ABSTRACT

GATHINGS, MARTHA JEAN. Justice, Equity, and Raising the Age of Juvenile Jurisdiction: A North Carolina Case Study of Race, Ethnicity, and Youthful Defendants in Criminal Courts. (Under the direction of Dr. Stacy De Coster).

Until recently, North Carolina was the only state in the U.S. that charged 16-year olds as adults, waiving them automatically from juvenile court to adult court. The recent passage of the Juvenile Justice Reinvestment Act (JJRA), which took effect December 1, 2019, raises the age of eligibility for adjudication in juvenile courts and corrects the practice of automatically waiving older youthful offenders (16- and 17-year olds) to adult court (see https://www.ncdps.gov/documents/juvenile-justice-reinvestment-act). Although not a cornerstone of the debate for raising the age, my dissertation weds the focal concerns perspective in criminology with research on racial and ethnic stereotyping to propose that keeping older youthful offenders (16- and 17-year olds) out of the criminal courts has the potential to help address racial and ethnic disparities in criminal court punishments that have disadvantaging consequences for opportunities over the life course.

Although racial and ethnic disparities are evidenced in juvenile courts (Rovner 2016), the long reach of adult criminal records as compared to sealed juvenile records for individual life chances are particularly relevant for exacerbating inequalities rooted in race and ethnicity over the life course (see Western 2002; Pager 2003; 2007). My research focuses on the criminal courts in North Carolina where youthful offenders have been waived automatically to adult court as a matter of policy. I propose that the youthfulness of defendants in the criminal court context exacerbates the effects of race and ethnicity on the likelihood of receiving harsh treatment — including the increased likelihood of receiving incarceration sentences and the decreased likelihood of being benefactors of charge reductions. That is, I propose that racial and ethnic

disparities are more pronounced among juveniles tried in adult courts than among older persons in the same courts because younger minority defendants may be viewed as more threatening than older minority defendants. The first two studies in my dissertation assess propositions about age, race, ethnicity and sentencing using data from the North Carolina Sentencing Commission. These chapters report that the offenders most likely to receive incarceration sentences and least likely to be the benefactors of charge reductions in criminal courts are indeed youthful minority defendants. In other words, age and race/ethnicity intersect to influence court outcomes in ways that doubly disadvantage youthful minority offenders, who in other states would have the benefit of being tried in juvenile courts and not having their criminal records made public. These outcomes, of course, result not only from legislation but also from decisions made by courtroom actors.

My third study focuses on decision-making by judges. I gathered information from North Carolina judges to assess the extent to which judges use race as a shorthand in their decision-making. Although sentencing data for the state does not provide detailed information on skin tone, offering only crude categories of race and ethnicity, I focus my study of NC judges on assessing the extent to which defendant skin tone influences decision-making. Preliminary findings from my research suggest that persons with darker skin tones are particularly disadvantaged in judicial decision-making, which suggests that studies that do not account for skin tone underestimate the courtroom disadvantages faced by darker-skinned African Americans. Taken together, my studies suggest that much more work is needed to understand how skin tone, race, ethnicity, and age intersect in courtrooms to influence the likelihood of doing time and of benefitting from judges' decisions to grant downward departures from sentencing guidelines.

My findings regarding the disproportionately harsh treatment of youthful (aged 16 and 17) defendants in adult criminal courts speaks to ideals of supporting and protecting youths through the development of a separate juvenile justice system. Recent legislation that raises the age of eligibility for being tried in juvenile courts helps address the distance between the ideals of giving youthful offenders a second chance by providing support and protection in the juvenile justice system and the practice of disproportionately harsh treatment for 16- and 17-year old defendants who have been automatically ushered into adult courtrooms where they are treated more harshly than older defendants, particularly if they happen to be young minority defendants. Although not a panacea to the gap between ideals and practice or to the inequalities that stem from courtroom decisions, raise the age legislation is certainly a step in the right direction when considering the joint influence of age, race, ethnicity, and potentially skin tone on sentencing outcomes in criminal courts.

Justice, Equity, and Raising the Age of Juvenile Jurisdiction: A North Carolina Case Study of Race, Ethnicity, and Youthful Defendants in Criminal Courts

by
Martha J. Gathings

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APPROVED BY:

Stacy De Coster Committee Chair	Steve McDonald
Michael Schwalbe	William Smith

DEDICATION

"*Your hardest times often lead to the greatest moments of your life. Keep going. Tough situations build strong people in the end*."

— Roy T. Bennett, The Light in the Heart

BIOGRAPHY

M.J. Gathings grew up in rural North Carolina and attended Scotland High School in Laurinburg, North Carolina. During her undergraduate education, she majored in psychology and pursued a minor in philosophy. With an interest in ideas and people, she chose to pursue graduate work in sociology and first earned a Master of Arts degree in sociology from the University of North Carolina at Greensboro before applying to the doctorate program at North Carolina State University (NCSU) At NCSU, her doctoral specializations included: (1) class, race, and gender inequality; and (2) crime, deviance, and social control.

Ms. Gathings is a Senior Research Associate with ETR Services, LLC, a small research and evaluation firm based in Durham, NC. Skilled in both qualitative and quantitative methodologies and working from an intersectional lens, Ms. Gathings specializes in stakeholder engagement, collaboration, and empowerment evaluations and provides training, technical assistance, and other capacity-building services to nonprofits and other entities with a need to utilize data-driven decision-making, strategic planning, and/or activism. In her spare time, Ms. Gathings enjoys engaging in service to her community by volunteering with local organizations such as Burlington Junior Woman's Club, the Alamance County Health Equity Collaborative, Southern Alamance Family Empowerment (S.A.F.E.), and Caswell Pet LifeLine.

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CHAPTER 1. INTRODUCTION

Problem Statement

Until the recent passage of the Juvenile Justice Reinvestment Act (JJRA), which took effect in December 2019, North Carolina was the last state in the U.S. to automatically process defendants as young as 16--years old as adults. The juvenile justice system was created in attempts to protect youthful offenders from the damaging punishments of criminal courts and offer them requisite rehabilitation and assistance (Platt 1969). Denying older juveniles in North Carolina the protections and services of the juvenile court and ushering them automatically to adult courtrooms has been viewed as problematic by social justice groups and advocates for raising the age of eligibility for juvenile courts.

Advocates for raising the age in NC made the case that young people should not be held as culpable as adults for decision-making that results in offending behaviors because neurobiological studies show that young people's brains continue to develop and mature until the early 20s (Steinberg 2012). They also emphasized that juveniles tried in adult courts are more likely to reoffend than those tried in juvenile courts (Redding 2010) and suggested that trying juveniles as adults exacerbates racial and ethnic inequalities in the courts and society. Racial and ethnic disparities are evidenced in decision-making within both juvenile and adult courtrooms (Rovner 2016; Steffensmeier, Ulmer, & Kramer 1998). However, my dissertation proposes that disparities for youthful offenders in adult courtrooms are exacerbated relative to disparities for older offenders in the same courtroom. Given the life-long consequences of an adult criminal record for education, work, marriageability, and full citizenship, it is important to consider what happens to youthful offenders tried in adult courts (see Western 2002; Pager 2003; 2007; Wakefield and Uggen 2010; Manza and Uggen 2006). To the extent that race and ethnicity

effects on sentencing are more pronounced among youthful offenders as compared to older offenders, the courtroom serves as an early contributor to long-term racial and ethnic inequities over the life-course.

Research suggests that youthful minority defendants may indeed pay a "punishment penalty" — i.e., young minorities are treated more harshly than their older counterparts — in criminal courts (Kurlychek & Johnson 2004; Spohn & Holleran 2000; Steffensmeier, Ulmer, & Kramer 1998). However, much of this research focuses on youthful offenders who have been waived to adult court through a hearing or on account of the seriousness of their offense, rather than as a matter of policy that waives all 16- and 17-year olds to adult court. Assessing the joint effects of age and race/ethnicity in a state — North Carolina — that ushered 16- and 17-year olds to adult court as a matter of policy offers a more stringent test of the "punishment penalty" and also speaks to whether the JJRA might be viewed as a step forward in addressing the racial and ethnic disparities that emerge from the mark of a criminal record.

That youthful minority defendants may receive disproportionately harsh treatment in adult courtrooms goes against the very ideals of offering second chances and rehabilitation for juveniles. In North Carolina, youthful defendants (aged 16 and 17), who have been automatically waived to adult court, have been faced with the mark of a criminal record before being legally able to join the military, vote in an election, or eligible for an unrestricted driver's license. Even after the full enactment of JJRA, some youthful offenders will continue to be waived automatically to adult courts in North Carolina based on the type of offense they are charged with and their prior history. For instance, those charged with motor vehicle and certain felony offenses will continue to be waived to adult court and those who previously have been tried as an adult will remain adults for all subsequent offenses. If these offenders are doubly disadvantaged

by race/ethnicity and their youthfulness, my research suggests further consideration of the utility and consequences of any automatic waivers to adult court.

Drawing on Steffensmeier, Ulmer, and Kramer's (1998) work on focal concerns and judicial decision-making, the first two studies in my dissertation examine how age, race, and ethnicity affect sentencing outcomes in North Carolina courts. More specifically, I investigate (1) whether race and ethnicity differentially influence the likelihood of receiving an incarceration sentence (in/out decisions) among defendants of different ages in criminal courts; and (2) whether race and ethnicity differentially influence the likelihood of benefitting from charge reductions among defendants of different ages in criminal courts. The findings from these studies support the argument that youthful minority defendants are particularly disadvantaged in adult courts when compared to other defendants.

Racial and ethnic minority disadvantages in the courts stem not only from large-scale policies like North Carolina's slow progress in raising the age but also from individual-level decision-making in the courts. As such, my third study shines the spotlight on judges and how race influences their decision-making. This study uses vignettes to assess the extent to which skin tone bias influences judges' decision-making. In doing so, the study goes beyond a simple consideration of race to take into account that dark-skin-toned African Americans may be even more disadvantaged in the courts than their lighter skinned counterparts. If this is the case, research using broad race categories of Black and White underestimates the full disadvantaged that dark-skinned Black individuals face in the acquisition of criminal records with life-long consequences. My preliminary findings suggest that further research is needed to fully document the disadvantages African Americans with darker skin tones face in the criminal courts and how these disadvantages may be exacerbated by youthfulness in adult criminal courts.

Juvenile Courts in North Carolina

In 1919, North Carolina lawmakers passed legislation that mandated the creation of a statewide juvenile justice system with the aim of "saving children" from the influence of detrimental punishments, adult prisoners, and other trappings of the criminal courts. Consistent with the rise of juvenile courts across the country, the focus of the juvenile court in North Carolina was intended to be on rehabilitating young offenders, rather than on punishing criminal behaviors (Platt 1969). The original language in the Juvenile Court Statute in North Carolina set the upper limit of juvenile jurisdiction at 18 but a last minute change in wording resulted in 15 years being the upper age limit of juvenile jurisdiction (Birckhead 2008). As a result, the legal protections and specialized services that were to be afforded by the juvenile court were unavailable to juveniles over the age of 15. Unfortunately, these services were not fully realized in practice for even younger offenders as the state legislature failed to provide adequate funding for the new juvenile system and did not mandate that courtroom actors be trained adequately in the procedures and ideals of the new court or in child development/psychology. Sanders (1933) sets the historical context as such:

> One may readily understand, therefore, that the passage of a law creating a juvenile court in every county did not immediately result in the establishment of an actively functioning juvenile court in each of the one hundred counties. Many of the county juvenile court judges were unfamiliar with the principles and procedures of juvenile courts, and in some instances the judges were actually hostile to the juvenile court movement, thinking it was merely a method of "letting the youthful criminal go free" (185).

Nonetheless the ideals of a more supportive and protective courtroom for juveniles were present, and those tried in juvenile court did benefit from some protections, including sealed records. That the juvenile court was never fully successful in achieving its mission of supporting, protecting, and rehabilitating youth has served as a strong argument against raising the age of eligibility for the juvenile court in the form of questioning the decision to expand an already

broken system (Birkhead 2008). Additional concerns of those against raising the age of eligibility for juvenile court include overcrowding the already underfunded juvenile justice system and conservative views that the juvenile courts are too soft on older youthful offenders (aged 16 and 17).

The latter concern became particularly relevant in the 1990s with media claims of a pending wave of violent crime by so-called juvenile super predators (DiIulio 1995). Super predators were described as young, mostly minority, violent, and remorseless. They were particularly dangerous in that they lacked conscience and concern for the people they harmed (Haberman 2014). Although the pending wave of crime by juvenile super predators never materialized in the U.S. as a whole or in North Carolina (see current statistics on juvenile crime arrests in Appendix A), legislators across the country and in North Carolina harnessed constituent fears and demands for punitiveness to propose legislation aimed at harsher treatment of youthful defendants, though much of the legislation failed in committee (Birckhead 2008). Despite the failure of new legislation, efforts in North Carolina to expand the jurisdiction of the juvenile court to protect older youthful offenders who were automatically waived to adult court were certainly off the table.

It took one hundred years after the creation of its juvenile justice system for North Carolina to implement a law that raises the age of eligibility for the juvenile court. The passage of the Juvenile Justice Reinvestment Act (JJRA) is touted as a historical policy shift that has the potential to alter significantly the lives of older youthful offenders (those aged 16 and 17). The JJRA increases the age of juvenile court jurisdiction to 17 years, though there are some exceptions wherein some youth under 18 will still be treated like adults. For instance, 16- and 17-year olds convicted of motor vehicle offenses or specific classes of felony offenses, including

first-degree murder and burglary, will continue to be processed automatically through the adult court system. Moreover, those convicted of any felony, misdemeanor, or motor vehicle violation lose access to the juvenile court for future offenses.

Given these exceptions, some advocates contend that the law has not gone far enough (Weisner 2019). Nevertheless, reformers and justice personnel see the enactment of the JJRA as a step in the right direction for 16- and 17-year olds in the system and remain hopeful that these youths will receive more protections and supports, including the protection of sealed records, in the juvenile system. My research focuses on the disadvantages minority juveniles face in the adult system relative to non-minorities and to older adult minorities to consider that the new legislation may be particularly beneficial in targeting the lingering racial and ethnic inequalities that criminal records produce. If this is the case, it may be worth reconsidering the exceptions written into the JJRA and further extending access to the juvenile courts. I turn now to a discussion of sentencing guidelines, which were adopted in adult courts in North Carolina to address issues of discrimination and disparate sentencing across race, ethnicity, sex, class, and age.

Sentencing Guidelines and Departures

Attempts to address inequalities in the sentences people receive for similar offenses in adult criminal courts resulted in the adoption of sentencing guidelines across the US (Daly and Tonry 1997; Savelsberg 1992). In 1990, North Carolina legislators created the North Carolina Sentencing and Policy Advisory Commission to oversee the development and implementation of sentencing guidelines that were truthful, rational, and consistent (particularly in regard to extra-legal social characteristics, such as race, sex, and social class). North Carolina legislators adopted the Structured Sentencing Act in 1994, which includes a set of sentencing guidelines

from which judges choose the most appropriate punishment based on a number of case-related factors (North Carolina Sentencing and Policy Advisory Commission, 2004). To date, seventeen states and the District of Columbia have implemented some form of determinate sentencing in line with the guidelines (see Figure 1-1. For additional information).

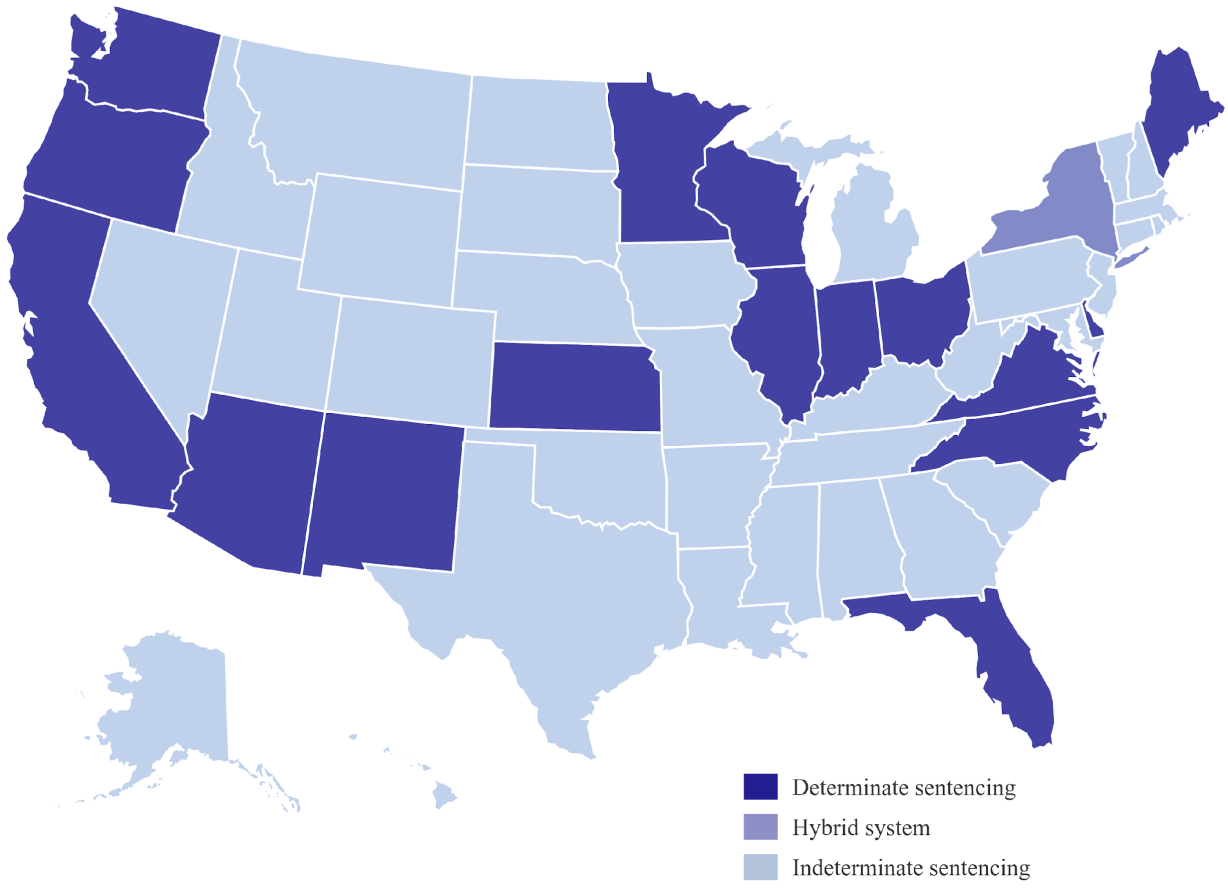

Figure 1-1. Sentencing systems across the U.S.

Sentencing guidelines in North Carolina include felony and misdemeanor punishment grids that outline sentencing recommendations based on two key pieces of information: (1) the seriousness of the alleged offense, and (2) the defendant's prior record. Felony offenses are

categorized using ten different offenses classes and six prior record levels ranging from level I with zero prior record level points to level six for those with nineteen or more prior record level points (see Appendix A). Misdemeanor offenses are categorized using four classes with three prior record levels: I, no prior convictions; II, one to four prior convictions; and III, five or more priors (see Appendix B). Unlike many other states, North Carolinian judges have the option of imposing an active-, intermediate-, or community-based punishment, thus offering "windows of discretion" that may be counterproductive to sentencing equity (Engen, Gainey, Crutchfield & Weis 2003). In practice, this means a defendant may be eligible for several forms of punishment, some of which are clearly more desirable than others. For example, a defendant found guilty of a Class H felony such as G.S. 90- 95(a)(1) (e.g., sale of a Schedule III, IV, V, or VI controlled substance) with no prior conviction record is eligible for either a community-based sentence (e.g., probation), an intermediate punishment (e.g., supervised probation with additional conditions such as a curfew or house arrest), or incarceration in a local jail for four to six months. Criminologists have devoted considerable attention to assessing the effectiveness of sentencing guidelines in curbing unwarranted racial, ethnic, class, age, and gender disparities in sentencing outcomes. Studies of sentencing guidelines consistently report that legal characteristics (offense severity and criminal history) are the strongest predictors of variations in sentencing in states with sentencing guidelines. However, racial and ethnic disparities persist when taking into consideration legal characteristics (Engen, Gainey, Crutchfield & Weis 2003; Ulmer & Kramer 1996; Steffensmeier et al. 1998), though it is not always clear where in the process disparities emerge and which groups disparities and discrimination affect the most.

The use of departures from sentencing guidelines is one place in which disparities appear to arise. A departure occurs when a judge agrees to deviate from sentencing guidelines: a

downward departure may demonstrate leniency (i.e., sentencing a defendant to a lesser sentence than prescribed by law) while an upward departure may promulgate contempt through extraordinary punitiveness (i.e., throwing the book at someone). In states with determinate sentencing, departures provide a mechanism for judges to exercise discretion in situations where the guidelines fail to capture all of the relevant facts of the case. Engen et al.'s (2003) study of sentencing departures through the use of sentencing alternatives, including first-time offender waivers and special sex offender sentencing alternatives, reports that the use of downward departures serves as a mechanism through which race, sex, and age remain significant determinants of sentence severity. Specifically, the defendants in their study who benefit from downward departures from sentencing guidelines are white, female, and older. In addition, those who plead guilty are likely to receive leniency in comparison to counterparts who choose to go to trial. Johnson (2003) reports similar findings - defendants who are white, female, and older have an increased likelihood of receiving a downward departure - but also finds that the effects of extralegal variables are conditioned by the mode of conviction (e.g., Black defendants who go to trial are punished more harshly than other Black defendants who take negotiated pleas). The effects of race and mode of conviction differed for upward departures, thus suggesting that different decision-making mechanisms may be at work when members of the courtroom workgroup consider leniency or severity in sentencing (Johnson 2003). It is also worth noting that other researchers report similar findings of a "trial penalty," i.e., defendants who exercise their constitutional right to a trial often receive harsher sentences their counterparts who pled guilty to forego a trial (Albonetti 1997, 1998; Johnson, Ulmer & Kramer 2008).

A common critique of determinate sentencing systems focuses on the displacement of discretion from judges to prosecutors. Often referred to as the hydraulic displacement of

discretion, this perspective holds that unwarranted discretion in the courts has simply moved from one source to another:

> An often-invoked simile likens the discretion-ridden criminal justice system to a set of hydraulic brakes. If you push down on one point, the displaced volume of fluid will exert pressure and "bulge out," reappearing elsewhere in the mechanism. Similarly, discretion in the criminal justice system can never be extinguished; it is simply dislodged and shifted to other system parts (McCoy 1984:256).

Prosecutors hold a tremendous amount of power under determinate sentencing systems: they are responsible for reviewing cases and determining what, if any, criminal charges apply in a particular case as well whether charge reductions are warranted once a case appears before the court.

Spohn, Beichner, and Davis-Frenzel's (2001) research shows that the decision to file charges in sexual assault cases are contingent upon victim characteristics and draw on narratives of "real rapes" and "legitimate" victims. This finding coalesces with Bjerk's (2005) focus on disparities emerging primarily from the use of prosecutorial discretion in deciding which charges to file. For example, under North Carolina's current laws, a prosecutor may choose amongst several options when charging a case of serious assault: G.S. 14-33(c)(1) (i.e., assault inflicting serious injury or using a deadly weapon) is an A1 misdemeanor whereas G.S. 14-32(b) (i.e., assault W/D/W/I/S/I) is a Class E felony. The former charge means a defendant is eligible for a community-based, intermediate, or active sentence of incarceration regardless of the defendant's prior record; however, the latter charge virtually guarantees that a defendant will be under surveillance of the justice system. As others have pointed out, prosecutors' decisions not only guided by considerations of dangerousness and culpability, but also concerns with "doing

justice" (Eisenstein & Jacob 1977), "convictability" of cases (Frohmann 1997), victim credibility (Spohn et al. 2001), and other characteristics of the case and defendant (Spohn 2018).

Charge bargaining represents another mechanism through which prosecutors may exercise discretion. Charge bargaining (e.g., plea bargaining, charge reductions) refers to the process through which a defendant agrees to plead guilty to a particular charge in exchange for leniency during sentencing, a practice that is often associated with a reduced likelihood of incarceration (Johnson & Larroulet 2019). Studies of prosecutorial discretion lag in comparison to examinations of judicial discretion, though evidence of unwarranted disparities in the application of prosecutorial discretion is emerging. For example, studies show that Black and Latino defendants are less likely to receive a charge reduction (Shermer & Johnson 2009; Kutateladze 2017) and Black defendants (particularly males) get lower value from their plea (Metcalfe & Chiricos 2018). White defendants and female defendants are most likely to receive the steepest reductions in charges, often referred to as the "distance traveled" in the literature (Johnson & Larroulet 2019).

Most plea bargaining occurs "back stage" (Goffman 1959): away from formal court proceedings, prosecutors may relax the formality of their words and actions as they strike deals with defendants and collaborate with defense attorneys and judges in "doing justice" (Eisenstein & Jacob 1977). The plea negotiation process also occurs "in the shadow of the trial," meaning that defendants must take into account the likelihood of conviction should their case go to trial, the punishment they can expect to receive if found guilty, and the sentence discount being offered in exchange for agreeing to plead guilty (Spohn 2018:327). Returning to the previous example of a case involving serious assault, a defendant charged with a Class E felony may feel

compelled to plead guilty to an A1 misdemeanor regardless of the fact of the case for fear of being sentenced to prison.

Ulmer, Kurlychek and Kramer (2007) more recently reported that the imposition of mandatory minimums is influenced not only by legal factors, such as defense type, but also by extra-legal factors, such as race. Consistent with research that finds marginalized groups receive poorer treatment in the criminal justice system than their white counterparts, Ulmer et al.'s (2007) finds that Hispanic and Black males are more likely to receive a mandatory minimum sentence as opposed to a downward departure from the mandatory minimum. Thus, the discretion judges are allotted through the use of downward departures from mandatory minimums make it so extra-legal factors, such as race, remain salient despite the adoption of sentencing guidelines. Thus, downward departures from sentencing guidelines remain as relevant as studies of decisions to incarcerate in studies of racial and ethnic disparities in courtrooms. I focus the research lens on both decisions to incarcerate and on downward departures in Chapters 2 and 3, respectively.

Age, Race, and Ethnicity in North Carolina Courts

The study I present in Chapter 2 explores how intersections of race, ethnicity, and age influence sentencing outcomes in the form of decisions to incarcerate (in/out decisions) male felony defendants. Drawing on research on race, ethnicity, and age, I ask three research questions: (1) Were 16- and 17-year old male defendants disadvantaged relative to older male defendants in NC criminal courts in the years (1997-2017) prior to the recent enactment of the JJRA? (2) Were racial and ethnic minorities disadvantaged relative to White defendants in NC criminal courts in these years? and (3) If present, did racial and ethnic disadvantages follow a

similar pattern for all male criminal defendants or were disadvantages most pronounced among the youngest defendants (16- and 17-year olds) in the courts?

Based on predictions derived from wedding Steffensmeier et al.'s (1998) focal concerns perspective with research on stereotypes and threat (Chavez 2001, 2013; Mirandé 1987; Steen et al. 2005; Steffensmeier and Demuth 2000, 2001), I consider the intersections of race, ethnicity and age in NC criminal courts prior to the enactment of JJRA. My work is particularly timely on account of recent legislation that raises the age of the juvenile court but that critics argue needs to go farther by doing away with various exclusions and providing access to the juvenile court system for all offenders under the age of 18.

Steffensmeier et al.'s (1998) focal concerns theory of sentencing proposes that judges consider three primary concerns during sentencing: a defendant's degree of culpability and the harm caused by their actions; the danger a defendant poses to the community; and practical constraints and consequences (e.g., availability of correctional space, suitable community-based programming, the defendant's ability to "do time," and so on). Since judges often associate these factors with a defendant's race, sex, and age, stereotypes and biases are built into the perceptual shorthand judges use to process cases efficiently.

By combining the focal concerns perspective with theory and research on racial and ethnic stereotypes that are age-graded, I derive hypotheses about how race/ethnicity and age intersect in the courtroom to make it such that young, minority defendants are more likely than other defendants to receive sentences of incarceration even when holding constant legal characteristics, such as offense type and criminal history. I assess the hypotheses using logistic regression to estimate main effects and interaction models. The models estimate the influence of race, ethnicity, and legal and procedural factors on in/out (incarceration/probation) sentencing

decisions in NC courts. To ease the interpretation of findings, I also present predicted probabilities for the main effects and interaction terms of key theoretical interest.

Chapter 3 further explores the intersections of race and age by focusing specifically on charge reductions and convictions from district courts across NC to examine differences in treatment among minority youthful defendants and adults. Based on predictions derived from focal concerns theory and empirical research on age and race intersections (Kurlycheck and Johnson 2004; Jordan and Freiburger 2010; Steiner 2009), I employ logistic regression models to examine charge reductions and the in/out decision for criminal misdemeanants. I present main effects and race/ethnicity-age interactions as well as differences in probabilities of charge reduction and incarceration among defendant groups of theoretical interest.

The potential disadvantages youthful offenders (aged 16 and 17) face relative to older defendants are hypothesized to be rooted in judges' decision-making and the use of racially charged stereotypes and perceptual shorthands. Chapter 4 explores judicial decision-making and moves beyond a simple focus on Black/White to consider whether skin tone informs judicial decision-making. Wedding focal concerns theory with socio-historical work on colorism and skin tone bias in the criminal justice system, I utilize a 2x2 factorial survey design with experimental photographic vignettes to study the role of skin tone bias in sentencing.

By leveraging advances in photo-editing technology, I created sets of photographic images depicting defendants that are similar in every way (e.g., build, facial features, facial expression, etc.) except skin color, with one image showing a defendant with light skin and the other defendant imaged with a darker skin tone. A random sample of judges across NC were presented with vignettes and photos of the alleged perpetrator and asked to sentence the individual and answer a series of open-ended questions about the factors -- legal and extra-legal -

- influencing their decision making. Judges were asked to respond to three vignettes, two experimental vignettes featuring a person of color and one control vignette featuring a white person, and judges were assigned experimental vignettes with several different combinations of skin colors (e.g., darker-skinned defendant in set 1, lighter-skinned defendant in set 2; darker-skinned defendants in both sets 1 and 2; lighter-skinned defendants in both sets 1 and 2).

Chapter 5 summarizes the main findings of the three research studies, which coalesce to show that race, ethnicity, and age intersect in courtrooms such that youthful Black defendants are more likely than other defendants to be disadvantaged in the courts. My study of judges suggests that the disproportionate disadvantages uncovered in the studies using sentencing commission data may be underestimated for Black defendants with dark skin tones (i.e., canceled out or obscured by unobserved effects of skin tone bias). Given that the criminal courts have been disproportionately incarcerating and denying downward departures to youthful minorities, my research suggests there may be some promise in the new JJRA legislation to address the long reach of criminal courts in producing and reproducing racial inequality. By providing 16- and 17-year old offenders with access to the resources of the juvenile justice system and sealing their juvenile record, youthful offenders may circumvent the mark of a criminal label and its negative impact on employment outcomes, education and housing outcomes, and other key resources that are essential to quality of life. My findings also can be used to suggest that a commitment to racial equality may necessitate reconsideration of excluding some minors from the juvenile court. Of course, future work that compares my findings to findings from sentencing studies post-JJRA will more directly assess these conclusions. I explore the implications of my findings and discuss them further in the context of equity and justice in the final chapter of the dissertation.

CHAPTER 2. RACIAL AND ETHNIC DISADVANTAGE ACROSS THE LIFE COURSE: THE IMPLICATIONS OF TRYING YOUTHFUL DEFENDANTS AS ADULTS

North Carolina traditionally has been touted as one of the most progressive states in the South (Chafe, 1981). Until the passage of the Juvenile Justice Reinvestment Act (JJRA) beginning in 2019, however, North Carolina stood in stark contrast to not only progressive states but to every other state in the nation regarding its conservative treatment of youthful offenders. That is, North Carolina was the last state to automatically process all 16- and 17-year olds as adults. Prior to JJRA, 16- and 17-year-old offenders in North Carolina were automatically tried in criminal court, and it is the only state that denied transferred youth the opportunity to appeal for return to the juvenile system (Birckhead 2008).[1] The passage of the JJRA is estimated to protect more than 5,500 young people each year from entering the adult system and facing the consequences of an adult criminal record (Doran 2017).

Bipartisan proponents of raising the age offered that recent research on brain development raises myriad concerns about the morality of punishing teenagers whose brains are still developing as adults (Birckhead 2008; Steinberg 2012). Proponents of raising the age also emphasized that juveniles tried in adult courts are more likely to reoffend than those tried in juvenile courts (see Redding 2010) and suggested that trying juveniles as adults exacerbates racial and ethnic inequalities in the courts and society.

Holding 16- and 17-year olds fully culpable for criminal behavior also raises a number of questions about justice and fairness. Under current NC sentencing policies, it is entirely possible

[1] In North Carolina, once a youthful offender is tried as an adult, s/he will be treated as an adult for any subsequent offenses in which s/he allegedly charged. The current legislation gives rise to the possibility that a previously convicted youthful defendant under the age of 16 could be tried as an adult for a minor misdemeanor offense.

that a youthful offender might have a criminal record before s/he graduates from high school, thus increasing the chances of encountering discrimination in education, employment, and housing prior to obtaining the legal status of adult (see Western 2002; Pager 2003; 2007; Wakefield and Uggen 2010; Manza and Uggen 2006 for studies of criminal records and discrimination). Evidence of racial and ethnic disparities in adult criminal courts raise additional concerns about the fact that young minorities will be particularly likely to be followed by the mark of a criminal record (Demuth & Steffensmeier 2004; Doerner & Demuth 2009; Kramer & Steffensmeier 2016). These concerns are exacerbated by research evidence suggesting that the effects of race and ethnicity are more pronounced among younger defendants than older defendants in the adult courtroom (Kurlychek and Johnson 2004; Spohn and Holleran 2000; Steffensmeier, Ulmer, and Kramer 1998). Prior research, however, may overestimate the importance of youthfulness by having compared younger defendants who were waived to adult court for specific reasons rather than on account of a policy excluding them from juvenile courts simply by virtue of being 16 or 17.

Drawing upon sentencing data from NC -- a state that has proven exceptional in its prosecution of 16- and 17-year-olds -- my research speaks to three central questions: (1) Were 16- and 17-year old male defendants disadvantaged relative to older male defendants in NC criminal courts in the years (1997-2017) prior to the recent enactment of the JJRA? (2) Were racial and ethnic minorities disadvantaged relative to White defendants in NC criminal courts in these years? and (3) If present, did racial and ethnic disadvantages follow a similar pattern for all male criminal defendants or were disadvantages most pronounced among the youngest defendants (16- and 17-year olds) in the courts? I assess these questions using logistic regression models of in/out decisions in North Carolina courts in the years prior to enactment of the JJRA.

To assess whether age and race/ethnicity intersect to influence sentencing outcomes, I estimate separate models disaggregated by age groups and assess the equality of the race/ethnicity coefficients across age groups using Paternoster, Brame, Mazerolle, and Piquero's (1998) method for testing the equality of regression coefficients.

My results reveal important patterns of racial/ethnic/age disadvantage. Specifically, age informs sentencing outcomes differentially among black and Hispanic male defendants in North Carolina's criminal courts. Racial disadvantage is most pronounced among young black men aged 16 to 29 years old, whereas Hispanic men experience ethnic disadvantage throughout the life course. Moreover, Hispanic defendants are treated especially harshly relative to others. I discuss these findings in the context of theory and research focused on the "punishment penalty" male minority defendants pay in criminal courts (Steffensmeier and Demuth 2001; Steffensmeier et al. 1998; Spohn and Holleran 2000). I also link my findings to the recent JJRA legislation and the decision to continue excluding some 16- and 17-year-old defendants from the juvenile court, making the case that a commitment to social justice may necessitate the protection of youthful offenders from adult courts.

The Role of Age in North Carolina's Courts

At the end of the nineteenth century, the "child saving" movement was firmly entrenched in the cultural fabric of the United States. Saving children from physical and moral harm became the impetus for the creation of numerous laws and institutional practices by which children's lives were protected, developed, and enhanced. From child labor laws and compulsory schooling to the creation of dedicated juvenile justice systems, proponents of the movement placed child

welfare at the forefront of their concerns (Moon, Sundt, Cullen, and Wright 2000). At the time, the dominant picture of juvenile offenders was one of:

> wayward youngsters…believed to be less responsible for their actions, less likely to benefit from punishment, and more amenable to change…[thus] the state, acting as a kindly parent (parens patriae), should be given wide discretion to ensure the best interests of the youths under supervision (Moon et al. 2000:39).

Reflecting the cultural zeitgeist, in 1919 North Carolina lawmakers passed legislation that mandated the creation of a statewide juvenile justice system (Birckhead 2008). However, legislators set the upper age limit of juvenile jurisdiction at fifteen, thus offering no legal protections or specialized services to older juveniles; since that time, all cases alleging criminal conduct by 16- and 17-year-olds are automatically prosecuted in criminal court.

In 1994 North Carolina legislators adopted the Structured Sentencing Act, which includes a set of sentencing guidelines from which judges choose the most appropriate punishment based on a number of case-related factors (North Carolina Sentencing and Policy Advisory Commission, 2004). North Carolina's guidelines offer "windows of discretion" (Engen, Gainey, Crutchfield, and Weis 2003) that can allow "… judicial decision making to move away from the more formal grounds of uniformity and just deserts inherent in sentencing guidelines" (Gainey, Steen, and Engen 2005: 491). While most scholars point out the potential problems associated with these "windows of discretion," a judge's ability to take aggravating and mitigating factors into account also offers opportunities for negotiating leniency, particularly among youthful defendants.[2] North Carolina allows age to be legally used as a mitigating factor in criminal sentencing, stating that a defendant may receive a mitigated sentence if:

[2] The American Bar Association suggests that age of defendant be taken into account as a mitigating factor during criminal sentencing (Schwartz 2012).

> "The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense."
>
> "The defendant is a minor and has reliable supervision available."

Whether used or not, the socio-legal infrastructure currently exists in North Carolina to treat youthful offenders with leniency.

Surprisingly, unwarranted disparities due to age/youthfulness have received relatively little empirical attention in comparison to other social characteristics like race, ethnicity, sex, and social class. Research on juvenile transfers (which usually includes defendants under the age of 16) often finds that youthful defendants pay a "juvenile penalty" when tried in criminal courts (Kurlychek and Johnson 2004).[3] However, when youth are transferred to criminal court, they have typically committed serious offenses that may warrant a harsh sanction. Few research studies have explored how age shapes the effects of race and ethnicity under determinate sentencing systems, and none to this author's knowledge have quantitatively assessed sentencing outcomes in states where all 16- and 17- year old defendants are automatically prosecuted as adults. Kupchik's (2006) study presents a partial caveat to the previous statement: he compares the process of prosecuting youth in juvenile and criminal courts in New York and New Jersey, but his qualitative research design does not examine quantitative measures like incarceration and sentence length.[4]

More commonly in research on sentencing disparities, researchers include continuous measures of age as a control variable and find that age has little to no effect on sentencing outcomes (Steffensmeier, Kramer, and Ulmer 1995; Wu and Spohn 2009; see also Myers and

[3] I exclude youth younger than 16 who are tried as adults in North Carolina's criminal courts from my analyses.
[4] New York is the only other state in the U.S. that automatically tries all 16- and 17-year old defendants as adults.

Talarico, 1987; Peterson and Hagan 1984; Klein, Petersilia, and Turner 1988; Steffensmeier et al. 1998). However, because a defendant's age can affect the effects of legal variables - like criminal history – solely treating age as a continuous variable that exerts a direct effect on sentencing outcomes is not always desirable (Bushway and Piehl 2007). When researchers disaggregate samples into broad categories of young and old (under and over 50 years of age, respectively), they find that younger defendants often receive harsher sentences than older criminal defendants (see Champion 1987; Cutsall and Adams 1983; Wilbanks and Kim 1984). Further partitioning samples into more refined age groups (e.g., 18-29, 30-49, 50-65) shows that the youngest defendants usually receive the harshest treatment (Steffensmeier et al. 1998; see also Bushway and Piehl 2001; Engen and Gainey 2000).

Steffensmeier et al.'s (1995) proposition that the effects of age on criminal sentencing are curvilinear represents one of the first solid attempts to theorize the role of age on sentencing outcomes. Steffensmeier and his colleagues reasoned that if 18-, 19-, and 20-year old defendants along with elderly defendants receive more lenient sentences, the more punitive sanctions received by defendants of other ages would potentially be canceled out:

> …it is plausible that judges would view 18-, 19-, and 20-year olds as more like juveniles than like full-fledged adults, and thus would regard them as deserving more lenient treatment. If this is so, the assumption of a linear relationship between age and sentencing would lead to a misinterpretation of the absence of an age effect (Steffensmeier et al. 1995: 584).

Subsequent works (e.g., Steffensmeier et al. 1998) in the area dispute the curvilinear effect of age on sentencing, but provide evidence that: (1) treating age as a strictly continuous control variable is an insufficient approach to understand how age shapes courtroom decisions; (2) the age of a defendant does indeed matter in the courtroom; and (3) the effects of variables like race and ethnicity are not uniform across defendants of all ages. In developing an argument for

examining the effects of race and ethnicity across the life course, the next sections discuss relevant works on race, ethnicity, race-age-sex interactions, and how perceptions of threat influence judicial decision-making.

Race, Ethnicity, and Sentencing

Zatz (1987) identifies four distinct waves of research on race and sentencing. The first wave includes studies conducted prior to the 1960s, before broad scale acceptance of the Civil Rights Movement occurred throughout the U.S. Typically these studies report that minority defendants are disadvantaged in relation to their white counterparts, an outcome largely thought to be a product of overt discrimination (Johnson 1957; Sellin 1935). With improvements in methodologies available, many second wave researchers report evidence that race operates indirectly on sentencing, documenting patterns suggesting that differential outcomes result from the fact that minorities are more involved in serious crime (Cohen and Kluegel 1978; Hagan 1974; Hindelang 1978; and Kleck 1981). The third wave began to consider social context (Hagan and Bernstein 1979; Lizotte 1978 for examples), while the final wave of research includes examinations of sentencing outcomes under systems of determinate sentencing (Miethe and Moore 1985; Petersilia 1983). Meta-analyses on race and sentencing yield conflicting results: Chiricos and Crawford (1995)[5] find that black defendants are consistently disadvantaged in relation to whites, while Mitchell (2005) concludes that findings of unwarranted racial disparities are highly dependant upon methodological decisions made by researchers.[6]

[5] In their meta-analysis of 38 studies, Chiricos and Crawford (1995) examined the cumulative evidence of the effects of race on sentencing and whether black defendants were more frequently incarcerated in the South. Although they found evidence of racial disadvantage in incarcerations, they did not find evidence that black defendants in the South are likely to receive an active (i.e., incarceratory) sentence.

[6] Using a quantitative meta-analytic technique, Mitchell (2005) reviewed 71 published and unpublished studies that examine the relationship between race (e.g. black-white) and sentencing outcomes in hopes of not only illustrating the presence of disparities, but to also explain why the findings from studies on race

The cumulative findings of research on race and sentencing are further obscured by researchers' failures to include measures of ethnicity in models,[7] despite the fact that the Hispanic and Latino population in the U.S. has grown rapidly over the past several decades (Steffensmeier and Demuth 2000, 2001; Zatz 1984).[8] Recent findings on the effects of ethnicity are mixed, though the majority of studies suggest that Hispanic defendants are not only disadvantaged in relation to non-Hispanic white defendants but also relative to non-Hispanic black defendants (Albonetti 1997; Hebert 1997; Steffensmeier and Demuth 2000, 2001; Unnever and Hembroff 1985; see also Zatz 1984).[9] Using data from Pennsylvania, Steffensmeier and Demuth (2001) find that Hispanic defendants are more likely to be incarcerated and receive longer sentences than similarly situated non-Hispanic white and black defendants. This pattern holds for both drug and non-drug offenses, with older defendants receiving more lenient sentences than younger defendants. Similarly, Brennan and Spohn (2008) find that Hispanic defendants convicted of drug offenses in North Carolina receive harsher sentences than non-Hispanic black defendants. Using multinomial logistic regression, they find that Hispanic drug defendants face substantially lower odds of receiving an intermediate punishment in comparison

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and sentencing often diverge. He finds that: (1) black-white differences are relatively small in comparison to other predictors of sentencing outcomes, but the magnitude of the effect is statistically significant across the studies included in the sample; and (2) various study factors, particularly methodological factors, explain a large proportion of the variability in study results.

[7] Steffensmeier and Demuth (2001) cite a number of reasons why researchers have not assessed differences in treatment among black, white, and Hispanic defendants, including: (1) a lack of reliable measures of ethnicity in datasets collected and maintained by the government; (2) small samples of Hispanic defendants within datasets collected and maintained by the government, which severely limits researchers' abilities to quantitatively explore difference in outcomes; and (3) prevailing cultural ideologies concerning the existence of fairness and equity within the modern day criminal justice system, or – in other words – researchers' beliefs that the justice system operates fairly in most cases.

[8] While only 1% of North Carolinian residents identified as Latino or Hispanic in 1980, that figure rose to 4.7% in 2000. From 2000 to 2010, the number of North Carolina residents who identified as Latino or Hispanic almost doubled, thus comprising a total of 8.4% of all residents in the state (Census 2010).

[9] In studies of sentencing in federal courts, both Feldmeyer and Ulmer (2011) and Spohn and Sample (2013) find no significant differences in the treatment of white and Hispanic defendants.

to non-Hispanic black drug defendants; non-Hispanic black and Hispanic drug defendants do not differ in the likelihood of receiving a community sentence versus incarceration or an intermediate punishment (e.g., house arrest with electronic monitoring; short-term periods of jail confinement).

While the research discussed herein focuses explicitly on the main effects of race and ethnicity on sentencing, recent theoretical and empirical work suggests that the effects of race and ethnicity are often contingent upon context and additional structural positions a person occupies. Not all minority men and women are disadvantaged in the same way across all contexts; an individual's particular location within various systems of oppression influences both experiences and outcomes within institutional settings (Collins 2002; Johnson, 2005; see also Acker 2005, Crenshaw 1991). Recent research on race-sex-age interactions and sentencing find that young minority men often pay a "punishment penalty" in criminal courts as a result of their marginalized social status (Spohn and Holleran 2000).

Both Steffensmeier et al. (1998) and Spohn and Holleran's (2000) work demonstrates that the effects of race and ethnicity on sentencing are inconsistent across defendants of different ages:10 the former finds that young black men are significantly more likely to be incarcerated than both white men and older black men, while the latter finds that young black and Hispanic men are similarly disadvantaged in criminal courts. These findings suggest the importance of considering the ways in which the effects of race and ethnicity on sentencing are shaped by age. The discussion now turns to the ways that judicial decision-making may be informed by cultural stereotypes and racialized notions of threat.

[10] There is also a rich literature on main and interactive effects of gender on sentencing; however, this is not the focus of my study.

Judicial Decision-Making

Along with elucidating interrelationships among race, gender, and sentence severity, Steffensmeier et al.'s (1998) study provides foundational insights into the judicial decision-making process. The focal concerns framework, which Steffensmeier and his colleagues use to interpret their findings, posits that court actors consider three primary concerns when making sentencing recommendations: an offender's blameworthiness and degree of injury caused, practical constraints and consequences, and protection of the community. Since judges are likely to associate these factors with a defendant's race, sex, and age, biases are built into the perceptual shorthand they use to process cases efficiently.

All at once, judges are required to balance perceptions of culpability, the level of risk a defendant poses to the community, and practical constraints they face in ordering sentences. Considering that perceptions of threat are both patterned and historically racialized in the U.S., the relative disadvantage of minority men is not entirely surprising. There's a long history of perceiving racial and ethnic minority groups as a threat. Consider in 1968 that: "81 percent of those responding to a Gallup Poll agreed with the statement that 'law and order has broken down in this country' and the majority blamed 'Negroes who start riots' and 'Communists'" (Alexander 2012:46). Stereotypes, typically defined as inaccurate generalizations that apply to an entire social group, are often inextricably linked to perceptions of threat. Historically, young black (virile) males were criminalized and often lynched for their alleged (and often fictitious) rapes of white women in the South prior to the Civil Rights Movement (Marable 1999); in modern times, young black males continue to be stereotyped as violent criminals (Alexander 2012; Steen, Engen, and Gainey 2005; Steffensmeier et al. 1998).[11] These stereotypical images

[11] Drug offenders are often perceived to be black and brown, though research suggests that whites are more likely to be users and sellers (Alexander 2012).

of black Americans, particularly young men, have deleterious effects when policing and sanctioning behaviors.

Young Hispanic and Latino men are also subjected to stereotyping. Hispanic and Latino men are often viewed as violent, drug-dealing criminals involved in drug trafficking and gang behavior (Mirandé 1987; Steffensmeier and Demuth 2000, 2001). However, unlike young black Americans, Hispanic and Latino men and women are often unfairly stereotyped as illegal immigrants, regardless of their actual immigration status. Journalists often utilize the metaphors of "an alien invasion" and "time bombs," emphasizing Hispanic and Latino's "undiluted traditions" as evidence of their hostility toward assimilation (Chavez 2001: 226). Thus immigrants, particularly Mexican Americans, are increasingly seen as the "enemy within" due to their ability to "reproduce themselves as an allegedly separate community or nation within a nation" (Chavez 2001: 18). Consequently, Hispanic and Latino individuals often face significant marginalization in the U.S., with their very presence reduced to a physical, cultural, and economic threat to the personal well-being of citizens and cultural traditions of the U.S.: consider that during a 2006 poll conducted by the Pew Research Center, 43% of white respondents and 59% of black respondents in the Raleigh-Durham, North Carolina area indicated that immigrants "are a burden because they take jobs, housing, etc." from other residents.[12] Because the perceptions of threat posed by Hispanic defendants is not only physical but economic and symbolic as well, this suggests that the Hispanic criminal defendants may be disadvantaged throughout their entire life course in North Carolina and not only when young and strong.

[12] Descriptive analysis available at: http://www.pewresearch.org/2006/04/25/attitudes-towa rd-immigration-in-black-and-white/.

Hypotheses

Based on predictions derived from Kurlychek and Johnson (2004), Steffensmeier et al.'s (1998) work on focal concerns, and theoretical and empirical works on stereotypes and threat (Chavez 2001, 2013; Mirandé 1987; Steen et al. 2005; Steffensmeier and Demuth 2000, 2001), I hypothesize that:

- Age will be a significant predictor of incarceration, with 16- and 17-year old male defendants reporting the highest likelihood of incarceration.
- Young black and Hispanic men will be treated more harshly (i.e., more likely to receive an incarcerative sentence) than young white men.
- Racial disadvantage will be concentrated among younger defendants, while ethnic disadvantage will be life-long among male defendants.

To test these hypotheses, I draw on eighteen years of felony sentencing data for defendants sentenced from fiscal year 1999-2000 through 2016-2017 (n=444,267).[13] To control for the effects of sex, I only include male defendants in my analyses. I present main effect and interaction models along with probabilities to explore how race and age, particularly among 16- and 17-year old defendants, shape sentencing outcomes in North Carolina courts. The following section provides additional details about the research context, data and variables, and my analytical approach.

[13] Sentencing decisions in the years immediately prior to the passage of the JJRA may have been influenced by the social movement that lead to legislative action. The Raise the Age movement started in 2007 in NC; thus, sentencing decisions for youthful offenders were likely not influenced until the movement gained momentum. Courtroom actors, many of whom became proponents of the JJRA, may have been influenced in later years by the arguments consistently presented by the movement and in the courts as passage of the JJRA was being considered.

Data and Methodology

Research Context

During the 1970s, the U.S. began to see sweeping changes in sentencing policies at the state-level; one after another, states adopted sentencing guidelines aimed at reducing the effects of race and social class by limiting unfettered judicial discretion in sentencing (Daly and Tonry 1997). Thus in 1990, the state legislators' collective decision to create the North Carolina Sentencing and Policy Advisory came as no surprise given national trends among other states that sought to adopt sentencing practices that were truthful, rational, and consistent (particularly in regard to extra-legal characteristics of defendants, such as their race, sex, or social class). After three years of work, the General Assembly adopted the Structured Sentencing Act,[14] hence convicted misdemeanants and felons alike would receive prescribed sentences based on the severity of the offense and the defendant's prior criminal history. The laws went into effect October 1, 1994 and apply to all sentences committed after that date (North Carolina Sentencing and Policy Advisory Commission, 2004).

North Carolina's felony sentencing grid outlines sentencing recommendations based on two key pieces of information about: (1) the seriousness of the alleged offense, and (2) the defendant's prior record. Offenses are categorized using ten different offenses classes and six prior record levels ranging from level I with zero prior record level points to level six for those with nineteen or more prior record level points. Unlike many other states, North Carolinian judges have the option of imposing an active-, intermediate-, or community-based punishment, thus offering "windows of discretion" that may be counterproductive to sentencing equity (Engen et. al 2003).

[14] Since its adoption, the Structured Sentencing Guidelines have been modified twice: once in 1995 and again in 2009.

Data and Variables

Data for this study come from the North Carolina Sentencing and Policy Advisory Commission for the 2009-2010 fiscal year. Only cases involving felony convictions are included, and those defendants who received either a life or death sentence were excluded from the analysis.[15,16] Listwise deletion of cases with missing values on key variables results in a maximum of 444,267 cases. Table 1 includes a description of key legal, procedural, and extralegal variables (descriptive statistics are reported in Appendix A-1).

Analytic Approach

While Steffensmeier and his colleagues' (1995; see also Steffensmeier et al. 1998) insights on the varying effects of age represent an important contribution to sentencing research, their research treated age as a continuous variable and thereby did not adequately reflect how most people think about age. Culturally, there is no denying that important age-related milestones occur in people's lives, and we often use broad understandings of age and maturity when assessing the behavior of others and ourselves; thus treating age categorically offers a more promising alternative to studying its effects than treating it as a continuous variable.

[15] For Class A (i.e., capital) offenses the guidelines specifies either life imprisonment or death, which leaves little room for judicial discretion.

[16] Although North Carolina has not executed anyone since 2006, the guidelines still allow for defendants to be sentenced to death. With the recent repealing of the Racial Justice Act, the State is one step closer to resuming executions.

Table 2-1. Description of variables

Independent variable	Description
Legal variables	
Offense seriousness	Ten categories, from least to most serious offense class
Prior record level	Six categories: 0-1 points, 2-5 points, 6-9 points, 10-13 points, 14-17 points, 18+ points
Offense type	Dummy coded into three categories: drug crimes, person crimes, property crimes (ref. group)
Procedural variables	
Attorney type	Four categories: court appointed attorney, public defender, privately retained attorney, and waived attorney (ref. group)
Mode of conviction	Two categories: guilty and not guilty (ref. group)
Time	
Fiscal year	Eighteen categories: from 1999-2000 (ref. group) through 2016-2017
Extralegal variables	
Race	Four categories: black, Hispanic, other, and white (ref group)
Age	Six categories: 16 to 17 years (ref group), 18 to 20 years, 21 to 29 years, 30 to 39 years, 40 to 49, and over 50.
Dependent variable	
Probation vs. Jail/Prison (In/Out)	1 = active sentence, 0 = nonactive sentence

Using logistic regression to examine the in/out decision, I first examine the main effects of age and race on male felony defendants; next I examine whether age interacts with race and ethnicity while controlling for other relevant legal and procedural variables. Because I am working with the full population of adult male defendants who received a sentence that was not either a life or death sentence, I follow Steffensmeier and Demuth's approach to:

> place more emphasis on the direction and magnitude of the coefficients than on significance levels, and judge the relative importance of the substantive effects of the independent variables according to the probability differences in the likelihood of incarceration (2000:160).[17]

[17] Quoting Steffensmeier and Demuth (2000), "…statistical tests of significance do not apply in a conventional sense of assessing error in making inferences to the universe from which the sample was drawn…to convert odds ratios to probabilities, we use the formula presented by Hanushek and Jackson (1977): [(odds ratio)/odds ratio +1)]-.05." (160).

Analysis

Table 2 presents the findings for main effects (i.e., Model 1) and interaction terms (i.e., Model 2). Both models are statistically significant ($p<.001$). The controls for legally relevant and procedural variables were all statistically significant and twelve of the seventeen controls for the effects of time (i.e., fiscal year) were statistically significant across both models. In the main effects model the effects of race and ethnicity were statistically significant, indicating that both non-Hispanic Black and Hispanic defendants have higher log odds of incarceration than white defendants ($p < .001$). The odds of incarceration are 1.1 times higher for blacks and 4.3 times higher for Hispanics than whites. The main effects model also indicates that youthfulness may offer defendants leniency – in comparison to 16- and 17-year old defendants, the odds of incarceration are 1.3 times higher for 18 to 20 year olds, 1.2 times higher for 21 to 29 year olds, and 1.1 times higher for 30 to 39 year olds. However, the odds of incarceration begin to decline for defendants, on average, around the age of 40. These findings fail to provide strong evidence for hypothesis 1: while age is a significant predictor of an incarcerative sentence, 16- to 17-year olds do not have the highest likelihood of incarceration. Instead, the results indicate that 18- to 20-year olds experience the highest odds of incarceration.

Model 2 presents race/ethnicity*age interactions. Patterns in the direction and magnitude of coefficients are immediately apparent. In looking at the interaction terms for Black defendants, all of the interaction terms are negative and decreasing in magnitude, suggesting that black disadvantage decreases over time. In contrast, the interaction terms for Hispanics are all positive and mostly increasing in magnitude (with the exception of the interaction for Hispanic defendants aged 50 and over). While the interactions for Black defendants aged 18 to 20 and Hispanic defendants aged 18 to 20 were not statistically significant, the magnitude and direction

of the terms both provide partial support for hypothesis 2 (i.e., that young Black and Hispanic men will be treated most harshly): the results indicate this may be true for young Black defendants in North Carolina, but not Hispanic defendants.

The probabilities in Table 2-3[18] provide additional context: Black defendants aged 18 to 20 have a 16% increase in the chances of an incarcerative sentence while Black defendants aged 21 to 29 have a 12% increase in the chances of incarceration. Younger Hispanic defendants are not disadvantaged in the same way that Black defendants are, though the chances of an incarcerative sentence increases with age for Hispanic defendants through age 50. For Hispanic defendants, the chance of incarceration increases 20% for defendants aged 21 to 29, 24% for defendants aged 30 to 39, and 23% for defendants aged 40 to 49. This provides support for hypothesis 3, that racial disadvantage will be concentrated among younger defendants, while ethnic disadvantage will be lifelong.

[18] Following Hanushek and Jackson (1977), probabilities are calculated as ((odds/(odds + 1)) - .50.

Table 2-2. Logistic Regression of In/Out Decision

	Model 1			Model 2		
	B	S.E.	Exp(B)	B	S.E.	Exp(B)
Class (conviction)	-.062	.000	.940***	-.062	.000	.940***
Prior record	.820	.004	2.272***	.830	.004	2.292***
Appointed	1.269	.028	3.559***	1.269	.028	3.556***
Public defender	1.068	.028	2.909***	1.066	.028	2.904***
Retained	.671	.029	1.957***	.673	.029	1.960***
Guilty	-1.437	.033	.238***	-1.439	.033	.237***
Person crime	.031	.012	1.031**	.023	.012	1.024*
Non-trafficking drug crime	-.172	.009	.842***	-.176	.009	.838***
FY2000/2001	-.015	.023	.985	-.014	.023	.987
FY2001/2002	.005	.023	1.005	.005	.023	1.005
FY2002/2003	.027	.023	1.028	.027	.023	1.028
FY2003/2004	.051	.023	1.052*	.049	.023	1.050*
FY2004/2005	.061	.023	1.062**	.060	.023	1.062**
FY2005/2006	.078	.022	1.081***	.078	.022	1.081***
FY2006/2007	.135	.022	1.145***	.132	.022	1.141***
FY2007/2008	.130	.022	1.138***	.127	.022	1.135***
FY2008/2009	.127	.022	1.135***	.124	.022	1.132***
FY2009/2010	.150	.022	1.162***	.146	.022	1.157***
FY2010/2011	.208	.023	1.231***	.206	.023	1.229***
FY2011/2012	.210	.023	1.234***	.209	.023	1.232***
FY2012/2013	.156	.023	1.168***	.154	.023	1.166***
FY2013/2014	.141	.023	1.152***	.140	.023	1.150***
FY2014/2015	.056	.023	1.058**	.054	.023	1.056*
FY2015/2016	.044	.023	1.045	.041	.023	1.042

Table 2-2. Logistic Regression of In/Out Decision, continued

	Model 1			Model 2		
	B	S.E.	Exp(B)	B	S.E.	Exp(B)
FY2016/2017	-.019	.023	.981	-.025	.023	.975
Black	.125	.008	1.133***	.410	.053	1.507***
Hispanic	1.456	.019	4.290***	.808	.103	2.243***
18 to 20	.245	.024	1.277***	.252	.050	1.286***
21 to 29	.206	.023	1.229***	.344	.048	1.411***
30 to 39	.071	.024	1.074**	.235	.048	1.265***
40 to 49	-.077	.025	.926**	.100	.049	1.105*
50 and older	-.267	.027	.766***	.022	.051	1.022
Black*18-20	--	--	--	-.020	.058	.980
Black*21-29	--	--	--	-.268	.054	.765***
Black*30-39	--	--	--	-.349	.055	.706***
Black*40-49	--	--	--	-.367	.057	.693***
Black*50over	--	--	--	-.570	.061	.566***
Hispanic*18-20	--	--	--	.175	.116	1.191
Hispanic *21-29	--	--	--	.679	.107	1.973***
Hispanic *30-39	--	--	--	.951	.110	2.587***
Hispanic *40-49	--	--	--	.965	.121	2.624***
Hispanic *50over	--	--	--	.916	.157	2.498***
Constant	2.164	.056***		1.985	.069***	

N=444,267

*** p < .001; ** p < .01; * p < .05

Table 2-3. Odds and probability of any charge reduction for misdemeanants in North Carolina Courts

	Model 1		**Model 2**	
	Odds ratio	[Probability difference]	Odds ratio	[Probability difference]
Black	1.133	[3.12%]	1.507	[10.11%]
Hispanic	4.29	[31.10%]	2.243	[19.16%]
18 to 20	1.277	[6.08%]	1.286	[6.26%]
21 to 29	1.229	[5.14%]	1.411	[8.52%]
30 to 39	1.074	[1.78%]	1.265	[5.85%]
40 to 49	0.926	[-1.92%]	1.105	[2.49%]
50 and older	0.766	[-6.63%]	1.022	[0.54%]
Black*18-20	--	--	0.98	[-0.51%]
Black*21-29	--	--	0.765	[-6.66%]
Black*30-39	--	--	0.706	[-8.62%]
Black*40-49	--	--	0.693	[-9.07%]
Black*50over	--	--	0.566	[-13.86%]
Hispanic*18-20	--	--	1.191	[4.36%]
Hispanic *21-29	--	--	1.973	[16.36%]
Hispanic *30-39	--	--	2.587	[22.12%]
Hispanic *40-49	--	--	2.624	[22.41%]
Hispanic*50over	--	--	2.498	[21.41%]

These findings lend partial support to Spohn and Holleran's (2000) findings that young minority men pay a punishment penalty in criminal courts and aligns with current research on race-age-sex interactions (Spohn and Holleran 2000; Steffensmeier et al. 1998) and findings that

Hispanic defendants are treated more harshly than both non-Hispanic white and black defendants (Brennan and Spohn 2008; Steffensmeier and Demuth 2001). Results suggest that non-Hispanic black youthful defendants are particularly disadvantaged in relation to older non-Hispanic black defendants, whereas Hispanic youthful defendants are not particularly disadvantaged in relation to Hispanic men of other ages. Instead, Hispanic men are disadvantaged at every stage in their lives when convicted of felony offenses. Additionally, these findings also suggest that the leniency associated with youthfulness for 16- and 17-year old defendants processed in criminal courts is actually only accessible to whites and Hispanic defendants. As a matter of equity, this raises concerns about the ways in which 16- and 17-year old defendants are treated in criminal courts.

Discussion and Conclusion

The present study examines the how age shapes the effects of race and ethnicity among male criminal defendants who received either a non-life or non-death sentence in North Carolina's courts during 2009-2010. Of particular interest is the treatment of youthful defendants who, by virtue of policy, are treated as adults in North Carolina. Using a conservative estimate of sentence length, 16- and 17-year old defendants are cumulatively sentenced to 7,741 years during the one-year period covered by this study. Results from a series of logistic regressions show that race and ethnicity are salient predictors for 16- and 17-year old felony defendants. However, whether minority 16- and 17-year olds are incarcerated more often for their misdeeds is a complex issue. Tests of the equality of coefficients across groups show that non-Hispanic black youthful defendants are disadvantaged in comparison to older non-Hispanic black defendants, but Hispanic youthful defendants are not particularly disadvantaged in relation to

older Hispanic men. Drawing on work in the focal concerns tradition and literature on racial and ethnic stereotyping, I conclude that these differences can be explained by the types of threat young non-Hispanic black men and Hispanic men pose to society: while young, black men are often feared as virile, violent criminals, Hispanic men represent a symbolic threat to Euro-centric American culture that persists throughout their entire lives (Chavez 2001, 2013; Steffensmeier et. 1998; Steffensmeier and Demuth 2000, 2001).

According to Michelle Alexander (2012): "…the stigma of criminality functions in much the same way that the stigma of race once did. It justifies a legal, social, and economic boundary between 'us' and 'them'" (18). Thus the mark of a criminal record becomes an opportunity for discriminatory treatment that is also perfectly legal (see Pager 2003). Mounting evidence suggests that ex-inmates experience a number of negative consequences and outcomes once their debt to society has been paid. For example, Pager's (2003) work illustrates the difficulty associated with job seeking when an individual has a criminal record, a difficulty that is only exacerbated among minority men who already experience racial and ethnic discrimination in hiring. Ex-inmates' wages are depressed by as much as 10-20%, and they often experience negative physical and psychological health outcomes well into mid-life19 (Massoglia and Schnittker 2009; Western 2002).

Where to draw the boundary at which it is ethically sound to hold an individual fully culpable for criminal behavior is a difficult issue: erring on the lower end of the spectrum would unfairly treat many immature adolescents as adults while waiting to grant adult status until the upper end of the spectrum would unjustly treat many adults as children. Drawing the line at the midpoint, around age 18, strikes a balance between these two considerations. The present study

[19] Massoglia and Schnittker (2009) believe these effects stem from the effects of stigma, not lack of consistent healthcare.

shows that younger minority defendants are particularly vulnerable to racial and ethnic disadvantage in criminal courts, thus the decision to raise the age in North Carolina has been and continues to be an issue of racial equity and justice. As such, the Raise the Age Campaign and the associated passage of the JJRA, though having taken a race-neutral stance in the goal of saving children, may have important implications for saving a particularly vulnerable group of children: minority males. The passage of the JJRA is set to usher in legislative changes in 2019 that raise the age of criminal responsibility to 18 in the State of North Carolina. Research on the age-race-ethnicity interactions uncovered in the present paper in the years following the passage of JJRA will offer insights on the extent to which this legislation has proven helpful for rescuing youthful offenders from the long-term snares of criminal justice contact and whether the legislation addresses racial and ethnic disparities in the sentencing of youthful offenders. Although optimism is warranted, follow-up research is needed to assess courtroom practices and decisions post-JJRA and the extent to which age-racial-ethnic disparities find ways of persisting through the change and uncovering any positive or negative unintended consequences of the legislation.

The present study is not without limitations. Although I control for the type of defense counsel (which is arguably a proxy for social class), I do not have direct measures of defendants' income or other measures of social class. Additionally, courtroom personnel sometimes make visual determinations of a defendant's race or ethnicity, which may not always align with the ways in which an individual self-identifies. Finally, it should be noted that the present research pairs an analysis of outcomes with theoretical work to infer the operation of social-psychological processes. Future research in this area should incorporate more rigorous statistical methods (i.e., propensity score matching) and consider modeling the incarceration decision using an analytical

procedure that allows for a dependent variable with three levels (i.e., multinomial logistic regression, for example). Additionally, future research should incorporate more qualitative work that helps derive a more direct assessment of the social-psychological processes that underlie judicial decision-making. The use of hypothetical sentencing vignettes presents an innovative approach to study how race, ethnicity, and age may shape sentencing determinations. Ethnographic and observational studies like Gathings and Parrotta's (2013) and Everett and Niedstedt's (1999) studies of courtroom dynamics can help capture interactional dynamics that influence sentencing outcomes. Lastly, future research should also focus on comparing outcomes for youthful offenders pre- and post-passage of Raise the age legislation. This may be accomplished through studies that explore issues of equity in sentencing and through studies of recidivism to assess whether the rehabilitative model used by the juvenile justice system is more effective at reducing recidivism (i.e., thus resulting in safer communities, in the context of the focal concerns framework) than more punitive model that permeates the criminal system.

CHAPTER 3. INTERSECTIONS OF RACE, ETHNICITY, AND AGE AMONG MISDEMEANANTS: CHARGE REDUCTIONS AND INCARCERATIONS IN CASES INVOLVING YOUTHFUL DEFENDANTS

According to Uniform Crime Reporting data for North Carolina, more than 25,000 people under the age of 18 were arrested in North Carolina during 2017 alone. Individuals under the age of 18 made up approximately 5.2% of all index crime arrests during 2017 (UCR 2017). Recent efforts to "Raise in the Age" of juvenile jurisdiction in North Carolina will change how youthful defendants, defined here as defendants under the age of eighteen who are tried as adults in criminal courts, are processed when charged with a punishable offense. As the last state in the U.S. to automatically try 16- and 17-year old defendants as adults, North Carolina provides a unique opportunity to assess whether youthful defendants are disadvantaged in criminal courts by sheer virtue of their youthfulness or whether other procedural factors (i.e., being transferred from the juvenile system to criminal court) may explain previous findings that youthful criminal defendants encounter a "juvenile penalty" when sentenced in criminal court (Kurlychek & Johnson 2004, 2010).

We know very little about how youthfulness operates in district courts. Whether youthful misdemeanants pay a juvenile penalty within district courts, and whether other sources of unwarranted disparity like race and ethnicity exacerbate age-related disadvantage in a state where 16- and 17-year olds are automatically processed as adults are empirical questions not yet answered. Although NC legislators have decided to raise the age of juvenile jurisdiction to through 17, documenting these historical patterns is important for understanding how changes to the Juvenile Justice Reform Act (JJRA) are impacting youthful defendants in the state. Thus the aims of this research are twofold: (1) examine how juvenile status operates in criminal courts by

comparing charge reductions and incarcerations among youthful defendants and adults; and (2) provide insight into sentencing outcomes for defendants convicted of less serious law violations. After reviewing relevant empirical and theoretical literature, I present findings from logistic regression analyses that suggest youthful defendants tend to receive leniency in response to their youthfulness, but the leniency afforded young defendants is diminished among youthful defendants of color. Findings are discussed in light of recent policy changes and implications for racial and ethnic minority youthful defendants are discussed.

Legislating the Age of Criminal Responsibility in North Carolina

Beginning December 1, 2019, defendants under the age of 18 charged with nonviolent offenses in North Carolina will be adjudicated in juvenile court. The 2017 Juvenile Justice Reinvestment Act (JJRA) increases the age of juvenile court jurisdiction to 17 years, except for motor vehicle offenses, and expedites transfer to adult court for 16 and 17 year olds who commit Class A-G felonies. Under amended G.S. 7B-1604, a juvenile will be prosecuted as an adult for all offenses (1) after 18th birthday, (2) after juvenile has been transferred and convicted in superior court for a prior offense, and (3) after the juvenile has been convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court.

Prior to the passage of the 2017 Juvenile Justice Reinvestment Act (JJRA), 16- and 17-year-olds charged with a misdemeanor or felony were tried as adults in criminal courts across the state. Youthful defendants awaiting arraignment and/or trial were held in jail with other adult defendants; similarly, if ordered to jail or prison, youthful defendants found themselves housed in adult correctional facilities despite their increased likelihood for victimization by other adult inmates (National Prison Rape Elimination Report 2009; Beck and Berzofsky 2013).

Supporters of raise the age have cited numerous benefits in support of their cause: it saves taxpayer money, promotes public safety, and may reduce recidivism among youthful defendants. The North Carolina Department of Public Safety has argued that raising the age of criminal responsibility to eighteen would enhance juvenile employability and strengthen families through mandated parental involvement for youthful defendants processed through the juvenile justice system. The confidentiality of juvenile records affords juvenile offenders protection from the collateral consequences of criminal conviction that often present barriers to higher education and employment (see Pager 2007).

Research on cognitive development provides strong justification for raising the age of criminal responsibility: brain development is not complete until an individual reaches their mid-20s (Steinberg 2012), which helps explain numerous empirical observations about individuals' declining propensity for delinquency and crime: impulsivity and sensation-seeking declines with age; preference for risk peaks in mid-adolescence, then declines with age; risk perception dips just before mid-adolescence and then steadily increases; future orientation increases with age; older individuals are more willing to delay gratification; with age, individuals spend more time thinking before acting and also become more resistance to peer influence (Steinberg et al. 2008; Steinberg et al. 2009; Steinberg and Monahan 2007).

For many supporters, raising the age was a moral imperative: it was simply immoral to continue to try youthful defendants as adults.

> "The facts support raising the age. Every state that has done so recently had uniformly positive results. This simple act can be the difference between a kid who turns around his life after a juvenile mistake and one who is put on a treadmill to failure and criminality before he has an opportunity to mature." — Jim Coleman, member of Chief Justice Martin's Juvenile Age subcommittee

> "Now is the time for North Carolina to join the other states in recognizing that in all but a small range of violent crimes, 16 and 17 year olds should not be treated as adults in the criminal justice system." — Representative Chuck McGrady (Republican-Hendersonville)

Although the JJRA received widespread support among legislators, organizations, and members of the community, it was not without opposition. Representative Larry Pittman (Republican-Concord) expressed his opposition to HB280, urging other lawmakers to join him in voting against efforts to raise the age in North Carolina:

> "Some say North Carolina needs to do this because we are the last state that hasn't. Standing alone does not mean you are wrong...Should we be lemmings running off a cliff to plunge into the sea just because 49 other states have done so? I say no. Let's continue to administer justice against crime and take care of victims, not following the crowd going soft on crime, especially without a clear understanding of the fiscal impact."

The implications of these changes are numerous. No longer will 16- and 17-year old youthful offenders be housed in prisons with adults, where youthful defendants are exposed to increased risk of harm and the norms of more hardened criminals. In North Carolina, the juvenile justice system offers greater wraparound services, including behavioral modification programming, mandated family involvement, and re-entry services. Youthful defendants may participate in motivational interviewing or group sessions with corrections staff with the goal of learning new knowledge and skills for coping with stress, peers, and other potential sources of behavioral influence. Yet these benefits for youthful defendants may not come without costs. The next section will draw from research on juvenile transfers to assess whether youthful defendants pay a juvenile penalty at sentencing, as well as whether age disadvantages all youthful defendants similarly.

The Present Study

Once JJRA changes are in effect in December 2019, first time offenders under the age of eighteen will be processed in the juvenile justice system. However, for all offenses after the juvenile has been convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court and for any new charges thereafter, a juvenile will be transferred to criminal court and prosecuted as an adult.

Most of what is known about how juveniles fare in adult courts comes from research on juvenile transfers. With changes in legislators' orientations toward the criminal justice system's role in punishing juveniles, questions about how transferred juveniles fare in comparison to their adult counterparts abound. This research has primarily took one of two approaches: comparing youth processed in the juvenile system with youth transferred to criminal courts (see Steiner 2005 for a review of this research) or comparing outcomes for transferred youth with those for young adult defendants.

Given the differences between the juvenile justice and criminal court systems, as well as salient differences in comparison groups and control variables in earlier studies, researchers were rightfully cautious in making conclusions about how age operates across systems. Overcoming earlier missteps in studies of juvenile waivers, Kurlychek and Johnson's (2004) study compared sentencing outcomes of transferred and adult defendants aged 18 to 24. Using data from Pennsylvania courts, they concluded that transferred youthful defendants were sentenced more harshly than adult defendants and juvenile status interacted with and conditioned the effects of other legal variables like offense type, offense severity, and prior criminal record. In discussing their results, they noted additional evidence and more stringent controls were needed before drawing conclusions about whether juvenile status in adult courts penalizes youthful defendants:

> It is important to emphasize that few prior studies have compared juvenile and young adult sentencing outcomes in adult court. Before our "juvenile penalty" can be generalized, then, future research is needed to replicate these findings. In particular, it is critical that future research implement additional controls for legal variables so that observed disparities between juveniles and adults can be attributed solely to juvenile status (Kurlychek and Johnson, 2004:507).

Follow-up studies have produced mixed results on how age, particularly juvenile status, operates in criminal courts. Steiner (2005) found that transferred juveniles in Idaho rarely received prison sentences and served fewer days in adult facilities than their youthful counterparts processed through the juvenile justice system, though the presence of a "rider program" in the state provided judges with an often used option for sentencing juvenile transfers. With a bootcamp-style structure, the "rider program" served dual roles of incapacitation and cognitive restructuring, helping facility residents develop more confidence and enhance their self-esteem. Drawing on data from 37 of the most heavily populated counties in the U.S., Steiner's (2009) later work found that juveniles transferred to criminal courts were more likely to be held in pretrial detention, which then predicted the likelihood of being sentenced to prison. Steiner (2009:100) concluded, "a transfer to juvenile court, which affords waived juveniles the right to bail, may operate to disadvantage those juveniles who cannot make bail because they may appear more dangerous to courtroom actors at later stages of the process by virtue of being in custody."

More recently, researchers have used propensity score matching to examine juvenile transfer outcomes. Kurlycheck and Johnson (2010) used propensity score matching to create more equivalent samples of juvenile transfers and young adult defendants sentenced in the State of Maryland between January 1999 and May 2006. Similar to previous patterns found in their Pennsylvania study, they concluded that juveniles were disadvantaged compared to young adults. Juvenile disadvantage was exacerbated in drug cases and in instances of discretionary waivers,

but not racial or ethnic group membership. Using a national dataset of youth convicted of a felony in criminal courts, Jordan and Freiburger (2010) conclude that race and ethnicity not only impact outcomes for youthful defendants in adult courts, but often interacts with other factors to exacerbate disadvantage among youthful defendants from marginalized racial and ethnic backgrounds. These findings are consistent with other studies that find that young minority men often pay a "punishment penalty" in criminal courts as a result of their marginalized social status (Spohn and Holleran 2000; see also Steffensmeier et al. 1998).

Hypotheses

Based on predictions derived from Kurlycheck and Johnson (2004). Jordan and Freiburger (2010), and Steiner (2009), I hypothesize that:

- (1a) Youthful defendants will be less likely to receive charge reductions than adult defendants in criminal courts.
- (1b) Youthful racial and ethnic minority defendants will be less likely to receive charge reductions than white defendants.
- (2a) Youthful defendants will be more likely to be sentenced to prison than adult defendants in criminal courts.
- (2b) Youthful racial and ethnic minority defendants will receive more prison sentences than youthful white defendants.

To test these hypotheses, I utilize misdemeanor and felony data from district courts in North Carolina to examine how juvenile status operates in adult courts. I will also explore race-age interactions among defendants charged with misdemeanors and low-level felonies.

Data and Methodology

Data and Variables

Data for this study come from the North Carolina Sentencing and Policy Advisory Commission across an eighteen-year period between 1999 and 2017 and represent all cases tried in district

courts across the state during the time period examined (i.e., low-level felonies, misdemeanor cases, and punishable infractions). Table 1 includes a description of key legal, procedural, and extralegal variables. Descriptive statistics are reported in Appendix B-1.

Two dependent variables are explored using logistic regression: (1) categorical charge reductions, and (2) the in/out decision. The charge reduction variable captures any reduction in the offense charged and the offense convicted that results in a change in the classification of the charge itself: from felony to misdemeanor, misdemeanor to infraction, infraction to fine only, or any other categorical reduction (i.e,, misdemeanor to fine only). The in/out refers to the decision to incarcerate versus order a community-based punishment such as probation or participation in specialized court-sanctioned programming (i.e, anger management, batterers intervention, substance abuse services, etc.).

Analytic Approach

According to Ulmer and Kramer (1998), sentencing guidelines are used by various members of the courtroom workgroup in subtly different ways: DA offices use guidelines as management tools, judges rely on them to legitimate their sentencing practices in political disputes, and prosecutors and defense attorneys make use of the guidelines to manage uncertainty during plea bargaining. The plea negotiation process also occurs "in the shadow of the trial," meaning that defendants must take into account the likelihood of conviction should their case go to trial, the punishment they can expect to receive if found guilty, and the sentence discount being offered in exchange for agreeing to plead guilty (Spohn 2018:327). When faced with these circumstances defendants often take enter into pleas with the prosecution as a way to manage the uncertainty they face in the outcome of their particular case, yet defendants are often poorly equipped to evaluate the details of the plea being offered.

Logistic regression is used to estimate main effects and interaction models for both dependent variables. I start by estimating main effects and interaction models for the charge reduction variable, as well as probabilities associated with the effects of race, ethnicity, age, and race/ethnicity*age interactions for defendants under the 18 and aged 18 to 29. I repeat this process for the in/out dependent variable while also controlling for charge reductions in the models.

Table 3-1. Description of variables

Independent variable	Description
Legal variables	
Class	Five categories, from least to most serious offense class
Prior record level	Three categories: no prior convictions, 1-4 convictions, 5 or more prior convictions
Procedural variables	
Attorney type	Court appointed, public defender, privately retained, and waived attorney (ref. group)
Extralegal variables	
Race and ethnicity	Black, Hispanic, and white (ref group)
Age	Under 18, 18 to 29 years (ref group), Over 29
Time	
Fiscal Year	1999-2000 (ref group) through fiscal year 2016-2017
Interactions	
Black/Hispanic*Under 18	Black/Hispanic defendants under age 18
Black/Hispanic*18-29	Black/Hispanic defendants aged 18-29
Dependent variables	
Charge reduction	1 = charge reduction, 0 = no charge reduction
In/Out	1 = active sentence, 0 = non-active sentence

Findings

Tables 3-2 and 3-3 present main effects and interaction models from logistic regressions of charge reductions and the in/out decision, respectively. To provide further interpretation, Table 3-4 presents probabilities calculated from odds ratios for the extralegal variables and interaction terms of theoretical interest. Starting with the main effects model in Table 3-2, all of

the legal and procedural variables and fourteen of the seventeen controls of fiscal year were statistically significant.

In the main effects model, Black and Hispanic defendants less likely to receive charge reduction than white defendants while younger defendants have a greater chance of receiving a charge reduction when charged with a misdemeanor or a low-level felony. Defendants under 18 are particularly likely to receive a charge reduction: the odds of receiving a charge reduction are 2.1 times higher for defendants under the age of 18 and 1.4 times higher for defendants aged 18 to 29 in comparison to defendants aged 30 and older. These findings do not support hypothesis 1a, youthful defendants will be less likely to receive charge reductions than adult defendants. Although notions of a juvenile super-predator were common in the 1990s, these stereotypes do not appear to be part of the perceptual shorthand used by judges when sentencing misdemeanants in North Carolina.

In the interaction model, the odds of receiving a charge reduction are 1.1 times higher for Black defendants under 18 and 1.2 times higher for Black defendants aged 18 to 29. This translates to a 15% increase and 6% increase in the chances of a charge reduction, respectively (both of which are relatively similar to the probabilities of charge reduction associated with each age respective age group in the main effects model). Again, these findings do not provide support for hypothesis 1b, youthful racial and ethnic minority defendants will be less likely to receive charge reductions than white defendants. Instead, it appears that youthful minority defendants may experience an increased chance of receiving a charge reduction in comparison to the referent category. While these findings suggest favorable treatment of youthful Black defendants, these findings may reflect initial overcharging by police in cases involving young Black men (see Holmes, Daudistel, & Farrell 1987).

Table 3-2: Charge Reductions for Misdemeanor Offenses[20]

	Model 1			**Model 2**		
	B	SE	B(Exp)	B	SE	B(Exp)
Class (charged)	-.001	.000	.999***	-.001	.000	.999***
PRL	.009	.003	1.009**	.009	.003	1.009**
Appointed	2.362	.008	10.614***	2.361	.008	10.606***
Pub. defender	2.381	.009	10.820***	2.381	.009	10.820***
Retained	1.567	.009	4.792***	1.566	.009	4.790***
Female	.092	.005	1.097***	.090	.005	1.095***
Black	-.072	.005	.931***	-.160	.007	.852***
Hispanic	-.233	.012	.792***	-.189	.021	.828***
Under 18	.720	.009	2.055***	.659	.013	1.933***
18-29	.330	.005	1.390***	.257	.007	1.293***
Black*Under 18	--	--	--	.126	.018	1.134***
Black*18-29	--	--	--	.157	.010	1.170***
Hispanic*Under 18	--	--	--	.004	.048	1.004
Hispanic*18-29	--	--	--	-.059	.026	.943*

N=2,525,891
*** p < .001; ** p < .01; * p < .05

The legal and procedural variables and fifteen of seventeen control variables for the effects of time across fiscal years are statistically significant in Table 3-3. In the main effects model, Black and Hispanic defendants were more likely to receive an incarcerative sentence. The odds of receiving an active sentence were 1.2 times higher for both Black and Hispanic defendants than white defendants. Defendants under the age of 30 had lower log odds of

[20] Dummy variables for fiscal year not presented in this table or the subsequent table for the in/out decision.

receiving an incarcerative sentence; this does not support hypothesis 2a, that youthful defendants will be more likely to receive an incarcerative sentence than adult defendants.

Model 2 presents interaction effects for race, ethnicity, and age. Findings indicate that the leniency afforded to youthful defendants under the age of age is extremely attenuated for both Black and Hispanic defendants under the age of 18. Considering in the main effects model the effect of being under the age of 18 was associated with an approximately 18% decrease in the chance of receiving an active sentence compared to the referent group, a Black defendant under the age of 18 could expect only a 2% decrease in the chance of receiving an active sentence. Hispanic defendants fare just a little better than similarly aged Black defendants with a 6% decrease in the chance of receiving an incarcerative sentence. However, model 2 does provide support for hypothesis 2b, youthful minority defendants will be more likely to receive an incarcerative sentence than white defendants.

Table 3-3: In/Out Decision for Misdemeanor Offenses

	Model 1			**Model 2**		
	B	SE	B(Exp)	B	SE	B(Exp)
Class (convicted)	-.001	.000	1.001***	-.001	.000	1.001***
PRL	.539	.002	1.713***	.538	.002	1.713***
Appointed	.390	.004	1.478***	.390	.004	1.476***
Pub. defender	.635	.005	1.886***	.634	.005	1.885***
Retained	-.792	.005	.453***	-.792	.005	.453***
Charge reduction	-.246	.006	.782***	-.247	.006	.781***
Female	-.534	.004	.586***	-.535	.004	.586***
Black	.211	.003	1.235***	.199	.004	1.220***
Hispanic	.203	.008	1.225***	.148	.012	1.159***
Under 18	-.463	.008	.629***	-.712	.014	.491***
18-29	-.272	.003	.762***	-.270	.005	.763***
Black*Under 18	--	--	--	.402	.017	1.495***
Black*18-29	--	--	--	-.009	.007	.991
Hispanic*Under 18	--	--	--	.305	.040	1.356***
Hispanic*18-29	--	--	--	.079	.016	1.082***

N=2,525,891
*** p < .001; ** p < .01; * p < .05

Table 3-4: Odds and Probabilities for Charge Reductions and In.Out Decision

	Charge reduction		**In/out**	
	Odds ratio	[Probability]	Odds ratio	[Probability]
Black	.852***	[-4.00%]	1.220***	[4.95%]
Hispanic	.828***	[-4.70%]	1.159***	[3.68%]
Under 18	1.933***	[15.91%]	.491***	[-17.07%]
18-29	1.293***	[6.39%]	.763***	[-6.72%]
Black*under 18	1.134***	[3.14%]	1.495***	[9.92%]
Black*18 to 29	1.170***	[3.92%]	.991	[-.23%]
Hispanic*under 18	1.004	[0.10%]	1.356***	[7.56%]
Hispanic*18-29	.943*	[-1.47%]	1.082***	[1.97%]

Discussion

The present study examines how race and ethnicity shape the effects of age on misdemeanants in the state of North Carolina. Contrary to literature on the "juvenile penalty" that youthful defendants pay when transferred to criminal court (Kurlychek & Johnson 2004), youthful defendants in North Carolina receive leniency by virtue of their youthfulness. Main effects models indicate that defendants under the age of 18 have a higher probability of charge reduction and lower probability of incarceration (5% and 8%, respectively) than defendants aged over the age of 29. Although models of the charge reduction variable suggest that youthful minority defendants fare better in comparison to older, white counterparts, this interpretation seems inaccurate given the findings from models of the in/out decision that show the advantages of leniency afforded by youthfulness are severely attenuated for youthful defendants of color. These findings are consistent with previous findings that race and ethnicity often interact with other factors such as age and gender (Spohn & Holleran 2000; Steffensmeier et al. 1998) and

may work to exacerbate disadvantage among youthful defendants from marginalized racial and ethnic backgrounds (Jordan & Freiburger 2010).

Given historical patterns of unequal treatment among racial and ethnic minority defendants within North Carolina courts, raising the age of criminal responsibility offers important advantages to youthful defendants of color. Youth adjudicated through the juvenile justice system are afforded more rehabilitative services, greater family involvement, and less risk of physical and sexual harm during confinement within a state institution (Lassiter, 2017). Moreover, first-time offenders may avoid the collateral consequences of criminal conviction (Alexander 2012; Pager 2003; Western 2002). Yet, there are important implications to consider: racial and ethnic minorities are disproportionately represented among youthful defendants arrested in North Carolina, where African American youth comprise more than half of all arrests among youthful arrestees but less than a quarter of the youth across the state. Non-Hispanic Black and Hispanic juveniles comprise almost three-quarters (73%) of all detention center admissions and just over 80% of all Youth Detention Center commitments during 2018 (NC DPS 2018). Thus, there is little reason to expect that raising the age of criminal responsibility will result in more favorable proximate punishments for youthful defendants of color. Future research should examine historical patterns in adjudication and services provided to youth of color adjudicated through the juvenile justice system and those newly falling under its purview. Similarly, future research should seek to incorporate cost-benefits analyses that illustrate the costs of adjudicating juveniles through the juvenile justice system versus providing similar services through other community-based organizations.

CHAPTER 4. FOCAL CONCERNS, IMPLICIT BIAS, AND COURTROOM DECISION-MAKING

Patterns of differential treatment within the criminal justice system are well-documented. Research suggests that racial and ethnic minorities fare more poorly in comparison to their white counterparts at multiple stages in the criminal justice system: arrests (Donohue & Levitt 2001; Ousey & Lee 2008; Parker, Stults & Rice 2005); pretrial release (Freiburger, Marcum & Pierce 2010; Demuth 2003; Demuth & Steffensmeier 2004); charge reductions (Frenzel & Ball 2008; Metcalfe & Chiricos 2017); and incarceration (Steffenmeier et al. 1998; Spohn et al. 1981; see also Ulmer, Kurlychek & Kramer 2007). Research also suggests that Black men and young Black men in particular experience "cumulative disadvantage" where disadvantage at earlier stages in the criminal justice system begets additional disadvantages at later stages (Wooldredge, Frank, Goulette & Travis 2015).

Since its development in the late 90s, the focal concerns perspective (Kramer & Steffensmeier 1993; Steffensmeier 1980; Steffensemeier et al. 1998) has dominated the sentencing literature. The focal concerns framework holds that court actors consider three primary concerns – blameworthiness and degree of injury caused, practical constraints and consequences, and protection of the community – when recommending sentences for criminal defendants. Since judges are likely to associate these factors with a defendant's race, sex, and age, biases are built into the perceptual shorthand they use to process cases efficiently. Focal concerns has been used to explain disparities in outcomes by gender (Steffensmeier 1980), race and ethnicity, and (Kramer & Ulmer 2002; Spohn & Holleran 2000; Steffensmeier & Demuth 2000) and the interactive effects of being young, minority, and male (Steffensmeier et al. 1998; Spohn & Holleran 2000). Researchers have also successfully applied the focal concerns

framework to understand decision-making within the juvenile justice system (Bishop, Leiber & Johnson 2010; Harris 2009).

Yet, Hartley, Maddan, and Spohn (2007) cogently argue that the focal concerns perspective is theoretically and methodologically underdeveloped: lacking an "explicit thesis or an established set of propositions that support this theoretical framework" (p. 62); over-reliance on "interrelated variables" that can be used to measure multiple focal concerns (i.e., past criminal history can be used as an indicator of blameworthiness and propensity for recidivism; seriousness of offense can be used as an indicator of culpability and danger posed to the community); and the untapped concept of practical constraints and consequences (such as a defendant's ability to "do time" and/or the availability of correctional space), which is rarely included in analyses (p. 63). In their original articulation of the framework, Steffensmeier and colleagues (1998) only vaguely theorize the complex interplay of focal concerns, instead focusing more on the results of their interplay: the development and reliance on a type of perceptual shorthand that explains disparities in sentencing outcomes (Hartley et al. 2007). Thus specific, mutually exclusive indicators for each identified focal concern are not fully elaborated, much less the ways in which these indicators interact with each other.

While defendant characteristics like race, ethnicity, gender, and age are assumed to affect perceptions of blameworthiness, dangerousness, and suitability for incarceration or community-based punishment (i.e., probation, community service, fine, etc.), how these characteristics interplay with defendant characteristics remains undertheorized and poorly tested. The present studies seek to contribute to the literature on focal concerns by elucidating how skin tone (e.g., a proxy for race) affects recommended sentences for minority defendants. Using an innovative approach that leverages photo enhancement technology to develop a photographic factorial

survey, this study examines the role that implicit biases related to skin color affect perceptions of culpability and dangerousness. According to judges, they explicitly consider a wide variety of factors when determining an appropriate sentence for a defendant, many of which are related to legal variables (i.e., facts of the case, legal statutes) and considerations predicted by the focal concerns framework (i.e., blameworthiness of the defendant, protection of the community, practical considerations). Yet the results from this vignette study also suggest that judges may unconsciously consider other pieces of information, such as the color of defendant's skin, as they determine the most appropriate punishment for a particular defendant. These findings are considered within the context of implicit bias.

Focal Concerns, Stereotypes, and Courtroom Decision-Making

Steffensmeier et al.'s (1998) articulation of the focal concerns framework contends that judges consider three interrelated concerns when making sentencing determinations: culpability and degree of injury caused; the ongoing threat a defendant poses to the community; and practical constraints and consequences, such as the defendant's ability to do hard time, availability of jail/prison space, suitable community-based programming to help address social needs, etc. Judges consider these factors with limited information about a defendant's personal circumstances, motivations, and intentions for the future. As such, decisions are made by relying on a rationality based on habit and social structure. According to Albonetti(1991: 249 , "decision makers seek to achieve a measure of rationality by developing 'patterned responses' that serve to avoid, or at least, reduce uncertainty in obtaining a desired outcome." As humans, our perceptions of the social world are influenced by our experiences, our beliefs, and our attitudes, thus decision-making is not always a wholly rational process. As Greenwald and Krieger (2006:946) write, "the science of implicit cognition suggests that actors do not always have

conscious, intentional control over the processes of social perception, impression formation, and judgment that motivates their actions."

The link between attributions and stereotypes has been documented by researchers for decades. Consider Steffensmeier's (1976) early work on citizen reactions to staged shoplifting incidents: individuals were more likely to report shoplifters and recommend harsher sentences for them if the perpetrated belonged to a stigmatized social category (i.e., hippie versus conformist). Fontaine and Emily (1978) studied verbal statements from bench trials and concluded that judges utilized stereotypes to attribute meaning to defendants' past and future behavior, an act that may hold consequences for sentencing recommendations. Researchers have theorized the damaging effects of stereotypes that depict Black men as criminal predators (Welch 2007; see also Steffensmeier et al. 1998; Spohn & Holleran 2000) and young Hispanic and Latino men as violent, drug dealing, illegal "aliens" (Chavez 2001; Mirandé 1987; Steffensmeier & Demuth 2000, 2001); most of these studies infer causal mechanisms (e.g., stereotypes, attributions, focus concerns) based on patterns of differential treatment across racial and ethnic groups. In a more recent exploration of the effects of race on sentencing outcomes, Steen, Engen, and Gainey (2005) conclude that the ways in which race influences courtroom decision-making is contingent upon both additional defendant characteristics (i.e., gender, age, social class, etc.) and offense characteristics. For Steen and colleagues (2005:435), this means that "differences in treatment within races may therefore be as large as differences between races."

With the exception of Steen et al.'s (2005) aforementioned work, most studies that use the focal concerns framework have paid little attention to intra-racial differences in treatment. Instead "blackness" or "brownness" is assumed to (1) create disadvantage for defendants and (2) disadvantage all defendants within a particular racial (or race-gender-age) category similarly.

Whether this is a theoretical shortcoming or a methodological artifact of using quantitative methods for secondary analyses of official data is unclear, but the shortcomings remain nonetheless. In fact, there is good reason to suspect that racial disadvantage does not operate across all defendants equally. For example, research on the effects of Afrocentric features on sentencing provides strong evidence that the meaning of race and its corresponding effects on perceptions of appropriate punishment differ across defendants of the same racial background. In these studies, defendants with more Afrocentric features (i.e., possessing more Afrocentric features such as darker skin, wider nose, and fuller lips) receive harsher sentences than defendants with less Afrocentric facial features (Blair, Judd & Chapleau 2004; Eberhardt et al. 2006).„ These findings underscore the importance of acknowledging that racial discrimination operates on at least two levels: race and color (Hunter 2007). With this in mind, the next section explores in-depth one key Afrocentric trait commonly associated with race – skin color – and its historical legacy in the U.S.

The Historical Legacy of Colorism in the U.S.

Skin color has a long history as a dimension of black stratification, signifying privilege and disadvantage within racialized groups. As Maddox and Gray (2002:250) explain, "Skin tone bias is the tendency to perceive or behave toward members of a racial category based on the lightness or darkness of their skin tone. Although similar to racial stereotyping, prejudice, and discrimination, skin tone bias is distinguished by its focus on the physical characteristics of individuals within a racial category." Skin tone bias (e.g., colorism) manifests in ways similar to racism, where light skin is preferred and revered beauty standards are washed in whiteness. Skin tone has served as a source of privilege within the black community for decades (Keith & Herring 1991), a vestige of hierarchy from the plantation (Horowitz 1973). During slavery white

slave masters preferred slaves with lighter skin as house servants and light-skinned slaves were bought for a higher price at market than dark-skinned slaves (Myrdal 1944; Hughes & Hertel, 1990). White slave owners preferred to rape light-skinned slave women (Myrdal 1944; DellaFave 2008) and light-skinned slaves were sometimes emancipated by white fathers (Frazier 1957a). Light-skinned slaves were also provided limited training in skilled trades, an option often not available to dark-skinned slaves forced to work as field hands (Neal & Wilson, 1989; Russell et al., 1992). Dark-skinned slaves more often worked in the field under harsher conditions, including hard manual labor and violent beatings; also field hands typically could not learn a trade, the local culture, or how to read or write (Frazier 1957b). In comparison, house servants often had better access to key resources like food, clothing, and shelter, and sometimes even learned to read and write; this close proximity to the slave master's culture also left house servants better prepared to assimilate and reduce their exploitation and oppression (Franklin 1980, Frazier 1957b, Landry 1987).

At the same time, a small class of Black freedmen emerged. Disproportionately light-skinned, these men and women become business leaders, clergy, teachers, and artists within the African American community (Edwards 1959; Frazier 1957; Gatewood 1990). When slavery ended, light-skinned men and women with kinship ties to white slave owners had advantages over dark-skin men and women in obtaining higher education, higher-status occupations, and property (DellaFave 2008). In the early 20th century, clubs, churches, fraternities, and sororities strategically worked to exclude dark-skinned applicants (Hall, 1992; Maddox, 1998; Russell et al., 1992). One particular strategy used to exclude darker-skinned Black applicants was the "paper bag test," where applicants were required to place their arm inside a brown paper bag: if their skin tone was darker than a paper bag, they were excluded from joining (Hall, 1992).

The effects of these cumulative disadvantages continue to shape the lives of Black men and women in the U.S. Hughes and Hertel (1990) found that light skin was associated with reporting (1) higher SES and (2) having a higher-SES spouse than those with dark skin, controlling for age, gender, current SES and background SES status. Similarly, Keith and Herring (1991) found that complexion predicted educational attainment, occupation, and income among Black Americans, and skin tone was more strongly related to stratification outcomes than parental socioeconomic status. Skin tone has been found to be more relevant in job applicant selection than educational achievements or prior work experience (Harrison & Thomas 2009). Thompson and McDonald's (2015) recent analyses of National Longitudinal Study of Adolescent Health data find skin tone differences in grade point average (GPA) across and within racial groups, with lighter-skinned respondents reporting higher GPAs than respondents with darker skin tone.

Dark skin is also more likely to be associated with criminality, toughness and aggressiveness, and lacking in wealth (Maddox & Gray 2002). Dark-skinned perpetrators on TV are more likely to make viewers uncomfortable (Dixon & Maddox 2006). Considering these findings in conjunction with studies of sentencing that find harsher punishments for defendants with Afrocentric features suggests the effects of racial disadvantage in courts may be unequally distributed, therefore masking the disadvantages experienced by some racial and ethnic minority defendants. To explore this line of inquiry, I utilize a 2x2 factorial survey design with experimental photographic vignettes that leverages photo-editing technology for the purposes of studying the role of skin tone bias in sentencing. In doing so, I test the following hypotheses:

- (1) Judges will punish darker-skinned defendants more harshly than defendants with lighter skin, all else equal.

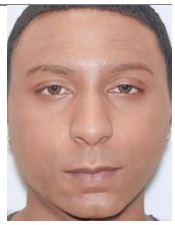
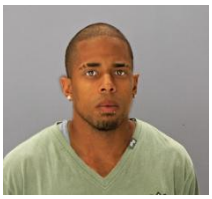
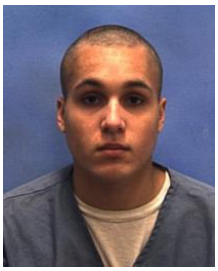
- (2): Judges will perceive darker-skinned defendants as more threatening than defendants with lighter skin, all else equal.

Methodology

I collected data from North Carolina judges using a 2x2 factorial survey design with experimental photographic vignettes. The 2x2 factorial design included two independent variables: vignette (e.g., set 1 or 2) and complexion (e.g., lighter-skinned or darker-skinned); respondents received one of two versions of set 1, one of two versions of set 2, and everyone received a control vignette, set 3. Set 3 depicted a white offender and was purposefully included to avoid only including vignettes with people of color. Dependent variables were threat ratings ("On a scale from 1 to 10, where 1 is not threatening at all and 10 is the highest level of threat an individual can pose to the community, how threatening is this defendant?") and severity ratings ("On a scale from 1 to 10, where 1 is the most lenient sentence and 10 is the most severe sentence, how harsh do you think the sentence for [this defendant] should be?").

Using a judicial directory maintained by the North Carolina Court System, 349 district and superior court judges were invited by mail to complete an online vignette exercise;, sixty-nine respondents accessed the link to the vignette exercise, but only 43 completed the vignette exercise. This yields a response rate of 12% (or approximately 20% overall if partial responses are included). I used Qualtrics survey software to create and administer the vignette exercise, which provided two important benefits: (1) it eliminated interviewer bias from the interaction, and (2) the software randomly assigned a version of each vignette to each respondent. Although previous studies (e.g., Eberhardt et al. 2006; Blair et al. 2004) have used photos to examine how the presence or absence of Afrocentric features affects punishment recommendations, these studies.

Table 4-1. Vignette descriptions

Set 1	
Antwon Patterson DOB: 5/28/94 Race: Black Sex: Male Height: 6'03" Weight: 161lbs.	Antwon Patterson, a 21-year-old African American man, robbed a local convenience store. Antwon used a firearm during the incident and the store clerk was hospitalized with a gunshot wound to his right arm. The store's total loss was $287 and law enforcement officers did not recover the stolen money. Antwon attends a local community college part-time where he studies culinary arts. Antwon is also currently employed full-time at the local Walmart, where he works third shift as a stocker. Antwon has two small children – a three-year-old boy and an 18-month-old girl. Antwon currently lives at home with his mother. Antwon has had several previous interactions with the local police department and has three prior record level points.  
Set 2	
Josiah Alvarez DOB: 12/28/96 Race: Black Sex: Male Height: 5'9" Weight: 149lbs.	Josiah Alvarez, a 20-year-old Black man, was arrested for aggravated assault and trespassing. After heated words with another patron were exchanged at a local nightclub, Mr. Alvarez was asked to leave the premises. He left the property but returned a short time later with a baseball bat. When the victim attempted to leave the nightclub at closing, Mr. Alvarez confronted the victim and hit him with the bat repeatedly. The victim was hospitalized with multiple severe injuries. Josiah works full-time as a custodial worker at a local small business. When he was younger, Mr. Alvarez was expelled from school several times for fighting and he spent some time moving from in and out of group homes. Despite his history of aggressive behavior, Mr. Alvarez only has one prior point on this record.  
Vignette 3 (control)	
James Cottingham DOB: 4/03/99 Sex: Male Race: White/Caucasian Height: 6'3 Weight: 203lbs.	James Cottingham is a 17-year-old defendant who sold 8 ounces of marijuana to an undercover agent. Mr. Cottingham did not use a weapon during the sale, and the money used to purchase the drugs was recovered. Mr. Cottingham does not currently attend school, but is employed part-time at a local Subway where he works as a "sandwich artist." Mr. Cottingham has a 1-year-old son that he helps support financially. Prior to this incident, Mr. Cottingham has never been arrested. 

utilized a 2x2 factorial survey design with experimental photographic vignettes. The current study uses photo-modification technology for creating two sets of photos that are comparable in

every way (i.e., defendant characteristics, offense details, demeanor, facial features, clothing, emotional expression) except skin tone. Table 4-1. provides descriptions of the vignettes.

To assess the factors that judges consider when determining an appropriate sentence, judges were asked to share the factors they generally consider when sentencing a defendant, as well as the individual factors considered when reviewing each vignette. Table 4.2. includes all the full list of questions after each vignette.

Table 4-2. Vignette follow-up questions

What is the most appropriate charge(s) for [this defendant]? - Should this person be sent to jail or prison? - Would you recommend an intermediate sentence for this defendant? - On a scale from 1 to 10, where 1 is the most lenient sentence and 10 is the most severe sentence, how harsh do you think the sentence for [this defendant] should be? - On a scale from 1 to 10, where 1 is not threatening at all and 10 is the highest level of threat an individual can pose to the community, how threatening is this defendant? - In your opinion, what details related to the case or the defendant were salient for determining the defendant's sentence?

Data and Respondents

Respondents were overwhelmingly male, white, political centrists (see Table 2). Twenty-three percent of the respondents were female and four-fifths were white. Approximately 62% of respondents were over the age of 50. District court judges outnumbered superior court judges (59% compared to 34%, respectively), there were as many judges from urban environments as judges from suburban and rural communities combined. Most judges identified as centrists with slightly fewer judges identifying as conservative than those who identified as liberal (n=9 and 11, respectively).

Table 4-3. Respondent demographics

	Frequency	% of respondents
Sex		
Female	9	23%
Male	31	78%
Race		
African American	7	18%
White	32	80%
Other	1	3%
Age		
30-39 years	4	10%
40-49 years	12	30%
50-59 years	11	28%
60-69 years	13	33%
Type of Court		
District	24	59%
Superior	14	34%
Other	3	7%
District Geography		
Primarily rural	10	25%
Primarily suburban	8	20%
Primarily urban	18	45%
Other	4	10%
District Size		
Small	3	8%
Mid-sized	19	48%
Large	18	45%
Political Orientation		
mean	3.03	--
range	1-5	--

n=40; three respondents who completed vignettes did not provide demographic information

Analytical Approach

I utilize a mixed method approach to analyze vignette data. Open-ended responses to questions about explicit factors considered during decision-making were analyzed deductively using theoretically derived codes from Steffensmeier et al.'s (1998) work on focal concerns. Severity [of sentence] and threat scores are analyzed using appropriate descriptive and inferential statistics.

Findings

Judges were first asked to identify the factors they consider when making sentencing determinations. These open-ended responses provide insight into the factors consciously considered during sentencing and courtroom decision-making, but these factors also provide context for understanding judges' awareness (or lack thereof) of how implicit bias shapes the perceptual shorthand they use to process cases efficiently. The vignette exercise described above was used to explore implicit bias (e.g., skin tone bias) on sentencing recommendations for hypothetical defendants in two different vignettes.

Explicit Factors That Affect Decision-Making

Across the 48 respondents who provided information, judges identified 168 factors they consider when sentencing a defendant. Ninety-eight percent of respondents shared at least one factor and 81% of respondents shared more than one factor they consider during sentencing. Prior record was cited most frequently by respondents. Coding for this factor was fairly straightforward in most cases, however responses such as "current probation status" and "whether defendant is currently incarcerated" also received this code since they also speak to a defendant's record of contact with the criminal justice system. Thirty-one (65%) of respondents mentioned prior record at least once and 32 mentions were cited in total. Facts of case was the second most frequently cited factor considered. Similar to prior record, the coding for this factor was fairly straightforward given that most respondents used this exact terminology. Factors such as "nature of the crime,' "severity of crime," and "seriousness of conduct" also received this code since each factor connotes consideration of specific factors related to the alleged crime. Although similar to Steffensmeier et al.'s (1998) focal concern referred to as "blameworthiness," which underscores the importance of offense severity and offender culpability, the pervasiveness

of the "facts of the case" language better reflects North Carolina's courts. Just over one half of respondents (54%) mentioned this factor at least once and 30 mentions were cited in total.

Table 4-4. "When determining a sentence, what factors do you take into account?"

	# mentions	# (%) of respondents
Facts of case	30	26 (54%)
Prior record	32	31 (65%)
Protection of the community	17	9 (19%)
Practical constraints and consequences	5	5 (10%)
Legal statutes and sentencing guidelines	25	21 (44%)
Victim considerations	16	14 (29%)
Defendant's character	20	12 (25%)
Defendant's circumstances	11	9 (19%)
Experience/judgement	8	6 (13%)

n=48

The next two codes were also derived from Steffensmeier et al.'s (1998) work: protection of the community and practical constraints and consequences. Factors such as "community safety" and "likelihood of rehabilitation" were coded as evidence of concern for community safety and were mentioned by approximately 20% of respondents. Practical constraints and consequences was only mentioned by 10% of respondents. Example responses include: [availability of] "treatment alternatives," "need for treatment and services that can be provided," and "ability to make restitution." Just under half of respondents mentioned legal statutes and sentencing guidelines, and approximately one third indicated they consider what's in the best interest of victims. Defendants' character and circumstances were mentioned less frequently

(mentioned by 25% and 19% of judges, respectively) while experience and personal judgment was mentioned least frequently by respondents (mentioned by only 13% of respondents). Table 4-4 provides additional information about coded responses.

Implicit Factors That Affect Decision-Making

To examine whether skin tone bias influences sentencing, judges were also asked to make sentencing recommendations for hypothetical defendants in two different sentencing vignettes. A 2x2 factorial survey design was used with two different versions of two sentencing vignettes, with one version including a lighter-skinned defendant and the other version including a picture of the same defendant with darker skin. Judges were asked a series of questions about each defendant, such as whether the person should receive an active sentence (i.e., jail or prison versus a community-based punishment like probation) and if the judge would recommend an intermediate sentence for this defendant (i.e., house arrest, day reporting, split sentence, etc.). Respondents were also asked to provide a severity score (i.e., corresponding to how severely the defendant should be punished) and a threat score (i.e., indicating how threatening the defendant appears).

Table 4-5 presents percentages of judges who recommend active and intermediate sentences by vignette and treatment (i.e., lighter-skinned versus darker-skinned defendants). For the first set of vignettes, judges' responses are very similar for the lighter-skinned defendant than the darker-skinned defendant. Overwhelmingly judges reported that an active sentence was appropriate for the defendant, regardless of the skin tone depicted in the defendant's picture, and about one third of judges considered an intermediate sentence to also be acceptable given the

facts of the case. It is worth nothing that the crime depicted in the first vignette was violent in nature, which likely contributes to greater uniformity in judges' responses.

Table 4-5. Appropriate sentence[21]

	Light	Dark
Set 1		
Active sentence (jail/prison)	95%	100%
Intermediate sentence	30%	33%
Set 2		
Active sentence (jail/prison)	84%	95%
Intermediate sentence	63%	53%

In the second set of vignettes, small substantive differences in sentencing recommendations emerge across the two variations with the lighter-skinned defendant receiving greater leniency. Fewer judges deemed the lighter-skinned version of the defendant to be deserving of an active sentence than the darker-skinned defendant (84% compared to 95%, respectively) while a larger percentage of judges believed an intermediate sentence would be appropriate for the lighter-skinned defendant than his darker-skinned counterpart (63% compared to 53%, respectively).

Independent samples t-tests were used to analyze vignette responses for each pair of vignettes (i.e., comparing ratings for defendants with lighter complexions with darker). Table 4-6 presents means, standard deviations and p-values from the results of corresponding t-tests. Given the small sample size for this one-directional test, significance was established at the .10 alpha level.

[21] Appropriate sentence recommendations are not mutually exclusive. Many judges selected multiple options (i.e., active and intermediate) as being appropriate given the facts of the case.

Table 4-6. Vignette exercise

		Light† Mean ± SD	Dark‡ Mean ± SD	p-value
Set 1				
	Severity†	6.71 ± 1.978	7.50 ± 1.535	.09*
	Threat‡	7.38 ± 1.830	8.05 ± 1.397	.32
Set 2				
	Severity†	6.05 ± 1.359	6.86 ± 1.670	.16
	Threat‡	6.48 ± 1.365	6.91 ± 1.444	.19

† On a scale from 1 to 10 where 1 is the most lenient sentence and 10 is the most severe sentence, how harshly should this defendant be sentenced?
‡ On a scale from 1 to 10 where 1 is not threatening at all and 10 is the highest level of threat an individual can pose to the community, how threatening is this defendant?

Several findings are noteworthy. The bivariate relationship between severity and threat scores is statistically significant. Severity and threat scores are strongly correlated for Set 1 and moderately correlated for Set 2 (Pearson's r = .816 and .672, respectively; $p < .01$ for each). This suggests that perceptions of threat and severity of sentence go hand in hand; thus higher ratings on one item should lead to higher ratings on the other item.

Next, the mean ratings for severity and perceptions of threat were higher for defendants with darker skin than defendants with lighter skin for all categories examined. In Set 1, the mean severity score was 6.71 ± 1.978 for the defendant with lighter skin but 7.50 ± 1.535 for the defendant with a darker complexion. For the threat score for Set 1, a mean threat rating of 7.38 ± 1.830 was observed for the defendant with a lighter complexion compared to 8.05 ± 1.397 for the defendant with darker skin. Ratings were in the hypothesized direction, with darker skinned defendants perceived as greater threats and more worthy of harsh punishment, but only differences in means for the severity rating were statistically significant. The patterns observed for Set 2 mimic findings for Set 1: mean ratings for severity and threat were higher for the defendant with darker skin than the defendant with lighter skin, but both differences failed to reach statistical significance.

Discussion and Conclusions

This study represents an initial step toward developing an improved method for exploring how stereotypes and skin tone bias influence judicial decision-making. By leveraging advances in photo-editing technology, I created a 2x2 factorial survey with two sets of photographic vignettes depicting a lighter-skinned and darker-skinned version of the same defendant. Judges were randomly assigned one of two versions of each vignette and asked to assign threat and sentence severity scores to each hypothetical defendant. Results showed that judges assigned slightly higher threat and sentence severity scores to vignettes depicting a darker-skinned defendant than vignettes with lighter-skinned defendants. These findings align with studies that find defendants with darker, more Afrocentric features are disadvantaged in comparison to lighter-skinned Black men and women with less Afrocentric features (Blair, Judd & Chapleau 2004; Eberhardt et al. 2006). Similarly, results from this study reinforce existing literature on racial stereotyping and the tendency for darker skin to be associated with criminality and aggressiveness (Blair 2005; Maddox & Gray 2002).

Although sentencing researchers have a long history of examining racial disparities in sentencing outcomes across racial and ethnic groups, findings from this study suggest that racial disadvantage may be unequally distributed in patterned ways across defendants within a racial group as well. This also suggests that prior research on racial disparities does not accurately convey the experiences of all minority defendants, thereby underestimating the effects of racial disadvantage for darker-skinned defendants. Future research should continue to explore new methodological approaches for understanding how discrimination, stereotypes, and implicit bias affect courtroom decision-making. This will aid researchers in more fully theorizing the interplay of focal concerns, defendant features, and offense characteristics.

The present study is not without limitations. Despite following best practices of sending multiple invitations and reminders to invite participation, the final sample size for this study was smaller than desired. Judges are elite members of their community "making their world difficult to penetrate" (OdenDahl & Shaw 2002:299). While approximately 20% of judges who were invited to participate logged into the vignette exercise, 37% of those who logged in answered the initial questions but failed to complete the vignette exercise. This may reflect a shared discomfort in answering questions about their sentencing practices or fears related to how this information could be used or disseminated. Given the small size of the group who decided to complete the vignette exercise, the likelihood of response bias may pose concerns for some. However, given the experimental nature of the method, the random assignment of vignettes to respondents, and the relatively homogeneous sample, response bias is likely to be minimal at best. Lastly, the small sample size precluded utilizing more advanced statistical techniques to explore multivariate relationships in the data. Future work utilizing a similar method could address these shortcomings through relational work. Building connections, relationships, and (most importantly) trust among judges may reduce reticence to participate in similar studies.

CHAPTER 5. CONCLUSIONS

This dissertation draws on more than a decade of felony and misdemeanor sentencing data from North Carolina courts to understand how age, race, and ethnicity operate to advantage some defendants while disadvantaging others. More specifically, this dissertation investigates: (1) whether race and ethnicity differentially shape sentencing patterns among defendants of different ages; (2) whether race and age shape charge reductions and incarcerations among misdemeanants; and (3) whether skin tone bias influences sentencing outcomes. Given existing literature on the "punishment penalty" paid by young minority men in the criminal justice system (Kurlychek & Johnson 2004; Spohn & Holleran 2000; Steffensmeier, Ulmer, & Kramer 1998), I expected to find that youthful minority defendants in North Carolina would experience similar levels of disadvantage relative to white defendants. Considering North Carolina's exceptionally harsh treatment of older juveniles (i.e., automatically processing 16- and 17-year olds as adults), I expected that racial disparities in treatment would be exacerbated among youthful offenders tried as adults within the state's criminal courts.

Chapters 2 and 3 assessed these expectations using quantitative approaches. Analyses of felony conviction data in Chapter 2 show that young Black youthful defendants are disadvantaged in comparison to older Black defendants but younger and older Hispanic defendants are equally disadvantaged in comparison to their white counterparts. These findings provide additional support for previous findings that young minority men pay a punishment penalty in the courts, i.e., receive harsher sentences than older, white counterparts (Spohn & Holleran 2000; Steffensmeier, Ulmer, & Kramer 1998). Yet these findings also suggest that race and ethnicity operate differently over the life course in North Carolina courts: where Black

defendants are disadvantaged while young, Hispanic defendants are disadvantaged relative to other defendants no matter their age.

Chapter 3 continued exploring how youthfulness, race, and ethnicity shape sentencing outcomes, focusing explicitly on misdemeanor conviction data. The sentencing of misdemeanants is a relatively unexplored domain within the sentencing landscape, despite the fact that most crimes committed in the United States are misdemeanors and not felony offenses (Natapoff 2012). My analyses of misdemeanor convictions indicate that youthfulness is often associated with leniency (i.e., greater probabilities of charge reduction, lower probability of incarceration), but these advantages are attenuated by racial and ethnic disadvantage. Hispanic youthful defendants are less likely to receive charge reductions and more likely to be sentenced to jail or prison while young Black defendants are about equally as likely as their white counterparts to receive a charge reduction but more often sentenced to jail or prison. These findings are consistent with previous findings that race and ethnicity often interact with other factors such as age and gender (Spohn & Holleran 2000; Steffensmeier et al. 1998) and may work to exacerbate disadvantage among youthful defendants from marginalized racial and ethnic backgrounds (Jordan & Freiburger 2010).

Chapter 4 explored the effects of skin tone bias on sentencing and perceptions of threat, indicating that judges perceive darker skinned defendants as more threatening and consequently recommend harsher sentences for darker skinned defendants than they do for defendants with lighter skin tones. These findings align with studies that find defendants with darker, more Afrocentric features are disadvantaged in comparison to lighter-skinned Black men and women with less Afrocentric features (Blair, Judd & Chapleau 2004; Eberhardt et al. 2006) and also support previous findings of racial stereotyping and the tendency for darker skin to be associated

with criminality and aggressiveness (Blair 2005; Maddox & Gray 2002). By testing some of the key theoretical ideas from the focal concerns framework (i.e., perceptions of threat are racialized; racialized perceptions of threat affect sentence severity), Chapter 4 sheds light on how the color of a defendant's skin can subtly influence decision-making and introduce unwarranted disparities in sentencing outcomes.

In looking at the bigger picture, I draw two additional conclusions from this work. The first is related to the design of North Carolina's sentencing grid and what Engen et al. (2003) have termed "windows of discretion" – although North Carolina's punishment grid specifies sentences based on a defendant's prior record and the seriousness of a charge, the guidelines themselves still allow in many cases for judges to choose from among several different punishment options with each option itself falling well within the sentencing guidelines and representing a lawful sentence. Yet these "windows of discretion" provide an opportunity for unconscious bias to creep into sentencing, where young Black and Brown defendants more often are ordered to jail and prison while white defendants receive community-based punishments that are far less disruptive to their lives.

The second sweeping conclusion I draw from this work is a simultaneously a critique. Throughout this dissertation inquiry I have read article after article about focal concerns, where researchers have contributed to this robust literature by documenting patterns of inequitable treatment within the courts. The message from the literature seems clear: (1) judges and other primary decision-makers consider several key "focal concerns" (i.e., blameworthiness, degree of injury caused and threat posed to community, practical constraints and considerations) when making decisions; and (2) the consideration of these focal concerns are patterned in such ways that young minority men are systematically disadvantaged. But the message that I do not hear

being conveyed in the literature is that these patterned responses are examples of institutional racism. While individual racism is overt and easily connected to the actions on a person or group of people, the concept of institutional racism was developed in the late 60s as a way to distinguish individual racist acts from the subtle, yet systemic racism that is built into the normal operations of major institutions within the U.S. (Carmichael & Hamilton 1967). The patterned responses used by judges and other decision-makers are part of the normal operation of the court system and function to protect the historical legacy of white supremacy that continues to quietly terrorize this country.

There are a number of actionable recommendations for criminal justice practitioners and policymakers that I draw from this work. These recommendations include:

- **Require racial equity training for all members of the courtroom workgroup, particularly key decision-makers such as prosecutors, judges, and defense attorneys.** This is an important step for helping members of the courtroom workgroup to understand the historical context of race and ethnicity in this country. The findings from this dissertation documents the harsh treatment of young, Black men within courts, underscoring the potential benefits that equity training could provide for institutional agents who work on behalf of the criminal justice system.
- **Invest heavily in juvenile justice and rigorously document individual-level outcomes to help assess how recent legislative changes are impacting public safety**. As North Carolina expands the jurisdiction of its juvenile justice system, the state is well-positioned to assess how recent changes to a more rehabilitative approach for older youth is impacting a number of key metrics like public safety, recidivism, and cost savings down the line for reformed youth. These

are important questions that may have broader implications for criminal justice reform at a later point.

- **Consider further expanding the reach of juvenile jurisdiction.** The current cutoff point is arbitrary and neurobiological studies indicate that brains continue to develop through one's early 20s, yet we hold individuals accountable for their actions regardless. Could the juvenile justice system's reach be extended to 21 years? 25 years?
- **Develop punishment models that balance accountability with humanity, where individuals have the opportunity to atone for their crime(s) without being cast aside.** Punishments need not "hurt" to be effective.
- **Require unconscious bias training for all members of the courtroom workgroup, especially judges and prosecutors**. Although unconscious bias is a normal part of how the human mind works, issues arise when unconscious bias goes unchecked. Trainings on unconscious bias help raise awareness of the biases and judgments an individual makes about others and provides a framework for mitigating the effects of personal biases in the future.

For lawmakers and other policymakers, I heavily stress the importance of carefully considering the final recommendation listed above: invest in implicit bias training and require that all members of the courtroom workgroup with any type of decision-making authority to complete the training prior to making decisions that may affect a defendant for the rest of his, her. or their life. To notice differences in other human beings is often involuntary and occurs unconsciously, yet it's also a practice that helps cue us into how to interact with others. However, when people hold biased views of others who possess a particular characteristic (e.g., darker skin, female-presenting, older, disabled, etc.), they may unconsciously act in ways that

reflect their biases and unintentionally cause harm. That we currently live in a culture where colorblindness is an accepted ideology only creates more difficulty (see Bonilla-Silva 2013) - individuals who profess colorblindness refuse to even acknowledge engaging in a very basic process of categorization and reading cues. The value in acknowledging one's own implicit biases lie in the greater control that acknowledgement provides for mitigating their effects. It's through self-reflection that an individual can change one's own behavior. At its core, implicit bias is learned behavior -- and it can be unlearned through intentional action.

Recommendations for Future Research

Research on the effects of extralegal variables will benefit from expanding its methodological toolkits beyond reliance on quantitative analyses of secondary data. Although quantitative studies using official data sources make important contributions to our understanding of sentencing practices, these datasets also have limitations that prohibit researchers from exploring theoretical claims about how stereotypes, prejudice, and implicit biases operate within the justice system. Similarly, growing evidence suggests that criminal proceedings and sentencing outcomes are influenced by multiple variables that are not captured in official sentencing datasets. These variables include demeanor, displaying remorsefulness, and physical features of defendants (Everett & Nienstedt 1999; Maddox & Gray 2002; Mazzella & Feingold 1994). Qualitative explorations of sentencing practices, including courtroom ethnographies and observational studies, offer important opportunities for closely examining how interactions between defendants and members of the courtroom workgroup may contribute to leniency or harsh punishment. Pairing observations or video recordings with court transcripts

to build a comprehensive dataset that captures more nuance would help tease out countervailing effects and interactions.

Future research should also seek to build upon and improve the vignette approach introduced in Chapter 4. With adequate funding to support a more relational approach for data collection (e.g., traveling to judges for face-to-face administration of vignette exercise), this methodology shows promise for addressing bias in the justice system by (1) documenting different types of biases, and (2) engaging judges and prosecutors as champions in developing implicit bias training for justice system workers with decision-making authority over the lives of others. Framing implicit biases and stereotypes as normal cognitive processes that help with categorization and making sense of the social world will help reduce defensiveness among judges and other members of the courtroom workgroup.

Limitations and Strengths

The datasets used for analyses in Chapters 2 and 3 include both limitations and strengths. One limitation is that the datasets used for analyses in Chapters 2 and 3 include no controls for victim race (Sweeney & Haney 1992) or the influence of victim impact statements (Erez & Tontodonato 1990) on sentencing proceedings. Prior research suggests that both of these variables may exert influence on sentencing recommendations. Additionally, the datasets used for analyses in this dissertation also did not include information about the defendants' behaviors or physical features that have been linked to sentencing disparities, such as: displays of remorse (Everett & Nienstedt 1999); physical attractiveness (Mazzella & Feingold 1994); and Afrocentric features (Maddox & Gray 2002). Although attorney type is included in regression models to control for differences in socioeconomic status (SES), this is a poor proxy for SES given that

defendants may choose to represent themselves or a private attorney even though they qualify for a public defender or court appointed counsel; additionally, there may be differences in which indigent systems operate across local contexts that create additional inconsistencies in how qualifications are determined.

A final limitation to the data used for analyses in Chapters 2 and 3 again centers on the absence of important variables that may help elucidate the relationship between race, ethnicity, and sentencing outcomes: there are no measures in the dataset of whether the defendant was employed or in school. Both of these circumstances are listed as mitigating factors in the Structured Sentencing Training and Reference Manual (Spainhour et al. 1995). Given that racial and ethnic minorities often experience higher rates of unemployment and lower rates of enrollment in post-secondary education, the influence of these variables on sentencing may partially account for racial and ethnic disparities observed in sentencing outcomes.

Despite these limitations, the datasets used for quantitative analyses in Chapters 2 and 3 have a variety of strengths, primarily attributable to its size and inclusion of legal, procedural, and extralegal variables. Given that the datasets include all cases heard in district and superior courts over the course of numerous years, these datasets are better described as populations rather than samples of defendants. This means that patterns that emerge are indeed actual patterns rather than inferred patterns of sentencing outcomes. When the dataset includes an entire population rather than a sample, Steffensmeier and Demuth (2000) maintain that questions of statistical significance wane in importance for determining substantive findings; instead, the direction of effects and magnitude of effects become salient to discussions of substantive findings. Measures of attorney type and mode of conviction are also important controls given their varied influence on court proceedings.

Another strength of this dissertation lies in the design of the vignettes used in Chapter 4. Although it proved challenging to get judges to complete the exercise, the vignette methodology used for this dissertation is an improvement over the typical approaches to using vignettes in studies of sentencing. More typically, vignettes studies either: (1) do not include a photo of the defendant; (2) include photos of many different defendants but no complementary pairs depicting the same defendant. In this dissertation, each vignette includes two versions that only differ in respect to one single characteristic (e.g., skin color). By leveraging recent advances in photo editing technology, this means that there are no other confounding variables (i.e., demeanor, facial features, emotional expression, etc.) that may influence the sentencing recommendations made by judges. Lastly, administering experimental photographic 2x2 vignettes to judges represents an improvement over previous studies that administer vignettes to mock jurors, college students, and other members of the public with likely no practical experience working within the justice system. Unfortunately, the vignette study was also limited by a small sample size. This not only limited the possibilities for drawing statistical inferences related to my research questions, but also limited the possibility of rigorously testing for non-response bias and assessing the randomization procedures used (i.e., did respondents who received one version of a vignette differ in important ways from the respondents who received the other version of a vignette in each set).

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APPENDICES

Appendix A-1

NORTH CAROLINA DEMOGRAPHICS

North Carolina shares many similarities and differences with the U.S. population as a whole (see Table 1-1). The sex distribution in North Carolina is approximately equivalent to the U.S. population (49% males, 51% females) and the percentage of older adolescents aged 15-19 is roughly equivalent to the U.S. population (7%). Although the overall percentage of non-white North Carolinians is similar to the U.S. population overall (approximately 72% in both N.C. and the U.S.), North Carolina has more Black/African American residents (22% compared to 13%) and fewer Hispanic and Latinx residents (5% compared to 16%) than the U.S. as a whole. The median income in North Carolina is about $7,000 less than the median U.S. income, with a slightly higher percentage of North Carolinians living below the poverty level than the national average (16% compared to 15%, respectively).

North Carolina Crime data collected through the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program shows that North Carolina had lower violent crime rates than the U.S. national average for the past two years (see Table 1-2. for additional information). However, North Carolina witnessed an increase in violent crime from 2017 to 2018; whereas, the U.S. overall saw declines in violent crime. Property crime rates in North Carolina are higher than the national average, with rates in N.C. and the U.S. both decreasing from 2017 to 2018.

Table A-1. North Carolina demographics, U.S. comparison

	North Carolina		United States	
	Frequency	*Percentage*	*Frequency*	*Percentage*
Sex				
Male	3,942,695	49.0	151,781,326	49.2
Female	4,106,618	51.0	156,964,212	50.8
Age				
15-19 years	539,931	6.7	22,040,343	7.1
median	35.3	--	38.5	--
Race				
American Indian and Alaska Native	99,551	1.2	2,932,248	0.9
Asian	113,689	1.4	14,674,252	4.8
Black or African American	1,737,545	21.6	38,929,319	12.6
Native Hawaiian and Other Pacific Islander	3,983	0.0	540,013	0.2
White	5,804,656	72.1	223,553,265	72.4
Some other race	186,629	2.3	19,107,368	6.2
Two or more races	103,260	1.3	9,009,073	2.9
Ethnicity				
Hispanic or Latino (of any race)	378,963	4.7	50,477,594	16.3
Median household income	50,320	--	57,652	--
Living below poverty level	16.1%	--	14.6%	--

Source: 2010 U.S. Census

Table A-2. North Carolina crime indicators, U.S. comparison

	North Carolina		United States	
	Frequency	*Percentage*	*Frequency*	*Percentage*
Violent crime rate (per 100,000 in population)				
2018	377.6	--	380.6	--
2017	370.4	--	394.9	--
Property crime (per 100,000 in population)				
2018	2,494.1	--	2,199.5	--
2017	2,584.8	--	2,362.9	--
Arrests under 18				
2018 violent crime	757	.01%	38,283	.02%
2018 index offenses	11088	.21%	553,620	.22%

Source: 2018 FBI UCR

Table A-2 includes information about the number of arrests involving individuals under the age of 18 for both violent and index offenses. The percentages of arrests involving individuals under the age of 18 for violent and index offenses in North Carolina are approximately equivalent to the U.S. as a whole. That North Carolina is not exceptional with respect to juvenile offending suggests little relationship between juvenile crime rates and the age-related statutory exclusions from juvenile court processing that remained on the books until recently in North Carolina but not in other states.

Appendix B

Table A-3. Descriptive Statistics

		16-17 y/o	18-20 y/o	21-29 y/o	30-39 y/o	40-49 y/o	Over 50 y/o
Offense severity	A	1	-	-	-	-	-
	B1	2	6	23	44	33	14
	B2	5	43	110	55	33	22
	C	7	49	244	372	234	87
	D	68	275	379	116	53	28
	E	78	276	471	190	136	89
	F	39	199	722	581	374	252
	G	137	489	1446	992	435	243
	H	530	1786	3654	2457	1465	616
	I	129	724	2302	1526	964	487
Prior record level	0 points	720	1818	2149	797	357	308
	1-4 points	243	1567	3515	1688	852	456
	5-8 points	32	418	2215	1449	767	386
	9-14 points	2	46	1235	1456	863	344
	15-18 points	-	1	187	568	406	138
	19+ points	-	1	68	396	490	216
Offense type	Drug Crime	71	707	3377	2347	1185	715
	Person Crime	279	966	1752	930	568	355
	Other	647	2178	4240	3077	1983	779
Attorney type	Court Appointed	612	2289	5105	3357	1980	924
	Public Defender	277	890	2098	1470	1030	471
	Privately Retained	96	586	1916	1344	624	407
	Waive	12	86	250	183	102	47
Mode of conviction	Guilty	996	3801	9192	6207	3641	1789
	Not Guilty	1	50	177	147	95	60

Race	Black	712	2478	5182	3313	1943	939
	Hispanic	63	181	532	350	125	26
	Other	20	57	213	124	54	28
	White	202	1135	3442	2567	1614	856
n		997	3851	9369	6354	3736	1849

Appendix C.

Table B-1. Descriptive statistics

Variable	Frequency	Percentage
Class		
100	227,470	9.0
110	1,231,296	48.7
120	365,061	14.5
130	398,958	15.8
Other class	303,106	12.0
Prior record level		
1	1,007,583	39.9
2	984,791	39.0
3	533,517	21.1
Attorney type		
Court appointed	586,209	23.2
Public defender	326,387	12.9
Retained privately	595,512	23.6
Waived	1,017,783	40.3
Crime type		
Drug	445,954	17.7
Person	298,112	11.8
Property	637,364	25.2
Other crime type	1,144,461	45.3
Sex		
Female	601,487	23.8
Male	1,924,029	76.2
Race and ethnicity		
Black	1,223,025	48.4
Hispanic	116,341	4.6
White	1,186,525	47.0
Age		
Under 18 years	135,263	5.5
18-29 years	1,120,039	45.6
Over 29 years	1,202,658	48.9
Race-age groups		
Black defendants under 18		
Hispanic defendants under 18		
Charge reduction		
Charge reduction	226,138	9.0
No charge reduction	2,299,753	91.0
In/out		
Incarcerated	601,217	24.5
Not incarcerated	1,856,473	75.5

N=2,525,891