs. jail) and the sentence length decision. In the end, empirical research aimed to assess this hypothesis is in relatively short supply, and initial results indicate somewhat mixed findings.

The current analysis extends previous tests of the southern subculture of punitiveness hypothesis to the study of prosecutorial decision making. If the hypothesis receives support, its implications for the behavior of prosecutors are relatively simple. First, prosecutors located in southern jurisdictions will be less likely to dismiss criminal charges as compared to prosecutors located in non-southern jurisdictions. Second, since research has indicated that African Americans are disproportionately targeted for capital punishment, primarily in the South, it is also possible that they will be disproportionately targeted for increased punitiveness more generally. Should this be the case, prosecutors will be less likely to dismiss charges against African Americans as compared to whites, but only in southern jurisdictions. In the end, the southern subculture of punitiveness hypothesis has important implications for prosecutorial discretion, yet no research has assessed its value in such a context.

Implications for the Study of Prosecutorial Decision Making

To date, no empirical study has considered the possible implications of the racial and economic threat theories or the crime control, organizational efficiency, and political conservatism hypotheses for understanding and explaining the pattern of prosecutorial charging decisions in the United States. Each of these theories/hypotheses and their related empirical literature, however, provide important insights for present and future studies of prosecutorial decision making. Specifically, analyses should consider the possible influence of the racial composition of the outside community within which prosecutors carry out their duties. Prosecutors operating in communities with larger minority populations may be more likely to file criminal charges and carry charges forward

post-indictment as suggested by the racial threat theory. To test the salience of this race-centered framework, researchers should incorporate measures of the communities' overall racial composition as well as specific measures of the communities' black and Hispanic populations. In accordance with economic threat theory, prosecutors might also be more likely to file criminal charges against defendants in communities suffering from economic deprivation. Additionally, the influence of economic threat may disproportionately affect minorities who stereotypically belong to the criminally-prone, poverty-stricken underclass. Thus, researchers should incorporate measures of economic conditions to determine how they directly and indirectly (through interactions with race) influence the charging decisions made by prosecutors. To assess the validity of the crime control hypothesis, which suggests that prosecutorial charging decisions will be harsher for criminal defendants (especially those who are minorities) in higher crime rate communities, researchers should consider the direct effects of violent and property crime rates, as well as trends in these rates. Additionally, the potential interaction between crime rates and individual measures of race/ethnicity should be considered, since minorities may be punished more harshly in communities with more crime. Researchers should also consider the potential influence of caseload on prosecutorial decisions, since organizational efficiency is a common goal of courtroom workgroups. Finally, empirical analyses should include measures to assess the presence of punitive attitudes in the external community, such as the proportion of the population identified as Republican and the geographic location of the jurisdiction (e.g., South vs. non-South), to consider their possible influence on prosecutors' decisions.

RESEARCH QUESTIONS

Based on the theoretical and empirical research discussed above, two important but previously unaddressed research questions become evident. First, the vast majority of research examining prosecutorial decision making has been conducted at the individual or case level. As a consequence, researchers have generally neglected to consider whether or not charging decisions depend upon the broader context in which they occur. Several studies have demonstrated that other formal criminal justice decisions (e.g., incarceration and sentencing decisions) vary systematically by context (e.g., Britt, 2000; Fearn, 2005; Kautt, 2002; Myers & Talarico, 1987; Ulmer & Johnson, 2004), and existing theoretical frameworks (e.g., racial and economic threat, among others) suggest that prosecutorial decisions might also vary by context in the same way. Consequently, the first research question for the present analysis inquires whether or not the likelihood of a specific prosecutorial outcome—the decision to dismiss a criminal case—varies across communities once important case-level measures are held constant.

In the event that significant variation is discovered, several theoretical perspectives provide avenues by which community context might explain such variation. As discussed above, racial and economic threat theories, the crime control hypothesis, the organizational efficiency hypothesis, the political conservatism hypothesis, and the southern subculture of punitiveness hypothesis all provide partial potential explanations for how community context might explain observed variation in prosecutors' charging decisions. Consequently, the second research question inquires whether or not community contextual factors are, in fact, capable of explaining the potential variation in the likelihood of

prosecutorial charging outcomes. In other words, if prosecutorial charging decisions vary across communities, can contextual level measures, such as those specified by racial and economic threat theories, the crime control hypothesis, the organizational efficiency hypothesis, and the punitive attitudes hypotheses, account for a significant proportion of this variation either through main effects of the measures or through cross-level interaction effects with case-level variables? By providing answers to these relatively straightforward, yet important and thus far unexamined research questions, considerable advances will be made to our collective understanding of the use of prosecutorial discretion in the contemporary American criminal justice system.

CHAPTER THREE

DATA AND METHODOLOGY

DATA

The research questions for the present analysis are to be evaluated using the 1998 State Court Processing Statistics (SCPS) and a county-level demographic data set (U.S. Department of Justice, 2000)². The SCPS data have been collected biennially through the Bureau of Justice Statistics (BJS) since 1990, and the records for each case provide substantial detail concerning the processing of defendants through state court systems. Specifically, the data provide information regarding demographic characteristics, arrest charges, criminal history, pretrial release and detention, adjudication (including prosecutorial charging decisions), and the sentencing outcomes of felony defendants tried in state courts. This information was tracked by the SCPS program for all felony defendants whose cases were filed during the month of May until either their final disposition or until the elapse of one year from the initial date of filing. Moreover, information provided by the SCPS is based on felony cases filed in nearly 40 of the nation's 75 largest counties. Of particular importance, these 75 counties represent more than one third of the nation's population and account for approximately 50 percent of all reported violent crime (Reaves, 2001).

The sampling procedure used for the SCPS was specifically designed to represent all felony court filings during the month of May in the nation's 75 most populous counties.

² Data more recent than 1998 have been made available through the SCPS program. Unfortunately, the latest releases of the SCPS data provide less detailed information regarding case and offender characteristics. To provide a more insightful analysis, then, the current study relies on the older 1998 data set.

To accomplish the desired representation, a two-stage stratified procedure designed by the U.S. Bureau of the Census was employed. The first stage of the stratified sampling procedure was used to select 40 of the 75 largest counties for inclusion in the sample. In doing so, potential sites were divided into four strata based on their number of court filings. The first stratum consisted of counties selected to be included in the sample with certainty due to their large number of court filings. The remaining counties were assigned to the three non-certainty strata according to the variance of their felony court filings. Thus, the second stratum contained counties with fewer filings than the first stratum, but more filings than the third stratum. The fourth and final stratum contained counties with the fewest court filings.

The second stage of the stratified sampling procedure was designed to select a sample of defendants capable of representing the entire population of defendants processed during the month of May. Since the first stratum consisted of counties with the largest number of case filings, data were collected on all felony filings during a single randomly selected week. For the second and third strata, data were collected on all felony filings during a randomly selected two-week period, and for the fourth stratum, data were collected for all felony filings during the full month of May.

In the end, the sampling procedure used by the SCPS provides useful information for 15,909 felony defendants processed through 39 county court systems³ and represents all felony defendants processed during the month of May in the nation's 75 largest counties. Table 3.1 provides a complete list of counties included in the present analysis. The number of felony defendants processed by each county ranged from 73 (Jefferson

³ The initial sample of 40 counties was reduced to 39 due to data collection problems experienced with Fulton County, GA.

Table 3.1. List of Counties Included in the Analysis

Jefferson, Alabama
Maricopa, Arizona
Pima, Arizona
Alameda, California
Los Angeles, California
Orange, California
Sacramento, California
San Bernardino, California
San Francisco, California
Santa Clara, California
Ventura, California
Broward, Florida
Hillsborough, Florida
Miami-Dade, Florida
Orange, Florida
Cook, Illinois
DuPage, Illinois
Marion, Indiana
Jefferson, Kentucky
Montgomery, Maryland
Baltimore City, Maryland
Wayne, Michigan
Jackson, Missouri
St. Louis, Missouri
Bronx, New York
Erie, New York
Kings, New York
Monroe, New York
New York, New York
Queens, New York
Suffolk, New York
Hamilton, Ohio
Allegheny, Pennsylvania
Philadelphia, Pennsylvania
Shelby, Tennessee
Dallas, Texas
Harris, Texas
King, Washington
Milwaukee, Wisconsin

County, KY) to 1,229 (Los Angeles County, CA), while the average number of defendants per county was approximately 408. Moreover, the sample includes defendants arrested for a variety of felonies broadly categorized as violent, property, drug, and public order crimes.

Since the present study focuses specifically on the prosecutor's decision to either fully charge or dismiss felony cases, the final analytic sample at the case level is restricted in several important ways. First, cases that received a *prosecutorial diversion* were excluded from analysis since defendants under these circumstances neither had their cases dismissed nor fully prosecuted by the state. Second, cases that were *transferred to a juvenile court* were also excluded from the present analysis as well as cases that *terminated due to death of the defendant*. After the exclusion of these cases the resulting sample contained data on 15,669 felony defendants who had their cases either fully charged or dismissed by the state.

To assess the possible influence of community context on prosecutors' charging decisions, the present study employs a county-level data set that provides information for each of the 39 counties sampled by the SCPS program. This data set includes theoretically relevant measures extracted from a variety of sources. Information concerning the racial composition and economic conditions of each county was provided by the 2000 U.S. Census. Crime rates for each county were provided by the Uniform Crime Reports for the three years preceding the SCPS program's 1998 collection of felony filings. County-level measures of political orientation were provided by the 1996 American National Election Study, and finally data concerning the caseload pressure present in each county court was provided by the 1996 National Prosecutors Survey and the SCPS data.

The county-level data set provides theoretically relevant racial, economic, and political information, as well as information concerning crime rates and court caseload for each county included in the case-level SCPS data set. The SCPS and county-level data sets were linked together using Federal Information Processing Standards (FIPS) codes available in each of the data files used for the current analysis. These codes provide unique identifiers for each county and serve as a means for reliably linking data from multiple sources. Relying on this method, the present study is based on a comprehensive data set providing important individual-level defendant, case, and processing information as well as important measures of community context for each of the counties in which these felony cases were filed.

MEASURES

Dependent Measure

The primary purpose of the current study is to test the potential direct and indirect effects of community context on prosecutorial charging decisions. Typically, prosecutors decide whether or not to charge a defendant's case during an initial screening of the case files. After this point in the criminal justice process, prosecutors also have the discretion to dismiss a defendant's case, effectively discontinuing criminal prosecution. Though both of these decision points are important for understanding prosecutorial discretion, the current study focuses on the prosecutor's decision to discontinue a criminal case through dismissal. Thus, the dependent variable is a dichotomous measure of the prosecutor's decision to dismiss a case and is coded 0 for fully prosecuted and 1 for dismissed.

Case-Level Measures

Existing research has demonstrated the importance of several defendant characteristics (e.g., age, race, sex, criminal history) as well as case and offense characteristics (e.g., seriousness of the crime, pretrial detention, conditional release status) in predicting charging outcomes (e.g., Adams & Cutshall, 1987; Albonetti, 1986; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Gruhl, Welch, & Spohn, 1984; Myers, 1982; Spohn & Beichner, 2000; Spohn, Gruhl, & Welch, 1987). As a result, several theoretically and empirically relevant case-level variables are included in the present study for the purpose of isolating the potential effects of county-level contextual factors on prosecutors' dismissal decisions.

Defendant Characteristics. Four measures are included in the analysis to account for differences in offender characteristics—*age*, *race*, *sex*, and *criminal history*. Though much of the literature examining the influence of age on criminal justice outcomes assumes a strictly linear relationship (e.g., Myers & Talarico, 1987; Peterson & Hagan, 1984; Ulmer & Johnson, 2004), research conducted by Steffensmeier, Ulmer, and Kramer (1995) demonstrated the nonlinear (i.e., inverted “U” shape) relationship between age and sentencing. More specifically, these researchers found that younger and older defendants were treated more leniently than defendants in the 21-29 age category. To account for this prior research finding, and to test its validity in the context of criminal prosecution, age is operationalized as a series of 5 dummy variables (0 = no, 1 = yes) which capture whether or not the defendant is less than 18 years old, between the ages of 18 and 20, between the ages of 21 and 29, between the ages of 30 and 39, or 40 years of age or older. The final group, 40 years of age or older, is excluded from the analysis and serves as the reference

category. Since it is unclear whether or not age has a nonlinear relationship to prosecutorial charging decisions, the present study also includes a linear measure of age. This second measure is operationalized as the age of the defendant in years at the time of arrest.

The possible influence of race on criminal justice outcomes has been examined by researchers in several prior studies and is most commonly operationalized as a dichotomous measure of either white versus non-white, or black versus white. As discussed by previous researchers (e.g., Pratt, 1998; Zatz, 1987), the use of a black versus white dichotomy often results in the inclusion of Hispanics, Cubans, and possibly even Native Americans in the white category. Recent research has demonstrated that these minorities, particularly Hispanics, may be treated more harshly than whites, and in some cases more harshly than blacks in similar circumstances (Steffensmeier & Demuth, 2000, 2001). As a result, the present study avoids combining whites and Hispanics into the same category. Instead, race/ethnicity is operationalized as a set of three dummy variables (0 = no; 1 = yes) capturing whether or not the defendant is white, black, or Hispanic.⁴ The white category is excluded from the analysis and serves as the reference group. It should be noted that defendants categorized as some other race (e.g., Asian, Native American, Pacific Islander) constituted less than two percent of the total sample, and these cases were thus excluded from the analysis.

The final two defendant characteristics controlled for in the present study are *sex* and *criminal history*. Several studies have demonstrated the importance of considering the sex of the defendant for understanding criminal justice outcomes, including the

⁴ It must be recognized that the Hispanic measure is somewhat limited in that it does not distinguish between black and white Hispanics. This limitation is due to the nature of the data collected by the SCPS where reliable information was not provided to distinguish separate categories of Hispanics based upon their race.

prosecutor's decision to dismiss charges (e.g., Adams & Cutshall, 1987; Barnes & Kingsnorth, 1996; Gruhl, Welch, & Spohn, 1984; Spohn & Beichner, 2000; Spohn, Gruhl, & Welch, 1987). To test for the possible lenient treatment of women as suggested by the chivalry/paternalism hypothesis, sex is included as a dichotomous variable coded 0 for female and 1 for male. In addition, the defendant's criminal history is included in the study to account for previous illegal behavior since such activity could possibly shape prosecutors' conceptions of guilt and convictability. Previous researchers have pointed out that dichotomous measures of criminal history are less prone to bias as compared to ratio measures (Geerken, 1994; Weltch et al., 1984; Wooldredge, 1998). For example, it has been noted that the *number* of arrests on a defendant's record may correlate with extralegal factors such as age and race (Geerken, 1994). Thus, to minimize the possibility of bias, criminal history is operationalized as a dichotomous measure (0 = no; 1 = yes) indicating whether or not the defendant had any prior felony convictions.

Offense and Case Characteristics. In addition to defendant characteristics, several offense and case characteristics are controlled for in the analysis. Three measures are included to account for the seriousness of the offense: the *offense type*, *whether or not the offense was completed*, and the *total number of felony charges*. The first measure, offense type, is operationalized as a set of four dummy variables (0 = no; 1 = yes) identifying whether or not the most serious arrest charge was for a violent, property, drug, or public order offense. The drug offense category is excluded from the analysis and serves as the reference group. The second measure, offense completed, is a dichotomous variable that captures whether or not the most serious arrest charge was for a completed (as compared to an attempted) offense (0 = no; 1 = yes). The third measure captures the total number of

felony charges faced by the defendant and is operationalized as an ordinal variable ranging from 1 to 5 or more charges.

The final three measures included in the analysis account for potentially important case-related factors. These measures provide information concerning the defendants' *pretrial release status*, *conditional release status*, and the *time from offense until arrest*. A substantial body of literature has identified the importance of pretrial release on later stages of the criminal justice process, where offenders are often treated more harshly in the absence of release (e.g., Chiricos & Bales, 1991; Crew, 1991; Demuth, 2003; Spohn, 2000). Thus, the current study includes a dichotomous measure (0 = no; 1 = yes) of pretrial release capturing whether or not the defendant was detained after arrest.

Conditional release status is a dichotomous measure (0 = no; 1 = yes) that captures whether or not the defendant was on probation or parole at the time of arrest for the current felony charge(s). Kingsnorth, MacIntosh, and Sutherland (2002) pointed out the importance of considering this factor for the study of prosecutorial discretion. In a study of domestic violence cases, these researchers discovered that prosecutors often drop criminal charges against defendants who are on probation in favor of pursuing a probation violation hearing. Thus, in the absence of controlling for defendants' conditional release status at the time of arrest, prosecutorial dismissal rates will be artificially inflated. In reality, Kingsnorth et al. (2002) demonstrated that such cases are not simply terminated as would be suggested by a case dismissal; instead, defendants facing these circumstances are often jailed or imprisoned through alternative means. Though many previous studies of prosecutorial discretion have failed to consider this point (e.g., Albonetti, 1986; Barnes & Kingsnorth, 1996; Ghali & Chesney-Lind, 1986; Horney & Spohn, 1996; Kingsnorth et al.,

1998; Kingsnorth et al., 1999; LaFree, 1989; Myers, 1982; Spears and Spohn, 1997; Spohn & Spears, 1996, 1998), the current study represents an advance in the literature by avoiding this shortcoming.

Finally, time until arrest is measured as a dichotomous variable (0 = no; 1 = yes) that identifies whether or not the defendant was arrested on the same day as the offense. In the absence of direct measures concerning the strength of evidence for each case, time until arrest is used as a proxy measure for evidentiary strength. Since time is a factor that might work against the building of a strong case, where evidence may degrade and eye-witnesses may forget important details, it is argued in the current study that evidence will be stronger in cases resulting in a quick arrest (i.e., the same day as the offense). Baumer, Messner, and Felson (2000) used a similar proxy measure to account for the lack of direct measures of evidentiary strength. Moreover, these researchers as well as others (Spears & Spohn, 1997; Spohn & Spears, 1996) suggest that the potential bias due to the absence of evidentiary measures may not be severe once other important factors are considered. In the end, the exclusion of direct measures for the amount and strength of evidence in the present study represents a weakness, but will unlikely prohibit a meaningful analysis.

County-Level Measures

To date, no research has examined whether or not community contextual factors influence the prosecutor's decision to dismiss a case. A growing body of research, however, has begun to address the ways in which community context might influence later decision points in the criminal justice process. Specifically, researchers have begun to test the influence of community context on sentencing outcomes, including the decision to

incarcerate and the sentence length decision (e.g., Britt, 2000; Fearn, 2005; Kautt, 2002; Myers & Talarico, 1987; Ulmer & Johnson, 2004). Drawing from this related body of literature, several potentially important community-level measures are considered in the current study. These measures include the racial and economic composition of the community, the official crime rates, the court caseload pressure experienced within each county, and several measures associated with punitive citizen attitudes (e.g., southern location, political orientation).

Consistent with the racial threat hypothesis (Blalock, 1967; Blumer, 1958; Quinney, 1974) as well as recent research testing the influence of racial threat on sentencing outcomes (e.g., Britt, 2000; Fearn, 2005), racial composition is captured through three related measures. The first measure is operationalized as the *proportion of black residents* within each of the 39 counties included in the analysis. The second measure is operationalized as the *proportion of Hispanic residents* present within each of the counties. Finally, the third measure captures the degree of racial and ethnic heterogeneity in each community through the following formula discussed by Britt (2000):

$$\text{Racial/Ethnic Heterogeneity} = 1 - [(p_W)^2 + (p_B)^2 + (p_A)^2 + (p_{NA})^2 + (p_{PI})^2 + (p_O)^2],$$

where p_W refers to the proportion of the white population, p_B refers to the proportion of the black population, p_A refers to the proportion of the Asian population, p_{NA} refers to the proportion of the Native American population, p_{PI} refers to the proportion of the Pacific Islander population, and p_O refers to the proportion of the population categorized as other. The racial/ethnic heterogeneity measure indicates the level of diversity in the community

where 0 represents a completely homogenous population and the maximum value of .8 represents the most heterogeneous population (i.e., each racial and ethnic group accounts for an equal proportion of the population).

To test the economic threat hypothesis and the supposition that macroeconomic conditions influence criminal justice outcomes (Blalock, 1967; Britt, 2000; Myers, 1987; Myers & Talarico, 1987), including the decision to dismiss criminal charges, the current study considers three economic measures. The first measure, *average unemployment*, is operationalized as the proportion of the civilian labor force reported to be unemployed across each county in 2000. The second measure, *per capita income*, captures the average yearly income for residents of each county for the 1999 work year. Though both measures have been commonly used in previous research (e.g., Britt, 2000; Kautt, 2000; Myers & Talarico, 1987), each has important shortcomings. The average unemployment measure fails to account for individuals who were no longer receiving state assistance due to time limits associated with unemployment benefits, but nonetheless, remained unemployed. Consequently, the actual proportion of unemployed individuals in the workforce is likely to be underestimated in places with long-lasting economic downturns. Per capita income identifies relative differences in mean income levels across counties, but fails to pinpoint the segment of the population that qualifies as an economic threat. To compensate for these shortcomings, a third measure, *poverty*, is included in the analysis as well. This measure captures the proportion of residents living below the poverty level during 1999, more accurately targeting the segment of the population living in absolute deprivation. This is precisely the group identified as threatening by the economic threat hypothesis. By including average unemployment and per capita income in the analysis, despite their

limitations, the comparative advantage of using a more precise measure of economic threat can be assessed. All three measures are extracted from the 2000 U.S. Bureau of the Census, and although they represent macroeconomic conditions one and two years after the SCPS data were gathered, there is little reason to suspect significant changes in each community's economic conditions over such a short time period.

To assess the crime control hypothesis, *property* and *violent crime rates* for each county are included in the analysis. The property crime measure includes incidents of burglary, larceny, auto theft, and arson. The violent crime measure includes incidents of murder, rape, robbery, and assault. Both measures were provided by the Uniform Crime Reports for the three years prior to the collection of the SCPS data, 1995 through 1997, and were averaged to create an estimate of the overall crime problem in each county. Since crime rates have the ability to fluctuate significantly from one year to the next, the use of an averaged crime rate across a three-year period offers a more stable measure of the crime problem. Moreover, the use of data for the three years prior to the filing of felony cases compensates for the potential lagged effect that jurisdictional crime rates might have on county-level criminal justice decision makers.

To test the punitive attitudes hypothesis, the current study includes measures of *political conservatism* and *southern geographic location*. The political conservatism measure was provided by the 1996 American National Election Survey and is operationalized as the proportion of the population that voted Republican in the 1996 presidential election. Additionally, since the sample of counties included in the present study is dispersed across multiple regions of the United States, it is possible to consider the impact of being located in the South. The measure for southern location is operationalized

as a dichotomous variable coded 0 for no and 1 for yes. Consistent with prior research (e.g., Borg, 1997; Fearn, 2005), the South is defined in accordance with the U.S. Census Bureau.⁵

For the purpose of assessing the organizational efficiency hypothesis and its assumption that caseload pressure influences the criminal justice process, particularly prosecutorial charging decisions, the present study includes a *felony caseload* measure. Specifically, this measure is operationalized as the proportion of felony cases processed during a one-month period to the total number of criminal prosecutors in each county. The total number of criminal prosecutors for each county was provided by the 1996 National Prosecutors Survey and the number of felony cases processed by each county was estimated from the SCPS data for 1998. Ideally, caseload information for each county court would be provided for the same year (i.e., 1998) in which data were provided by the SCPS. Unfortunately, the National Prosecutors Survey was not conducted during 1998 and the 1996 National Prosecutors Survey provides the most relevant data with regard to timeframe. Despite this timeframe shortcoming, it is unlikely that the number of prosecutors working for a single county would change substantially over such a short period.

To control for variation in prosecutorial screening practices from one county to the next, one final measure was included at the county level. Prosecutors in most counties screened out some felony cases before filing charges; however, in 12 of the 39 counties prosecutors filed charges for all felony cases received by the office. To control for the different *screening practices* from one county to the next, the present study includes a

⁵ According to the U.S. Census Bureau, the region of the United States identified as the South includes the following states: Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Virginia, West Virginia, Maryland, and Delaware.

dummy variable that captures whether or not the county screened felony cases prior to filing charges, coded 0 for no and 1 for yes. Failing to control for this difference in the initial screening practices would unduly inflate the variation in case dismissals across counties since jurisdictions that do not screen out cases prior to filing charges will be more likely to dismiss cases at a later point in the process.

ANALYTIC STRATEGY

Given the multilevel, nested nature of the prosecutorial charging data and the proposed research questions, hierarchical linear modeling (HLM) is the most appropriate statistical technique for analysis (Bryk & Raudenbush, 2002). The present data are characterized by a two-level hierarchical structure where criminal defendants are nested within various county-level courts. Though some studies (e.g., Myers & Talarico, 1987) have assessed similar data sets using standard ordinary least squares regression (OLS), the use of hierarchical modeling provides several important advantages (Britt, 2000; Bryk & Raudenbush, 2002; Fearn, 2005; Ulmer & Johnson, 2004). First, because criminal cases are nested within county-level courts, it is very likely that similarities among cases within the same county will exist. The end result is that each observation (i.e., criminal case) cannot be assumed to be independent of one another. Statistically, this creates a situation where residual errors within each county are correlated, violating a basic assumption of OLS regression. The lack of independence among error terms is a violation that results in the potential downward bias of standard errors, and hence, the increased possibility of Type I error. Second, OLS regression inappropriately bases tests of statistical significance

for level-two measures on the level-one sample size (which is typically much larger than the level-two sample size), creating an additional circumstance in which standard errors are biased downwards. HLM correctly adjusts the degrees of freedom for level-two measures, basing them on the level-two sample size. Finally, and of particular importance to the research questions posed here, HLM allows the analyst to statistically model variation in level-one regression coefficients across counties. For example, if the influence of race on prosecutors' charging decisions differs from one county to the next (i.e., the regression coefficients for race are heterogeneous) it is possible to model the potential influence of level-two measures (e.g., racial composition of the population, crime rates, geographic location) on this variation.

Since the outcome measure for the current analysis (case dismissal) is operationalized as a nonlinear dichotomous variable, hierarchical generalized linear models (HGLM) are estimated as opposed to hierarchical linear models which are limited to continuous outcome measures. The general form for the hierarchical generalized linear model is as follows:

$$(Y_{ij}) = \beta_{0j} + \beta_{1j} (X_{1ij} - X_{1j}) + \dots + \beta_{kj} (X_{kij} - X_{kj}), \text{ where} \quad (1)$$

$$\beta_{0j} = \gamma_{00} + \gamma_{01} W_1 + \dots + \gamma_{0m} W_m + u_{0j} \quad (2)$$

$$\beta_{1j} = \gamma_{10} + \gamma_{11} W_1 + \dots + \gamma_{1m} W_m + u_{1j} \quad (3)$$

⋮

$$\beta_{kj} = \gamma_{k0} + \gamma_{k1} W_1 + \dots + \gamma_{km} W_m + u_{kj} \quad (4)$$

Equation (1) represents the case-level of analysis and tests the potential influence of case, offense, and defendant characteristics on the prosecutors' decision to dismiss charges. More specifically, it assesses the log odds of dismissal (Y_{ij}) for case i in county j . The term β_{kj} represents the effect of variable k on the outcome variable for each county j included in

the model. Finally, $(X_{kij} - \bar{X}_{kj})$ is a term that represents the values of the independent variables for case i and county j centered on the grand mean.

Equations 2 through 4 specify the random coefficient components of the model as well as the level-two predictors or explanatory county-level measures of community context. These equations can be interpreted as follows: The term W_m represents the county-level measures, γ_{km} represents the effects of the county-level measures on the case-level coefficient β_{kj} for variable k and county j , and u_{kj} represents the error term or random component for the effect of variable k for county j . In these equations, then, county-level (level-two) measures can be specified to predict variation in the average likelihood of case dismissal (intercept β_{0j}) as well as variation in the effect of case-level factors (β_{kj}) across the 39 counties.

Recent multilevel research has relied on the use of both group-mean centering (Britt, 2000) and grand-mean centering (Ulmer & Johnson, 2004). Though group-mean centering has analytic advantages, the present study relies on grand-mean centering for reasons clarified by Ulmer and Johnson (2004). Centering around the group (i.e., county) mean provides unbiased parameter estimates for the level-one measures (see the discussion by Britt, 2000); however, this technique simultaneously biases the effect of level-two parameters (i.e., county-level independent measures), producing the effect of masking theoretically important compositional differences between counties. Like Ulmer and Johnson (2004), the current analysis relies on grand-mean centering since the primary focus of the study is to uncover potentially important differences among counties.⁶

⁶ To be sure that grand-mean centering does not substantially change the research findings with regard to level-one parameter estimates, non-tabularized supplemental analyses were run using group-mean centering. The research findings are not substantially changed by this test.

To address the research questions proposed in the current study, several statistical models are estimated. First, an unconditional random intercept model is analyzed to determine whether or not the log odds of case dismissal vary across the 39 counties in the analysis. The unconditional model also serves as a baseline of comparison for more fully specified models, allowing determination of the extent to which case-level and county-level independent measures explain variation in the dependent measure. These effects can be assessed by comparing the variance component reported in the baseline model to the variance components of later, more inclusive models (i.e., models that incorporate defendant, case, and offense characteristics as well as those that incorporate community characteristics). This comparison makes it possible to determine the proportion of variation in case dismissals across counties that is explained by both case-level and county-level predictors (see Fearn, 2005; Ulmer & Johnson, 2004 for a similar discussion).

Once the unconditional random intercept model is specified, a second baseline model is estimated with the inclusion of all case-level measures. This step in the analysis determines whether variation in the odds of case dismissal remains statistically significant after measures unique to each case are controlled. In addition, this model serves as a point of comparison for determining whether case- or county-level factors appear to explain the larger portion of variation in case dismissals across counties. Finally, by specifying a model with only case-level measures included, it is possible to determine if case-level coefficients undergo substantial changes once county-level measures are included in later, more complete models. Such a strategy allows for the assessment of potential indirect effects of county-level measures.

Following the baseline models, a series of models are analyzed where the unique effects of level-two predictors are estimated. Due to the relatively small sample size at level two ($N = 39$), county-level measures are introduced into the models separately from one another, providing bivariate relationships between each county measure and the dependent variable.⁷ These models provide an initial estimation of the direct effects of county-level measures on the dependent measure. These same models are then estimated with the addition of the case-level measures to determine whether any effects at the county-level disappear once these measures are controlled.

As a next step in the analysis, random coefficient models are estimated to provide important information regarding the effect of case-level measures. Specifically, these models determine whether or not the coefficients for the case-level measures vary across the counties in the analysis. For example, if the influence of defendants' race on the odds of case dismissal varies from one county to the next, this is indicated by a significant variance component for the race coefficient. If coefficients for case-level measures are discovered to vary across counties, further modeling will be undertaken to determine the degree to which county-level measures can explain this particular variation. Consequently, the random coefficient models serve as a guide for specifying theoretically relevant cross-level interaction effects.

Given the theoretical links drawn between community context and prosecutors' charging decisions discussed in the previous chapter, the present study is primarily concerned with the potential variation in the effect of race and ethnicity on the decision to dismiss criminal cases. If the random coefficient models indicate that the effects for these

⁷ The simultaneous inclusion of all county-level measures would likely produce unstable parameter estimates as a result of too few degrees of freedom.

measures do, in fact, vary across the counties included in the analysis, a series of cross-level interaction models will be estimated. These models identify whether community context is useful for understanding the potential variation in the influence of race from one county to the next. Put more simply, these models provide an answer to the following question: if race and ethnicity appear to matter in some communities but not others, what is it about those communities that can explain this variation?

Finally, a summary model is estimated based on the results of previous models over the course of this analysis to test for the possibility of spurious level-two effects. The models that are estimated prior to the final summary model only analyze the influence of county-level factors separately from one another; it is possible, of course, that significant findings may be due to the absence of other relevant measures in the models. To test for this possibility, the summary model will estimate the simultaneous influence of county-level measures identified as significant predictors in the earlier models. Such a strategy is necessary since the relatively small sample size at level-two does not support the testing of all level-two measures simultaneously. The selection of significant predictors from earlier models, however, will likely produce a smaller and, given the level-two sample size, more appropriate set of county-level measures to be tested.

CHAPTER FOUR

RESULTS

The current chapter reports the results of several analyses aimed at testing the effects of community context on prosecutorial decision making. The first section presents the results of two preliminary baseline models for the purpose of identifying whether variation in the probability of case dismissal exists across counties. The second section presents the results of a series of models aimed to test the direct and indirect effects of community context on case dismissal. The third section presents the results of a series of models that test for the possibility of cross-level interactions between case- and county-level factors. Finally, the last section reports the results of a summary model testing the simultaneous direct and cross-level interaction effects of those measures of community context identified to be important in the earlier stages of analysis.

PRELIMINARY BASELINE MODELS

Table 4.1 provides descriptive statistics for each measure used in the present study, and Table 4.2 presents the results of a fully unconditional random intercept model. The negative and significant coefficient for the intercept (-1.370) reported in the later table indicates that criminal cases are more likely to be prosecuted than dismissed across the counties included in the analysis. Specifically, prosecutors are approximately 4 times more likely to prosecute than dismiss criminal cases. More importantly, the random

Table 4.1. Descriptive Statistics for Case- and County-Level Measures

Variables	Mean	Standard Deviation
<i>Dependent Variable (N = 15,557)</i>		
Case Dismissed	.25	.43
<i>Case-Level Variables (N = 15,557)</i>		
Age	31.06	10.02
Less than 18	.03	.18
18 to 20	.15	.36
21 to 29	.32	.47
30 to 39	.30	.46
40 and older ¹	.19	.39
Race/Ethnicity		
White ¹	.32	.46
Black	.48	.50
Hispanic	.20	.40
Male	.82	.39
Number of Charges	2.06	1.22
Most Serious Arrest Charge		
Violent Offense	.24	.43
Property Offense	.30	.46
Drug Offense ¹	.37	.48
Public Order Offense	.10	.30
Arrested Same Day	.55	.50
Prior Record	.71	.45
Conditional Release	.20	.40
Defendant Detained	.36	.48
<i>County-Level Variables (N = 39)</i>		
Percent Black	19.18	14.18
Percent Hispanic	17.32	14.58
Racial Heterogeneity	.50	.12
Percent Below Poverty	13.31	5.24
Percent Unemployed	6.40	2.40
Per Capita Income	23,340.69	5,835.38
Violent Crime Rate	9.39	5.14
Property Crime Rate	52.65	18.44
Percent Republican	33.60	9.33
Southern Location	.28	.46
Court Caseload	608.08	344.66
Initial Screening	.69	.47

¹ These variables serve as reference categories and are thus excluded from analyses.

effects portion of the model reports the amount of variation in the likelihood or odds of case dismissal across counties. The variance component of .326 is significant and

Table 4.2. Unconditional Random Intercept Model of the Dismissal Decision

<u>Fixed Effects</u>	<u>Coefficient</u>	<u>S.E.</u>	<u>T-Ratio</u>	<u>Df</u>	<u>P-value</u>
Intercept, G00	-1.370	.095	-14.667	37	.000
<u>Random Effects</u>	<u>Variance</u>	<u>S.D.</u>	<u>X²</u>	<u>Df</u>	<u>P-value</u>
Level 2, U0	.326	.571	919.042	37	.000

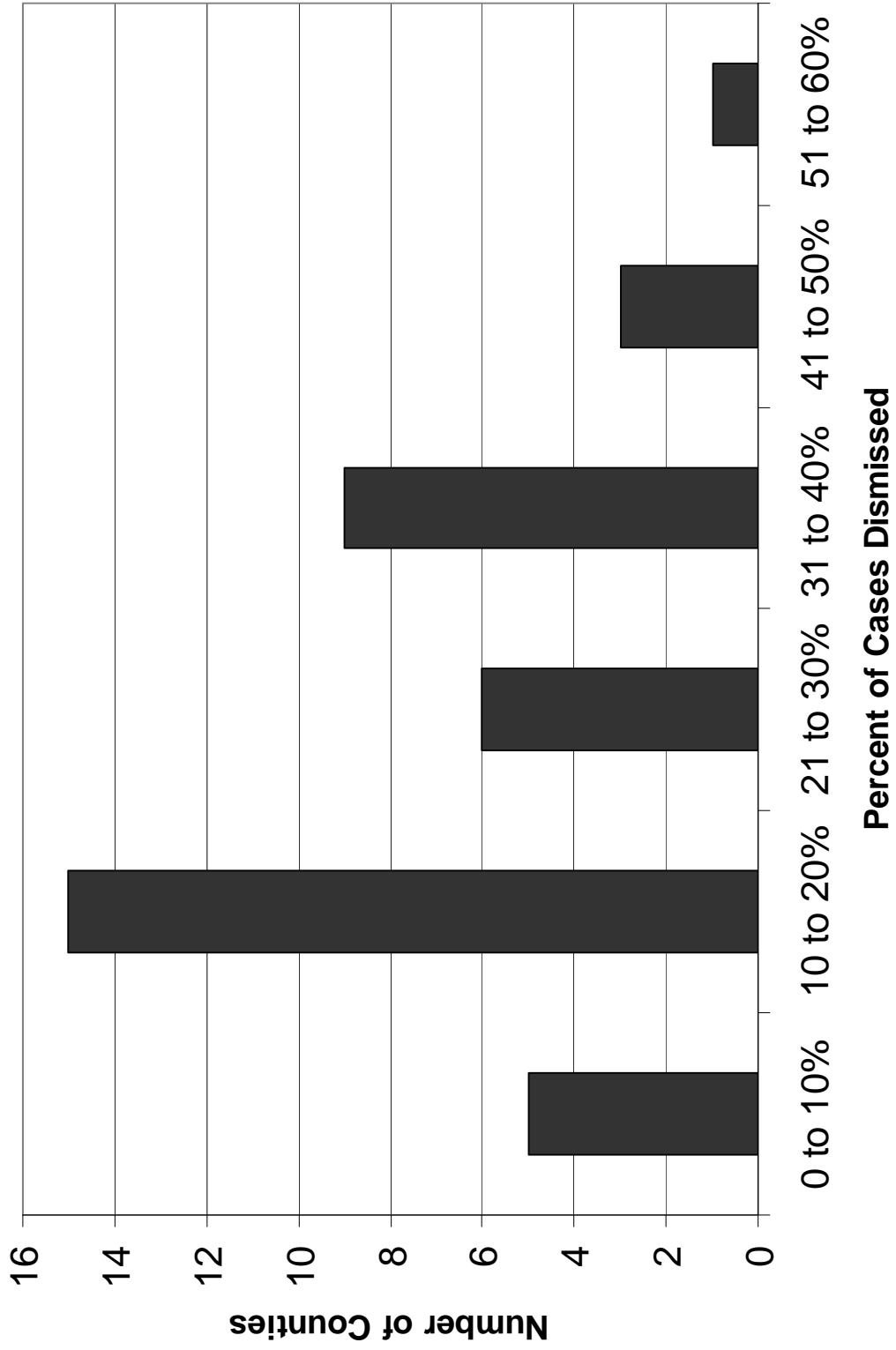
indicates that the odds of case dismissal do, in fact, vary from county to county. To help illustrate this point, Figure 4.1 provides a visual summary of the variation in prosecutorial case dismissals across counties included in the analysis. As indicated by the bar graph displayed in Figure 4.1, the percent of criminal cases dismissed by the prosecution varies substantially across counties, with some jurisdictions dismissing less than 10 percent of all filed cases and others dismissing more than 50 percent of all filed cases.⁸

The presence of variation in the likelihood of case dismissal across counties is an important indicator that community context may play a major role in explaining prosecutorial decision making. Had the reported variance component been non-significant or substantially smaller, it would have led to the opposite conclusion—that is, case dismissals are handled in a relatively universal manner from one county to the next, and community context is unlikely to affect this prosecutorial decision. Given the present findings, however, further analyses are justified.

Since previous literature has demonstrated that prosecutorial decisions are influenced by a variety of case-level factors (e.g., Albonetti, 1987; Baumer, Messner, & Felson, 2000; Beichner & Spohn, 2005; Free, 2000, 2001), the next logical step in the analysis is to include these measures in the model to determine if variation in the

⁸ For a complete breakdown of the percent of cases dismissed by each of the 39 counties, see Appendix A.

Figure 4.1. Percent of Cases Dismissed by County



likelihood of case dismissal remains. Table 4.3 presents the results of a random intercept model of case dismissal with relevant case-level factors added. The results reported in the random effects portion of the model indicate that significant variation remains even after controlling for a variety of important case-level factors. In fact, the reported variance increased slightly from .326 to .372, indicating that after controlling for these added measures variation in the likelihood of case dismissal across counties is even greater. Similar findings have been reported by Ulmer and Johnson (2004) and Fearn (2005) where variation in sentencing outcomes (e.g., the incarceration decision) across counties increased after controlling for important case-level measures. Thus, it appears that in the absence of such measures, county-level variation is suppressed in particular criminal justice outcomes, including the decision to dismiss criminal cases.

The fixed effects portion of Table 4.3 reports the direction and magnitude of the case-level controls included in the analysis. As expected, several of the measures significantly influenced prosecutorial case dismissals.⁹ Specifically, defendants who were younger than 18 years old as well as those who faced a high number of criminal charges, were arrested on the same day the offense(s) occurred, had a prior felony conviction, and were held in pretrial detention were less likely to have their cases dismissed as compared to their counterparts. Moreover, defendants charged with violent offenses, property offenses, and public order offenses were all significantly more likely to have their cases dismissed as compared to those charged with drug offenses. Finally, important extralegal factors including age (i.e., age categories for defendants older than 18 years of age), race,

⁹ It should be noted that fixed effects for state were also controlled to account for the possible influence of state laws and/or policies that might influence prosecutorial decision making. The case-level coefficients, however, were unaffected by these controls. Thus, fixed effects for state are excluded from further analyses.

Table 4.3. Random Intercept Model of the Dismissal Decision with Case-Level Controls

<i>Fixed Effects</i>	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>
Intercept	-1.454*	.102	.234*
Less than 18 Years Old	-.289*	.127	.748*
18 to 20 Years Old	-.009	.071	.991
21 to 29 Years Old	.071	.060	1.073
30 to 39 Years Old	-.027	.061	.973
Black	.066	.050	1.069
Hispanic	-.071	.065	.931
Male	.055	.055	1.057
Number of Charges	-.255*	.019	.774*
Violent Offense	.739*	.056	2.095*
Property Offense	.189*	.055	1.208*
Public Order Offense	.208*	.076	1.231*
Arrested Same Day	-.120*	.050	.887*
Prior Felony Conviction	-.096*	.048	.908*
Conditional Release	-.096	.062	.908
Defendant Detained	-.272*	.049	.762*
<i>Random Effects</i>	<i>Variance</i>	<i>S.D.</i>	<i>X²</i>
Level 2, U0	.372*	.610	936.083

* p < .05

ethnicity, and sex demonstrated no effect on the prosecutor's decision to dismiss criminal cases.

In sum, the two baseline models provide useful information for structuring further analyses where county-level factors are introduced into the models. The unconditional random intercept model indicates that the likelihood of case dismissal varies significantly across the 39 counties included in the analysis. More importantly, this variation remained significant (and even increased slightly) after controlling for important case-level factors as indicated by the second baseline model. This finding means that the likelihood of case dismissal varies by county even after controlling for theoretically relevant case and offender characteristics. This clearly indicates that factors unique to the communities where prosecutors work are likely responsible for this observed variation.

DIRECT AND INDIRECT EFFECTS OF COMMUNITY CONTEXT

Table 4.4 presents a series of models designed to assess the direct and indirect effects of theoretically important measures of community context. As indicated by the fixed effects portion of the table, several county-level measures are statistically significant. Communities with higher levels of racial/ethnic heterogeneity, unemployment, poverty, and violent crime experienced an increase in the odds of case dismissal. Communities characterized by increased political conservatism, on the other hand, experienced a slight reduction in the odds of case dismissal. While each of these effects was statistically significant, their substantive importance varied considerably. Racial/ethnic heterogeneity demonstrated a powerful effect; specifically, a one unit increase in the measure raised the odds of case dismissal by approximately six times. Proportion unemployed also demonstrated a noteworthy (but much weaker) effect, where a one unit increase in the

Table 4.4. Random Intercept Models of the Dismissal Decision with Bivariate County-Level Effects

<i>(Model)/Variable</i>	<u>Fixed Effects</u>			<u>Random Effects</u> ¹	
	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>	<i>S.D.</i>
(1) Intercept Only	-1.370*	.095	.254*	.326*	.571
(2) Proportion Black	.011	.007	1.011	.315*	.561
(3) Proportion Hispanic	.004	.007	1.004	.334*	.578
(4) Racial/Ethnic Heterogeneity	1.801*	.823	6.056*	.300*	.548
(5) Proportion Unemployed	.112*	.036	1.118*	.264*	.514
(6) Per Capita Income	-.000	.000	.999	.328*	.574
(7) Poverty	.052*	.016	1.053*	.263*	.513
(8) Property Crime Rate	.003	.006	1.003	.337*	.580
(9) Violent Crime Rate	.039*	.018	1.040*	.303*	.551
(10) Felony Caseload	-.007	.027	.993	.335*	.579
(11) Political Conservatism	-.026*	.010	.974*	.280*	.529
(12) Southern Jurisdiction	-.197	.222	.821	.327*	.571

¹ The random effects report the variance component for the Level 2, U0.

* p < .05

measure raised the odds of case dismissal by just over 1.1 times. Finally, poverty, the violent crime rate, and political conservatism all demonstrated effects with less substantive meaning as indicated by the odds ratios approaching 1.0. It should also be noted that racial/ethnic heterogeneity, unemployment, poverty, and violent crime had the opposite effect as predicted by the previously discussed theoretical frameworks.

The random effects portion of Table 4.4 reports the variance for the model intercept after controlling for the bivariate effect of each county-level measure as presented in models 2 through 12. In each of the models where a significant county-level effect emerged, the variance component for the intercept was reduced from that reported in the earlier baseline model (Table 4.2). This indicates that some of the variation in the outcome measure (case dismissal) is explained by the bivariate effects of the county-level factors. Even so, the variance component in each model remains statistically significant, indicating that variation in the likelihood of case dismissal is still present after county-level measures are controlled. Thus, no single measure of community context is able to fully explain the differential handling of criminal cases with regard to prosecutorial dismissals.

As a next step in the analysis, case-level controls are added to each of the models that previously assessed the bivariate effects of community context. These models provide the direct effects of community context, net of case-level controls, but also allow for the assessment of possible indirect effects where county-level measures might operate through various case-level measures. For example, the proportion of the unemployed population might work indirectly through the number of criminal charges filed to influence the prosecutor's decision to dismiss a case. To test for this as well as similar indirect effects, the coefficients for county-level measures can be compared with and without the presence of case-level controls. If the effects of county-level measures disappear once case-level measures are introduced into the models, important indirect effects can be identified.

Table 4.5 presents the results of models with case-level controls added. As indicated by the fixed effects portion of the table, the effects of community context remain relatively unchanged as compared to the previous bivariate models presented in Table 4.4.

Table 4.5. Random Intercept Models of the Dismissal Decision with County-Level Effects and Case-Level Controls¹

<i>(Model)/Variable</i>	<u>Fixed Effects</u>			<u>Random Effects²</u>	
	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>	<i>S.D.</i>
(1) Intercept Only	-1.454*	.102	.234*	.372*	.610
(2) Proportion Black	.009	.007	1.009	.369*	.607
(3) Proportion Hispanic	.008	.007	1.008	.373*	.610
(4) Racial/Ethnic Heterogeneity	2.209*	.866	9.103*	.328*	.573
(6) Proportion Unemployed	.133*	.038	1.142*	.281*	.530
(6) Per Capita Income	-.000	.000	.999	.375*	.613
(7) Poverty	.062*	.017	1.063*	.282*	.531
(8) Property Crime Rate	.003	.006	1.003	.384*	.620
(9) Violent Crime Rate	.045*	.020	1.046*	.340*	.582
(10) Felony Caseload	-.011	.029	.989	.381*	.617
(11) Political Conservatism	-.034*	.010	.967*	.292*	.540
(12) Southern Jurisdiction	-.282	.235	.755	.365*	.604

¹ Case-level measures are controlled in each of the presented models; however, the coefficients for these measures remain virtually unchanged from the earlier model presented in Table 4.3. Thus, for ease of presentation, the coefficients for the case-level measures are not reported for these models.

² The random effects report the variance component for the Level 2, U0.

* p < .05

Racial/ethnic heterogeneity, proportion unemployed, poverty, the violent crime rate, and political conservatism all remain statistically significant predictors of case dismissal.

Additionally, the magnitude and direction of each coefficient is relatively unaffected by the inclusion of important case-level controls, with the exception of racial/ethnic

heterogeneity. In this case, the magnitude of the coefficient became notably stronger, with the corresponding odds ratio increasing from 6.056 to 9.103. None of the county-level factors, however, appear to be mediated by case-level factors; this leads to the conclusion that community context does not appear to indirectly affect the case dismissal decision.

The random effects portion of Table 4.5 presents similar findings to the earlier bivariate models of Table 4.4. Each one of the models with significant county-level predictors was able to reduce the variance component from that reported in the second baseline model (Table 4.3).¹⁰ A comparative assessment of the models indicates that the proportion unemployed (model 5) has the largest impact on the variance component, reducing it from .372 to .281. The variance component for each model, however, remains significant, indicating that county-level variation in the decision to dismiss criminal cases is not fully explained by any of the statistical models presented thus far.

To summarize, the analyses presented in Tables 4.4 and 4.5 provide initial evidence that some of the theoretically relevant measures of community context have significant direct effects on a county prosecutor's decision to dismiss cases. Racial/ethnic heterogeneity, the proportion of the unemployed population, poverty, the violent crime rate, and political conservatism all demonstrate significant effects, net of case-level controls. Moreover, a comparison of Tables 4.4 and 4.5 reveals that community context does not appear to operate indirectly through important case-level measures. Instead, the influence of county-level factors remained relatively stable with and without the inclusion case-level measures.

¹⁰ In this case, the second rather than the first baseline model serves as a more appropriate point of comparison since it provides an estimate of the variance component after controlling for all case-level factors. Such a comparison provides an assessment of the impact of each county-level measure on the variance, net of case-level controls.

CROSS-LEVEL INTERACTION EFFECTS

The consideration of direct and indirect effects of community context is important for understanding prosecutorial decision making, but to create a more complete picture of this process it is also necessary to model potential cross-level interaction effects. That is, the influence of case-level factors (i.e., the magnitude of their coefficients) might vary across counties depending upon important community characteristics, and this must be considered to more fully appreciate the possible complexities of prosecutorial decision making. As a first step, however, it is necessary to consider whether, and the degree to which, case-level coefficients vary across the counties included in the analysis. To accomplish this task, random coefficient models were estimated and the results are presented in Table 4.6.

In the first three columns of Table 4.6, the coefficients, standard errors, and odds ratios are reported, similar to the format of the second baseline model presented in Table 4.3. The primary difference in the present model, however, is that each case-level coefficient was allowed to vary randomly across the level-two counties. The final column of the table reports the estimates for the variance associated with each of the case-level measures. Nearly all of the estimates are statistically significant at $p < .05$, with the exception of male and the age category 21 to 29 years old, both of which are significant at $p < .10$. The only case-level measure that demonstrated a non-significant variance estimate was public order offense. These results demonstrate that the case-level predictive models of prosecutorial decision making vary across counties. Practically speaking, this implies that prosecutors in different counties do not use case and offender characteristics, such as

Table 4.6. Random Coefficient Model of the Dismissal Decision¹

<i>Fixed Effects</i>	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>
Intercept	-1.454*	.102	.234*	.372*
Less than 18 Years Old	-.289*	.127	.748*	.249*
18 to 20 Years Old	-.009	.071	.991	.072*
21 to 29 Years Old	.071	.060	1.073	.023 [†]
30 to 39 Years Old	-.027	.061	.973	.018*
Black	.066	.050	1.069	.082*
Hispanic	-.071	.065	.931	.056*
Male	.055	.055	1.057	.041 [†]
Number of Charges	-.255*	.019	.774*	.038*
Violent Offense	.739*	.056	2.095*	.273*
Property Offense	.189*	.055	1.208*	.110*
Public Order Offense	.208*	.076	1.231*	.034
Arrested Same Day	-.120*	.050	.887*	.659*
Prior Felony Conviction	-.096*	.048	.908*	.050*
Conditional Release	-.096	.062	.908	.102*
Defendant Detained	-.272*	.049	.762*	.390*

¹ Significance tests for the intercept and variance components are based on 38 degrees of freedom while significance tests for the case-level coefficients and odds ratios are based on 14,808 degrees of freedom.

* $p < .05$

[†] $p < .10$

age, race, sex, and prior criminal history in the same way when deciding whether to dismiss cases. Instead, the degree to which these factors influence prosecutorial decision

making varies depending upon the community under consideration.

The magnitude of each variance component indicates the degree of county-level variation present among the case-level factors. The effects of defendant's age (e.g., 21-29 years old and 30 to 39 years old), Hispanic, male, number of charges, and prior felony conviction demonstrate relatively small variance estimates. Thus, prosecutors appear to use these factors in a relatively similar way. In stark contrast, the effects of being black, less than 18 years old, violent offense, property offense, arrested same day, conditional release, and defendant detained status demonstrate considerably larger variance estimates. Prosecutors in these 39 counties use each of these factors with less consistency when deciding whether to dismiss a defendant's case.

It is also important to note that several of the case-level factors in Table 4.6 have non-significant coefficients but significant variance estimates. Specifically, 18 to 20 years old, 21 to 29 years old, 30 to 39 years old, black, Hispanic, male, and conditional release all demonstrate non-significant coefficients, indicating null effects when averaged across all counties in the sample. Thus, when examining the average influence of these factors across the entire sample of counties, the results suggest the absence of meaningful effects. The significant variance estimates, however, demonstrate that the null effects of these predictors are not constant across counties. Rather, their effects vary from one community to the next, and it is not until they are averaged across all counties in the data that they become non-significant predictors of case dismissal. In the end, these models suggest that each of these factors are important for understanding prosecutorial decision making, but their relative importance depends specifically upon the community under consideration.

Given the evidence of noteworthy variation in the salience of case-level factors

across counties, the next logical step in the analysis is to consider whether factors unique to each community can account for this finding of varying explanatory power. The influence of extralegal factors—such as race and ethnicity—are of primary importance for evaluating equity in prosecutorial decision making, and several theoretical developments discussed in Chapter 2 suggest the need to consider whether community context might condition the effects of these factors. Consequently, the following series of analyses test for possible cross-level interaction effects between community context and defendants' race and ethnicity. Findings related to this question are reported in Tables 4.7 and 4.8.

Table 4.7 reports a series of models that assess the cross-level interaction effects between the case-level measure of the defendant's race (black) and each of the county-level factors. The first three columns of the table report the coefficient, standard error, and odds ratio for the intercept, the direct effect of the specified county-level factor, the direct effect of black, and finally the cross-level interaction effect between the specified county-level factor and black for each of the ten models. The final column reports the variance estimates for the model intercept and black coefficients. Each model also includes all case-level measures; however, since their coefficients remain virtually unchanged from the earlier model presented in Table 4.3, results for these measures are not reported here. An examination of the cross-level interactions specified in each of the ten models reveals that county-level measures offer little explanation for the observed variation in the black coefficient across counties. The cross-level interactions estimated in models 1 through 9 are all non-significant. Moreover, the variance estimate associated with the black coefficient in each of these models remains relatively unaffected when compared to the baseline random coefficient model presented in Table 4.6.

Table 4.7. Cross-Level Interactions between Race and County-Level Factors¹

<i>(Model)/Variable</i>	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>
(1) Intercept	-1.451*	.100	.234*	.359*
Proportion Black	.010	.007	1.010	
Black	.076	.072	1.079	.079*
Proportion Black * Black	-.004	.005	.996	
(2) Intercept	-1.465*	.096	.230*	.322*
Racial Heterogeneity	2.345	.861	10.435*	
Black	.075	.075	1.078	.091*
Racial Heterogeneity * Black	-.194	.636	.823	
(3) Intercept	-1.462*	.089	.231*	.276*
Proportion Unemployed	.134*	.037	1.143*	
Black	.068	.074	1.071	.088*
Proportion Unemployed * Black	.014	.028	1.013	
(4) Intercept	-1.459*	.102	.232*	.371*
Per Capita Income	-.000	.000	.999	
Black	.074	.074	1.077	.088*
Per Capita Income * Black	-.000	.000	.999	
(5) Intercept	-1.464*	.089	.231*	.273*
Poverty	.063	.017	1.065*	
Black	.071	.075	1.074	.090*
Poverty * Black	.001	.013	1.001	
(6) Intercept	-1.456*	.102	.233*	.374*
Property Crime Rate	.002	.006	1.002	
Black	.088	.074	1.092	.082*
Property Crime Rate * Black	-.003	.004	.997	
(7) Intercept	-1.461*	.096	.231*	.329*
Violent Crime Rate	.046*	.019	1.047*	
Black	.079	.075	1.081	.087*
Violent Crime Rate * Black	-.004	.014	.996	
(8) Intercept	-1.453*	.102	.233*	.373*
Felony Caseload	-.010	.029	.990	
Black	.085	.073	1.088	.082*
Felony Caseload * Black	-.018	.021	.982	
(9) Intercept	-1.460*	.090	.232*	.286*
Proportion Conservative	-.034	.010	.966	
Black	.073	.073	1.075	.081*
Proportion Conservative * Black	-.008	.007	.992	
(10) Intercept	-1.447*	.100	.235*	.359*
Southern Jurisdiction	-.025	.233	.778	
Black	.093	.065	1.097	.049*
Southern Jurisdiction * Black	-.391*	.133	.676*	

¹ Each model controls for all case-level measures which remain virtually unchanged from the model presented in Table 4.3.

* p < .05

The tenth model reported in Table 4.7, however, does offer insight into the varying influence of being black on case dismissals. The findings from this model indicate that the cross-level interaction between southern jurisdiction and black is statistically significant. Moreover, the variance estimate associated with black has been reduced from .082 (see Table 4.6) to .049, demonstrating that once southern jurisdiction is taken into consideration there is less variation remaining in the black coefficient across counties. The negative coefficient (-.391) for the cross-level interaction indicates that black defendants are nearly 1.5 times more likely to have their cases prosecuted as compared to white defendants in southern jurisdictions.

Table 4.8 reports a similar series of models aimed to test the cross-level interaction between county-level factors and defendants' ethnicity (Hispanic). Once again, each model reports estimates for the intercept, the direct effect of the specified county-level factor, the direct effect of Hispanic, and the cross-level interaction effect between the specified county-level factor and Hispanic. The findings from this series of models indicate that community context, as operationalized in the current study, is unable to explain the variation in the Hispanic coefficient. None of the cross-level interaction effects are statistically significant, and the variance estimates for Hispanic remain relatively unchanged as compared to the baseline estimate reported in the earlier random coefficient model (Table 4.6).

In sum, the series of models reported in Tables 4.6 to 4.8 provide several key findings. First, nearly all of the case-level factors included in the current study appear to be used by prosecutors in different ways from one county to the next. Thus, case and offender characteristics do not have a universal influence on important prosecutorial

Table 4.8. Cross-Level Interactions between Ethnicity and County-Level Factors¹

<i>(Model)/Variable</i>	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>
(1) Intercept	-1.458*	.102	.233*	.369*
Proportion Hispanic	.008	.007	1.008	
Hispanic	-.110	.106	.896	.060*
Proportion Hispanic * Hispanic	-.002	.006	.998	
(2) Intercept	-1.466*	.096	.231*	.325*
Racial Heterogeneity	2.196*	.865	8.993*	
Hispanic	-.122	.091	.885	.057*
Racial Heterogeneity * Hispanic	-.226	.712	.797	
(3) Intercept	-1.463*	.090	.231*	.280*
Proportion Unemployed	.134	.038	1.143*	
Hispanic	-.127	.089	.881	.057*
Proportion Unemployed * Hispanic	-.009	.029	.991	
(4) Intercept	-1.461*	.102	.232*	.374*
Per Capita Income	-.000	.000	.999	
Hispanic	-.125	.089	.882	.063*
Per Capita Income * Hispanic	.000	.000	1.000	
(5) Intercept	-1.466*	.090	.231*	.281*
Poverty	.062*	.017	1.064*	
Hispanic	-.128	.092	.880	.060*
Poverty * Hispanic	-.001	.014	1.064	
(6) Intercept	-1.460*	.103	.232*	.383*
Property Crime Rate	.003	.006	1.003	
Hispanic	-.133	.087	.875	.058*
Property Crime Rate * Hispanic	.003	.005	1.003	
(7) Intercept	-1.467*	.098	.231*	.342*
Violent Crime Rate	.043*	.020	1.045*	
Hispanic	-.123	.086	.884	.051*
Violent Crime Rate * Hispanic	-.013	.020	.987	
(8) Intercept	-1.455*	.103	.233*	.381*
Felony Caseload	-.005	.030	.995	
Hispanic	-.123	.087	.884	.057*
Felony Caseload * Hispanic	.040	.043	1.041	
(9) Intercept	-1.461*	.091	.232*	.292*
Proportion Conservative	-.033*	.010	.968*	
Hispanic	-.128	.087	.880	.058*
Proportion Conservative * Hispanic	.003	.009	1.003	
(10) Intercept	-1.459*	.101	.232*	.362*
Southern Jurisdiction	-.279	.235	.756	
Hispanic	-.125	.089	.882	.061*
Southern Jurisdiction * Hispanic	-.042	.202	.959	

¹ Each model controls for all case-level measures which remain virtually unchanged from the model presented in Table 4.3.

* p < .05

decisions such as case dismissal. Second, several of the case-level factors (e.g., race, ethnicity) demonstrate no effect on the prosecutor's decision to dismiss cases when results are averaged across the entire sample of counties. The significant variance estimates associated with each of these measures, nevertheless, suggest that they do, in fact, matter—at least in certain locations. Third, most of the county-level measures are unable to explain the varying effect of defendant's race. Of primary importance, however, is the finding that southern jurisdictions are significantly less likely to dismiss cases against black defendants as compared to white defendants. Finally, the measures of community context are unable to offer an explanation for the varying influence of ethnicity on case dismissals.

SUMMARY MODEL

Thus far in the analysis, measures of community-context have been assessed separately from one another (i.e., multiple measures of community-context have not been assessed in the same model). To provide more accurate estimates of the county-level effects, however, a final summary model is estimated based on the results of previous analyses. Rather than simply combining all county-level measures into a single model, the summary model assesses the simultaneous effects of those county-level measures that demonstrated a significant effect in the previous models. Such a strategy aims both to preserve the limited degrees of freedom at the second level of analysis and provide a test for spurious effects among the county-level measures identified as important predictors in the previous models.

Prior to estimating the final summary model, several collinearity diagnostics were

examined for the group of county-level measures to assure the calculation of accurate parameter estimates and tests of statistical significance. These diagnostics are particularly important given the interrelated nature of several of the measures of community-context included in the present study. An examination of a bivariate correlation matrix revealed strong correlations ($b > .7$) between poverty and two other measures identified as important predictors in the earlier analyses—violent crime rate and proportion unemployed.¹¹ To address this concern, the measure of poverty was excluded from the next step in the analysis.¹²

Additional collinearity tests were examined for the remaining county-level measures (i.e., racial/ethnic heterogeneity, proportion unemployed, violent crime rate, political conservatism, southern jurisdiction). Results from these tests indicated that excessive collinearity was not present among the measures. Variance inflation factors (VIFs) for each measure of community context ranged from 1.8 to 3.4, and tolerances ranged from .29 to .71. Moreover, an examination of the condition indexes (CIs) also revealed that collinearity was unlikely to be an issue in the present analysis ($CI < 25$).¹³ Despite the acceptable findings from the collinearity diagnostics, initial results not presented in tabular form indicated that collinearity, in fact, was likely problematic among the assessed county-level measures. This was evidenced by the non-significant parameter estimates (due to inflated standard errors) for each county-level measure, as well as the directional change among some of the coefficients as compared to earlier analyses.

Given that several of the county-level measures included in the present study

¹¹ Appendix B reports the bivariate correlation matrix for all county-level measures.

¹² Given that poverty and proportion unemployed are highly related from an empirical ($b = .918$) and conceptual point of view, the exclusion of the former is unlikely to affect the substantive findings of the analysis.

¹³ The results of collinearity diagnostics are presented in Appendix C.

attempt to assess one form of community “threat” or another (e.g., economic threat, racial/ethnic threat, the threat of violent crime), and issues of collinearity preclude the comparative assessment of these factors in a single model, theoretically relevant measures were combined using factor analysis. Results from the factor analysis indicated that racial/ethnic heterogeneity, proportion unemployed, poverty, and violent crime rate all loaded heavily on a single underlying factor structure (eigenvalue = 3.31, factor loading > .7).¹⁴ Based on these findings, a single measure of concentrated threat, operationalized as a weighted factor regression score, was created to identify communities suffering from a variety of conditions recognized as potentially dangerous (Blalock, 1967; Britt, 2000; Myers, 1987; Turk, 1969).

The newly constructed measure of concentrated threat was employed to eliminate concerns of collinearity, and with this new measure a final summary model was estimated; the results are presented in Table 4.9. The first column of the table reports the coefficients for the direct effects of concentrated threat and proportion conservative, as well as the cross-level interaction effect between southern jurisdiction and black. The measure of concentrated threat demonstrates a statistically significant effect, indicating that county prosecutors are more likely to dismiss criminal cases in communities with higher levels of concentrated threat. More specifically, a one unit increase in concentrated threat raises the odds that prosecutors will dismiss a case by approximately 1.26 times. The first column of Table 4.9 also reveals that proportion conservative is no longer statistically significant once concentrated threat is controlled. This finding indicates that the proportion of residents who are conservative in a given community does not influence the manner in which prosecutors exercise discretion with regard to case dismissals.

¹⁴ For a complete list of factor loadings see Appendix D.

Table 4.9. Summary Model of County-Level Contextual Effects on Case Dismissal¹

<i>Variable</i>	<i>Coefficient</i>	<i>S.E.</i>	<i>Odds Ratio</i>	<i>Variance</i>
Intercept	-1.457*	.087	.232*	.261*
Concentrated Threat	.231*	.106	1.261*	
Proportion Conservative	-.019	.012	.981	
Black	.084	.065	1.088	.050*
Southern Jurisdiction * Black	-.385*	.133	.681*	

¹ The model controls for all case-level measures which remain virtually unchanged from the model presented in Table 4.3.

* $p < .05$

The finding that blacks are less likely to have their cases dismissed in southern jurisdictions, however, remains statistically significant. Moreover, the magnitude of the relationship is relatively unchanged as compared to the earlier model presented in Table 4.7. Even after controlling for other important case- and county-level factors, black defendants in southern jurisdictions are still 1.47 times more likely to have their cases prosecuted as compared to white defendants. Punitive attitudes prevalent in the South, then, appear to be a primary factor for explaining variation in the effect of race on prosecutorial decision making. At least in the current study, race demonstrates a clear influence on the decision to dismiss criminal cases, but this finding must be understood through the broader context of geographic location and the punitive attitudes characteristic of the South.

The final column of table 4.9 reports the variance estimate for the model intercept as well as for the black coefficient. The variance estimate for the intercept is .261, which is substantially reduced from that reported in the second baseline model. Moreover, the variance estimate for the intercept reported in the final summary model is smaller than the estimates reported in any of the previous models where county-level measures were assessed separately from one another. Thus, the final summary model is able to explain

additional county-level variation in the likelihood of case dismissal. The variance estimate for the black coefficient is also smaller than the baseline estimate presented in Table 4.6, indicating that once the location of the jurisdiction (South vs. non-South) is statistically controlled, less variation in the black coefficient is observed. It should also be noted that both variance estimates (i.e., for the model intercept and the black coefficient) remain statistically significant. This essentially means that even after controlling for the measures of community context included in the present study, the likelihood of case dismissal and the influence of defendants' race still vary across the counties included in the analysis. Thus, the measures of community context included in the current analysis are unable to explain fully the differential case processing that occurs from one county jurisdiction to the next.

CHAPTER FIVE

DISCUSSION AND CONCLUSIONS

A growing body of research has pointed to the importance of considering the broader context in which key criminal justice decisions are carried out (Britt, 2000; Fearn, 2005; Free, 2002; Kautt, 2002; Myers & Talarico, 1987; Ulmer & Johnson, 2004; Weidner, Frase, & Pardoe, 2004). It has been argued by scholars for some time that a more complete understanding of such decisions must consider the social context of the external communities in which they are made (e.g., Peteron & Hagan, 1984). Though researchers have begun to address this concern with regard to sentencing outcomes (e.g., Britt, 2000; Crow & Johnson, 2008; Fearn, 2005; Free, 2002; Kautt, 2002; Myers & Talarico, 1987; Ulmer & Johnson, 2004; Weidner, Frase, & Pardoe, 2004), similar developments have been nearly absent from the literature focusing on prosecutorial discretion (Free, 2002; for an exception see Ulmer, Kurlychek, and Kramer, 2007). To remedy this shortcoming, the current study has attempted to answer two important questions: (1) does the likelihood of prosecutorial case dismissal vary across legal jurisdictions once important case-level measures are controlled, and (2) is community context able to explain (either directly, indirectly, or through cross-level interactions) any observed variation in the likelihood of case dismissal? Findings reported in the previous chapter indicate that the odds of case dismissal do, in fact, vary widely across legal jurisdictions. Moreover, community context appears to be important for understanding prosecutorial decision making and as such, important theoretical, research, and policy implications must be addressed.

THEORETICAL IMPLICATIONS

The results reported in the present study provide several implications for the theoretical frameworks used to link community context and prosecutorial decision making. First, the proponents of racial threat theory have suggested that the criminal justice system will respond more punitively in areas with larger minority populations (Blalock, 1967; Blumer, 1958; Liska, Lawrence, & Sanchirico, 1982; Quinney, 1974) and have argued that this punitive effect will result in even harsher outcomes for minorities (Britt, 2000; Fearn, 2005; Myers & Talarico, 1987). While some studies have found this to be at least partially true in the context of judicial sentencing decisions (e.g., Britt, 2000; Myers & Talarico, 1987), measures of racial threat do not appear to influence prosecutorial charging decisions in the manner originally hypothesized by the theory. Contrary to expectations, higher levels of racial threat did not increase the likelihood of prosecution for either African-American or Hispanic defendants. Instead, communities characterized by higher levels of racial and ethnic heterogeneity reported *less punitive treatment* by prosecutors. Specifically, county prosecutors were substantially *more* likely to dismiss cases against all defendants—minority and non-minority alike—in areas with increased racial/ethnic heterogeneity.

Such a finding clearly indicates that the contentions of racial threat theory do not apply to prosecutorial charging decisions in a clear and consistent fashion. In fact, the evidence reported here suggests that measures of racial threat are either inconsequential (e.g., proportion black, proportion Hispanic) or result in leniency for all defendants (e.g., racial heterogeneity), despite their race or ethnicity. Ulmer, Kurlychek, and Kramer (2007)

uncovered similar findings when examining the influence of racial threat on the prosecutorial decision to apply mandatory minimums. These researchers reported that as the percentage of African Americans in the community increased, the likelihood of receiving a mandatory minimum decreased for both African-American and white offenders. Britt (2000) reported a similar finding, though in the context of judicial sentencing decisions, where convicted offenders received shorter sentences in communities with larger African-American populations; it should be noted, however, that in these same communities offenders were more likely to receive a sentence involving incarceration as opposed to community placement. Given the limited support and sometimes contrary findings surrounding the racial threat theory and its hypothesized influence on criminal justice outcomes, theorists should attempt to develop more fully and clarify the ways in which the racial and ethnic composition of communities might affect the process of formal court-related punishment.

Second, the proponents of economic threat theory have argued that in communities with larger proportions of economically disadvantaged citizens the criminal justice system will respond harshly to potential criminals (Blalock, 1967; D'Alessio, Eitle, & Stolzenberg, 2005; Myers, 1987; Myers & Talarico, 1987). In addition, researchers have suggested that this punitive response should be harsher for minorities who tend to be stereotypically viewed as members of the poor underclass (Britt, 2000). Findings from the present study, however, are not consistent with the predictions of this theoretical framework either. Instead, prosecutors appear to respond *more* leniently to all offenders in areas characterized by economic downturn. Measures of economic threat do not seem to incite an overly punitive response by prosecutors, but instead the very opposite impact

appears to be true. Considering this finding, the underlying assumption of economic threat theory is clearly challenged as inaccurate, at least in the context of prosecutorial case dismissals.

Third, the research findings presented here also have important implications for the crime control hypothesis, which argues that the criminal justice system will, in the interest of deterrence, respond more punitively in communities afflicted with higher crime rates than those with lower crime rates (Britt, 2000; Fearn, 2005). Once again, however, this basic supposition is not born out by the present analysis; instead, prosecutors are significantly more likely to dismiss criminal cases in communities with *more* violent crime than in communities with less violent crime. At first glance such a finding may appear to reveal more about the practices of police rather than prosecutors. It is very possible that police officers are more prone to arrest potential criminals in areas with higher rates of crime, despite the level or quality of evidence available to corroborate the charges. In cases where police choose to arrest with either questionable or limited evidence to support a future conviction, prosecutors will be faced with heightened levels of uncertainty, increasing their likelihood of dismissing the case (see Albonetti, 1986, 1987).

One limitation of the present study is the absence of direct measures capturing the quality of evidence surrounding each criminal charge. Despite this limitation, however, it is unlikely that the strength of evidence accompanying arrest decisions is driving the finding that case dismissals are more likely to occur in higher crime communities. This is particularly the case since prosecutors generally screen through cases prior to filing formal charges—this stage in the process is likely to identify and reject cases where police officers arrest in the absence of sufficient evidence for conviction. The present study, however, is

concerned with the prosecutor's decision to discontinue or dismiss criminal charges during the post-indictment phase—well after the initial screening decision has taken place. Consequently, the cases in the current sample have already been vetted for basic evidentiary problems, reducing the likelihood that dismissals occur more readily in high crime areas due to potential police practices. In the end, the finding that prosecutors dismiss cases more frequently in higher crime areas appears to be a robust finding that cannot be simply attributed to a misspecified model.

Fourth, the fact that each of the threat-based theoretical frameworks (racial threat, economic threat, and crime control), appear to significantly influence prosecutorial discretion in the opposite direction predicted is a finding that raises important theoretical implications. Prosecutors operating in areas characterized by racial/ethnic heterogeneity, economic deprivation, and high rates of crime may view the communities where they work as severely *disadvantaged* rather than threatening. Viewed through a lens of concentrated disadvantage, then, prosecutors in these communities may be inclined to operate more leniently than prosecutors working in more advantaged areas. This is particularly the case since residents of disadvantaged communities have added structural conditions that might potentially lead to a life of criminal activity (Flango & Sherbenou, 1976; Kposowa, Breault, & Harrison, 1995; Shihadeh & Ousey, 1998). Prosecutors may simply find defendants to be less blameworthy and more deserving of leniency where concentrated disadvantage is widespread.

Alternatively, it is also possible that prosecutors are more lenient in areas of racial/ethnic heterogeneity, economic deprivation, and high crime as a result of desensitization. It may be that they, as well as residents of the community, come to expect

criminality as commonplace in communities with such characteristics. If prosecutors become desensitized in this way, they may process cases with less vigor for upholding the law, particularly when uncertainty surrounds the likelihood of conviction. Moreover, dismissing cases in these types of communities may be viewed as less harmful than dismissing cases in those communities that are more advantaged. Whether or not a potential criminal is released into an area of considerable concentrated disadvantage may result in little or no appreciable change to the quality of life experienced by residents. On the other hand, prosecutors may believe that releasing or dismissing criminals into an advantaged community will produce noticeable effects on the quality of life there. In the end, prosecutors who become desensitized to criminal behavior stemming from areas with racial/ethnic heterogeneity, economic deprivation, and high levels of violent crime may feel that their work is of less consequence than prosecutors who work in more advantaged neighborhoods; this desensitization, then, may result in more cases being dismissed, especially when a successful conviction is clouded with uncertainty.

Fifth, the organizational efficiency hypothesis generally holds that communities with court systems facing higher caseload pressure (incited by high crime rates and the provision of fewer resources to process defendants) will work to dispose of cases in the most expedient manner possible (Blumberg, 1967; Dixon, 1995; Engen & Steen, 2000; Hagan, 1989; Packer, 1968; Ulmer & Johnson, 2004); for prosecutors, this should lead to increased rates of case dismissal. Findings from the present analysis, however, do not support this contention. The felony caseload pressure experienced by the courts did not appear to have any effect on the prosecutor's decision to dismiss criminal charges. The lack of support afforded the organizational efficiency hypothesis by the present study,

however, could simply indicate that prosecutors working under heavy caseload pressure alleviate this problem during the initial screening process and during later plea negotiations, not at the point of post-indictment case dismissal. If prosecutors are able to address the issue of caseload pressure by rejecting cases up front and negotiating pleas, it is very possible that dismissing cases at the later post-indictment stage will not be influenced by pressure of incoming cases. In the end, the findings reported here suggest that prosecutors may achieve their goals of organizational efficiency without the need to discontinue the prosecution of criminal charges.

Sixth, the results of the present analysis also have important theoretical implications for the punitive attitudes hypotheses. Research has suggested that politically conservative communities tend to be more punitive in their responses to criminality through increased rates of incarceration and lengthier sentences (Huang et al., 1996; Jacobs & Helms, 1996, 1997; Kuklinkski & Stanga, 1979; Nardulli, Fleming, & Eisenstein, 1988). The findings reported here, however, do not support this hypothesis as it applies to prosecutorial discretion. Although the proportion of the conservative population was found to decrease the odds of case dismissal when other contextual measures were not controlled, this effect disappeared entirely once additional contextual measures were included in the multivariate analysis. Thus, prosecutorial charging decisions do not seem to be affected by the potential punitiveness associated with more conservative political environments.

Research has also suggested that residents of the South hold particularly punitive attitudes toward criminals (see Borg, 1997; Fearn, 2005), and especially those criminals who are African American (Borg, 1997; Keil & Vito, 1992). In the context of

prosecutorial charging decisions, this hypothesis appears to be at least partially true.

Prosecutors working in the South were no less likely to dismiss criminal charges against all defendants on average; however, the current study discovered that these prosecutors were, in fact, less likely to dismiss criminal charges against African Americans as compared to whites. It appears that the southern subculture of punitiveness does not apply universally to all offenders, but instead is reserved for African Americans. This creates a considerable disadvantage for these minority defendants and suggests that attitudes of racial bias have not been sufficiently vetted from the prosecutorial decision making process of southern jurisdictions. It is likely that the “convictability” calculations prosecutors in the South make about juries disfavor African-American defendants systematically.

The final theoretical implication stemming from the findings reported by the current study involves the overall ability of the included theoretical frameworks to explain the county-level variation in the prosecutorial decision to dismiss a case. Even after controlling for the theoretically specified measures of community context, significant variation in case dismissal remained; the final model was able to account for just under one third of the total county-level variation. Moreover, several of the county-level measures were unable to explain any variation in the odds of case dismissal (e.g., proportion black, proportion Hispanic, per capita income, political conservatism, felony caseload). Consequently, further theoretical development is needed to more adequately explain why it is that case processing, at least with regard to prosecutorial dismissal, varies from one county to the next. As is, the current spectrum of theoretical frameworks linking the actions of prosecutors to the communities where they work appears to remain underdeveloped and in need of further specification.

RESEARCH IMPLICATIONS

The findings from the present analysis also have important implications for the current body of research examining prosecutorial discretion as well as future research to be conducted in this area. First, the existing prosecutorial research, particularly those studies that focus on charging decisions, report a variety of mixed findings concerning the factors that influence this outcome. For example, Free (2002) reviewed the studies examining the effect of race on case dismissals and rejections. In summarizing this literature, the researcher noted that race was a significant predictor of charging decisions in some studies, while having no effect in others. In light of the present analysis, such a finding should be of no surprise—in fact, mixed results should be the expected finding when reviewing this and similar bodies of literature. This is particularly the case since much of the research is conducted within the context of a few jurisdictions, and the current study has demonstrated not only that the average odds of case dismissal vary widely by legal jurisdiction (i.e., county), but also that the influence of case-level factors—including race—themselves vary by jurisdiction. So while some of the differences reported across studies are likely to be attributed to factors such as sample size, analytic strategy, and other methodological concerns, much of the variation is also very likely linked to the context where the study was conducted. In the end, summarizing similar bodies of literature, either through subjective or quantitative analysis, with disregard for community context may lead researchers to draw unfounded conclusions.

Second, and on a related note, researchers conducting multi-jurisdictional studies of prosecutorial decision making may also draw inaccurate conclusions regarding important

predictors of prosecutorial charging decisions if community context is ignored. It should be noted that in the current study, race was found to have no influence on case dismissals when its effect was averaged across the entire sample of counties in the analysis. Had community context been disregarded, the findings of the present research could have been interpreted as supporting a racially neutral prosecutorial charging process. Once community context was taken into account, however, it became apparent that race was, in fact, an important predictor of case dismissals, but only in county jurisdictions in the South. In the end, race appeared to matter in the South, but not in other regions of the country—when the effect of race was averaged across the entire sample of counties, however, it did not appear to matter at all. It follows that researchers must consider the possibility that null findings reported by multi-jurisdictional studies may simply be the result of aggregation bias. This possibility highlights the importance of a multilevel analytic strategy where both case-level and contextual factors are modeled.

Third, the findings from the current study demonstrated that the effects of nearly all case-level factors, not just race, varied from one jurisdiction to the next—prosecutors, then, appear to use other important case-level factors (e.g., prior criminal history, number of charges, type of charge, gender, and age) in different ways, and this appears to depend upon location. The present analysis was primarily concerned with explaining variation in the effect of race, particularly since the theoretical frameworks investigated specified different ways in which their respective effects might vary across jurisdictions. Future research, however, is needed to explain why it is that the effects of other case-level factors, both legal and extralegal, vary across communities as well. This gap in the literature leaves important questions unanswered. For example, if gender, like race, only matters in

particular environments or social contexts, what is it about those social contexts that can explain such a finding? By answering this and similar questions, researchers will gain a more complete and accurate understanding of how prosecutorial discretion is exercised.

Fourth, future research must consider how the individual characteristics of prosecuting attorneys might influence the criminal justice process. The findings reported here are derived from the study of important case- and county-level factors, but it should be noted that each prosecutor also represents an important level of analysis. Though each case is nested within a particular county or legal jurisdiction, it is also true that each case is nested within a particular prosecutor who is responsible for reaching a variety of important decisions, including that of case dismissal. Consequently, an even more complete analysis of prosecutorial discretion should simultaneously model theoretically relevant factors from the case, prosecutor, and county level. Such an analysis could identify whether factors at the prosecutor level—such as age, race, gender, job experience, religious affiliation, and political orientation—are important for understanding how prosecutors exercise their authority. Moreover, an analysis of this sort could determine the relative importance of community context and prosecutors' individual characteristics. It is very possible, for example, that some of the unexplained county-level variation in the current study is associated with the prosecutor level rather than missing measures of community context.

Factors at the prosecutor level may also prove to be important for more fully understanding the varying influence of race and ethnicity. For example, just as race appears to matter in the South, but not matter in other locations, it is very likely that race and/or ethnicity matters for some prosecutors but not for others. Though researchers have yet to examine this possibility in the context of prosecutorial decision making, a few

studies have considered how the individual characteristics of judges might influence their sentencing decisions (e.g., Steffensmeier & Britt, 2001; Welch, Combs, & Gruhl, 1988). For example, Welch, Combs, and Gruhl (1988) found that judges' race was an important factor for understanding incarceration decisions. Specifically, the researchers reported that African-American trial judges tended to treat African-American and white offenders equally when making incarceration decisions; white judges, on the other hand, tended to treat white offenders more leniently than African-American offenders. More recently, Steffensmeier and Britt (2001) reported that African-American judges sentenced both white and African-American offenders more harshly than white judges. Findings such as these point to the importance of not only considering how judges' characteristics might affect their decision making, but also how various characteristics of prosecutors might affect a variety of outcomes, such as case rejection, plea bargaining, and case dismissal.

Fifth, the current research addressed the influence of community context with regard to a single prosecutorial outcome—case dismissal. Unfortunately, the data made available by the SCPS did not provide the necessary information to address other important prosecutorial decisions such as those surrounding initial case rejections and plea negotiations. Even so, both of these decision points are critical for understanding the formal processing of criminal cases. Prosecutors also have considerable discretion over the decision to apply mandatory minimum sentencing statutes, including the application of three strikes laws. Ulmer, Kurlychek, and Kramer (2007) discovered that both the racial composition and violent crime rates of Pennsylvania communities were influential factors in the prosecutorial decision to impose three strikes statutes. Such findings provide strong evidence that community context is not only important for understanding case dismissals,

but also for understanding other key outcomes decided by prosecutors. Consequently, future research is needed to address the specific ways in which community characteristics affect the initial decision to reject cases as well as the later plea negotiation process.

Lastly, the present study addressed the importance of community context with regard to prosecutorial case dismissals for all felony crimes; more in depth analysis is needed to determine whether the influence of community context depends, in part, on the type of crime with which the defendant is charged. For example, contextual factors may operate differently in a sample of drug cases as opposed to a sample of violent cases. Since drug use and sales are often geographically concentrated in inner-city communities (Anderson, 2000; Baumer, 1994; Fagan, 1989; Johnson et al., 1990), prosecutors working in these areas may respond to drug-related cases differently than prosecutors working in areas with relatively few drug problems. As a result, future research should assess the effects of community context on prosecutorial decision making for separate crime types, differentiating between violent, property, drug, and public order crimes. Such an analysis would further our understanding of the more specific ways in which community context sets the stage for important prosecutorial decision making.

POLICY IMPLICATIONS

Looking beyond theory and research, the findings reported here also have important practical implications for policy makers, particularly with regard to achieving equity in the processing of criminal defendants. First, the present study reported that race was an important factor for predicting prosecutorial case dismissals in southern

jurisdictions. This finding should be troubling for those seeking equal treatment for all offenders, despite their race. To date, state legislatures as well as lower-level policy makers (e.g., police administrators) have imposed a variety of statutes and policies on actors of the criminal justice system, with a clear of goal equity in mind. For example, many jurisdictions have adopted specific practices to prevent police officers from engaging in the highly controversial use of racial profiling (Parker et al., 2004; Petrocelli, Piquero, & Smith, 2003). Even further, many agencies have begun to adopt data collection programs to monitor for the presence of racial profiling for preventative purposes (Dominitz, 2003). With regard to the courts, several state legislatures have imposed sentencing guidelines to eliminate what was viewed as excessive judicial discretion at the sentencing stage (Engen & Steen, 2000; Spohn, 2000). Similar to those policies condemning racial profiling, sentencing guidelines have been designed to enhance equity in the criminal justice system. Few efforts, however, have been made to reduce or at least monitor the considerable discretion afforded prosecutors. Given the findings reported in the current study, policy makers should consider methods to ensure the equal treatment of offenders, despite their race, at the prosecutorial level as well.

To help ensure that individual county prosecutors make fair and equitable decisions, prosecutors' offices should adopt policies aimed to monitor key outcomes such as the decision to discontinue criminal charges. Similar to practices adopted by police departments for preventing racial profiling, prosecutors' offices could engage in data collection efforts to identify unjustified disparity in critical decisions that have previously gone unchecked. This could be accomplished by recording important information, including detail surrounding the specific reasons for choosing to discontinue prosecution.

A basic effort such as this could provide general oversight and help to at least identify offices where problematic practices need to be further addressed.

Second, the findings reported by the present study also indicate that punishment, or at least the pursuit of punishment (i.e., deciding to carry charges forward as opposed to dismissing them), depends in part on location. In other words, depending on the legal jurisdiction considered, prosecutors may be more or less inclined to pursue criminal charges during the post-indictment stage, net of important case-level controls. This finding is not entirely surprising given that local cultures may develop varying ideas about appropriate punishment or case processing methods (see Kautt, 2002; Ulmer & Johnson, 2004). Nevertheless, advocates of equality should be concerned with the variation in how prosecutors handle cases. In the end, a defendant in one community or legal jurisdiction might have their charges dismissed while a similarly situated defendant in another jurisdiction might have their charges carried forward. Though it is probably unreasonable to expect the prosecutors of all legal jurisdictions to operate in the very same way, policy makers could certainly attempt to produce more consistent practices at the state level. Such an accomplishment would be a considerable improvement over the present state of the modern criminal justice system.

CONCLUSION

The current study has attempted to answer important questions regarding the ways in which prosecutorial discretion is exercised. This issue is particularly salient considering the significant discretion afforded prosecutors (see Engen & Steen, 2000), yet there has

been a distinct shortage of empirical literature addressing how these authorities reach important decisions. To date, one study (Ulmer, Kurlychek, & Kramer, 2007) has examined the effects of community context on prosecutorial decision making. Though insightful and pioneering, Ulmer, Kurlychek, and Kramer's (2007) work only tested for the influence of two county-level measures (percent of the population identified as black and the violent crime rate) on prosecutors' decision to impose mandatory minimum sentences, leaving much to be answered regarding the importance of community context. In contrast, the analysis presented here tested the effects of several measures of community context and considered their influence on a different prosecutorial outcome—the decision to dismiss criminal charges. In doing so, considerable advances to our understanding of prosecutorial discretion have been made.

Specifically, the current study has demonstrated that community context, in fact, is important for understanding how prosecutors make key decisions in the processing of criminal defendants. Factors such as the racial composition of the community, the violent crime rate, the poverty rate, and geographic location are all germane to understanding how prosecutors reach important outcomes, particularly the decision to discontinue criminal charges. These findings indicate that a more complete picture of prosecutorial discretion must move beyond the case-level of analysis and consider factors beyond that of the courtroom. In doing so, researchers will be able to more accurately model the complex processing of defendants through the criminal justice system.

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Appendix A. Percent of Case Dismissals by County

<i>County</i>	<i>Percent Dismissed</i>
Jefferson, Alabama	12.9
Maricopa, Arizona	50.7
Pima, Arizona	43.9
Alameda, California	13.3
Los Angeles, California	11.2
Orange, California	9.3
Sacramento, California	20.5
San Bernardino, California	11.0
San Francisco, California	16.1
Santa Clara, California	7.1
Ventura, California	11.8
Broward, Florida	16.5
Hillsborough, Florida	25.7
Miami-Dade, Florida	35.6
Orange, Florida	30.6
Cook, Illinois	35.7
DuPage, Illinois	2.5
Marion, Indiana	38.9
Jefferson, Kentucky	36.9
Montgomery, Maryland	44.3
Baltimore City, Maryland	31.8
Wayne, Michigan	16.9
Jackson, Missouri	14.2
St. Louis, Missouri	15.3
Bronx, New York	24.5
Erie, New York	35.8
Kings, New York	48.2
Monroe, New York	30.4
New York, New York	28.5
Queens, New York	25.3
Suffolk, New York	11.4
Hamilton, Ohio	28.5
Allegheny, Pennsylvania	6.6
Philadelphia, Pennsylvania	35.2
Shelby, Tennessee	14.5
Dallas, Texas	11.1
Harris, Texas	11.0
King, Washington	7.4
Milwaukee, Wisconsin	12.8

Appendix B. Bivariate Correlation Matrix for County-Level Measures

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
(1) Proportion Black	1.000										
(2) Proportion Hispanic	-.292	1.000									
(3) Racial/Ethnic Heterogeneity	.280	.467*	1.000								
(4) Proportion Unemployed	.618*	.271	.450*	1.000							
(5) Per Capita Income	-.456*	-.134	-.045	-.545*	1.000						
(6) Poverty	.637*	.351*	.555*	.918*	-.554*	1.000					
(7) Property Crime Rate	.399*	-.030	.091	.156	-.351*	.306	1.000				
(8) Violent Crime Rate	.706*	.146	.505*	.567*	-.384*	.738*	.617*	1.000			
(9) Felony Caseload	.500*	-.106	.102	.104	-.284	.242	.523*	.415*	1.000		
(10) Political Conservatism	-.249	-.031	-.480	-.519*	-.112	-.445*	-.037	-.420*	.359*	1.000	
(11) Southern Jurisdiction	.351*	.009	-.025	-.133	-.114	.048	.423*	.323*	.565*	.331*	1.000

Appendix C. Collinearity Diagnostics for County-Level Measures

<u>Measure</u>	<u>Variance Inflation Factor</u>	<u>Tolerance</u>
Racial/Ethnic Heterogeneity	1.773	.564
Percent Unemployed	2.340	.427
Violent Crime Rate	3.412	.293
Political Conservatism	1.939	.516
Southern Jurisdiction	1.851	.540

Appendix D. Factor Loadings for the Measure of Concentrated Threat

<u>Measures</u>	<u>Factor Loadings</u>
Racial/Ethnic Heterogeneity	.718
Percent Unemployed	.895
Poverty	.922
Violent Crime Rate	.826
