

FEDERAL SENTENCING GUIDELINES AND DONALD BLACK'S THEORY OF LAW:
ANALYZING SENTENCE OUTCOMES AMONG ORGANIZATIONAL DEFENDANTS

By

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To my sons, Royalton, Bryce and Dylan, my incredible and beautiful wife Lisa, my supportive brother Quentin Davis, and my loving parents Cassandra and Alton Davis

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This study used Donald Black's theory of law as a framework to analyze sentence outcomes among organizations sanctioned under the federal sentencing guidelines. More specifically, it examined the extent to which (1) offender and (2) location (federal district) characteristics affect fine amounts. The organizational guidelines were enacted to address corporate crimes and help eliminate sentence disparities related to extralegal offender characteristics including financial status and size. While sentencing outcomes should be based on legal factors including offense seriousness and offender culpability, post-guideline research indicates extralegal factors still exert influence on sentence outcomes.

Black's general theory of law was used because it focuses on the social structure of a case which includes characteristics of the actors involved in a dispute, the relational ties between these actors, and characteristics of the social setting. Moreover, he asserts the behavior of the law can be explained by five aspects of social life including economic, integrational, cultural, organizational and normative statuses. Black proposes that across all setting offenders with lower statuses will be subject to greater law (higher fine amounts). At the same time, settings or locations with greater social statuses will use more law (impose higher fines). Accordingly,

Black's theoretical concepts helped to anticipate the extent to which corporate offender and district statuses affect sentence outcomes.

This study analyzed 813 cases from 2001 to 2004, using hierarchical linear modeling (HLM). Findings provided non-supportive evidence for Black's theory. Despite the lack of theoretical confirmation, there are important conclusions. First, there is significant variation across federal districts in terms of fine amounts. Secondly, extralegal offender factors are significantly more important in determining fines than legal factors. The strongest predictor of fine amount is a corporation's ability to pay (extralegal factor). Interestingly, culpability score (legal factor) is significantly but *inversely* related to fine amounts. Offenders with higher culpability scores are more likely to receive *lower* fines. Finally, districts differentially consider the importance of both legal and extralegal in deciding fines. This calls into question the formal rationality of the organizational guidelines and the notion of one unified federal district court system.

CHAPTER 1
FEDERAL SENTENCING GUIDELINES, ORGANIZATIONAL DEFENDANTS, AND
BLACK'S THEORY OF LAW

This dissertation provides a theoretical analysis of the federal sentencing guidelines for organizations (FSGO) to determine the Effect of (1) offender characteristics and (2) location (federal districts) on sentence outcomes or fine amounts. In 1987, the US Sentencing Commission (hereafter Commission) created the federal sentencing guidelines (FSG) in an effort to eliminate unwarranted sentence disparities among individual offenders. By 1991 the Commission created organizational guidelines to more effectively sanction offenses commonly referred to as corporate crime or crimes committed by entities other than persons such as corporations, non-profit organizations, and government entities (USSC, 2007)¹. By implementing formalized instructions, the Commission sought to significantly curb judicial discretion and restrict sentence decisions to legally relevant factors such as seriousness of the offense; prior criminal convictions; and the degree of harm caused by the crime. Accordingly, any sentence variations could be explained by legal variables.

Overall, the intent of both the individual and organizational guidelines was to ensure consistent and uniform outcomes for similarly situated defendants or offenders who committed analogous crimes and who had comparable criminal histories (Tonry, 1993). Despite the Commission's stated goals, post-FSG research continues to discover that extralegal factors yield sentence disparities among individual (Albonetti, 1997; Kautt, 2002; Kautt & Spohn, 2002; Steffensmeier & Demuth, 2000; Steffensmeier et al., 1998; Ulmer, 2005) and organizational offenders (Piquero & Davis, 2004; Beck & O'Brien, 2000).

¹ According to Chapter 8 of Federal Sentencing Guidelines Manual, organizations are defined as persons other than individuals and include corporations, partnerships, associations, unions, non-profit organizations, or government and political entities (USSC, 2007)

Since this dissertation examined the effect of offender *and* contextual characteristics on sentence outcomes, it provided a more systemic analysis of the federal sentencing guidelines than previous research. For the most part, FSG research has been limited to studying case-level effects, specifically, offender characteristics on sentencing (Kautt, 2002). Recent studies, however, indicate that larger social or contextual factors such as economic, political, and cultural norms influence sentence decisions and outcomes (Richardson & Vines, 1970; Heydebrand & Seron, 1990; Flemming et al, 1992; Ulmer, 2005; Kautt, 2002; Ulmer & Johnson, 2004; Britt, 2000; Alschuler, 2005; Weidner et al, 2005; Lambiras, 2003; Hofer et al, 1999). For instance, one study concludes regional disparities are “the most troubling finding” of the post-FSG era as locational variations among drug offenders actually increased or nearly tripled since the enactment of the guidelines (Hofer et al, 1999, p. 303). In this respect, political, economic, and cultural differences among criminal courts appear to be just as relevant as offender characteristics in predicting sentence disparities (Richardson & Vines, 1970; Heydebrand & Seron, 1990; Flemming et al, 1992; Ulmer & Johnson, 2004; Kramer & Ulmer, 1998). Accordingly, more definitive research is needed to ascertain how larger political and social contextual factors in conjunction with individual or intermediate variables influence legal processes or outcomes (Ulmer, 2005).

Theoretical Orientation

To address multiple units of analysis, an inclusive theoretical framework and methodical approach are needed. Donald Black’s (1976) general theory of law is utilized because it focuses on the social structure of a case to explain legal processes and outcomes. Social structure of a case includes (1) characteristics of all actors involved in a dispute including offenders, victims, and third parties (police officers, prosecutors, defense attorneys, judges); (2) the relational distance among these actors (intimates, strangers, social equals); and (3) characteristics of the

location or setting (neighborhoods, cities, states) in which the case occurs (Black, 1995; Borg & Parker, 2001). Implicit in this theoretical conceptualization is the idea that the application of law can be explained across different units of analysis. Black's theory provides a useful framework by which to examine variations in sentence outcomes among individual offenders and at the same time sentence variations across cities, states, or societies. His theory therefore simultaneously addresses how offender statuses and larger contextual characteristics influence the behavior of law (Borg & Parker, 2001). According to Black (1976; 1995), the behavior of law can be explained by five aspects of social life including: vertical status (stratification or economic rank); integrational status (morphology); cultural status (conventionality); organizational status; and normative status (respectability). As applied to this dissertation then, Black's theory provides a theoretical structure for examining how both the characteristics of corporate offenders as well as characteristics of the geographical location (federal district) in which the case occurs impact sentence outcomes or fine amounts. In this respect, his theory is well suited for helping to explain which corporate offenders are subject to more or less law (higher or lower fines) and which federal districts will impose more or less law.

Significant Contributions

Overall, this dissertation makes at least three important contributions to the field of criminology. First, the focus on organizational defendants provides empirical insight to offenders traditionally overlooked or marginalized in criminology. When Edwin Sutherland introduced the term white collar crime in 1939 he assailed his colleagues for their failure to seriously research the topic. Nearly seventy years later, scholars continue to be critical of the lack of attention afforded corporate crime. Snider (2000) wrote an "obituary" for corporate crime because of the lack of formal or academic research on the subject. In general, she argues that state regulation of corporate crime has essentially disappeared and critical discourse about

the subject has become obsolete. Thus, compared to the literature on street crime there is a relative dearth of corporate crime research. A comprehensive study by Lynch et al (2004) supports the notion of the death of corporate crime. In particular, they concluded that white collar crime topics including corporate crime were significantly underrepresented throughout the criminology discipline in terms of textbook chapters or pages, journal articles, and PhD curriculum. To be sure, the preponderance of FSG research has examined sentence disparities among individual offenders. Only a handful of studies have analyzed the organizational guidelines (Cohen, 1989, 1991, 1996; Parker & Atkins, 1999; Alexander, Arlen, Cohen, 1999; Murphy, 2002; Piquero & Davis, 2004). While research on individual offenders has been informative, these studies reveal little about factors that potentially affect sentence outcomes among organizational defendants. By examining criminal responses to organizational offenses, this dissertation shifts the balance of criminological research toward the topic of corporate crime.

A second contribution of this dissertation is its theoretical focus. Traditionally, critical perspectives have been used to explain the lenient sanctions or responses directed toward corporate offenders. In general, these perspectives assert corporate status and financial resources negate meaningful or effective criminal legislation, regulation, and sanctioning (Sutherland, 1949; Clinard & Yeager, 1980; Geis, 1967 & 2002; Quinney, 1980; 1974; Snider, 1990 & 2000; Calavita, Tillman, & Pontell, 1997; Calavita & Pontell, 1990; Chambliss & Seidman, 1982; Friedrichs, 2004; Gruner, 1992). Critical explanations have been fruitful and insightful however they have generally been accused of instituting a dogmatic ideology and using untestable conceptual measures (Akers, 1999). Black's (1976) theory of law helps overcome some of these criticisms since it offers a host of testable and empirical propositions. Further, his theory is advantageous because it is applicable across different units of analysis. While his theory has

received great attention and been evaluated in a variety of legal outcomes or settings, the author is unaware of any tests using organizations as the locus of attention. Instead, Black's theory has been used to analyze individuals and communities (Gottfredson & Hindelang, 1979; Braithwaite & Biles, 1980; Myers, 1980; Kruttschnitt, 1980-81; Mooney, 1986; Smith, 1987; Lessan & Sheley, 1992; Borg & Parker, 2000). Additionally, most analyses have only examined the micro-level dimensions of Black's theory (Lessan & Sheley, 1992, Borg & Parker, 2001). Fewer studies have investigated macrosociological dimensions or the effect of the social context on the behavior of law (Lessan & Sheley, 1992; Borg & Parker, 2001). Therefore, this dissertation provides a more comprehensive theoretical evaluation of the organizational guidelines, and at the same time a more extensive examination of Black's theory of law since it examines organizational offenders and incorporates aggregate measures of theoretically relevant concepts.

A third contribution of this dissertation is its focuses on the importance of contextual or structural factors on criminal sentencing. According to Kautt (2002), studies of the federal sentencing guidelines continue to neglect the influence of larger environmental factors on sentence outcomes. This failure to empirically recognize the link between contextual and case-level variables on sentencing remains a major flaw in criminological research (Ulmer & Johnson, 2004; Kautt, 2002; Britt, 2000). To this end, this dissertation assesses the effect of federal districts on sentence outcomes to ascertain if interdistrict variations exist. Additionally, this dissertation uses hierarchical linear modeling (HLM) statistical techniques in order to more accurately assess multilevel effects. Use of single-level regression models such as logistic regression or OLS are inappropriate primarily because they misestimate the true effects of either contextual or offender factors on the dependent variable (Bryk & Raudenbush, 1992; Ulmer & Johnson, 2004; Kautt, 2002; Weidner et al, 2005; Britt, 2000). Since HLM permits explanatory

factors to vary across and within different levels of analysis, it can more precisely estimate how district and organizational characteristics affect sentence outcomes. In other words, HLM provides a more accurate picture of what factors impact sentence outcomes (Britt, 2000).

Collectively, the focus on sentence outcomes directed toward corporate offenders, the reliance on a more inclusive theoretical framework, and the application of a multilevel analysis using appropriate statistical techniques allows the dissertation to significantly contribute to the criminological literature in general and to corporate crime research more specifically. In order to accomplish these tasks, this dissertation proceeds as follows. Chapter 2 provides a general overview of the FSG with a specific focus on the organizational guidelines. Originally, corporations were subject to the same penalties as individual offenders, however by 1991 the Sentencing Commission created chapter eight of the FSG to effectively deal with corporate offenders. In particular, the organizational guidelines sought to provide substantially stronger punishments commensurate to the harm caused, while at the same time promote “good corporate citizenship” by providing sentence incentives for organizations with effective compliance programs (Desio, 2004; Nagel & Swenson, 1993; Murphy, 2002; Ferrell et al, 1998; Izraeli & Schwartz, 1998). This chapter further discusses the underlying basis for the organizational guidelines and focuses on the legal factors that should theoretically guide the sentencing process.

Chapter 3 provides an overview of Black’s (1976) theory of law. He defines law a governmental social control by state over its citizens (p. 2). His theory offers general propositions intended to predict how the law varies in response to stratification, morphology, culture, organization, and social control. Black asserts his theory of law is applicable across *all* stages of the legal process including investigation, arrest, prosecution, conviction, and sentencing. This chapter further explains each of these statuses at both the individual and

contextual units of analysis and concludes by summarizing empirical assessments of Black's theory. Chapter 4 focuses on existing corporate crime research that lends support for some of the propositions outlined by Black's theory of law. For the most part, such literature has focused on the impact of offender characteristics on sentence outcomes. Fewer studies have examined the effect of structural factors of sentence outcomes. Particular attention will be given to the potential impact of federal district political climates (used as a measure of Black's dimension of cultural status) on sentence outcomes. Finally, Chapter 5 outlines the analytical framework for this dissertation. More specifically, this chapter discusses the dependent and independent variables, describes the data sources, explains the advantages of using hierarchical linear modeling (HLM) and outlines the hypotheses predicted by Black's theory. The dependent variable measures total fine amounts imposed against guilty corporations sanctioned under the federal sentencing guidelines. The independent variables measure legal factors (offense seriousness and corporate culpability variables) as well as extralegal factors related to offender and federal district characteristics. In particular, the extralegal measures capture the social statuses predicted by Black's theory. The financial status (vertical status or rank); ownership structure (integrational status); number of employees (organizational status); and criminal history (respectability) of corporations are measured to determine their influence on fine amounts corporate. At the federal district level, measures of economic characteristics within the district (vertical status or rank); integrational status; political climate (cultural status); organizational status; and crime and homicide rates (normative status or respectability) are gathered to discern the extent to which these variables impact fines.

Since this dissertation conducts a multilevel analysis, several data sources will be incorporated. Case level information (legal variables and fine amounts) as well as characteristics

of organizational defendants are obtained from data collected by US Sentencing Commission and disseminated by the Inter-University Consortium for Political and Social Research (ICPSR). Most of the contextual information is obtained from FEDSTATS which provides general census data for each federal district. Additional sources are used to better capture characteristics of each federal district.

CHAPTER 2
FEDERAL SENTENCING GUIDELINES FOR ORGANIZATIONS (FSGO)

Federal District Courts

By examining the federal sentencing guidelines for organizations (FSGO), this study focuses on decisions rendered in federal district courts. The federal judiciary is divided into four separate court systems: Magistrate Courts (lowest federal court); District Courts; Courts of Appeal, and the United States Supreme Court (represents highest federal court). Currently, there are 94 separate federal districts occupied by approximately 678 judges. District boundaries are intentionally state-contained so that no district court crosses state borders. Within the fifty states, there are 89 federal districts. Each state has at least one district but no more than four districts. Most states (26) have only a single district, whereas twelve states are divided into two districts, nine states have three districts, and three states (California, New York, and Texas) contain four separate federal districts. For example, California has a Southern, Central, Northern, and Eastern federal district. Beyond the US territorial district courts, there are five additional districts that represent Washington, DC, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands. Each district has two or more judges with the Southern District of New York having the largest number of judgeships with twenty-eight (Alliance of Justice, 2007).

Federal district courts are considered the trial courts or the workhorse of the federal judiciary. Over the past five years, there have been well over 300,000 criminal and civil cases filed each year in district courts. In 2006, there were a total of 326,401 cases filed in federal district courts with judges hearing an average of 102 criminal and 374 civil cases (Administrative Office of the United States Courts, 2007). Since they hear and dispose the majority of federal cases, district courts are often considered the “gatekeepers” of the federal judiciary (Lyles, 1997, Rowland & Todd, 1991). Judgments rendered in these courts are generally final decisions as few

cases proceed to the higher courts. In this way, the federal district courts are the final arbiter in approximately 90 percent of all federal cases (Scherer, 2005). Prior to the enactment of the FSG, the federal district courts utilized an indeterminate sentence structure that afforded judges wide discretion in determining the type and length of sentences (Podgor & Israel, 1997).

Consequently, considerable sentence disparities existed as sentence outcomes were generally more punitive against certain types of defendants namely the poor and ethnic minorities.

Ideological biases of judges and perceptions of discrimination raised important questions about equality of the federal courts.

Historical Development of the Federal Sentencing Guidelines (FSG)

In 1984, Congress enacted the Sentencing Reform Act (SRA) for the purposes of (1) significantly reducing discriminatory sentencing discrepancies among similarly situated offenders -offenders who committed similar crimes and had equivalent criminal histories; (2) limiting unfettered judicial discretion; (3) increasing sentence uniformity, certainty, and fairness; and (4) enhancing the severity of punishments in an effort to deter, incapacitate, and justly sanction offenders (USSC, 2007; Gruner, 1992; Nagel & Swenson, 1993; Lambiras, 2003). The SRA established a full-time, seven-member United States Sentencing Commission to serve as an ongoing independent body of the judicial branch (USSC, 2007; Desio, 2004). By 1987, the Commission disseminated the federal sentencing guidelines which established a determinate and formalized sentencing structure for federal district courts.

By and large, the FSG reflect a Weberian or formal legal model of criminal sentencing. According to this perspective, sentence outcomes should be determined solely by legal factors such as the seriousness of the offense, prior criminal history of the offender, and the amount of harm caused by the crime (Dixon, 1995). Precedent and established axioms should guide the decision-making process in order to ensure judicial impartiality and objectivity (Dixon, 1995;

Segal & Spaeth, 1993; Yarnold, 1992). In this manner, criminal courts should operate like highly rational machines that generate predictable and consistent outcomes for all offenders irrespective of extralegal factors such as socioeconomic status, race, gender, or geographical location. Indeed, offense seriousness and prior criminal history are two primary factors that direct judicial discretion under the FSG.

In short, the FSG use a point system to determine sentence outcomes. Point totals are calculated using a basic three step process. First, judges determine a *base offense score* commensurate to the crime of conviction. For each offense, the Commission created base offense scores that serve as a starting point in the sentencing process. Secondly, an *offense seriousness score* is calculated. In order to determine offense seriousness, judges consider aggravating and mitigating circumstances and make upward adjustments (add points to the base offense score) or downward adjustments (subtract points). Judges examine legal factors such as the type of weapon used during the commission of a crime, the role of the offender, the severity or harm of the crime, and whether the defendant cooperated with prosecutors or legal authorities. Once the offense seriousness score is calculated it is added or subtracted to the base offense score. This determination yields a *final offense score*. Under the FSG, final offense scores range from 1 point (least serious type of offenses) to 43 points (most serious). The final step of the FSG sentence decision process involves a computation of a *criminal history score*. Judges assess scores ranging from 1 point (first-time offenders) to 6 points (extensive history of offending). Using a two-dimensional sentencing table, judges' measure the point at which the final offense score and the criminal history level intersect. This point of intersection specifies a sentence range (in terms of months to be served in prison). Judges are given discretion to sentence an offender anywhere within the mandated sentence range (USSC, 2007). Under the FSG, any

departures outside the mandatory sentence range are subject to automatic appellate review. Judges must publicly disclose in court or through written opinion why they departed from the recommended sentencing range. Through these systematic sentencing instructions, the Commission attempted to ensure accountability for all federal sentencing decisions. While the Guidelines were originally drafted with individual offenders in mind, by 1991 the Commission created chapter eight of the FSG to address organizational or corporate offenders.

Historical Development of Federal Sentencing Guidelines for Organizations (FSGO)

Federal sentencing guidelines for organizations (FSGO) were developed to more adequately sanction offenses commonly referred to as corporate crimes. In general, corporate or organizational crime refers to illegal or socially injurious acts committed by corporate officials or employees primarily to promote or benefit corporate interests (Clinard & Quinney, 1973; Kramer et al, 2002). When considering the development of the organizational guidelines, the US Sentencing Commission confronted two immediate problems related to corporate sentencing. First, fines imposed against corporate criminals were historically weak and insignificant. Prior to 1984, guilty corporations or organizations were subject to the same penalties as individual offenders. In most instances, the maximum corporate fines were miniscule and woefully inadequate (Gruner, 1992; Alexander et al., 1999). For instance, 60 percent of the fines imposed against criminal organizations totaled less than \$10,000 (Alexander et al., 1999). Monetary penalties rarely equaled the losses or harm caused by the crime (Gruner, 1992; Alexander et al., 1999; Nagel & Swenson, 1993). That is, the illegal financial gains easily exceeded the criminal fines imposed against corporate offenders. The underlying message of the federal sentencing structure was “crime does pay” and criminal fines were just a “minor” business cost (Gruner, 1992). Thus, the Commission faced Congressional and public concern over the lenient sanctions imposed against corporate offenders. The prevailing perception was that white collar crime

offenders were afforded preferential treatment and did not receive punishments as severe as those meted out against street criminals (Nagel & Swenson, 1993). A second flaw in corporate sentencing was noticeable sentence disparities related to corporate size and/or financial status (Cohen, 1989). The Commission found many cases where organizational defendants committed nearly identical offenses yet one corporation would be fined over twice the loss of the crime while another organization would be fined only a fraction of the loss (Nagel & Swenson, 1993; Izraeli & Schwartz, 1998). Cumulative evidence demonstrated that corporate offenders were significantly underpunished and did not receive penalties commensurate to the seriousness of their crimes. Thus, a primary objective of the Commission was to develop tougher more punitive sanctions in an effort to deter corporate criminality and increase perceptions of justice.

At the same time, however, the Commission faced considerable opposition from businesses as well as political interests including the White House and Congress (Lofquist, 1993; Rodriquez & Barlow, 1999). A primary concern was that the overly aggressive organizational guidelines would significantly hinder corporate interests. The Reagan administration in the early 1980s ushered a political era that endorsed probusiness policies. These laissez faire economic principles supported deregulation and cooperative crime control policies. Strict regulation and sanctions were considered counterproductive to free market corporate activity (Snider, 2000, 1990; Calavita & Pontell, 1990). During the development phases of the organizational guidelines, business and political interests successfully reduced many of the tough fine provisions initially proposed by the Commission (Lofquist, 1993; Rodriquez & Barlow, 1999). Also, the Corporate Defense Attorney Working Group was victorious in influencing the Commission's decision to institute generous incentives into the organizational guidelines (Nagel & Swenson, 1993). In many ways, the Commission was placed into a contradictory role of

needing to significantly increase corporate sanctions but at the same time provide opportunities or inducements to mitigate corporate criminal responsibility and offer sentencing leniency (Rodriquez & Barlow, 1999; Laufer, 2002; Nagel & Swenson, 1993).

After conducting extensive research, publishing a series of formal and informal drafts, and holding public hearings with key groups including judges, practitioners, and academics, the Commission promulgated the Federal Sentencing Guidelines for Organizations (FSGO) on November 1, 1991. The Commission specified that organizations including corporations, partnerships, associations, government agencies, and non-profit companies were subject to guideline provisions if they committed any felony or Class A misdemeanor offense (USSC, 2007). These included offenses such as corporate fraud, embezzlement, antitrust, and environmental violations. Despite pressures from the business community to make the organizational guidelines non-binding, the Commission decided to make them mandatory like the individual guidelines (Nagel & Swenson, 1993). They reasoned that organizations should be subject to the same standards as individual offenders and believed that corporations should not benefit from the traditional leniency afforded by the courts (Nagel & Swenson, 1993). By making the FSGO mandatory, the Commission sought to dramatically narrow the scope of judicial discretion and ensure consistent uniform punishments absent the influence of extralegal organizational characteristics. Similar to the individual Guidelines, the organizational guidelines instructed judges to base sentence decisions on two legally relevant factors: (1) offense seriousness and (2) corporate criminal culpability.

Federal Sentencing Guidelines for Organizations (FSGO) Sentencing Process

Under the FSGO, fines are the primary sanction imposed against corporate or organizational defendants. Fine amounts are determined by multiplying (1) a base fine score with (2) a culpability score. Base fine score corresponds to offense seriousness which is

determined by choosing the greatest of three factors including (a) an offense score, (b) the pecuniary gains from the offense, or (c) the pecuniary losses caused by the crime (USSC, 2007). To determine an offense score, judges use procedures similar to the individual guidelines. For each crime, the Commission created an initial offense score that serves as a starting point in the sentence decision process. Judges then make upward or downward adjustments to this score depending on aggravating or mitigating circumstances. Once adjustments are made and a final offense score is calculated, judges consult a FSGO fine table that specifies fine amounts (see Table 2.1 for partial list of offense levels and corresponding fine amounts). Final offense scores range from 6 or fewer points (equals corporate fine amount of \$5,000) to 38 or more points (\$72.5 million fine). This fine amount is measured against the pecuniary gain and loss caused by the crime. Whichever amount is greatest determines the *base fine score*.

To illustrate, consider a hypothetical case involving a corporate offender who commits embezzlement worth \$1,000,000 that results in a pecuniary loss of \$500,000 to victims. If this offender is assigned a final offense score of 20 points then a \$650,000 fine will be imposed. Comparing the three dollar amounts, the pecuniary gain (\$1,000,000) is greater than the fine (\$650,000) and pecuniary loss (\$500,000). Accordingly, the base fine score for this offender would be \$1,000,000. This dollar amount is then multiplied by the offender’s culpability score.

Table 2-1. Partial list offense level fine table

Offense level	Fine amount
6 or less	\$5,000
7	\$7,500
8	\$10,000
10	\$20,000
15	\$125,000
20	\$650,000
25	\$2,800,000
30	\$10,500,000
38 or more	\$72,500,000

Source: U.S. Sentencing Commission, Guidelines Manual - § 8C2.4, 2007

An offender's culpability score determines their level of responsibility for a criminal act. Each organization begins with a culpability score of five points. Aggravating factors give cause for upward adjustments to the culpability score (as high as 10 or more points), while mitigating factors justify downward adjustments (as low as 0 or fewer points). Sentencing judges weigh four aggravating factors including (1) organizational tolerance of or involvement in criminal activity, (2) obstruction of justice, (3) prior history of offending for similar crimes, and (4) violation of any existing court orders or injunctions. The FSGO authorizes judges to give special attention to the role of high ranking managers when considering these aggravating factors. That is, judges must determine whether officials participated in, condoned, tolerated or willfully ignored criminal conduct; or if they violated their position of trust (Ferrell et al., 1988).

At the same time, judges contemplate four mitigating factors including (1) the existence of an effective compliance or ethics program, (2) organizational cooperation with investigators, (3) the presence of self-reporting to officials upon discovery of criminal activity, and (4) acceptance of responsibility. In essence, these mitigating factors lessen corporate responsibility and help reduce fine amounts. Final culpability score establishes minimum and maximum multipliers. For instance, a culpability score of 0 yields a minimum multiplier of .05 and a maximum of .20. A final culpability score of 10 includes a minimum multiplier of 2.00 and maximum of 4.00 (See Table 2.2 for a list of the minimum and maximum culpability multipliers). These culpability multipliers are combined with the base offense score to provide a recommended or mandated fine range. Sentencing judges can impose a fine anywhere within this range. However, similar to the individual guidelines any departures from the recommended fine range is automatically open to appellate review (Alexander et al., 1999).

As a hypothetical example, a corporate defendant with a base offense score of 6 (fine amount equals \$5,000) and a culpability score of 0 points (a minimum and maximum multiplier of .05 and .20) would have a recommended fine range of \$250 to \$1,000. A guilty corporation with a final base score of 10 points (\$20,000 fine) and a culpability score of 5 (1.00 to 2.00 multipliers) would produce a fine range from \$20,000 to \$40,000. The most egregious organizational offender with a base offense score of 38

Table 2-2. Minimum and maximum culpability multipliers.

Culpability score	Minimum Multiplier	Maximum multiplier
0 or less	.05	.20
1	.20	.40
2	.40	.80
3	.60	1.20
4	.80	1.60
5	1.00	2.00
6	1.20	2.40
7	1.40	2.80
8	1.60	3.20
9	1.80	3.60
10 or more	2.00	4.00

Source: U.S. Sentencing Commission, Guidelines Manual - § 8C2.6, 2007

points (\$ 72.5 million fine) and a culpability level of 10 (2.00 to 4.00 multipliers) would receive a fine between \$145,000,000 and \$290,000,000 (Table 2.3 gives an example of hypothetical fine ranges).

Beyond fines, the organizational guidelines include other sanctions such as probation, orders to pay restitution, and orders to issue public notices and apologizes. In all cases, these other punishments can be imposed in additional to criminal fines in order

Table 2-3. Hypothetical fine ranges for various offense levels and culpability scores

Offense level	Culpability score	Minimum multiplier	Maximum multiplier
6 pts = \$5,000	0	(.05) = \$250	(.20) = \$1,000
10 pts = \$20,000	5	(1.00) = \$20,000	(2.00) = \$40,000
38 pts = \$72.5 Million	10	(2.00) = \$145 Million	(4.00) = \$290 Million

to remedy the harm caused by such offenses. Also, it should be noted that the FSGO are applicable to corporations or organizations operating primarily for criminal purposes. Indeed, the FSGO stipulate that unlawful organizations should be fined sufficient enough to divest the criminal firm of all of its assets (USSC, 2007).

Underlying Philosophy of the Federal Sentencing Guidelines for Organizations (FSGO): Good Corporate Citizenship and Compliance Programs

Unlike the individual guidelines, punishment and incapacitation were not the immediate goals of the FSGO (Murphy, 2002). Instead, restitution and deterrence were prominent goals. Accordingly, fine provisions and compliance programs became the centerpieces of organizational guidelines (Nagel & Swenson, 1993; Murphy, 2002; Desio, 2004; Ferrell et al., 1998). Fine provisions were designed to remedy the harms caused by corporate offenses and offset any illegal gains. Emphasis on compliance programs was intended to promote and reward good corporate citizenship (Desio, 2004; Nagel & Swenson, 1993; Ferrell et al., 1998). Indeed, the culpability component of the sentence instructions was intended to evaluate the effectiveness of compliance programs prior to criminal activity and help absolve or reduce corporate liability for violations committed by rogue employees (Nagel & Swenson, 1993; Podgor & Israel, 1997; Laufer, 2002). The Commission viewed compliance programs as an important means of institutionalizing ethical behavior and promoting a strong commitment to legal standards (Ferrell et al., 1998; Izraeli & Schwartz, 1998; Desio, 2004; Murphy, 2002; Nagel & Swenson, 1993; Laufer, 2002). Through the maintenance of compliance policies any criminal conduct could be considered an aberration rather than the corporate norm. Beyond compliance programs, the FSGO also placed substantial responsibility on high level officials or managers to exercise due diligence in terms of establishing and maintaining compliance programs (Desio, 2004; Ferrell et al., 1998). Specifically, the organizational guidelines stipulate that managers should institute

proactive objectives intended to (1) prevent and detect criminal activity, (2) offer continuous training and communication at all levels, (3) provide constant evaluation by high-level managers, and (4) outline clearly defined steps to respond to any violations (Lofquist, 1993; Nagel & Swenson, 1993; Ferrell et al, 1998; Murphy, 2002; Desio, 2004).

In many ways, the underlying organizational guidelines philosophy parallels a “carrot and stick” approach to sentencing (Izraeli & Schwartz, 1998; Nagel & Swenson, 1993). Fine provisions escalate as organizational culpability increases, however corporations are rewarded for taking steps to help prevent and deter misconduct. The Commission believed that fine penalties should not only be proportional to the costs of the crime but should also deter future criminality (Nagel & Swenson, 1993). As such, mitigating credits and sentencing reductions were offered during every stage of the organizational sentencing process (Laufer, 2002; Izraeli & Schwartz, 1998). The organizational guidelines essentially rewarded corporations for adopting and preserving effective crime control policies. In so doing, corporate offenders could expect fine reductions, up to 95 percent in some cases (Desio, 2004).

Evaluations of the Federal Sentencing Guidelines for Organizations (FSGO)

Overall, the organizational guidelines appear to have had a positive and immediate impact on corporate crime sentencing. Over a ten year period, nearly 1500 FSGO cases resulted in \$2.3 billion in fines, approximately \$279 million in restitution, and over 3000 years of probation (Murphy, 2002). Also, the average criminal fine significantly increased since the implementation of the organizational guidelines. During the pre-guideline era, the mean fine imposed was \$1.9 million but increased to \$19.1 after the institution of the organizational guidelines (Alexander, et al., 1999). The percentage of fines that exceeded \$1 million increased from 37 percent (pre-organizational guidelines) to 59 percent (Alexander, et al., 1999). Nevertheless, problems persist with the organizational guidelines.

First, corporate convictions remain minimal. During a five-year period (1996 to 2000), less than one percent of all federal sentences were imposed against organizational defendants (Murphy, 2002). One study concluded that monetary penalties did not significantly change after controlling for the harm caused by corporate offenses (Parker & Atkins, 1999). That is, fine amounts remained relatively stable during the pre- and post-guideline eras when comparing the amount of restitution or loss incurred by corporate crimes. Another criticism of the organizational guidelines is the heavy emphasis on rewarding corporate compliance programs. Inadvertently, the FSGO created a “dark side” as corporate managers have become very eager to “flip” on less culpable employees in order to escape punishments or fines (Laufer, 2002). Finally and perhaps more importantly, research indicates that extralegal characteristics continue to influence sentence outcomes (Piquero & Davis, 2004; Beck & O’Brien, 2000). Small and closely-held firms (corporations controlled by a single owner or small group of owners whose stocks are not publicly traded) continue to represent the majority of defendants sentenced (Beck & O’Brien, 2000). Furthermore, financial status and ownership structure have yielded differential fine outcomes among corporate defendants (Piquero & Davis, 2004).

Despite efforts to eliminate unwarranted sentence disparities, there appears to be an empirical link between extralegal characteristics and sentence outcomes. Some question whether the federal guidelines can truly use rationalized sentencing policies to totally eliminate judicial discretion (Savelsberg, 1992; Kautt, 2002; Ulmer, 2005). Subjective evaluations of offenders coupled with larger contextual influences may unduly sway sentencing processes and decisions (Ulmer, 2005). This dissertation uses Donald Black’s (1976) general theory of law because it offers propositions for predicting variations in sentence outcomes (fine amounts) in response to characteristics of corporate offenders and characteristics of the federal districts in which the

offenses occur. In this way, his theory helps explain how sentence disparities may vary across different levels of analysis. In particular, Black asserts the quantity of law is affected by five social statuses including vertical status (stratification or economic rank); integrational status (morphology); cultural status (conventionality); organizational status; and normative status (respectability). The next chapter provides an overview of Black's theory of law.

CHAPTER 3 DONALD BLACK'S THEORY OF LAW

This chapter examines Donald Black's (1976) general theory of law. In short, Black defines law as governmental social control by the state over its citizens. He maintains that law is quantifiable and can be explained by variations in social statuses or conditions (Black, 1976, 1995; Greenberg, 1983; Doyle & Luckenbill, 1991; Gottfredson and Hindelang, 1979; Lessen & Sheley, 1992). One of the benefits of his theory is that it focuses on the *social structure of a case*. According to Black (1976; 1995) the *social structure* is shaped by five statuses or aspects of social life including: vertical status (stratification or rank); integrational status (morphology); cultural status (conventionality); organizational status; and normative status (respectability). *Case* includes (1) characteristics of the actors involved in a conflict (i.e., offender, victim, 3rd party participants such as attorneys or judges), (2) the relational ties or distance among these actors (i.e., intimacy, strangers, or equals), and (3) characteristics of the geographical location or setting (neighborhoods, cities, or states) in which the conflicts arise (Black, 1995; Borg & Parker, 2001). Taken together then, the social structure (five social statuses) of the case (actor characteristics, relational ties, and larger contextual factors) helps predict the quantity of law. In this way, Black's theory can be applied across different units of analysis. His theory can help explain legal variations among individual offenders as well as variations among neighborhoods, cities, or states. This dissertation utilizes Black's theory to determine whether the quantity of law or sentence outcomes (fine amounts) varies by the social statuses or characteristics of (1) corporate defendants and (2) federal districts. More specifically, Black's theory is used to predict the extent to which corporate offenders encounter more or less law (higher or lower fines) and districts impose more or less law (fines) after controlling for the impact of legal factors. This chapter reviews his theory of law and summarizes each of the five social statuses

that affect the behavior of law. It concludes by summarizing empirical studies of Blacks' theory of law conducted across different levels of analysis.

Overview of Black's Theory of Law

Black's (1976:x) theory of law provides a "quantitative, predictive, and general" theory that can explain the conditions wherein law will be used or applied. Law, according to Black, reflects governmental social control over its citizens in the form of legislation, litigation, and adjudication. Law includes the reporting of crime, arrests, prosecutions, and sanctions. Black (1976:3) contends "any initiation, invocation, or application of law increases its quantity." Thus, law is considered a quantitative variable that can be measured by the scope and rate of its usage. Any complaint, investigation, arrest, indictment, prosecution, or punishment constitutes more law compared to the absence of a complaint, investigation, arrest, and so forth. Black also asserts any increment or increase in severity represents the presence of more law. Thus, an offender detained during pretrial procedures indicates the use of more law than an offender released on bond. Incarceration signifies more law than probation. Similarly, a ten year incarceration sentence reflects more law than a five year sentence.

According to Black, every aspect of social life behaves including cities, governments, organizations, and families. Law is no different. It behaves or varies across time and place. It changes from one decade to another, one year to the next, or even day to day, hour to hour. Law behaves differently across societies, regions, communities, or courts. Since law is a social phenomenon, Black argues it "has no concept of human nature" and can be explained irrespective of individual or psychological motivations (Black, 1976:7). In other words, his theory is not concerned with individual motivations such as rationality or goal-oriented pleasure seeking behaviors (Gottfredson & Hindelang, 1979). Rather, Black attempts to explain how the behavior of law is invariably tied to the larger social or normative climate (Lessan & Sheley,

1992; Greenberg, 1983). Accordingly, he presents a series of predictive statements intended to anticipate the quantity and direction of law in any and every social setting or “wherever it is possible to measure law and other aspects of social life (Black, 1976:6).” Black contends that the behavior of law is dependent upon five social statuses or aspects of social life including stratification (rank); morphology (integrational status); culture (conventionality); organization; and social control (respectability). In terms of the application of the law, it can be applied *upward* against offenders with greater social statuses or *downward* against those with fewer statuses. For Black (1976: 21), “downward law” is more common across all settings since people with lower statuses are subjected to more law or greater punishments. Lower status offenders have a greater likelihood of being arrested, convicted, or harshly punished. At the same time, Black argues that these five statuses help predict structural variations in the law. In other words, his theory helps explain why some locations use more law (i.e., drafting legislation, reporting crime, making arrests, and imposing harsh sentences) than other areas. The following section further examines the relationship between law and each of these social statuses.

Stratification (Vertical Status or Rank)

According to Black (1976), stratification represents the vertical aspect of social life or the uneven distribution of material goods. More succinctly, stratification symbolizes wealth inequality. In terms of the relationship between stratification and the law, Black (1976:17, italic in original) predicts “*law varies directly with rank.*” All else being equal, lower ranks are more vulnerable to the application of the law. For instance, Black hypothesizes that the poor, women, and nonwhites are more susceptible to the law than the rich, men, and whites primarily because the former groups have less rank within the stratification system. In terms of economic rank, the poor are more likely to have their behaviors defined as criminal. They are more likely to be subjected to criminal investigation, arrest, prosecution, and harsh sanctions. Thus, the poor have

traditionally encountered more law or been severely sanctioned throughout the criminal justice process. By comparison, the wealthy have traditionally been immune from the applications of the law. The rich are less likely to have complaints filed against them, less likely to be arrested or convicted, and less likely to have punitive measures imposed against them. In this way, higher ranks have less law imposed against them.

For Black (1976), the proposition of rank holds constant for groups, communities, regions, or even entire societies. Locations have various degrees of wealth and therefore possess different ranks. In this respect, the law varies with the rank of a location. According to Black, poor societies have traditionally had less law (i.e., criminal laws, courts, and lawyers) than wealthier industrialized societies. For instance, he notes that the African kingdom of Dahomey was largely inhabited by poor groups and thus largely untouched by the law. Similarly, he maintains that poor communities in the United States have proportionately used less law than wealthier suburban areas. Residents in wealthier areas are more likely to report crimes and to have their complaints result in arrests. Offenders who commit crimes in wealthier areas are subject to more punitive sanctions compared to those who offend in poorer communities. As such, the more wealth within a geographical setting the more law typically used.

Morphology (Integrational Status)

Beyond stratification, Black (1976) argues morphology affects the application of the law. He refers to morphology as the horizontal aspect of social life or a society's "division of labor, network of interactions, intimacy, and integration, (p.37)." In terms of integration, Black argues that social life has center and periphery. Those that participate near the center of social life increase their level of integration, while people that operate at the peripheral are weakly integrated or marginalized. Morphology can therefore be measured by the extent to which people participate in social life or the scope, frequency, and length of their interactions with

others. For Black, factors such as employment, marital status, and residential stability help determine levels of integration. The employed, married, and residentially stable have more integrational status than the unemployed, single, vagrants, and transients. Accordingly, Black (1976:51) asserts “law varies inversely with the integration of the offender.” Marginalized offenders are subject to more law, while the integrated encounter less law or enjoy legal advantages. A crime by a marginalized offender (i.e., unemployed, single, or transient) is considered more serious than an offense committed by an integrated defendant (i.e., employed, married, community ties, or residentially stable). Moreover, a marginalized offender is more likely to have the police called against him or her, to be arrested, prosecuted, or severely punished. Black (1976:55) concludes that “at every stage of the legal process, a marginal person is more vulnerable to law . . . a person without work, a family, or other involvements is more likely to get into trouble with the law.”

At the structural level, Black (1976) predicts that law varies with differentiation. In particular, more law exists in locations with greater exchange networks, divisions of labor, and economic transactions. Conversely, there is less law in regions with limited exchanges of property or services, divisions of labor, or economic transactions. In relatively simple societies, people are more likely to participate more fully in each other lives. As a result, less law exists because people are unwilling to invoke the law against intimates such as family members, close friends, neighbors, or coworkers. In this respect, structural intimacy leads to immunity from the law. For example, Black points out simple nomadic societies have relatively few contract or property laws since their economic system is relatively rudimentary. However, with economic expansion more law is needed to address various issues of ownership and rights. Contract, property, and criminal laws generally emerge in industrialized or capitalistic societies as labor

becomes differentiated and exchanges become more impersonal. Black (1976) points out that more law emerged in New York City during the early nineteenth century because of industrialization and population growth. Several new legal agencies and inspectors were developed to address a host of issues including tobacco, flour, fish, restaurants, and alcohol regulations. According to Black, social differentiation increases social distance meaning people essentially become strangers. Consequently, citizens must resort to the law or independent third parties to settle grievances. Thus, Black (1976: 40) asserts that “as the division of labor increases, so does the severity of law.” Differentiated societies use more law or impose harsher punishments, while simple societies apply less law or less punitive sanctions.

Culture (Conventionality)

A third social status that affects the quantity or direction of the law is culture. Black (1976:61) defines culture as the symbolic aspect of social life including values, norms, languages, ideologies, folklores or conceptions of right and wrong. Culture also includes sciences, technologies, religions, political parties, and fine arts (i.e., music, literature, painting, arts, or clothing). For Black, certain cultural statuses are more conventional simply because they occur or appear more frequently. For example, in the United States Protestants or Catholics are more conventional than Jewish parishioners simply because there are more Protestants and Catholics. Similarly, high school graduates are more conventional than dropouts; a bourgeois lifestyle more conventional than a bohemian lifestyle; Democrats and Republicans more conventional than Communists; and tobacco smokers are more conventional than cocaine users (Black, 1976: 68). With respect to the behavior of law, Black (1976:69, italic in original) concludes “*law is greater in a direction toward less conventionality than toward more conventionality.*” In other words, law is generally applied downward against the unconventional or those with the least amount of culture. Crimes committed by unconventional offenders are

generally considered more serious particularly if they commit an offense against a conventional victim. The unconventional are more likely to be arrested, convicted, and receive a harsh sentence. Therefore, Black states political radicals are subject to more law or tougher sanctions than Democrats or Republicans; ethnic minorities subject to more law than whites; the uneducated are more susceptible than the educated; and unconventional religious followers encounter more law than more common religious worshippers. He concludes that “at every stage of the criminal process . . . [a]ny person who is unconventional in his dress, speech, manner, ideas, or anything else, is more vulnerable to law of every kind, (Black, 1976:71).”

All locations have distinct cultural or normative climates. Communities, cities, states, and regions generally have dominant political, religious, ideological, moral, linguistic, or ethnic norms. For instance, in the United States some states are considered “red” or Republican states because they have more Republican politicians, voters, and policies, while others are “blue” or Democratic states because Democratic political ideologies are more frequent. With respect to the behavior of law, Black argues the law varies directly with the cultural distance between offender and location. In particular, the greater the cultural distance between an offender and the larger social setting, the more law they encounter primarily because they are considered unconventional by cultural standards. For instance, Black (1976:71) points out that in colonial Tanzania the harshest sentences were imposed against the most unconventional tribes (Baraguyu) while members of the most conventional tribe (Kaguru) encountered the least amount of law. In the United States, the ethnic composition of a location is an important determinant of the application of the law. Black asserts that in settings where everyone shares the same ethnicity, language, religion, or customs, there is little or no law primarily because there is limited cultural diversity or conflict. In essence, the cultural distance between the

offender and cultural climate is minimal. Black (1976) states Italian police officers are less likely to arrest an Italian offender than an African American. Similarly, Italian judges are less likely to convict or severely punish an Italian defendant compared to other ethnic defendants. The same applies to other ethnic enclaves in the United States. In American Chinatowns, disputes between Chinese and non-Chinese individuals result in more law or litigation than matters between fellow Chinese (Black, 1976). However, as the cultural distance increases so does the presence of law. Thus, in the United States ethnic offenders that commit crimes in predominantly white areas have generally been subjected to the most severe punishments because they are viewed as unconventional in terms of ethnicity. In this respect, cultural uniformity or intimacy provides immunity from the law while cultural diversity or distance increases one's vulnerability to the law.

Organization

Organizational status represents the corporate aspect of social life or the capacity for collective action. It can be measured by the presence and number of administrative officers, the centralization of decision-making, and the ability for collective action. According to Black (1976:85), individuals, families, groups, firms, political parties, cities, and societies possess various levels of organization. Individuals who belong to several clubs or groups are viewed as more organized than a person with limited affiliations or memberships. Any group is considered more organized than a single individual since groups by definition have more people. Among groups, those with more employees, functional duties, subunits, and administrators are deemed more organized than smaller organizations with fewer employees, functional responsibilities, subunits, or officers. Accordingly, Black (1976:92) predicts that "*law is greater in a direction toward less organization than toward more organization, (italic in original).*" All else being equal, individuals are more vulnerable to the law than groups or corporations. For example,

Black notes that businesses are more likely to file complaints against individuals than vice versa. In such cases, the police are more likely to arrest an individual and the individual defendant is more likely to be prosecuted, convicted, and severely punished. Among corporations, smaller firms are more susceptible to the law than larger firms since they have less organization. Black (1976:93) concludes that “organization provides an immunity from law, and the more organized the offender, the more of this immunity is enjoyed.”

Structurally, Black (1976:86, italic in original) asserts that “*law varies directly with organization.*” The greater the organizational status of a social setting, the more law found. Simple tribal societies use little or no law because they have fewer public or private organizations (i.e., schools, factories, businesses, interest groups, associations, or hospitals) and thus fewer legal conflicts. However, as societies become more modern they develop more organizations. Black (1976) maintains that the organizational status of a particular location increases during wartime, economic expansion, foreign trade, or disasters. During such times, new legislation, powers, or rights are needed to centralize decision-making and guide behaviors. Black also notes that in most contemporary societies organizational law is so pervasive and voluminous that corporations generally hire lawyers on a permanent basis. Accordingly, as cities, states, or societies develop more organizations per capita, they become increasingly litigious and punitive. In other words, the more organizations in a particular location the more law they use.

Social Control (Normative Status or Respectability)

Finally, Black predicts that social control or normative status impacts the behavior of law. Normative status defines expectations of right and wrong, deviant behaviors, violations, obligations, and abnormalities. Black measures normative status by “respectability,” or the amount of social control a particular group or individual is subjected. The more social control

one encounters, the less respectable they are generally considered. Thus, juveniles often have lower normative status (respectability) than adults because they are subject to greater parental, educational, and governmental controls. In addition, Black states that those subjected to legal social control (law) are typically viewed as less respectable than those subject to nonlegal or informal controls (family controls). Convicted criminals are viewed as less reputable than a person shunned by family or friends. Indeed, criminals have traditionally been branded, mutilated, or otherwise had their reputations tarnished (Black, 1976). Accordingly, Black (1976:114, italic in original) predicts “*law is greater in a direction toward less respectability than toward more respectability.*” He notes social deviants of all kind including criminals, prostitutes, homosexuals, drug addicts, the mentally ill, or the homeless are more vulnerable to the application of the law at every stage of the criminal justice process compared to nondeviants. The disreputable are more likely to be arrested, convicted, and severely punished.

At the structural level, normative status can be “measured by the respectability of the people in its environment (Black, 1976: 112).” The more social control people are subject to within a particular location, the less respectable it is. Thus, locations with high crime rates, several ex-offenders, and social deviants including prostitutes or drug users generally have less respect than areas with low crime rates and few offenders or social deviants. As such, disreputable social settings are more vulnerable to applications of the law. These geographical areas are more likely to be patrolled by police and to have higher arrest rates. Offenses in disreputable locations are more likely to result in prosecution, conviction, and severe punishments. All else being equal then, more law exists in locations with greater social control because these settings are considered less respectability.

To conclude, Black advances several empirical propositions concerning the effect of the social statuses of offender and the social statuses of geographical location on the behavior of law. He asserts greater or more law will be applied in a downward direction toward offenders with less (1) vertical status (rank), (2) morphology (integrational status), (3) culture (conventionality), (4) organization, and (5) normative status (respectability). Corporate defendants with lower rank, less integration, less conventionality, less organization, and lower respectability should encounter more law or higher fines. Simultaneously, Black argues that federal districts with greater (1) stratification, (2) morphology (differentiation), (3) cultural diversity, (4) organizational status, and (5) less respectability will use more law.

Before proceeding, it should be noted that Black suggests his theory not only explains the quantity of law, it can also explain the conditions in which different *styles of law* will be used. These styles of law consist of (1) penal, (2) compensatory, (3) therapeutic, and (4) conciliatory forms of social control. According to Black (1976), each has its own definition, language, and logic of deviant behavior as well as its own responses to such behaviors. The penal style of control deals primarily with criminal offenses in which formal groups (criminal justice system or government) enact laws to prohibit certain conduct, decide guilt or innocence, and impose punishments. For the most part, Black's discussion of the quantity of law as related to stratification, morphology, culture, organization, and respectability (social control) addresses penal styles of social control. That is, Black's theory anticipates the type of criminal offenders that are more or less likely to be subjected to penal forms of control including arrest, prosecution, and/or imprisonment. Under compensatory control, the victim rather than formal groups initiates the proceedings against a defendant. Compensatory styles of control are more interested in civil remedies or payments to settle conflicts. Therapeutic control is also initiated by the victim who

seeks support or intervention. The goal of therapeutic control is to offer assistance to people in trouble. Victims seek therapy from an individual or organization in order to help or improve his or her condition. In essence, the victim desires a return to normalcy. Finally, conciliatory styles of control seek social harmony or social repair. Parties involved in a dispute generally search for an independent third party or mediator to help restore damaged relationships to their previous friendly conditions. The goal of conciliation is to work together to develop mutual acceptable resolutions.

While these styles of control can be included in the same case (a penal or criminal case may include compensatory or therapeutic elements), Black (1976:5) asserts that “in most cases it possible to identify the dominant style.” Additionally, he notes that just like the quantity of law, the style of law varies across time and place, social setting, and characteristics of the parties involved in a dispute. For instance, Black anticipates that penal control may be more prominent during one century or decade compared to another, more dominant in one community in relation to another. Some settings may use more punishment (penal), while other areas are more inclined to use compensation or therapy. Likewise, one offender may be more likely to be punished, while another might pay compensation or attend a mediation session (conciliatory). Overall, Black states both the quantity *and* style of law are aspects of the behavior of law and it is possible to predict either given information about the social structure of a case.

Interestingly, the federal sentencing guidelines for organizations (FSGO) include both penal and compensatory styles of punishments. By and large, the FSGO impose penal sanctions including fines and probation that serve the interests of the government (formal group) rather than a particular victim. However, one of the punishments included in the organizational guidelines is restitution paid to victims. In this respect, restitution represents a compensatory

style of social control. This presents a potential empirical or analytical problem because a guilty organization may receive a small fine (less law or penal) but pay a significant amount of restitution (more law or compensation). Thus, only examining variations in fine amounts to the exclusion of restitution can potentially miscalculate the amount of law an organization is subjected to. A more complete or accurate assessment of the FSGO should therefore examine the impact of both fines and restitution. The remainder of this chapter discusses prior tests of Black's theory conducted at both the individual and structural levels of analysis.

Empirical Tests of Black's Theory of Law

Empirical tests of Black's theory call for an examination of the relationship between the quantity of law and stratification, morphology, culture, organization, and social control. Since his theory addresses *all aspects of the law* and is applicable across *all social settings or groups* (i.e., individuals, communities, cities, or entire societies), attempts to examine the entire breadth of his theory prove daunting. Accordingly, studies have tended to address *one* aspect of the criminal justice process and have typically used the individual as the unit of analysis. For instance, these studies have examined decisions to invoke the law or report crime (Gottfredson & Hindelang, 1979; Braithwaite & Biles, 1980; Mooney, 1986); prosecutorial decisions (Myers, 1980); variations in sentence outcomes (Mooney, 1986; Kruttschnitt, 1980-81; 1982); police decisions to arrest (Smith, 1987); and community perceptions of deviance or responses to deviance (Doyle & Luckenbill, 1991; Hembroff, 1987). A few have applied Black's theory to general criminal justice activities at the macro or structural level. For example, studies have examined variations in police expenditures, arrest or incarceration rates, and homicide clearance rates across cities (Lessan & Sheley, 1992; Borg & Parker, 2001). The following briefly summarizes the major studies of Black's theory performed at the individual, structural, and multi-levels of analysis.

Individual Level Evaluations of Black's Theory of Law

In a study that examined five legal outcomes (e.g., seriousness of prosecutor's charges, case dismissal, guilty plea, trial verdict, and sentence imposed), Myers (1980) tested Black's theory to ascertain whether defendant's social statuses significantly affected the application of the law at various stages. Some of her findings confirmed Black's theoretical predictions. Specifically, she found that prosecutor's charges were more likely to be serious in cases involving a white victim and Black offender (rank); cases where the victim was older than the offender (rank); and offenses that included multiple victims (organization). However, offenders' sex, race, or age (vertical status or rank); level of intimacy, employment, or marital status (morphology or integrational status); education (culture or conventionality); and prior criminal history (normative status or respectability) *did not significantly* impact legal outcomes. Also, measures of social control including crime setting (public or private)² and time did not have a substantial impact on case outcomes. In some cases, Myers' findings were contrary to Black's expectations. For instance, she discovered prosecution charges were likely to be *less serious* when the victim was married (greater integrational status) or never been arrested (greater respectability). Black proposes victims with greater integrational status (married) and respectability (never been arrested) should enjoy more law and thus crimes against them should be considered *more* serious. Overall, Myers concluded that there was inconsistent and insubstantial support for most of Black's theoretical propositions.

Mooney (1986) tested whether college student's social statuses affected either the initiation or application of the law within a private, quasi-legal setting (college university). In particular,

² Black (1976) notes that time and place are important measures of normative status or social control. He maintains that nonlegal social control is weaker at nighttime and in public places. Subsequently, law increases or becomes more important. People are more likely to invoke the law at nighttime when they are asleep and nonlegal social controls are nonexistent. Likewise, Black predicts that people are more likely to call the police in public disputes since private conflicts tend to have more nonlegal social control.

she performed a partial analysis of Black's theory to determine how student's rank, cultural, or organizational statuses affected the likelihood of seeking official university decisions (e.g., file complaints, seek legal remedies, or contact police) or receiving a university sanction (e.g., warning, expulsion, fine/ticket, or legal repudiations). She found limited support for Black's theory. In terms of the *initiation of the law*, students with greater organizational status (e.g., employed, married, member of a campus or community organization) were significantly more likely to use the law or initiate university legal proceedings. While significant, student's rank (e.g., sex, race, income, grade point average) was inversely, rather than directly, related to the probability of initiating the law. In contrast to Black's theoretical expectations, female students, nonwhites, students with low monthly incomes, and those with low grade point averages (lower rank) were *more likely* rather than less likely to invoke the law. As related to the *application of the law*, stratification was directly related to the likelihood of receiving university sanctions. This finding validates Black's hypothesis that students with lower rank are subject to more law or more likely to receive a university sanction.

Examining anticipated responses to various neighborhood problems (e.g., street crime, drugs, poor property care, landlord abuses, noise), Doyle and Luckenbill (1991) tested Black's theory to determine which residents were more likely to contact *any* legal official or agency. Black proposes residents with greater rank, integrational status, conventionality, organizational status, and respectability should be more likely to invoke the law and contact a legal official regarding neighborhood issues. Overall, Doyle and Luckenbill found a weak or insignificant relationship between the mobilization of the law and stratification, morphology, culture, and organization. Resident's sex, race, income (rank); employment, marital status, sociability (integrational status); education (cultural status); or organizational status (number of community

memberships) did not consistently predict the likelihood of contacting officials. In terms of social control and law, Doyle and Luckenbill discovered a significant, but positive, relationship between nonlegal or informal social control and the law. Whereas Black's theory predicts an inverse relationship between nonlegal social control and the law, they found that those most likely to use alternative nonlegal social control (i.e., directly talk to person involved in dispute) were also more likely to mobilize the law and contact an official.

In a study that examined sentence outcomes among female offenders, Kruttschnitt (1980-81) found consistent support for Black's theory that the law varies by a defendant's rank, integrational status, conventionality, and respectability. In particular, she examined the extent to which a woman's race and income (vertical status or rank); employment status (integrational status); age (culture); and prior criminal history (respectability) impacted sentence severity across five different types of offenses (e.g., disturbing the peace, assault, forgery, drug violation, and petty theft). Kruttschnitt discovered that female offenders with lower economic status, integrational status, and respectability received the most severe sentences. In a similar study, Kruttschnitt (1982) again found support for Black's theory that women's social statuses significantly impact sentence severity.

In an assessment of police responses to violence encounters among citizens, Smith (1987) conducted a partial examination of Black's theory to determine if arrest decisions varied by offender or victim social statuses. Specifically, Smith measured the effect of race and sex (vertical status or rank); offender and victim intimacy (morphology); and social control (dispute in private or public setting) on police responses. He found supportive evidence that victim's rank influenced how police handled violent crimes. As predicted, the police were less likely to arrest in violent cases involving Black or female victims (lower rank). Smith also included a

structural measure of stratification as he used household income rates to measure the economic status (stratification or vertical status) of neighborhoods. In support of Black, Smith discovered that the police were significantly more likely to arrest in low income neighborhoods than in upper income neighborhoods. He concluded that the economic distance between police officers and residents were greater in poor communities and thus the police were more likely to use the law against residents with lower rank than themselves.

Hembroff (1987) tested Black's theory against the perceived seriousness of two crimes (i.e., stabbing and theft). He created and manipulated 32 different crime scenarios to determine if respondent's perceptions of seriousness varied according to the social statuses of offenders and victims involved in a conflict. For instance, respondents were asked to judge the serious of an accountant killing a family-man banker in self-defense *or* a bartender killing a family-main bank executive in self-defense. In general, the results corroborated most of Black's propositions. There was clear support that conventionality (culture) affected perceptions of seriousness. Crimes by conventional offenders were judged as less serious than the same acts committed by less conventional offenders. Integrational status (morphology) also significantly affected perceptions as offenses committed against marginalized victims were considered less serious than similar acts committed against socially integrated victims. Supportive evidence, although not statistically significant, showed that victim respectability (normative status) influenced perceptions. Acts committed against respectable victims were generally judged more serious than acts against disreputable victims. Hembroff found no relationship between organization and perceived seriousness. Unexpectedly, he discovered stratification or vertical status results contradicted Black's theory. Black anticipates that *upward deviance* (crime by low ranked offender against a high ranked victim) should be deemed the most serious of offenses, while

downward deviance (crime by high ranked offender against low ranked victim) should be judged the least serious of offenses. In other words, a poor offender who commits a crime against a rich victim is considered more serious than a rich offender committing a crime against a poor victim. Hembroff's results showed that respondents judged cases involving people within the same rank (poor offender, poor victim; rich offender, rich victim) as less serious than scenarios depicting upward deviance (poor offender, rich victim).

Structural-Level Evaluations of Black's Theory of Law

In the first aggregated examination of Black's theory, Lessan and Sheley (1992) focused entirely on structural statuses and tested whether changes (increases or decreases) in (1) police expenditures, (2) yearly arrest rates, (3) incarceration rates, and (4) community correction rates corresponded with changes in structural stratification, morphology, culture, organization, and social control. Specifically, they sought to ascertain if labor versus corporate income ratios (stratification or vertical status); division of labor (morphology); religion, technology or number of patents within a location (culture); years at war, number of corporations per 100,000 people (organization); and homicide rates (social control) correlated with changes in the quantity of law. They discovered that only year of war (organization) was consistently and significantly related to changes in law enforcement and correctional activity. Legal activities (police expenditures; arrest, incarceration, and community correction rates) tended to increase during wartime and subside during peacetime. The relationship between stratification, culture, or social control and the law was highly inconsistent and they found no significant link between division of labor (morphology) and law. In several instances, the relationship between structural variables and law activity was in a direction *opposite* of that hypothesized by Black.

In perhaps the strongest affirmation of Black's theory of law, Borg and Parker's (2001) macrolevel analysis examined the impact of city characteristics on homicide clearance rates.

Their study included twelve aggregated urban community measures related to stratification, morphology, culture, organization, and social control. On the whole, their results substantiated that city characteristics significantly influenced the likelihood of clearing homicide cases. Specifically, cities marked by greater racial inequalities (stratification); higher levels of education (culture); and lower homicide rates (social control) had the highest homicide clearance rates. While less support was found for morphology and organization, at least two community measures impacted homicide clearance rates. Cities with greater residential stability (integration) had more law or higher clearance rates, as did urban areas that spent more expenditure for education (organization).

Multilevel Evaluations of Black's Theory of Law

One of the earliest tests of Black's theory focused on the initiation of law or variations in the likelihood of reporting crime. Gottfredson and Hindelang (1979) used United States victimization data to conduct a multilevel analysis and determine which *individuals* and *neighborhoods* were most likely to invoke the law. In particular, they measured characteristics of people who more or less likely to report crimes and characteristics of the neighborhoods that were more or less likely to report crimes to the police. They found mixed empirical support that a victim's (1) family income level (rank); (2) employment or marital status (morphology or integrational status); (3) educational level (culture or conventionality); (4) organizational status (individual versus business) impacted the probability of reporting crimes to the police. As predicted by Black, married victims (morphology) were significantly more likely to report crime than single people; victims with more education (culture) were slightly more likely to report crime; and businesses (organization) were more likely than individuals to report crime. At the structural level, none of the neighborhood characteristics including community poverty or household incomes (stratification or vertical status); community size, population density

(morphology); proportion of community with college degrees (culture); and (4) rural, suburban, or urban community (social control) had a significant influence on the likelihood of reporting crime.

Similar to previous studies, some of Gottfredson and Hindelang's (1979) findings were in a direction *opposite* of that anticipated by Black's theoretical propositions. For example, Black (1976) predicts an inverse relationship between legal and nonlegal social control. Crimes occurring at home (greater nonlegal or informal social control) should be reported *less often* than crimes in public places (street) where nonlegal controls are nonexistent. Gottfredson and Hindelang (1979) discovered that that reporting was actually *higher* for victimization occurring within the home and *lowest* for victimization that occurred in public places. Among the structural variables, they found that the reporting of crime police actually decreased as the size of the city increased whereas Black's theory expects the quantity of law should increase as the size of community (morphology) increases. Gottfredson and Hindelang (1979) tested an alternative theory and concluded victim perceptions of seriousness (e.g., whether crime resulted in significant bodily harm or financial loss) was more important in determining victim's decisions to report crime.

Braithwaite and Biles (1980) replicated Gottfredson and Hindelang's study and conducted a multilevel analysis of Black's theory using Australian victimization data. As predicted, they found that intimates (morphology) were *less likely* to report crime to the police, while those employed (morphology) and victims with higher educational levels (culture) were *more likely* to report crimes. Also, reporting of crimes increased at night when nonlegal social control mechanisms were absent (social control). Similar to Gottfredson and Hindelang (1979) however, none of their structural significantly affected the likelihood of reporting crime.

Overall, there has been inconsistent or tentative confirmation of Black's theory. Most assessments have found only moderate to weak support and in several instances findings have refuted or contradicted Black's expectations. Consequently, some researchers have concluded that there are serious questions concerning the validity, predictive power, and generality of his theory of law (Myers, 1980; Greenberg, 1983; Mooney, 1986; Lessan & Sheley, 1992). However, it should be noted these previous studies conducted only a partial test of Black's theory. His theory is based on the idea that the social structure of a case should be the unit of analysis. As stated earlier, the social structure of the case includes statuses of the actors involved in a case (offender, victim, and third parties), the relational ties among these actors, and characteristics of the setting or location in which conflicts arise. Thus, a true test of Black's theory would incorporate measures of all these social status factors. Accordingly, the lack of empirical support may be related to the absence of analysis based on the entire social structure of the case. Most empirical examinations have focused only on the microsociological dimensions of Black's theory since they analyze characteristics of persons invoking the law or against whom the law is applied (Lessan & Sheley, 1992; Borg & Parker, 2001). Other studies have focused exclusively on macrosociological or structural dimensions of Black's theory and investigated the effect of neighborhood or city characteristics on the behavior of law (Gottfredson & Hindelang, 1979; Braithwaite & Biles, 1980; Smith, 1987; Lessan & Sheley, 1992; Borg & Parker, 2001). In this way, tests of Black's theory have performed a single-level analysis since they concentrate either on individual or macrolevel (city) statuses. In part, this concentration on the single unit of analysis is due to the lack of exhaustive data sources available (Borg & Parker, 2001). While this dissertation encounters similar data limitations, it begins to address past limitations by including more aspects of the case. In particular, this research simultaneously examines the

affect of corporate offender characteristics *and* structural characteristics of the federal districts on sentence outcomes. Also, this dissertation diverges from previous analyses of Black's theory because it examines corporate rather than individual offenders. Since his theory is applicable across all units of analysis it is possible to determine the effect of corporate social statuses on the behavior of law. The author is unaware of any examinations of Black's theory using corporations as its unit of analysis.

It should also be noted that despite the lack of empirical confirmation, Black's theory appears well suited for examining sentence outcomes under the federal sentencing guidelines. A measure of at least one of his social statuses is explicitly part of the guidelines. Black's normative status or social control dimension predicts that law is greater in a direction toward less respectability. All else being equal, those with a criminal past are generally considered less reputable and therefore should be subject to more law or greater punishments. Under the guidelines, criminal history is a primary criterion in the sentence decision process. It is an aggravating factor that justifies increases in sentence severity. In this respect, sentence outcomes are directly linked to an offender's criminal past or, in Black's terminology, their level of respectability.

Beyond respectability (social control), Black identifies other, extralegal variables which also impact sentence outcomes. In particular, he asserts variations in legal outcomes can be explained by the rank (stratification or vertical status), integrational (morphology), cultural, and organizational statuses of the actors and locations involved in a case. Indeed, post-guideline research continues to find that extralegal factors such as race, socioeconomic status and gender (rank) and education (integrational status) produce sentence disparities (Albonetti 1997; Steffensmeier et al., 1998; Steffensmeier, & Demuth, 2000; Ulmer, 2005; Ulmer & Johnson,

2004; Kautt, 2002; Kautt & Spohn 2002; Lambiras, 2003; Hofer et al, 1999). Organizational status also appears to influence the behavior of the law. Black predicts law is greater in a direction toward less organization so that individuals are more vulnerable to the law than corporations. Since the implementation of the guidelines, individual offender cases are significantly more likely to appear in federal courts than corporate defendant cases. For example, between 1996 and 2000 there were approximately 257,441 federal cases involving individual offenders compared to only 1,149 corporate crime cases (Murphy, 2002). Beyond individual offenders, the statuses of corporations impact sentence outcomes. In particular, financial status (rank) and size (organization) significantly affect fine amounts as corporate offenders experiencing financial stress and smaller organizations receive the highest fines (Beck & O'Brien, 2000; Piquero & Davis, 2004). Such findings undermine the very foundation of guidelines which were explicitly developed to eliminate the influence of nonlegal offender characteristics on sentence outcomes. Through the use of formalized sentencing instructions, federal district courts are expected to perform like rational machines impervious to extralegal influences. However, Black asserts extralegal social factors will invariably impact the application of law and thus sentence disparities are inevitable.

Beyond the influence of characteristics of offenders, prior research also suggests that the federal courts are inherently influenced by their immediate political, economic and cultural environments (Ulmer 2005; Stidham & Carp, 1988; Benson & Walker, 1988; Kautt, 2002). Rather than being viewed as one rigid unified court system, federal district courts more accurately represent unique “court communities” that supersede the “formal rationality” of the sentencing guidelines (Ulmer, 2005). Subsequently, Black’s focus on the social structure of the case is directly relevant here because his theory recognizes that characteristics of the offender (in

this case corporations) as well as characteristics of the location in which law behaves (in this case federal districts) both impact legal outcomes. While not entirely exhaustive, this dissertation addresses prior shortcoming by examining as many dimensions of the social structure as possible including the affect of offender and locational statuses on fine amounts. Chapter 4 reviews literature that indicates a link between Black's theory and variations in sentence outcomes under the organizational guidelines.

CHAPTER 4 BLACK'S THEORY OF LAW AND CORPORATE CRIME SENTENCING

This chapter discusses Black's theory in relation to corporate criminal sentencing. In particular, it examines the empirical relationship between offender and locational characteristics (as applied to stratification, morphology, culture, organization, and social control) and sentence outcomes. It should be noted however that there is a relative paucity of corporate crime research and data sources (Lynch, McGurrin, & Fenwick, 2004; Sutherland, 1949; Snider, 1993, 2000; Parker, 1989). Since the 1970s, just a few empirical studies on corporate crime have been funded by major agencies in the United States (Snider, 2003). Consequently, there are only a handful of analyses on corporate crime sentencing. Concerning the organizational guidelines, studies have generally examined whether fine amounts substantially increased under the guidelines and the effect of organizational characteristics on sentence outcomes (Cohen, 1989, 1991, 1996; Parker & Atkins, 1999; Alexander, Arlen, Cohen, 1999; Murphy, 2002; Piquero & Davis, 2004). To the author's knowledge, no study has directly examined the effect of structural conditions on sentencing under the organizational guidelines. Therefore, attempting to locate literature germane to Black's concepts and corporate sentencing is challenging. Black himself dedicates little time illustrating how his concepts relate to corporations with the exception of his discussions on organizational status.

Nonetheless, enough research exists to indicate a relationship between corporate and locational characteristics and the application of law. At the corporate offender level, the literature consistently finds an inverse relationship between sentencing and corporate *economic status* and *size* (Goff, 1993). The most punitive sanctions are meted out against economically marginalized and small corporations while the most lenient penalties are levied against economically resourceful and large corporations (Sutherland, 1949, Clinard & Yeager, 1980;

Shover, Clelland, & Lynxwiler, 1986; Yeager, 1991; Goff, 1993). At the structural level, critical criminologists have traditionally asserted that corporations play an important role in terms of shaping the political-economic structure. Through campaign contributions and lobbying efforts, corporations influence the drafting of lenient corporate crime legislation and help establish probusiness policies or agendas (Sutherland, 1949; Quinney, 1974; 1980; Chambliss & Seidman, 1982; Clinard & Yeager, 1980; Goodman, 1979; Snider, 2000; Michalowski & Carlson, 2000; Pearce & Tombs, 2002; Kramer, et al, 2002; Mokhiber, 1988). Subsequently, nonenforcement or moderate sanctions have been the preferred method of punishing corporate criminality (Snider, 1993).

Stratification and Corporate Crime Sentencing

Corporate (Offender) Rank and Sentence Outcomes

Black (1976) predicts that law varies directly with rank. All else being equal, offenders with less rank enjoy few legal advantages. Accordingly, corporate offenders with less economic rank should be sentenced more harshly than organizations with greater rank. Corporate crime research has generally supported this hypothesis. In his groundbreaking book, *White Collar Crime*, Edwin Sutherland (1949) examined “adverse decisions” against the seventy largest manufacturing corporations and formal legal responses to these violations. One of his major findings was that there was a “differential implementation of the law.” Corporate offenders were sanctioned leniently partly because of their high economic status. Criminal justice officials including legislators, prosecutors, regulators, and judges were afraid to impose aggressive sanctions against corporate managers because of a fear of losing potential campaign funds or support. In addition, he maintained that criminal justice officials generally viewed corporate offenders as respectable businessmen who made technical violations that did not warrant tough penalties. Instead, corporations were more likely to be subjected to alternatives to criminal law

such as civil or regulatory penalties that Sutherland believed were less punitive and stigmatizing. Indeed, a persistent theme of corporate crime is the lack of criminal charges or sanctions imposed against corporate offenders (Goff, 1993). According to Snider (1990, 1993), cooperative, informal sanctions (warnings, fines, cease and desist orders) are generally preferred over confrontational criminalization penalties (substantial fines, imprisonment, etc).

Clinard and Yeager (1980) conducted a study similar to Sutherland's and analyzed law violations and sentence outcomes among the 582 largest corporations in the United States during 1975 and 1976. They concluded that the largest corporations (annual sales \$1 billion or more) received the most lenient penalties despite being the most habitual or serious offenders. That is, corporate criminals with a significant history of offending and those that committed the most harmful crimes typically received the most inconsequential punishments. Large corporations committed an average of 5.1 violations and accounted for over 70 percent of the serious violations and 60 percent of the moderately serious offenses. However, the average fine for large corporations was \$1,000 compared to \$1690 for medium sized corporations (annual sales of \$500-\$999 million) and \$750 for small firms (annual sales of \$300-\$499 million). In addition, Clinard and Yeager found that 86 percent of all fines imposed against large businesses were \$5,000 or less and just 6.5 percent were fined over \$45,000. By comparison, just 54 percent of all fines against smaller firms were \$5,000 or less and 38.5 received fines \$45,000 or greater.

Studies of the federal sentencing of corporate criminals have found similar results. Cohen (1989) studied pre-organizational guideline sentence outcomes and discovered that only a small percentage (approximately ten percent) of corporations sentenced in federal court had sales over \$1 million (Cohen, 1989). A subsequent study analyzing outcomes under the organizational guidelines found that just about 15 percent of the corporations sentenced had sales exceeding \$1

million (Cohen, 1991). Yet another study of 961 corporations sentenced in federal courts from 1984 to 1990 determined that only six percent of those convicted had sales in excess of \$50 million. Conversely, corporations in financial stress or lower rank generally received tougher sanctions. A study found that “organizations deemed financially unable to pay the minimum fine amount were more likely to receive a higher fine amount, (Piquero & Davis, 2004: 651).” Overall, these studies tend to confirm Black’s prediction that the law is more likely to be applied downward against offenders with lower economic rank.

Federal District Rank and Sentence Outcomes

At the structural level, Black (1976) maintains that the law varies directly with locational rank. Federal districts with greater rank or economic status will use more law or impose higher fines. Conversely, districts with less rank will impose less law. While no study has directly tested this prediction, some research has argued that contextual economic conditions impact corporate sentencing. For instance, corporations tend to actively seek poor or economically depressed locations primarily because they offer few regulatory restrictions and lenient sanctions (Goodman, 1979; Snider, 2000; Michalowski & Carlson, 2000; Pearce & Tombs, 2002). Economically depressed areas are reluctant to impose harsh sanctions against corporate offenders because of the potential economic consequences (Benson & Cullen, 1998, Aulette & Michalowski, 1993). Communities with weak economies rely heavily on corporate investments for essential jobs and tax revenues. Imposition of tough enforcement may cause corporate relocation and disinvestment (Benson & Cullen, 1998). Similarly, punitive sanctions may hinder the ability to attract new corporations or other industries to the area (Aulette & Michalowski, 1993). In this regard, poor areas are generally more willing to tolerate corporate crime (Benson & Cullen, 1998; Aulette & Michalowski, 1993). Subsequently, poor areas are considered probusiness climates because they provide a host of benefits or enticements including

deregulated oversight agencies; no unions; low labor wages and benefits; nonexistent or relaxed safety obligations; corporate tax breaks and subsidies; tort reforms that limit damages or lawsuits filed against corporations; the ability to downsize without penalty; and few consequences for spatialization or capital flight (Kotz, 2003; Snider, 2000; Michalowski & Carlson, 2000; Calavita & Pontell, 1990; Pearce & Tombs, 2002; Goodman, 1979; Eisinger, 1988; Gordon et al, 1982; Grant II, & Martinez Jr., 1997; Grant II, & Wallace, 1994; Kasarda, & Irwin, 1991). Overall, economically poor markets or locations have tended to minimize business expenditures and labor costs while at the same time providing various forms of corporate protectionism against criminal legislation, prosecution, and sentencing (Snider, 2000; Pearce & Tombs, 2002; Simon, 2000; Michalowski & Carlson, 2000; Gordon et al, 1982). These patterns are all consistent with Black's theoretical propositions that locations with lower rank tend to impose less law and tend to allow corporations to freely engage in questionable, risky, and unlawful behaviors with impunity.

Morphology (Integrational Status) and Corporate Crime Sentencing

Corporate (Offender) Integrational Status and Sentence Outcomes

Black hypothesizes that law varies inversely with integrational status. Integrated offenders enjoy legal immunity, while marginalized offenders are subject to more law throughout the criminal justice process. Marginalized offenders are more likely to be arrested, prosecuted, or severely punished. Thus, marginalized corporate offenders should be subject to harsher fines compared to more integrated defendants. One potential measure of corporate integrational status may be their ownership structure. For instance, publicly owned businesses could be considered more socially integrated than closely-held corporations. Publicly owned firms have individual stockholders from across the country and they are connected to the major financial institutions since their ownership shares are traded on open stock exchanges. By contrast, closely-held

corporations are controlled by a single individual or small group of owners and do not have nationwide investors. Thus, Black's theory would predict that publicly traded corporations should be subject to less law since they have greater integrational status. In support, Cohen (1996) discovered that only 8% of corporations sentenced in federal courts from 1984 to 1990 were publicly traded firms. In 1988, approximately 5% of corporate offenders sentenced in federal courts were publicly owned businesses (Cohen, 1991). On the other hand, closely-held organizations have been the primary corporations sanctioned at the federal level. Of nearly 1,000 corporations convicted and sentenced in federal court from 1984 to 1990, approximately 70 percent of the firms were closely-held (Cohen, 1996). A study of organizations convicted under federal guidelines from 1991 to 2001 concluded that closely-held corporations received the highest fines (Piquero & Davis, 2004).

Federal District (Integrational Status) and Sentence Outcomes

According to Black (1976), law varies directly with structural integration. As more and more people participate in the major social institutions within a geographical area, law increases there as well. Conversely, in social settings where people are undifferentiated by functions or have little or no social exchanges there is less law. In this respect, federal districts with greater integrational status should use more law or impose higher fines compared to marginalized districts. Previous studies have examined city characteristics related to joblessness, unemployment, single-parent households, and residential mobility to measure integrational status at the structural level. For instance, Borg and Parker (2001) found that communities with fewer married households, higher unemployment rates, and higher rates of short-term residency also tended to have less law or lower clearance rates. Applied to this research, Black's propositions would suggest that federal districts located in more socially marginalized areas (i.e., higher unemployment, greater residential mobility, higher single family households or divorce rates,

etc) will also use less law or impose lower fines. Current literature on corporate crime sanctioning lacks information, anecdotal or otherwise, to evaluate this argument. This dissertation will include measures to evaluate the affect of integrational factors on sentence outcomes among corporate offenders.

Culture (Conventionality) and Corporate Crime Sentencing

Corporate (Offender) Conventionality and Sentence Outcomes

The direction of law, according to Black (1976) is generally applied downward against unconventional offenders, or those with a more marginalized culture. All things being equal, crimes committed by less conventional offenders are generally considered more serious and less conventional criminals are more likely to be arrested, convicted, and severely punished. As related to this dissertation, then less conventional organizational defendants should be subject to more law or higher fines. Black (1976) and most researchers use education as an indication of cultural status or conventionality (Gottfredson and Hindelang, 1979; Braithwaite and Biles 1980; Myers, 1980; Mooney, 1986; Hembroff, 1987; Doyle & Luckenbill, 1991; Borg & Parker, 2001). Educated offenders are more conventional and thus encounter less law, while less educated defendants would be subject to greater law or tougher sanctions. While it is possible to measure the educational level of a corporation by measuring the aggregated educational credentials of its employees, the author is unaware of any study or sources that include such data.

Federal District (Cultural Distance) and Sentence Outcomes

While measuring corporate cultural status is challenging, assessing the cultural status of a particular location is more practical. Black (1976) states locations or social settings have distinct cultures including prevailing ethnic, educational, religious, philosophical, or political norms. He predicts the quantity of law increases with cultural diversity or distance: the greater the cultural distance between an offender and the larger social context, the more law applied against the

defendant. Thus, fine amounts should be higher in federal districts in which there is greater distance between a corporate offender and the larger cultural climate. In districts with less cultural diversity or distance, fines should be lower. Most relevant for this dissertation is the political climate within federal districts. Indeed, one of the most salient structural factors believed to impact corporate crime sentencing is political climate. For the most part, corporations have benefitted from Republican political climates that endorse probusiness economic policies.

Beginning with the Ronald Reagan presidency of the early 1980s, Republicans have generally championed neoliberal economic agendas. In short, neoliberalism supports self-regulation and free market activity with minimal government intervention. Strict or aggressive governmental policies are considered economically detrimental because they hinder corporate ability to effectively compete and maximize profit opportunities (Snider, 2000; Michalowski & Carlson, 2000; Calavita & Pontell, 1990; Pearce & Tombs, 2002; Kotz, 2003). Corporate expenditures would be wasted on meeting tough regulatory standards and/or paying workers higher wages or more benefits. To advance its probusiness economic policies, the Reagan administration deregulated several important industries or agencies including the savings and loans industry, the Environmental Protection Agency, and the Occupational Safety and Health Administration (OSHA) (Calavita & Pontell, 1990; Calavita, Tillman, & Pontell, 1997; Calavita, 1983, Snider, 1993). In addition, Reagan frequently appointed former corporate lobbyists to top positions in regulatory agencies (Snider, 1993). Finally, the Reagan administration “packed” the federal courts with young conservative judges’ generally sympathetic to corporate interests (Schwartz, 1988; Goldman, 1997; Lyles, 1997; Scherer, 2005). Not surprisingly, soon after the Reagan administration took office several important cases against powerful corporations were

either dropped or significantly stalled (Calavita, 1983). Collectively, some scholars have denounced Republican supported neoliberal economic policies because they offer corporate protectionism and criminal immunity (Snider, 1990, 2000; Chambliss & Seidman, 1982; Quinney, 1974, 1980; Pearce & Tombs, 2002; Calavita & Pontell, 1990; Calavita, Tillman, & Pontell, 1997; Sutherland, 1940; Friedrichs, 2004).

The pioneer of white collar crime research, Edwin Sutherland (1949), asserted criminal justice and political leaders were primarily responsible for the preferential sentences afforded corporate offenders. He concluded these officials shared a cultural homogeneity with corporate leaders because they had mutual social networks, attended the same universities, and shared ideologies that made them intimately familiar with each another. As such, prosecutors, judges, and politicians admired and respected businessmen and had difficulty conceiving of corporate offenders as “real criminals.” Sutherland noted this mutual respect was responsible for the differential or lenient treatment of corporate criminals. During probusiness presidential administrations, corporations seldom encountered administrative regulations or sanctions. Laws originally drafted to criminalize corporate transgressions were instead used against less powerful labor unions. For instance, Sutherland (1949) discovered that from 1890 to 1929, only 27 percent of criminal prosecutions under the Sherman Act (a law originally drafted to criminalize corporate monopolistic practices) involved corporate offenders compared to 71 percent of cases against trade unions.

Since the 1930s, other studies have found a similarly strong association between political ties and corporate crime sentencing. Specifically, federal judges appointed by Republican presidents have generally imposed lenient sentences against corporate defendants (Carp & Rowland, 1983; Giles et al, 2001; Songer et al, 2003; Rowland & Todd, 1991; Stidham & Carp,

1988; Carp et al 2001). For instance, Republican appointed judges have been more supportive of corporate interests in cases pertaining to labor/union-management conflicts and cases that have attempted to enforce government or environmental regulation over corporate practices (Carp & Rowland, 1983; Carp et al, 2001; Songer et al, 2003; Rowland & Todd, 1991). In corporate lawsuit cases, a study found that Reagan appointed judges were the least supportive of “underdog” litigants (unions, employees, minority groups, aliens, and criminals) that sued “upperdog” interests such as corporations (Rowland & Todd, 1991).

In environmental regulation cases, Republican appointed judges have been more inclined to issue pro-business, anti-environment decisions (Canes-Wrone, 2003; Austin et al, 2004; Sunstein et al, 2004; Center for American Progress, 2005). For instance, a study of National Environmental Policy Act (NEPA) discovered Republican appointees issued *pro-business* decisions in nearly 58 percent of the cases as opposed to Democrat appointed judges who supported business interests just 14 percent of the time. Republican appointed judges made *pro-environment* decisions just over 28 percent of the time, whereas Democratic appointees did so nearly 60 percent of the time (Austin et al, 2004). Thus, Republican judges were more than four times more likely than Democratic appointees to support corporate litigants in these environmental cases.

Beyond individual voting patterns, other studies have asserted the political climate of the federal courts can affect other measures of law as conceptualized by Black. A study found the political composition of the federal courts affected the probability of the Army Corps of Engineers issuing business grants or permits for wetland development (Canes-Wrone, 2003). The Corps officials were more likely to grant permits in conservative Republican districts (districts in which the majority of judges were appointed by Republican presidents) with

probusiness climates and fewer threats of environmental lawsuits. Conversely, the Corps was less likely to issue permits in Democratic districts that were more inclined to support environmental groups and challenge wetland development. This suggests that districts are likely to develop partisan sentencing norms that ultimately influence how cases are adjudicated within particular social settings or locations.

There is also evidence that judges are influenced by the political voting behaviors of their immediate colleagues. In particular, studies of the federal circuit courts assert judges are likely to be affected by the political party affiliation of other panel judges (Sunstein et al 2004; Revesz, 1997; Austin et al, 2004). These “panel effects” can either *amplify* voting behaviors particularly when a judge sits on a panel with one or more judges appointed by the same political party or *dampen* decisions if sitting with one or more judges appointed by a President from the opposing party (Sunstein et al, 2004; Revesz, 1997). For instance, a three judge circuit panel that includes all Republican appointees would expectedly *amplify* voting behaviors and yield highly conservative decisions, while a panel with all Democratic appointed judges would more inclined to issue liberal decisions. However, a lone Republican appointee on a panel with two Democrats would likely *dampen* voting decisions and force the Republican to acquiesce and vote more liberally. Similarly, a single Democrat sitting on a panel with two Republicans would be more inclined to decide in a more conservative manner. As such, the political and ideological inclinations of a judge’s immediate colleagues are perhaps better predictors of voting behavior than a judge’s own personal ideology (Revesz, 1997; Austin et al, 2004).

An analysis of Environmental Protection Agency (EPA) decisions issued in the D.C. Circuit from 1970 to 1994 confirmed that judicial voting behaviors were greatly affected by the

party affiliation of other judges on the panel (Revesz, 1997). Judges were more apt to vote along with their ideological preferences when sitting on panels with at least one other judge of the same political party. A similar study examined nearly 5,000 published panel decisions covering thirteen different categories of cases ranging from abortion and civil liberty cases to corporate lawsuits and environmental litigation (Sunstein et al, 2004). Overall, the partisan composition significantly affected voting patterns. For instance, panels composed of three Democratic appointed judges issued liberal decisions 61 percent of time, while circuit panels with all Republican appointees did so 34 percent of the time. Panels with two Democratic appointees and one Republican issued liberal decisions 50 percent of the time. They also found dampening effects as panels with one Democrat appointee and two Republicans voted liberally only 39 percent of the time. Of interest to this dissertation, these studies have found that all Republican panels were the most likely to issue probusiness decisions including cases involving lawsuits filed against corporations; campaign finance laws; and environmental regulation. Beyond immediate panel effects, Sunstein et al (2004) also found evidence of larger contextual influences on voting behaviors. Specifically, federal circuits with a majority of Democratic appointed judges were more inclined to issue liberal decisions. Thus, the political contextual climate can potentially explain differential sentence outcomes.

Overall, the existence of panel effects and ideological amplification or dampening can be attributed to “collegial concurrence” (Sunstein et al, 2004). Judges are likely to succumb to conformity pressures because peer acceptance is considered a valuable and powerful asset. Also, dissenting opinions may be considered burdensome, time-consuming, futile, and more importantly a potential source collegial tension (Revesz, 1997). Ultimately, collegial concurrence contends that judges confronted with unanimous colleague opinions will generally

show deference and adopt the prevailing attitudes. In situations where the panel is unified along partisan lines (all Republican or all Democratic panels), “group polarization” is likely to occur in which like-minded groups tend to adopt more extreme or intense behavior tendencies (Sunstein et al, 2004). Thus, all Republican panels tend to be the most conservative, while all Democratic panels the most liberal.

Building upon these studies of panel effects and collegial concurrence, this dissertation hypothesizes that district court judges may be influenced by “district effects” or the prevailing political climate and norms. In districts in which a majority of the judges are appointed by Republicans Presidents, the judicial normative climate may be decidedly probusiness. In this way, Republican districts can either amplify the voting behaviors of other Republican appointed judges or dampen the sentencing decisions of Democratic appointees. While district court judges do not encounter intimate panels like circuit judges, they nonetheless work in relatively small workgroups. To be sure, most districts have an average of 7 sitting judges with a median of 5 judges per district. This reasonably small number of judges per district means a judge is generally cognizant of the political and ideological preferences of his or her fellow colleagues. For example, (Cohen, 1991) found that district judges came under considerable peer pressure to issue opinions opposing the constitutionality of the US Sentencing Commission and the Federal Sentencing Guidelines. As a district court judge in Kansas stated, “there was considerable institutional and peer pressure to overturn the guidelines, (Cohen, 1991:187).” This suggests district courts judges encounter similar political pressures that may ultimately influence sentencing decisions.

Overall, the literature suggests a shared or mutual political relationship between Republicans and corporations. Since Republicans tend to endorse probusiness economic agendas

that consider criminal sanctions as imposing unfair advantages on corporations, there are legitimate concerns about Republicans' commitment to effectively regulate and sanction corporate criminality (Snider, 2000; Michalowski & Carlson, 2000; Calavita & Pontell, 1990; Pearce & Tombs, 2002; Schwartz, 1988; Kotz, 2003; Friedrichs, 2004; Gould, 2003). As related to Black's theory then, corporate offenders in federal districts characterized as "more Republican" should encounter less law or lower fines because there is greater cultural intimacy (versus distance) between these defendants and the larger political climate which is likely to be more probusiness. Stated differently, legal outcomes in Republican dominated federal districts should be more favorable toward corporate offenders (less law) since Republican economic policies tend to be probusiness.

Organization and Corporate Crime Sentencing

Corporate (Offender) Organizational Status and Sentence Outcomes

According to Black, law varies directly with organizational status. The more organized an offender the more legal advantages they enjoy. Offenders with less organization are more susceptible to applications of the law. Traditionally, corporate crime research has concluded that the intensive investigations and harshest sanctions tend to be directed against the smallest or most peripheral corporations while larger companies more often enjoy criminal immunity (Snider, 1993; Goff, 1993). According to corporate crime researchers, smaller corporations are typically at a disadvantage because they do not possess the resources to effectively challenge criminal investigations or prosecution (Snider, 1993; Goff, 1993). They also lack the structural complexity to easily conceal their crimes (Ermann & Lundman, 2002). As such, it is easier for prosecutors and judges to procure convictions because they can more quickly investigate crimes by smaller corporations and pinpoint criminal liability or responsibility.

A study of criminal prosecutions of corporations in federal court from 1984 to 1987 found that the majority of offenders punished were small businesses that employed fewer than 50 workers (Cohen, 1989). A ten year investigation of the organizational guidelines discovered that the median number of employees for guilty corporations was 20 workers (Murphy, 2002). Thus, it appears that corporations with a lower organizational status are subject to more law under the federal guidelines compared to those with greater organizational status.

Federal District Organizational Status and Sentence Outcomes

According to Black (1976), social settings or locations with greater organizational status use more law, while areas with lower organizational status use less law. With regard to locations such as cities or states, he measures organizational status by the capacity for collective action and the number of administrative agencies within a specific location. This includes increases in the number of public or private establishments such as businesses, governmental agencies, schools, or public works agencies. Black asserts the number of organizations within a setting tends to increase during wartime, economic expansion, foreign trade, or disasters because new legislation, powers, or rights are needed to centralize decision-making and guide behaviors. Accordingly, as locations develop more organizations per capita they use more law or become increasingly litigious and punitive.

Similar to morphological status, the author is unaware of any corporate crime study that has analyzed the effect of organizations per capita on sentence outcomes. However, a couple tests of Black's theory at the structural level have found evidence that organizational status impacts the behavior of law. For example, Lessan and Sheley (1992) discovered year of war (organization) was significantly related to increases or decreases in law enforcement (police expenditures and arrest rates) and correctional activity (incarceration and community correction rates). These legal activities consistently increased (more law) during wartime (greater

organizational status) and decreased (less law) during peacetime (lower organizational status). Borg and Parker (2001) found that urban areas that spent more expenditure for education (organization) had higher homicide clearance rates. In respect to this research, Black's theory predicts federal districts with more private or public establishments (taken as a measurement of organizational status) should use more law or impose higher fines.

Social Control (Normative Status or Respectability) and Corporate Crime Sentencing

Corporate (Offender) Respectability and Sentence Outcomes

Black (1976) uses respectability as an indicator of normative status. In particular, he asserts the law varies directly with respectability as those with lower levels of respect are subject to more law. For instance, Black predicts criminals are more likely to be severely sanctioned compared to noncriminals since criminals enjoy lower levels of respectability. In support of this prediction, Piquero and Davis (2004) found that organizations with a prior history of criminal misconduct were more likely to receive fines at the upper end of the recommended sentence range compared to offenders without a prior criminal history.

Federal District Respectability and Sentence Outcomes

With regards to social location, Black (1976) proposes that geographical areas with greater social control are considered less respectable and thus should encounter more law. Locations with higher crime rates, numerous felons and social deviants such as prostitutes or drug users typically have less respect compared to areas with lower crime rates and fewer offenders or social deviants. Accordingly, disreputable social settings use more law and impose harsher sanctions. Previous tests of Black's theory have focused on homicide or crime rates to measure social control or levels of respectability (Lessan & Sheley, 1992; Borg & Parker, 2001). Again, the author is unaware of corporate crime research that has directly examined this relationship but studies of cities have generally found that locations with higher crime rates tend to be more

punitive (Borg & Parker, 2001; Weidner et al 2005; Smith, 2004; Chiricos & DeLone 1992; Jacobs & Helms, 2001, 1996). If Black's proposition is correct, federal districts with greater homicide or crime rates (less respectability) should use more law or impose higher fines than districts with lower homicide or crime rates (greater respectability).

In sum, literature on corporate crime holds quite a bit of suggestive evidence to support many of Black's theoretical propositions as applied to variations in legal punishments. Some of this evidence supports the notion that extralegal corporate offender characteristics impact legal outcomes, while other studies suggest structural conditions or factors effect sentencing. At the same time, several of Black's arguments have not been empirically addressed, directly or indirectly, by previous research. Subsequently, the analysis that follows provides a more systematic examination of Black's propositions. The next chapter outlines the operational definitions and empirical hypotheses that guide this dissertation.

CHAPTER 5 ANALYZING SENTENCE OUTCOMES UNDER THE ORGANIZATIONAL GUIDELINES: DATA AND MEHTODS

This dissertation addresses two central questions pertaining to the federal sentencing guidelines for organizations: (1) to what extent do corporate offender characteristics or social statuses impact sentencing and (2) to what extent do characteristics of the federal districts affect sentence outcomes? In other words, are potential sentence disparities under the organizational guidelines related to extralegal offender characteristics and interdistrict variations? Black's theory of law is utilized since it provides a theoretical framework for analyzing the social structure of the entire case. In particular, his theory anticipates the likelihood of more or less law given offender (in this case, corporate) characteristics and structural conditions (here, federal district courts). While prior guideline studies have concentrated almost exclusively on the effect of offender characteristics, more recent studies have asserted that structural variables are equally important in determining sentences (Richardson & Vines, 1970; Heydebrand & Seron, 1990; Flemming et al, 1992; Ulmer, 2005; Kautt, 2002; Alschuler, 2005; Lambiras, 2003; Hofer et al, 1999). Thus, research should examine how larger political and social contextual factors work in conjunction with case level variables to influence legal processes (Ulmer, 2005). To this end, this dissertation provides a more systemic analysis of the organizational guidelines.

This dissertation examines sentence outcomes from 2001 to 2004 primarily because of its interest in political climate (measure of district cultural status). Including too many successive years may inaccurately measure political climate since the political landscape tends to shift or change every two to four years. Accordingly, it is imperative to capture a distinctive political atmosphere to ascertain its impact on sentence outcomes. Based on the literature, the years included (2001 to 2004) are indicative of Republican control over the presidency and other important branches of government including the federal judiciary. More importantly, these years

also witnessed the reemergence of distinctive probusiness political policies (Friedrichs, 2004; Pearce & Tombs, 2002; Gould, 2003; Kotz, 2003).

Also, it should be noted that only federal districts embedded within the United States political system are analyzed. The federal districts covering US territories (Puerto Rico, Guam, Virgin Islands, and Northern Mariana Islands) are excluded primarily because states have additional privileges and authorities that territories do not and thus treating them alike may introduce nonrandom biases (Kautt, 2002). The Washington DC federal district is included however, because of its historical link to the US political system. Thus, a total of 90 federal districts will be examined. Overall, there were 813 cases or corporations sentenced under the FSGO from 2001 to 2004. However, six of the federal districts (West Virginia Northern; Georgia Southern; Mississippi Northern; Hawaii; Oklahoma Eastern; and Wyoming) did not have a single case during this period and were thus eliminated from the analysis (see Appendix for frequency tabulation). Consequently, the analysis is based on information gathered from 84 federal district courts. During the years of the study, an average of 9.68 cases per district occurred, with 28 districts having 10 or more cases. Two Florida districts including Florida Southern (44 cases) and Florida Middle (42 cases) had the most number of cases during this period, while the California Central district had 41 cases. Two districts had at least 30 or more cases (New York Southern and California Northern district) while seven districts had 20 or more cases. A total of 16 district courts had between 10 and 17 cases. At the other end of the spectrum, 17 districts had two or fewer cases from 2001 to 2004. Specifically, seven districts only had one case, while 10 districts had just two cases during the years of study.

A limited number of cases per level II units (district courts) represent a common problem in multilevel modeling. According to Clarke and Wheaton (2007), data sparseness can produce

robust or inflated estimations of significance and thus render multilevel models inappropriate. Recent trends to address this problem have used cluster techniques in which units with few cases are matched with groups that have a greater number of cases. One of the more common techniques is the use of census tracts to match groups or areas together along socioeconomic or demographics characteristics. However, Clarke and Wheaton suggest that the elimination of singleton groups (units with only one case) or similarly small groups can introduce bias because these purged units may be systematically different than groups with a greater number of observations. More importantly, they argue the use of cluster techniques introduces within-group heterogeneity which artificially combines observations that are largely disparate or incompatible but share enough group-levels values to be matched. In order to test the threshold at which data sparseness does not adversely affect the reliability or usefulness of multilevel modeling, Clarke and Wheaton (2007) conducted a series of simulated models that included both singleton and cluster groups. While accurate estimates could be attained with units or groups that had an average of three or more cases, they maintain units with an average of six or more cases generally produce unbiased estimates. At the same time, cluster techniques did appear to have meaningful, albeit, moderate effects on model performances. In the end, they state that in multilevel analyses the number of groups is generally more important than the number of cases per group. As such, Clarke and Wheaton (2007, 344 & 345) conclude “researchers are probably safer with more data sparseness than they think (according to the simulations) ... and researchers should “aim to preserve the integrity of the between-group differences.” Since there is an average of nearly 10 cases per district, this dissertation meets the acceptable threshold for number of cases per group and therefore districts with two or fewer cases will remain unclustered.

Most of the information used for this dissertation is obtained from organizational data collected by the US Sentencing Commission and disseminated by the Inter-University Consortium for Political and Social Research (ICPSR). Each year, the Commission compiles annual information of organizational defendants sentenced under the Federal Sentencing Guidelines for Organizations (FSGO). Among other things, this data set includes information related to (1) sentences outcomes directed against corporate offenders including fines, probation, or restitution, (2) legal or case level variables, and (3) extralegal corporate characteristics. In this way, the ICPSR dataset includes measures of the dependent variable (fine amount), the legal factors that should theoretically guide the sentence decision process including factors related to offense seriousness and organizational culpability, and the extralegal corporate social statuses indicative of Black's theoretical concepts.

A second dataset, FEDSTATS, is used because it contains relevant structural measures of the US federal district courts. This data source provides demographic information including economic trends, population characteristics, and crime statistics within each district. Thus, FEDSTATS statistics provide pertinent measures of structural stratification, morphology, organization, and normative status. An additional dataset, the Alliance of Justice (2007)³, was used to gather information on all active federal judges and, more importantly, details about the political party (Presidents) responsible for appointing judges within each district. This

³ It should be noted that the Alliance contains information on all judges actively sitting on the federal courts. It does not specifically identify which judges were sitting on the bench from 2001 to 2004. Thus, the data used in this analysis contains information on district court judges appointed after 2004. However, a significant majority of judges confirmed after 2004 were appointed by Presidents of the same political party as those they replaced. That is, Republican appointees who retired, received promotions, or died were essentially replaced by judges also appointed by a Republican President. To be sure, over 80 percent of the judges appointed by George W. Bush were appointed by Republican presidents (Goldman et al, 2005). Thus, the data represents a close approximation of the partisan affiliation of judges sitting on the bench from 2000 to 2003.

information is used to calculate the percentage of judges within each district appointed by Republican presidents.

Dependent Variable

This research uses economic fine as a measure of law. Black proposes that any quantitative increment in punishment increases the presence of law. Thus, it becomes possible to ascertain which corporate criminals are subject to more law (higher fine amounts) or less law (lower fine amounts) and which locations use more or less law after controlling for legal factors. Accordingly, the dependent variable measures total fine or dollar amount meted out against organizations criminally convicted under the federal sentencing guidelines. This measure was selected because fines are the most salient punishment under the organizational guidelines. Due to the highly skewed nature of total fine amount, a log of the total fine was created to help normalize the distribution.

In chapter 3 a brief discussion was given about different styles of law outlined by Black's theory including penal, compensatory, therapeutic, and conciliatory forms of law. Penal styles of law include formal criminal punishments, compensatory law involves civil punishments including restitution, therapeutic styles of law seek therapy or intervention, and conciliatory styles of law are best characterized by mediation. Under the FSGO, organizational defendants are subject to both penal (fine or probation) as well as compensatory (restitution) styles of law. Thus, it is plausible that a corporation may receive no fine (less law) but have a large restitution payment (more law) imposed against them. If this is the case, a focus just on fine amount may overlook the importance of restitution and thus undermine Black's predictions concerning the behavior of law. Preliminary tests were conducted to discern the impact of restitution on sentence outcomes. A frequency tabulation revealed that the majority of offenders (61 percent or 499 out of 813 cases) were not subject to a restitution payment (\$0). Furthermore, a bivariate

correlation indicated no significant relationship between the log of total fine and restitution (see Table 5-3). Finally, a dummy variable for the total fine amount was created to represent organizations that received no fine (232 cases received a fine of \$0) versus corporations that received a fine (580 cases). Average restitution among organizations that *did not* receive a fine was \$2,031,747, while the mean restitution paid by organizations that *did* receive a fine was \$17,810,113. Collectively, these analyses suggest that corporations that did not receive a fine were not more *or* less likely to have a restitution payment imposed against them. As such, the log of total fine remains the only dependent variable used for this dissertation.

Case Level (Legal) Independent Variables

Federal sentencing guidelines for organizations were drafted with the intent of basing sentence decisions on legally relevant factors such as seriousness of offense and the level of corporate culpability for criminal actions. Offenders who committed similar crimes and had similar levels of culpability should receive equivalent punishments irrespective of extralegal offender attributes or district characteristics. In this way, any sentence variations could theoretically be explained by legal variables. As developed by the US Sentencing Commission, final offense score and culpability score are the two primary means of determining fine amounts.

Offense Seriousness

Under the Guidelines, offense seriousness is measured by calculating a base fine which is the greatest of three factors including (a) the offense level that corresponds to the individual guidelines, (b) the pecuniary gains from the offense, or (c) the pecuniary losses caused by the crime (USSC, 2007). The higher offense score, the higher the fine imposed. Unfortunately, there are a limited number of cases that contain information on this variable within the ICPSR dataset. In particular, 43 percent of the cases (346 out of 813 cases) are missing a final offense score. The inclusion of this variable in the analysis would introduce serious bias problems and

risk misestimations of its importance on sentence outcomes. Accordingly, final offense score is not included in the analysis. However, in an effort to indirectly measure offense seriousness the total number of counts for which a corporation was convicted will be used. In theory, the more counts an organization is convicted for the more law (higher fines) they should encounter. Since a majority of corporations were convicted of only one count (68 percent), this variable was dichotomized so that 0 equaled corporations that had only one count of conviction and 1 if an organization was convicted on more than one count.

Culpability Score

Under the organizational guidelines, guilty corporations are assessed a culpability score which is determined by considering aggravating and mitigating circumstances. In particular, judges consider four aggravating factors including an (1) organization's level of tolerance of the crime; (2) the prior criminal history of an organization; (3) violation of an existing order; and (4) whether the organization obstructed the criminal investigation. Judges also examine two mitigating factors: (1) whether there was evidence of an effective compliance program in place during the time of the crime; and (2) whether the organization reported the crime. Similar to the final offense score variable, there is significant missing data for each of these factors. Five of the variables are missing information in 48 percent (390 cases) of the cases, while one variable (prior criminal history) is missing information on 50 percent (408 cases) of the cases. The introduction of these variables in the statistical models would significantly reduce the number of cases or data that could be sufficiently or effectively used for computation. Consequently, this dissertation examines the calculated culpability score rather than focusing on each of the aggravating and mitigating circumstances separately. Only eleven percent (89 cases) of the cases are missing data on culpability score. The culpability scores range from 0 (less culpability) to 10 (greater culpability).

Independent Variables: Extralegal Measures of Corporate Offender Statuses

In addition to the legal factors, extralegal offender characteristics are examined to measure Black's theoretical propositions. In terms of the direction of the law, Black (1976) asserts that downward law is more common across all setting. Offenders with lower statuses are more likely to be harshly punished in comparison to offenders with greater statuses. To operationalize offender statuses information from the ICPSR organizational dataset is used. Specifically, measures of corporate rank (financial status); integrational status (ownership structure); and organizational status (number of employees) are gathered.

Corporate Rank (Economic Status)

Black (1976) predicts that the law varies directly with economic rank as offenders with greater rank are subject to less law. At the same time, offenders with less rank should encounter more law or higher fines. While the ICPSR dataset does not contain a direct measure of financial assets or worth, three potential measures include financial status of an organization on the offense date; financial status of an organization on the sentence date; and ability to pay the fine imposed. Due to missing data problems, financial status on offense date (50 percent of cases are missing data) and financial status on sentence date (34 percent missing data) the inclusion of these variables again present statistical problems because of the significant reduction in the number of cases that can be potentially analyzed. Thus, a corporation's financial status will be measured by their ability to pay a fine. Within the ICPSR dataset, ability to pay is coded 1 for unable to pay entire fine, 2 for unable to pay a portion of the fine, and 3 for ability to pay fine. This factor was recoded into a dummy variable in which 0 represents unable to pay a portion of or the entire fine and 1 indicates an ability to pay the fine. Accordingly, Black's theory would hypothesize:

- H₁: Corporations unable to pay a portion of or the entire fine (lower economic rank) should be subject to higher fines compared to corporations able to pay the fine imposed (greater economic rank).

Corporate Integrational Status (Morphology)

In terms of morphology, Black (1976) states that the law varies directly with integration. Offenders more socially integrated enjoy legal advantages throughout the legal process, while marginalized or less integrated offenders should be subject to greater law or higher fines. To gauge an organization's integrational status, ownership structure is measured. The ICPSR dataset indicates whether an organization is an open or publicly-traded corporation, governmental, nonprofit, closely-held organization, partnership, sole proprietorship, or association. For the purpose of this dissertation, ownership is recoded so that 1 represents socially integrated corporations (publicly-traded, government, nonprofit organizations or association), while 0 indicates marginalized businesses (closely-held organizations, partnership, sole proprietorship). Since publicly-traded, government, and nonprofit agencies are more likely to interact with more social institutions (financial markets, distributors, and so forth) on a larger scale they are considered more socially integrated. In contrast, smaller closely-held organizations are considered to be more localized and less likely to interact on a larger national scale. Frequency tabulations show that this variable is highly skewed as 94 percent of the organizations are coded 0 or closely-held (575 cases); sole proprietor (23 cases); or partnership (13 cases). Just six percent of the corporations convicted from 2001 to 2004 were coded 1 or publicly-traded (29 cases); government (3 cases); non-profit (3 cases) or association (1 case). Due to the uneven distribution this measure, it is not included in the subsequent empirical analysis because it essentially performs as a constant variable.

Corporate Cultural Status (Conventionality)

Because the ICPSR dataset does not include educational variables it is difficult to adequately or accurately capture an offender's cultural status as commonly measured by Black and other researchers. As such, this dissertation does not include a measure for cultural status or conventionality.

Corporate Organizational Status

According to Black (1976), law varies with organization so that offenders with the capacity for greater collective action have higher organizational status and ultimately greater immunity from the law. Corporations with less organizational status are more vulnerable to the law and should theoretically receive higher fines. To operationalize organizational status, the number of employees within a particular corporation is measured. Corporations with more employees will be considered to have greater organizational status than those with fewer employees.

Consequently, an empirical hypothesis anticipates:

- H₂: Corporations with fewer employees (lower organizational status) should be subject to higher fines compared to corporations with more employees (greater organizational status).

Corporate Respectability (Social Control)

Black (1976) proposes that law varies directly with respectability. Offenders with greater levels of respectability are subject to less law, while those with less respectability are more vulnerable to law. Thus, defendants with a criminal past (lower respectability) should receive harsher sanctions than offenders without a criminal past (greater respectability). However, the organizational guidelines already include prior criminal history as legal factor that should directly impact sentence decisions and outcomes. Consistent with Black's arguments, criminal history should increase the fine amount imposed on corporations.

Independent Variables: Structural Measures of Federal District Status

At the structural level, Black contends that the quantity of law varies by locational statuses. Social settings with greater rank, integrational status (morphology), cultural diversity or distance between an offender and the larger normative climate, organizational status, and less normative status or respectability should impose more law or higher fines. The following are measures of federal district characteristics related to each social status.

Federal District Rank (Economic Status)

Black (1976) proposes that locations marked by greater economic status or rank use more law. Thus, federal districts with greater economic status will use more law or impose higher fines, while districts with lower economic status will use less law. Accordingly, the total dollar amount of wholesale trade sales within each district is used to indicate the economic status of a district⁴. Federal districts with greater wholesale trade sales are considered to have greater rank or economic status than districts with lower earnings, retail sales, and wholesale trade sales. In order to normalize the distribution of this variable, a log of wholesale trades was created. The resulting empirical hypothesis asserts:

- H₃: Federal districts with greater wholesale trade sales (greater economic rank) will use more law or impose higher fines compared to districts with lower wholesale trade sales (lower economic rank).

Federal District Integrational Status (Morphology)

One aspect of morphology is integration or the extent to which people participate in major social institutions, including employment and education. Black (1976) hypothesizes greater levels of integration lead to more law. As such, morphology is operationalized as net change in

⁴ It is important to note that FEDSTATS includes other economic indicators such as the total economic earnings within a district, the total dollar amount of retail sales within each district, and total dollar amount of manufacturing shipments in a district. However, due to highly significant correlations among these variables there are risks of multicollinearity. Since the log of total dollar amount of wholesale trade had the strongest correlation with the log of total fine it was selected as the measure of structural economic status.

housing units within a district. This indicator is used to gauge residential mobility rates within each federal district. Black asserts residential stability is an indication of greater integration compared to locations with residential instability. Thus, districts with fewer changes in housing units are deemed more integrated than districts with greater changes. As a result, the following hypothesis predicts:

- H₄: Federal districts with fewer changes in housing units (greater integrational status) will use more law or impose higher fines compared to districts with more changes in housing units (lower integrational status).

Federal District Cultural Status (Conventionality)

According to Black (1976), the greater the cultural distance between an offender and the larger cultural environment, the more law will be used. In this way, cultural diversity increases applications of the law while cultural intimacy decreases applications of law. This dissertation uses political climate as a measure of culture and asserts that the cultural distance between corporations and the larger federal district will be smaller in Republican dominated environments. Since Republican economic policies generally support fewer regulations or sanctions over corporate activity, there is greater cultural intimacy or ties between corporations and the larger climate. In other words, corporations are considered more conventional in probusiness climates and thus they should encounter less law. To capture the political climate of each district the percentage of judges in each district appointed by Republican presidents is used.

Also, the racial composition of each district is included as a measure of structural culture. Black asserts that increases in the ethnic population will lead to cultural conflict and thus the use of more law within certain locations. In order to capture the ethnic population, the total number of ethnic residents (FEDSTATS includes five major ethnic groups including Black; Hispanic or Latino; American Indian or Alaska Native; Asian; and Hawaiian or Pacific Islander) within each

district is divided by the total district population and multiplied by 100. The following indicates the empirical hypotheses:

- H_{5a}: Federal districts with a greater percentage of Republican appointed judges (greater cultural intimacy between offender and larger political climate) will use less law or impose lower fines compared to districts with a lower percentage of Republican appointed judges (lower cultural intimacy between offender and larger political climate).
- H_{5b}: Federal districts with a greater percentage of ethnic minorities (greater cultural conflict) will use more law or impose higher fines compared to districts with a lower percentage of ethnic minorities (lower cultural conflict).

Federal District Organizational Status

At the structural level, organizational status represents the presence of administrative offices, associations, and centralization of government. More law is used in locations where there are more organizations per capita. In districts with lower organizational status or fewer organizations per capita, there should be less law or lower fine amounts. To operationalize district organizational status the total number of private establishments within each district is measured. This measure helps capture the number of organizations within each district. Federal districts with more private establishments are deemed to have greater organizational status than districts with fewer private establishments and building permits. Subsequently, Black's theory would hypothesize:

- H₆: Federal districts with more private establishments (greater organizational status) will use more law or impose higher fines compared to districts with fewer private establishments (lower organizational status).

Federal District Respectability (Normative Status)

Black (1976) predicts social settings or locations with greater social control generally have lower respectability and thus are subject to more law. In other words, more law exists in locations considered less respectable. Previous studies have used homicide rates as an indication of the loss or lack of nonlegal control over its residents (Lessan & Sheley, 1992; Borg & Parker, 2001). Accordingly, homicide rate within each district is used to operationalize normative status

as the district level. Federal districts with higher homicide rates are viewed as having lower respectability and thus should have more law or higher fine amounts. Districts with lower homicide rates are considered to have greater respectability and therefore should use less law or impose lower fine amounts:

- H₇: Federal districts with higher homicide rates (lower respectability) will use more law or impose higher fines compared to districts with lower homicide rates (higher respectability).

In sum, this dissertation examines the effect of two legal variables, two extralegal offender statuses, and six district statuses on the log total fine amount. Specifically, the case level (level I) include culpability score, counts of conviction, ability to pay fine, number of employees. At the district level (level II), the log of wholesale trades, changes in housing units, percent of judges in a district that were appointed by Republican judges, percent of the district population ethnic minority, total number of private business establishments in a district, and homicide rates in the district. Table 5-1 presents descriptive statistics for each of the legal and extralegal (case or level I) and the district (structural or level II) variables. Furthermore, Table 5-2 provides a correlation matrix among the variables.

Summary of Black's Empirical Hypotheses Related to Corporate Offender and Federal District Statuses

Based on Black's theoretical propositions, the subsequent hypotheses restate or summarize the expected relationship between corporate offender and federal district statuses and the quantity of law or fine amounts.

Corporate economic status:

- H₁: Corporations unable to pay a portion of or the entire fine (lower economic rank) should be subject to higher fines compared to corporations able to pay the fine imposed (greater economic rank).

Table 5-1. Descriptive statistics for case and structural level variables

	Mean	Std. Dev.	Minimum	Maximum
<i>Dependent variable</i>				
Log total fine amount	8.122	5.54	0	19.3
<i>Level 1 (legal & extralegal variables)</i>				
Calculated culpability score	4.11	1.98	0	10
Counts of conviction	0.317	0.465	0	1
Ability to pay	0.63	0.484	0	1
Number of employees	1,249.03	11,014.57	0	156,992
<i>Level 2 (structural/district variables)</i>				
Log of wholesale merchandise sold	23.91	1.24	19.72	26.72
Change in housing units	153,019.95	146,876.26	2930	637,522
% of Republican appointed judges	0.5	0.25	0	1
Race (% population ethnic minority)	0.27	0.16	0.03	0.66
Private businesses within district	91,321.55	79,236.08	16,444	453,897
Homicide rates	5.88	5.21	0.5	41.8

Corporate organizational status:

- H₂: Corporations with fewer employees (lower organizational status) should be subject to higher fines compared to corporations with more employees (greater organizational status).

Federal district economic status:

H₃: Federal districts with greater wholesale trade sales (greater economic rank) will use more law or impose higher fines compared to districts with lower wholesale trade sales (lower economic rank).

Federal district integrational status (morphology):

- H₄: Federal districts with fewer changes in housing units (greater integrational status) will use more law or impose higher fines compared to districts with more changes in housing units (lower integrational status).

Federal district cultural status:

- H_{5a}: Federal districts with a greater percentage of Republican appointed judges (greater cultural intimacy between offender and larger political climate) will use less law or impose lower fines compared to districts with a lower percentage of Republican appointed judges (lower cultural intimacy between offender and larger political climate).

Table 5-2. Correlation matrix for case and district level variables related to total fine amount

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
(1) Log total fine amount	1.00								
(2) Culpability score	-.163**	1.00							
(3) Final offense level(a)	-.160**	.098*	1.00						
(4) Counts of conviction	.008	.013	.178**	1.00					
(5) Ability to pay	.838**	-.110	-.310**	-.080*	1.00				
(6) Financial status at sentence date (a)	.438**	-.002	-.199**	-.039	.466**	1.00			
(7) Financial status at offense date (a)	.174**	.062	-.082	.051	.194**	.546**	1.00		
(8) Ownership structure (b)	.161**	-.197**	.020	-.008	.091*	.123**	.065	1.00	
(9) Number of employees	.134**	-.070	.053	.005	.077	.050	.035	.327**	1.00
(10) Log of wholesale trade sales	.094**	-.065	.004	.043	.086*	-.091*	-.095	.037	-.010
(11) Log of total earnings (c)	.051	-.063	-.021	.064	.021	-.140**	-.096	.033	-.040
(12) Log of retail earnings (c)	.039	-.058	.000	.051	.026	-.149**	-.126*	.036	-.030
(13) Log of manufacturing shipments (c)	.086*	-.013	-.037	.006	.087*	-.085*	-.083	-.003	.004
(14) Changes in housing units	-.054	-.005	-.028	.044	-.033	-.144**	-.042	.044	-.031
(15) Percent judges Republican appted	.042	-.003	-.057	-.048	.053	.006	.016	.091*	.081
(16) Percent ethnic population	-.005	-.065	.050	.047	-.015	-.035	-.023	.085*	-.062
(17) Private business establishments	-.017	-.058	.016	.085*	-.006	-.095*	-.099*	.019	-.056
(18) Homicide rates	-.038	.018	-.019	.048	-.008	.066	.049	-.011	-.018
(19) Restitution	.036	.020	-.003	-.023	.029	.037	.016	-.010	-.005

**p<.01 (2-tailed) * p<.05 (2-tailed)

(a) = Due to a significant number of missing data, these variable were excluded from final HLM models

(b) = Due to highly skewed or uneven distribution, this variable is excluded from final HLM models

(c)= Due to highly significant correlations with log of wholesale trades, these variables were excluded from final HLM models because of risks of multi-collinearity

Table 5-2 Continued

	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
(10) Log of wholesale trade sales	1.00								
(11) Log of total earnings (c)	.840**	1.00							
(12) Log of retail earnings (c)	.800**	.909**	1.00						
(13) Log of manufacturing shipments (c)	.701**	.605**	.768**	1.00					
(14) Changes in housing units	.218**	.511**	.620**	.317**	1.00				
(15) Percent judges Republican appted	-.143**	-.127**	-.054	-.075*	.097**	1.00			
(16) Percent ethnic population	.456**	.542**	.368**	.032	.236**	-.093**	1.00		
(17) Private business establishments	.671**	.827**	.839**	.546**	.610**	-.133**	.505**	1.00	
(18) Homicide rates	-.121**	-.041	-.290**	-.381**	-.092**	-.069*	.433**	-.073*	1.00
(19) Restitution	.028	.019	.023	.041	-.001	-.016	-.018	.005	.011

**p<.01 (2-tailed) * p<.05 (2-tailed)

(a) = Due to a significant number of missing data, these variable were excluded from final HLM models

(b) = Due to highly skewed or uneven distribution, this variable is excluded from final HLM models

(c)= Due to highly significant correlations with log of wholesale trades, these variables were excluded from final HLM models because of risks of multi-collinearity

- H_{5b}: Federal districts with a greater percentage of ethnic minorities (greater cultural conflict) will use more law or impose higher fines compared to districts with a lower percentage of ethnic minorities (lower cultural conflict).

Federal district organizational status:

- H₆: Federal districts with more private establishments (greater organizational status) will use more law or impose higher fines compared to districts with fewer private establishments (lower organizational status).

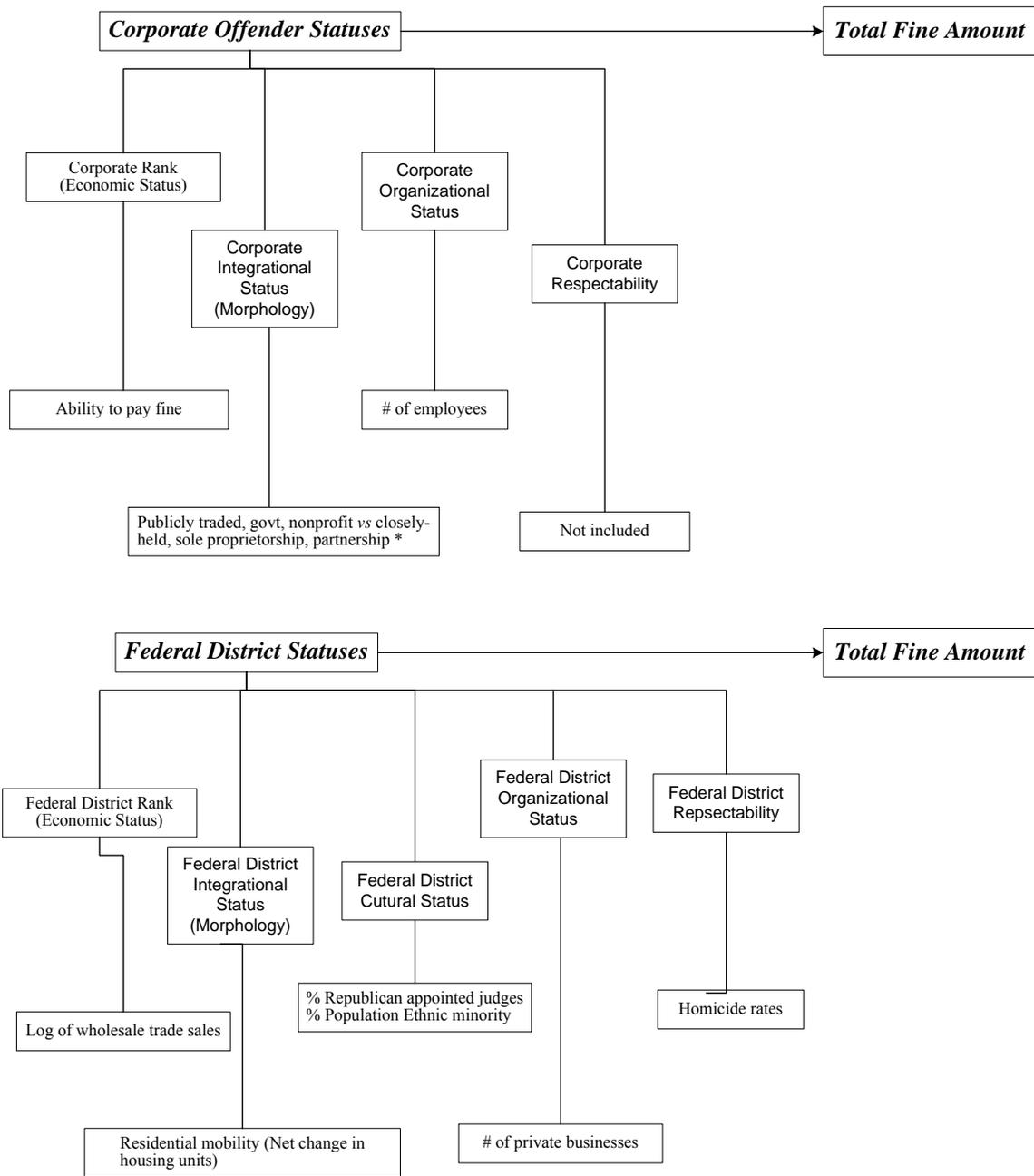
Federal district normative status (respectability):

- H₇: Federal districts with higher homicide rates (lower respectability) will use more law or impose higher fines compared to districts with lower homicide rates (higher respectability).

Figure 5-1 provides a conceptual model that indicates the anticipated impact of both corporate and district statuses on total fine amounts.

Analytic Strategy

Since this dissertation includes a two level structural analysis, hierarchical linear modeling (HLM) is used to more accurately examine the extent to which offender and federal district level variables affect sentence outcomes. Most social science research involves hierarchical structures in which cases are nested within higher levels of analysis (Bryk & Raudenbush, 1992). For this dissertation, corporate crime cases are nested within federal districts. Corporations are likely to be influenced by characteristics of the districts in which they are embedded or located. Thus, corporations tried and convicted within the same district are likely to encounter similarities that help predict or explain sentence outcomes. In addition, districts are likely to reflect the economic, social, political, and cultural norms of the immediate environments (Ulmer, 2005). Subsequently, statistical techniques are needed to address how contextual characteristics interact with or influence case level variables. The uses of single-level models such as ordinary least-squares (OLS) are inappropriate for analyzing multilevel data (Bryk & Raudenbush, 1992; Hox, 2002; Kautt, 2002; Britt, 2000; Ulmer & Johnson, 2004; Weidner et al, 2005). One of the



*Due to a highly skewed or uneven distribution this variable is not included in final HLM models

Figure 5-1. Conceptual model of Black's theory applied to corporate sentencing: Effects of offender and district statuses on fine amount

underlying assumptions of OLS is error terms at one level are unrelated to or independent of higher level variables. As such, single-level statistical techniques generally produce type II errors in which inaccurate p-values provide misleading indications of significance. In other words, OLS misestimates the true effects of case level factors as well as structural variables on the dependent variable (Bryk & Raudenbush, 1992; Kautt, 2002; Britt, 2000; Ulmer & Johnson, 2004; Weidner et al, 2005). Thus, one of the primary advantages of HLM is the fact that it can simultaneously and more precisely test for the effect of offender and structural characteristics on dependent variables (Britt, 2000).

Hierarchical linear modeling creates a series of successive formal submodels for each level in that analytical structure (Bryk & Raudenbush, 1992; Hox, 2002). These submodels produce regression coefficients that estimate the affect of higher level influences on case level factors. In addition, the submodels allow the slope and intercept to vary across different levels of analysis. For this dissertation then, HLM can estimate how (1) legal or extralegal corporate offender statuses (case or level I variables) affect sentence outcomes and (2) federal district statuses (level II variables) impact fine amounts. The following formula illustrates the simplest two-level HLM model for fine amounts within and between federal districts:

Level 1 (Case Level): $Y_{ij} = \pi_{0j} + e_{ij}$ where

Y_{ij} = log odds of total fine amount for offender i in district j;

π_{0j} = average fine amount in district j; and

e_{ij} = the deviation of total fine from the district mean

Level 2 (District Level): $\pi_{0j} = \beta_{00} + r_{0j}$ where

β_{00} = mean fine amount in district j; and

r_{0j} = the deviation of district mean

Combined model: $Y_{ij} = \beta_{00} + r_{0j} + e_{ij}$

As the combined formula indicates, intercepts at level one are derived from equations at level two. Thus, HLM creates an average fine amount for *each* of the federal districts (in this case 84 federal districts) in the analysis. This allows for a determination of which corporations received fines above or below the average fine within the district. Simultaneously, HLM estimates which districts imposed fines above or below the average across or between all federal districts. As applied to this dissertation then, the case level (level I) predictors include two legal variables (culpability score and counts of conviction) as well as two extralegal variables related to Black's social statuses including ability to pay (economic rank) and number of employees (organizational status). At the district level (level II), a total of eight measures are incorporated in the model. These structural level variables include the log of wholesale trade sales in a district (district economic rank); the change in housing units in a district (integrational status); the percentage of judges in a district appointed by Republican presidents (cultural status); the percentage of the district population identified as an ethnic minority (cultural status); the total number of private business establishments in a district (organizational status); and homicide rates in a district (respectability).

Following Ulmer and Johnson (2004), grand mean centering is utilized because of the interest in assessing sentence variance across districts. Traditionally, intercepts are interpreted as a certain value when a given independent variable equals zero. Since most of the variables in this dissertation do not have a meaningful zero point it is appropriate to change the location of these variables so that a significant interpretation of the intercept can be made. Use of group mean centering, according to Ulmer and Johnson, artificially restricts differences at level II. It is therefore more beneficial to use grand mean centering since it more accurately assess level II differences or in this case variations across or between federal districts. Figure 5-2 outlines the

final HLM model that includes both case or level I (legal and extralegal variables) and district or level II variables.

Table 5-3. Summary of the full HLM model specified in equation format

Level I Model
$Y = B_0 + B_1*(\text{Culpability score}) + B_2*(\text{Counts of conviction}) + B_3*(\text{Ability to pay}) + B_4*(\text{Number of employees}) + R$
Level II Model
$B_0 = G_{00} + G_{01}*(\text{Log of wholesale sales}) + G_{02}*(\text{Change in housing units}) + G_{03}*(\% \text{ judges Republican appted}) + G_{04}*(\% \text{ Ethnic minority}) + G_{05}*(\text{Private businesses}) + G_{06}*(\text{Homicide rates}) + U_0$
$B_1 = G_{10} + U_1$
$B_2 = G_{20} + U_2$
$B_3 = G_{30} + U_3$
$B_4 = G_{40}$

Despite its usefulness with multilevel data, HLM does have some limitations. First, HLM models are highly sensitive and cannot handle too many independent variables at level I particularly when cases at level II are sparse. Since the intercept and slopes at the case level (level I) become outcome variables at level II, it is also important to use theoretically concise models to produce accurate findings (Bryk & Raudenbush, 1992). In this case, the mean log total fine amount (intercept) and slopes (culpability score; counts of conviction; ability to pay; and number of employees) become outcome variables in the level II model (see Figure 5-2). Further complicating the capabilities of HLM models, level II intercept and slopes are permitted to vary for each case at that level. As Kautt (2002: 646, italic in original) points out, a two-level HLM model involving federal districts could potentially have 94 different intercepts and 94 different slopes for *each* case-level variable included in the model. As such, the inclusion of numerous predictors significantly challenges the statistical reliability of HLM findings. In addition, the introduction of variables with missing data complicates HLM modeling.

Finally, HLM models require strict specification of standard error terms in order to perform statistical analyses. Under HLM, each case level (level I) predictor or variable can have a random, nonrandom varying, or fixed effect across each level II equation (Bryk & Raudenbush, 1992). As applied to this dissertation then, the effect of culpability, counts of conviction, ability to pay, and number of employees can have a random (allowed to vary across districts), nonrandom varying (allowed to vary under certain conditions), or fixed (predictors held constant) effect at the district level (level II). Traditionally, slopes or predictors are fixed because it is assumed they are normally distributed across units of analysis. However, since this dissertation is interested in determining if case level factors are differentially applied across districts, each of these variables were allowed to vary randomly with the assumption that they are not normally distributed and their importance differs from case to case. If any of the variables are misspecified at level II, HLM will encounter convergence problems and will not conduct subsequent tests. Thus, variables theoretically expected to vary across different levels of analysis may be rejected by HLM procedures. Accordingly, several preliminary models are necessary in order to determine which specification of error terms is appropriate for analysis (Kautt, 2002). In this case, the number of employees' predictor is fixed while the remaining case level variables are permitted to vary randomly because the HLM model was unable to converge when total number of employees was allowed to vary randomly.

CHAPTER 6
PREDICTIVE POWER OF BLACK'S THEORY ON SENTENCE OUTCOMES FOR
ORGANIZATIONAL DEFENDANTS

Under HLM, an initial unconditional model or one-way ANOVA test with random effects is necessary because it provides important preliminary information about the amount of variation within and between different levels of analysis. This model is considered fully unconditional because there are no predictors specified at either level I or II (Bryk & Raudenbush, 1992). In this case, the preliminary ANOVA test indicates the amount of variance in log total fine amounts that occurs at each level of analysis including within federal districts (case or level 1) and between federal districts (structural or level II). Results of this initial test are illustrated in Table 6-1. The findings indicate a significant difference in average log fine amounts between districts. The proportion of variance explained within districts is .912⁵ which indicates that 91 percent of the variation in mean total fine amount occurs at the case level. Conversely, the amount of variation accounted for between different districts is .0879⁶. Thus, about 9 percent of the total variance in the mean fine amount is accounted for by district level factors. Despite the small amount of variance between districts (level II), it is still theoretically important to further examine the potential predictive power of structural characteristics on sentence outcomes (Ulmer and Johnson, 2004). In this case, it is important to determine if Black's theoretical propositions help explain the variance in fine amounts between different federal district courts.

Level I Random Coefficient Model: Fixed and Random Effects Models of Legal Variables

Findings in Table 6-2 show the level 1 random coefficient model for the log total fine. In HLM, the fixed effect model is equivalent to a single-level OLS regression since it indicates

⁵ The formula used to calculate the amount of variance within districts is $\rho = \tau_{00} / (\tau_{00} + \sigma^2)$. See Bryk and Raudenbush (1992).

⁶ The formula used to calculate the amount of variance between districts is $\rho = \sigma^2 / (\sigma^2 + \tau_{00})$. See Bryk and Raudenbush (1992).

Table 6-1. Unconditional model of log total fine amount

Fixed effects					
	Coefficient	S.E.	t-ratio	Df	p-value
Log total fine	8.25	0.28	29.08	83	0.000
Random effects					
	Variance	S.D.	df	X ²	p-value
Within districts (Level I)	27.77	5.27			
Between districts (Level II)	2.68	1.64	83	164.79	0.000
Proportion of variance explained					
Level I	91.2				
Level II	8.8				

how an increase or decrease in particular independent variables or coefficients affect changes in the dependent variable. Fixed effect model results indicate that calculated culpability score has a significant⁷ effect on total fine amount, albeit, in a direction opposite of that expected. The negative coefficient suggests that the higher a corporate defendant's culpability score, the lower their fine amount. Under the organizational guidelines, increases in culpability score should directly correspond to higher fine amounts. That is, as an offender's culpability score increases so to should the fine amount imposed against them.

In HLM, the random effect models estimates whether level I regression coefficients or predictors significantly vary across level II units (Bryk & Raudenbush, 1992). As applied to this dissertation then, the random effect model indicates whether the application of culpability score and counts of conviction significantly differ or vary across districts. The model intercept indicates significant variation in the mean total fine amount across district even after controlling for the two legal variables (culpability and counts of conviction). In other words, the mean fine amount varies significantly across districts despite organizations that have similar culpability scores or that were convicted on a similar number of counts. In addition, the variance

⁷ It should be noted this and subsequent empirical findings are based on two-sided tests and thus report significance at the .1 level.

component for the counts of conviction is significant which indicates that districts differentially assess or determine the number of counts imposed. Finally, Table 6-2 indicates the amount of variance that culpability and counts of conviction factors account for at the case (level I) and district (level II). At the case level, the inclusion of culpability score and counts of conviction only explain about .058 or 6 percent of the total variance for the log of total fine. In other words, these two legal variables explain only a small percentage of the variation in total fine amount in cases that occur within districts. In some ways, such a finding appears to undermine the inherent intent or goals of the organizational guidelines. In theory, culpability score should account for a high percentage of the total variance on fine amounts since guideline instructions mandate that a corporation's level of culpability be one of the principle factors that directs the judicial sentencing process. However, the lack of legal variables in the model including final offense score and aggravating and mitigating factors undoubtedly influences the lack of explained variance at the case level.

In terms of the impact of calculated culpability and counts of conviction at the district level, the results show that approximately 15 percent (.147) of the explained variance in mean total fine amount between districts can be accounted for by these two legal variables. This suggests that culpability and counts of conviction is differentially applied from one district to another. In some districts, culpability may be more or less important in determining total fine amount, while the importance of the counts for which a corporation is convicted tends to similarly vary across districts.

Full Random Coefficient Model: Fixed and Random Effects Models of Black's Theoretical Concepts

In Table 6-3, Black's social statuses at both the offender and structural level are introduced into the full model. In essence, this model provides empirical findings concerning Black's

Table 6-2. Random coefficient model of log total fine

Fixed Effects		Coefficient	S.E.	
Intercept		8.13***	0.283	
Calculated culpability score		-0.387**	0.118	
Counts of conviction		0.168	0.541	
Random Effects		Variance	df	X2
Intercept		1.51	35	97.372***
Calculated culpability score		0.403	35	45.478
Counts of conviction		2.261	35	60.919**
Level I (Variance within districts)		26.145		
Proportion of Variance Explained				
Level I (Within districts)		0.058		
Level II (Between districts)		0.147		

** p<.01 *** p<.001

theoretical hypotheses or expectations about the application of the law directed against corporate defendants sentenced under the organizational guidelines. At the case level, his concepts of offender statuses including economic status (ability to pay fine) and organizational status (number of employees) are entered into the model in order to test hypotheses 1 and 2. At the structural level a total of six variables are included in the model to gauge the explanatory power of hypotheses 3 through 7. These district level variables include measures of economic status (the log of wholesale trade sales); integrational status (change in housing units); cultural status (percentage of judges in district appointed by Republican presidents and percent of district population ethnic minority); organizational status (number of private businesses in district); and respectability (homicide rates).

At the case level, the fixed effect model reveals that both ability to pay and the number of employees have a positive and highly significant effect on total fine amount. The findings indicate that corporations unable to pay a portion or the entire fine amount have lower fines levied against while corporations able to pay the fine are significantly more likely to receive higher fines. In terms of the number of employees, corporate defendants with fewer workers are

substantially more likely to receive lower fines and offenders with more employees more likely to have higher fines imposed against them. While these two extralegal factors are statistically significant, they *do not support* Black's theoretical propositions. Rather, corporate economic and organizational statuses have an affect in a direction opposite of that expected by Black. For instance, Black asserts law varies directly with rank and that all else being equal, lower ranks including the poor are more vulnerable to applications of the law at every stage of the criminal justice process including the likelihood of arrest, prosecution, conviction, and severe punishments. Contrary to this prediction, the results imply that corporate offenders with less economic rank (unable to pay) encounter less law or lower fines. Conversely, corporations with greater economic status (sufficient financial resources to pay fine) have more law or higher fines imposed against them.

Similarly, Black anticipates law is greater in a direction toward less organization. Among businesses, he contends that those with more employees, functional duties, subunits, and administrators have greater organizational status than smaller corporations with few workers, functions, or subunits. In other words, greater organizational status provides immunity from law. However, the findings indicate otherwise as corporate defendants with a greater organizational status (higher number of employees) encounter more law or higher fines, while defendants with less organizational status (fewer number of employees) have less law (lower fine amounts) imposed against them. Thus, while ability to pay and number of employees are significant predictors of fine amounts such findings do not support hypotheses 1 or 2. Beyond ability to pay and number of employees, the fixed effects model illustrates that the counts of conviction

Table 6-3. Full random coefficient model of log total fine

<i>Fixed effects</i>	<i>Coefficient</i>	<i>S.E.</i>	
Intercept	8.04***	0.168	
<i>Legal variables</i>			
Calculated culpability score	-0.044	0.114	
Counts of conviction	0.674*	0.300	
<i>Extralegal variables (Corporate statuses)</i>			
Ability to pay (Economic status)	8.987***	0.441	
Number of employees (Organizational status) ⁸	0.027***	0.008	
<i>Structural variables (District statuses)</i>			
Log of wholesale trades (Economic status)	0.174	0.142	
Housing unit changes (Integrational status) ⁴	0.000	0.001	
% Republican appted judges (Cultural status)	0.823	0.511	
% Population ethnic minority (Cultural status)	0.012	0.011	
Private businesses (Organizational status) ⁴	-0.003	0.003	
Homicide rates (Normative status)	-0.028	0.018	
<i>Random effects</i>	<i>Variance</i>	<i>Df</i>	<i>X²</i>
Intercept	0.740	17	34.580**
Calculated culpability score	0.161	23	33.412†
Counts of conviction	0.625	23	32.645†
Ability to pay (Economic status)	6.398	23	55.009***
Level I (Variance within districts)	7.247		
<i>Proportion of Variance Explained</i>			
Level I (Within districts)	0.722		
Level II (Between districts)	0.676		

† p ≤ .10 (two-tailed test) * p < .05 ** p < .01 *** p < .001

significantly affects total fine amounts. In particular, corporations convicted of more than one offense had higher total fine amounts. This finding is interesting because it was not significant when included in the legal variable model (see Table 6-2). In addition, culpability score which was significant in the legal variable model now becomes insignificant in the full model. This reversal indicates that ability to pay and number of employees control for the effect of culpability and in some ways interacts with counts of conviction to produce significant differences in total

⁸ Due to the scale of these original variables their coefficients were very small. In order to interpret the coefficients, they were all multiplied by 1000 which indicates the expected change in the log total fine amount when the variables increase by 1000.

fine amounts imposed against corporate offenders. Since both the extralegal factors are highly significant, it is plausible that the culpability score becomes meaningless if the defendant is unable to pay a fine or if they have a few employees. At level II, none of the structural factors, as predicted by Black, have a significant affect on total fine amounts. As such, hypotheses 3 through 7 are not supported either. More specifically, the economic, integrational, cultural, organizational, or normative statuses of a particular federal district have no significant effect on the application of the law directed toward corporations sentenced under the federal sentencing guidelines from 2001 to 2004. Stated differently, there is no statistical evidence that the district statuses or characteristics specified in the full model impact sentence outcomes.

With regards to the random effects model, the results show significant variation across districts. As previously stated, the random effect models in HLM estimate the extent to which level I regression coefficients vary across level II units. In the full, the random effect model indicates whether culpability score, counts of conviction, and ability to pay significantly vary across districts⁹. The significant model intercept suggests there is statistically meaningful variation in the mean total fine amount across district even after controlling for the importance of legal and extralegal variables. In particular, the mean fine amount continues to significantly vary across districts even when corporate culpability scores, counts of conviction, and ability to pay are similar. The variance components for both of the legal variables show they are slightly significant across districts. The meaning or importance of culpability and counts of conviction differs significantly from one district court to another implying that the organizational guidelines are not performing uniformly across districts (see Appendix B for graphs illustrating the slope of

⁹ In an initial test, the number of employees was allowed to vary at level II or across districts but HLM was unable to perform this test. This indicates that the full model was misspecified with number of employees allowed to vary randomly. As such, the number of employees was held constant at level II.

the relationships between the independent variables and the log total fine amount for each district). Similar to Ulmer's (2005) argument, the districts appear to be developing their own unique interpretations of the guidelines which lead to variations or differential sentence outcomes. Likewise, the extralegal factor (ability to pay) significantly and strongly varies across districts. This indicates that districts differentially assess the importance of a corporate defendant's ability to pay. Specifically, the ability to pay seems to be a more important consideration in those districts that have low average fine amounts (see Appendix B for graphs)¹⁰.

Lastly and perhaps more importantly, the full model identifies the amount of explained variance accounted for by including the theoretical predictors in the model. The inclusion of ability to pay and number of employees at the case level (level I) dramatically increased the amount of explained variance within districts. Specifically, these two extralegal variables increased the amount of variance in mean fine amount over 65 percent. In the legal model (see Table 6-2) culpability score and counts of conviction accounted for a mere 6 percent of the variance, however, with the addition of ability to pay and number of employees, 72 percent (.722) of the variation can be accounted for (see Table 6-3). Thus, it appears these two extralegal variables are considerably more important in predicting fine amounts than legal factors. Collectively, the results indicate that much of the 91 percent variation in mean total fine amount that occurs within districts can be explained by culpability score, counts of conviction, ability to pay, and total number of employees.

Concerning the amount of explained variance between districts, the inclusion of Black's concepts as related to offender and district statuses explain approximately 68 percent (.676) total

¹⁰ An examination of the Tau as correlation coefficient indicates a strong and inverse (-.988) relationship between the slope of the relationship between ability to pay and log total fine across districts.

variance in average total fine amount (see Table 6-3). However, two comments are warranted with regards to these findings. First, none of the corporate status measures operate in the direction predicted by his theory and none of the structural characteristics are significant. Secondly, it appears all or a substantial amount of the variation across districts is due to the ability to pay and total number of employees. The positive coefficients suggest that districts or judges are sympathetic towards corporate defendants unable to pay a portion of or the entire fine amount and are thus reluctant to impose more law or higher fines. Similarly, corporate offenders with a small number of employees seem to encounter less law or lower fines. Overall, then, the ability to pay and number of employees are strong predictors of mean total fine amount within *and* between districts. At both levels of analysis it appears these two extralegal factors help explain at least 50 percent of the variance in fine amounts.

Summary of the Empirical Findings

The initial ANOVA test showed that most of the variance (91 percent) in total fine amount existed at the case level, while a small but statistically significant amount of variation (9 percent) occurs between or across districts. Findings reveal most of the variation at the case level can be explained by two extralegal variables including a corporate offender's ability to pay a fine and its number of employees. It appears the inclusion of these two variables accounts for most of the 68 percent explained variance in total fine amount. The importance of these extralegal variables in the sentencing process undermines the formal rationality of the federal guidelines which were established to limit the influence of legally non-relevant factors. Interestingly, the two legal variables including culpability and counts of conviction seem to have minimal impact in predicting total fine amounts, and none of the structural indicators have a direct effect on total fine amount.

Another important finding is the fact that the case level variables, including culpability score, counts of conviction, and ability to pay, vary significantly across federal districts. This calls into question the uniformity of the organizational guidelines and the goal of the 94 district courts performing like one rationalized machine. It appears that the district courts are differentially interpreting and applying the organizational guidelines which may lead to noticeable sentencing disparities among similarly situated offenders. In particular, it seems that district courts differentially consider the importance or value of these case level variables so that in some districts culpability, counts of conviction and ability to pay are a determining factor in deciding total fine amount while in other districts these variables wield little influence in fine amount decisions. While this dissertation was unable to meaningfully account for the 9 percent of variance that occurs between or across districts, there are underlying structural factors yet to be identified that significantly affect the differential interpretation of the guidelines and application of total fine amounts.

CHAPTER 7

SUMMARIZING THE IMPORTANCE OF BLACK'S THEORY & FEDERAL SENTENCING GUIDELINES FOR ORGANIZATIONS

This dissertation examined sentencing outcomes under the federal sentencing guidelines for organizations (FSGO). By and large, the guidelines reflect a Weberian model of criminal justice in which sentencing decisions and outcomes should be directly related to legal factors such as the seriousness of the offense, prior criminal history of the offender, and the amount of harm caused by the crime (Dixon, 1995). One of the primary objectives of US Sentencing Commission in disseminating the guidelines was the elimination of sentence disparities related to irrelevant extralegal factors including offender characteristics. Post-guideline research, however, continues to find that extralegal factors impact sentence outcomes among organizational offenders (Piquero & Davis, 2004; Beck & O'Brien, 2000). To this end, this dissertation analyzed the extent to which corporate offender and federal district characteristics affect fine amounts. Moreover, it used Black's theory of law as a guiding theoretical framework since it focuses on the social structure of a case.

Social structure of a case includes (1) characteristics of the actors involved in a conflict (i.e., offender, victim, 3rd party participants such as attorneys or judges), (2) the relational ties or distances among these actors (i.e., intimacy, levels of cultural similarity, etc), and (3) characteristics of the geographical location or setting (neighborhoods, cities, or states) in which conflicts arise (Black, 1995; Borg & Parker, 2001). Black (1976) also asserts the application of the law is influenced or shaped by five statuses or aspects of social life including: stratification (economic rank); integrational status (morphology); cultural status (conventionality); organizational status; and normative status (respectability). In general, he proposes that across all settings offenders with lower statuses are subjected to more law including a greater likelihood of being arrested, prosecuted, convicted, and severely punished. In this case, corporate criminals

with lower statuses should encounter more law or higher fine amounts compared to defendants with higher statuses. At the same time, Black (1976) anticipates social settings or locations with greater social statuses will use more law or be more punitive toward criminal offending. Thus, federal districts with higher statuses should use more law or impose higher fines while districts with lower statuses should use less law or issue smaller fine amounts. Accordingly, Black's theory is ideally suited to understanding how quantity of law or fine amounts varies by the social statuses or characteristics of (1) corporate defendants and (2) federal districts.

Use of multilevel data necessitated the use of hierarchical linear modeling (HLM) because of its ability to more accurately assess how independent predictors at different units of analysis impact outcome variables. HLM was also beneficial because it indicates how much of the explained variance exists at different levels of analysis including the case (level I) and district level (level II). Relying on organizational data collected from 2001 to 2004, two legal factors (culpability and counts of conviction) and a total of eight social statuses (two corporate offender statuses and six district statuses) derived from Black's theory were included in the final model to determine their effects on mean total fine amounts. Overall, the findings offer non-supportive evidence for Black's theoretical expectations. While measures of corporate statuses related to economic rank (ability to pay) and organizational status (number of employees) significantly influence fine amounts, both do so in a direction contrary to Black's hypotheses. For instance, Black contends law varies directly with economic rank so that poor defendants are more vulnerable to the law compared to the rich. Empirical evidence contradicts this proposition. Corporations with lower economic rank (unable to pay a portion of or the entire fine) are significantly more likely to receive less law or lower fines while offenders with greater economic rank (ability to pay a fine) encounter more law or higher fines. Likewise, Black's theory asserts

an inverse relationship between organizational status and the application of the law. He maintains offenders with lower organizational status should encounter more law and defendants with greater organizational status should have less law or lower fines applied against them. However, the results illustrate corporate offenders with less organizational status (smaller number of employees) receive less law or lower fines and corporate criminals with greater organizational status (higher number of employees) come upon more law or higher fines. In general, the results of this study are consistent with several other evaluations which discover significant findings in a direction *opposite* of that expected predicted by Black's theory (Gottfredson & Hindelang, 1979; Braithwaite & Biles, 1980; Myers, 1980; Mooney, 1986; Hembroff, 1987; and Lessen & Sheley, 1992). Consequently, these reemerging contradictory findings raise important questions about the predictive power and utility of his theoretical propositions. In addition, none of the structural statuses had a significant impact on total fine amount. Districts with greater economic (greater wholesale trade sales); integrational (residential stability or fewer changes in housing units); cultural (more Republican appointed judges and fewer ethnic minorities); organizational (more private business establishments); or normative (lower homicide rates) statuses were not statistically more likely to impose more law or higher fines in comparison to districts with lower statuses.

In spite of the lack of theoretical confirmation, the dissertation findings generate some important conclusions. First, the initial unconditional ANOVA random effects model (see table 6-1) reveals that most of the explained variance in mean total fine amount occurs at the case level (level I). More specifically, 91 percent of the variance can be explained by case level predictors while 9 percent of the total variance in average total fine amount takes place across or between districts. This indicates that there is something about the case (legal or extralegal

offender factors) that accounts for most of the variance in mean total fine amount. Despite the small amount of variance, the fact that district level factors exert some statistically meaningful influence on sentence outcomes is important because it illustrates that the federal district courts are not performing like one unified rational system. Instead, contextual factors have some influence on sentencing decision processes.

With regards to the case level, this dissertation accounted for substantial amount of the explained variance in total fine amount. In particular, the ability to pay and number of employee dramatically increased the variance to 72 percent when added to the case level model (see Table 6-3). In the legal model, culpability and counts of conviction by themselves only accounted for six percent of the explained variance in average fine amount (see Table 6-2). As such, extralegal rather than legal factors are surprisingly more important in determining total fine amount. Judges are more likely to base their sentencing decisions on a corporate offender's ability to pay a portion of or the entire fine and/or the number of employees they have rather than their level of culpability or the number of counts or crimes they were convicted of. It should also be noted that the legal model which only included culpability and counts of conviction revealed an unusual finding. Culpability score was significantly but *inversely* related to fine amounts. Under the organizational guidelines, fine amount should be commensurate to culpability score. In essence, culpability scores measure the level of responsibility corporations and their officials have in the commission and reporting of the crime. The greater their responsibility the greater their punishment or fine should be. The fact that offenders with higher culpability scores were significantly more likely to receive *lower* fines is peculiar. In the full model, however, the inclusion of ability to pay and number employees negates the significance of culpability score. It therefore seems that culpability scores become meaningless in the decision making process if a

corporate defendant is unable to pay their fine or if they have a small number of employees. At the district level, it appears ability to pay and number of employees are equally effective in terms of explaining the amount of variance in mean fine amount across or between districts. While the two legal variables accounted for approximately 15 percent of the variation between districts (see Table 6-2), the inclusion of Black's social statuses (two corporate offender statuses and six district statuses) helped explain approximately 68 percent of the differences in fine amounts (see Table 6-3). Since none of the structural measures were significant, it is reasonable that ability to pay and number of employees are responsible for most of the variation.

Another important finding is the fact that the case level variables including culpability score, counts of conviction, and ability to pay significantly vary significantly across or between federal districts. More specifically, the inability to pay a fine is a stronger predictor of total fine in districts that impose lower mean fine amounts. Likewise, culpability score and counts of conviction have a weaker but statistically significant effect on total fines in districts that issue lower average fines. Thus, it appears that the district courts are differentially interpreting and applying the organizational guidelines. In particular, it seems that district courts differentially consider the importance or value of these case level variables so that in some districts culpability, counts of conviction and ability to pay are a determining factor in deciding total fine amount while in other districts these variables wield little influence in fine amount decisions. This calls into question the formal rationality of the organizational guidelines and the idea that the 94 district courts are one unified system. According to Ulmer (2005), the federal sentencing guidelines are more realistically embedded into localized district court communities that are invariably shaped by their provincial social, cultural, political, and ideological norms. Each district develops their own processual orders that shape interpretations and definitions of the

federal guidelines and ultimately the use or application of the guidelines. Major district court actors including judges use localized discretion and adjust the federal guidelines to coincide with the immediate contextual or normative climate. In support of these assertions, Ulmer (2005) found that some districts develop relatively broad or liberal definitions of the guidelines and thus are more likely to restructure mandated sentencing so they are less punitive. Conversely, he found other districts have strict or rigid interpretations and are less likely to depart from the recommended sentences. Ulmer therefore concludes that the effects of legal (offense seriousness, criminal history, trial, and plea) and extralegal (race and gender) factors on the likelihood of imprisonment and sentence length vary significantly between districts. In other words, the differential use and interpretation of key guideline provisions ultimately leads to sentence disparities across districts. This dissertation lends supporting evidence since the importance or uses of both legal and extralegal variables vary significantly across districts.

Significant Contributions and Implications

Overall, this dissertation exposes two major shortcomings of the federal sentencing guidelines for organizations. First, the volume of missing data, particularly on key legal variables, is extremely troubling and disconcerting. Congress established the US Sentencing Commission with the expectations that the Commission would critically review and analyze sentencing data in order to revise, refine, or amend policies and practices in order to ensure fair and consistent federal sentencing system (Nagel & Swenson, 1993). Furthermore, Congress projected that the Commission's efforts and assessments would advance knowledge about criminal justice procedures (Nagel & Swenson, 1993; Parker & Atkins, 1999). However, Parker and Atkins (1999) point out that the Sentencing Commission has consistently been unable or unwilling to compile and release reliable organizational data. They conclude the organizational guidelines operate as if they are unimportant or as if they do not take themselves too seriously.

Parker and Atkins further comment that this colossal failure to provide meaningful data has made it extremely difficult to empirically evaluate the effectiveness of the organizational guidelines and perhaps more importantly advance knowledge about sentencing practices directed against corporate offenders. As applied to this dissertation, several of the important legal factors were missing information. For example, 43 percent of the 813 cases during the years of study (2001 to 2004) were missing data on final offense score, which in theory, should be a principal determinate of total fine amount. Likewise, crucial aggravating and mitigating factors including involvement/tolerance; violation of an existing order; obstruction of justice; existence of a compliance program; self-reporting, and prior history of offending were missing data in at least 48 percent of the cases. Further complicating the task of conducting effective analyses is the fact that the ICPSR data does not include a substantial number of cases, particularly cases that involve \$1 million or more fines (Alexander, Arlen, & Cohen, 1999). Consequently, there are likely to be significant misestimations concerning the average penalties, including fine amounts, imposed against corporate offenders.

Notwithstanding these data problems, the available organizational information reveals a second troubling aspect of the organizational guidelines, namely the importance of extralegal variables on sentence outcomes. The FSGO were expressly disseminated so that sentencing decisions and outcomes would be directly or explicitly related to legally relevant factors including offense seriousness and culpability. The use of an objective point system was intended to ensure that similarly situated offenders that committed comparable crimes and had analogous levels of culpability would be punished uniformly across different cases and districts. Any sentence disparities could thus be explained by legal differences. In this way, the organizational guidelines sought to diminish the importance of corporate offender characteristics related to

financial status or size (Nagel & Swenson, 1993). However, the empirical findings paint a grim picture concerning the importance of legal factors on total fine amounts. The fact that culpability score and counts of conviction explained so little of the variance in the mean log total fine amount should be alarming. These two variables accounted for only 6 percent of the explained variance. In theory, culpability scores should be a major determinate of fine amounts.

Furthermore, the results indicate that higher culpability scores are significantly related to the imposition of *lower* fine amounts. Even at the district level, extralegal factors again appear to exert more influence in determining fine amounts than legal variables. In contrast, the two extralegal variables exert tremendous influence on fine decisions. In this dissertation, the ability to pay a portion of or the entire fine is the strongest predictor of total fine amount. Organizations deemed unable to pay were significantly more likely to receive small fine or no fine. Similarly, corporate offenders with fewer employees are substantially more likely to receive lower fines.

Overall then, this dissertation provides empirical evidence that the purported goal of the organizational guidelines utilizing strict and rational instructions to determine sentence outcomes is more of a façade than a reality. Instead, it appears the federal district courts haphazardly consider the importance of legal variables and more generally base sentence decisions on extralegal factors. In this case, the financial status of offenders and their overall size as measured by total number of employees play a very important role in determining fine amounts.

Future Research Directions

In Black's defense, this dissertation did not offer a true or complete test of his theory. At best, this dissertation offered only a partial analysis of important offender statuses. Indeed, just two offender statuses were included in the final model including measures of economic and organizational statuses. While the indicator of organizational status (number of employees) is consistent with Black's overview of organization, the operationalization of economic rank

(ability to pay fine) could understandably be viewed as problematic because it fails to directly measure an offender's financial status. Unfortunately, the ICPSR organizational dataset does not include unequivocal measures of economic assets or net worth for each corporate offender. Beyond ability to pay, two other potential indicators assessed the financial status of an organization on offense *and* sentencing date. These variables determined whether a corporation was financially stable (solvent and operating) or unstable (defunct or out of business; bankrupt; reorganization; financial stress). However, due to significant missing data problems there were a limited number of cases that could be effectively analyzed. Approximately 50 percent of the 813 cases were missing information on financial status at offense date, while 34 percent were missing data on financial status at sentence date. Consequently neither could be used in the final analyses. Among the structural predictors, most measures used were consistent with own Black's writings and previous assessments of his theory. For instance, similar to other studies this dissertation used residential mobility (integrational status), ethnic population (cultural status), number of businesses (organizational status), and homicide rates (normative status or respectability) as measures of structural statuses (Lessan & Sheley, 1992; Borg & Parker, 2001; Gottfredson & Hindelang, 1979; Braithwaite & Biles, 1980). However, the use of wholesale trade sales (measure of district economic status) and political climate (culture) could conceivably be questioned as crude measures of Black's concepts.

It is also possible that the focus on total fine amount may be an inappropriate dependent variable or unit of analysis. Black proposes there are different styles of law including penal, compensatory, therapeutic, and conciliatory forms of social control. While this study focused on penal social control (criminal sanctions or fines), research suggests the threat and/or use of civil litigation is the primary means of controlling and punishing corporate criminals (Sutherland,

1949; Clinard & Yeager, 1980; Snider, 2000; Pearce & Tombs, 2002). Victims generally seek punitive or monetary damages for injuries or losses suffered as a result of corporate crimes. Civil litigation, according to Black, is indicative of compensatory styles of law or social control because victims demand payments for unfulfilled obligations. Accordingly, a more germane dependent variable may be civil or compensatory outcomes. More specifically, Black's theory may be better suited for predicting how the social statuses of offenders and social locations impact compensatory damages levied against corporate offenders.

In addition, this dissertation failed to analyze the complete social structure of a case. Black (1995) contends that a true examination of the behavior of law should focus on (1) actors (2) relational distances, and (3) social setting. In general, this study conducted a micro-level (focus on offender characteristics) and macro-level (focus on district statuses) analysis of Black's theory. While it was beyond the scope of this dissertation, a more complete test would examine the importance of meso-level factors such as the relational ties between offender and victims (intimates, strangers, acquaintances) and/or the relationship between offender and courtroom actors including judges and their effects on sentence outcomes. According to Black (1976), the greater the distance between offender and other participants the more law expected. Results of this dissertation may indicate that the relational distance between some corporate offenders and their victims or the even the judges was smaller and as a result such defendants encountered less law or lower fines. In terms of the micro-level analysis, no facts were gathered on the statuses of the victims or courtroom actors. For instance, having knowledge or information about the characteristics of sentencing judges could potentially account for the significant relationship between the inability to pay fine amounts and receiving lower fines. In some cases, offenders and judges could have shared similar statuses and been closely related and thus less law would

be expected. As Black (1976:16) states that, “a judge with lowly origins might also be more sympathetic [towards a poor defendant] than a judge from the higher levels of society.” As such, judges may have been more compassionate or understanding of corporate offenders unable to pay fine or smaller defendants (companies with fewer employees) and thus were more likely to impose less law or lower fines.

Finally, while the results do not support Black’s theory, it may be that his theory is more applicable at a different stage of the criminal justice process, specifically the prosecutorial stage. Some of the findings suggest that corporations are differentially prosecuted based on their statuses or characteristics. For example, a relatively small number of corporate crime cases occurred during the years of study. There were a total of 813 cases which translates to an average of only 203 per year among the 94 federal district courts. The fact that twenty three districts had two or fewer cases during this time span, including six districts without a single case, raises at least two important questions. Are corporations not committing offenses or are prosecutors reluctant to pursue corporate crime cases? If Black’s theory holds true, a plausible explanation may be that prosecutors are reluctant to try offenders with greater organizational status (corporations) and more interested in pursuing offenders with less organizational status (individuals). In assessing the characteristics of the offenders sentenced, a glaring pattern emerges. The vast majority of corporate offenders fined are small businesses. Nearly 95 percent of the organizations sentenced were small closely-held corporations and 80 percent employed less than 100 workers. This is consistent with corporate crime research that asserts the most punitive sanctions are meted out against the smallest, most peripheral offenders (Sutherland, 1949, Clinard & Yeager, 1980; Shover, Clelland, & Lynxwiler, 1986; Yeager, 1991; Goff, 1993). It therefore appears that the only corporate criminals are small organizations and larger

businesses are model citizens that refrain from criminal behavior. Using Black's theoretical framework, however, a more realistic explanation or possibility is that corporate offenders with less integrational and organizational status are more vulnerable to the law in terms of likelihood of prosecution. In addition, the economic status of corporate offenders could be a determining factor in the decision to prosecute or not. Thus, Black's theory could be useful in determining if discretionary decisions to prosecute corporate crime cases vary by the statuses of corporate offenders. By the time a case reaches the sentencing phase the degree of variation among offenders is almost non-existent and consequently the amount of variation in legal outcomes is minimal as well.

At the federal level, Pontell, Calavita, and Tillman (1994) analyzed responses in legal outcomes to the savings and loans scandals of the 1980s and found prosecutors were reluctant to pursue white-collar and corporate crime cases. In part, the complex nature of financial cases and attempting to uncover convoluted business transactions and schemes makes the investigation process laborious and time-consuming. In addition, federal prosecutors typically have high caseloads and other offenses that garner greater priority in comparison to fraud cases. Moreover, if corporate crime cases reach the trial stage, prosecutors confront difficulties in terms of presenting elaborate crimes in laymen terms to both juries and judges. Accordingly, the intricate nature of these crimes impedes the probabilities of conviction because such cases are difficult to fully investigate and comprehend.

In one of the most comprehensive studies of prosecutorial discretion, Benson and Cullen (1998) examined what factors affect state prosecutor's decisions to pursue corporate crime cases. Overall, they found that state prosecutors display considerable trepidation in initiating the legal process against corporate offenders. Indeed, they identified at least five common considerations

that ultimately hinder or restrict prosecutors' desire to commence criminal litigation, including a lack of available resources, criminal justice priorities, legal constraints, and political and economic considerations. Many prosecutors are reluctant to devote scarce resources toward corporate crime cases because they require a considerable amount of investigation and preparation. Corporations also have adroit attorneys who can delay the legal process through the filing of motions or through attempts to limit prosecutorial access to critical information. In other situations, prosecutors noted that street offenses such as drug and violent cases receive greater priority or attention in comparison to corporate crimes. With regards to legal constraints, prosecutors mentioned that it is difficult to transfer or apply traditional individual-level statutes or laws toward corporations. Also, because of the structural complexity of large corporations it is difficult to pinpoint liability, establish probable cause, or criminal intent against corporations. Furthermore, Benson and Cullen found that prosecutors generally succumb to partisan and economic pressures primarily because they occupy politically appointed or elected positions. Since corporations play an important role in the political and economic arenas (principally through campaign contributions and vital jobs or resources to the surrounding communities) prosecutors may be reluctant to pursue cases against certain corporate offenders. Undoubtedly, their careers are tied to the cases they do and do not pursue. In the wake of the controversial firing of seven federal prosecutors who purportedly failed to aggressively pursue cases against Democratic interests this seems like a stark reality (Johnston, Lipton, and Zeleny, 2007). As such, this dissertation may have been better served if it focused on the political characteristics of prosecutors as a measure of district cultural climate instead of judges. Instead of inquiring if districts with a greater number of Republican appointed judges impose less law, a more relevant question would have been to what degree do Republican prosecutors impose less law or have

lower rates of corporate prosecutions compared to Democratic prosecutors. Since it is customary for presidents to appoint all federal prosecutors, an appropriate test would require a comparison of corporation prosecutions during Republican and Democratic presidencies.

Overall, it appears prosecutors are highly influenced by the social statuses of corporate offenders. Prosecutors seem more likely to pursue cases against smaller, financially poor corporations because it is easier to identify the offender(s), gather evidence, establish intent or liability, ensure convictions, and ultimately is a better use of their resources and time (Benson & Cullen, 1998; Pontell, Calavita, & Tillman, 1994; Piquero & Davis, 2004). By contrast, larger corporations with greater financial resources complicate the legal process by making prosecution too time-consuming or costly. In the context of Black's theory, future research could examine how the economic, integrational, cultural, organizational, and normative (respectability) statuses of corporate offenders and districts impacts the behavior of law or the quantity of prosecutions directed against corporations.

APPENDIX A
NUMBER OF CASES PER FEDERAL DISTRICT (2001-2004)

Federal district	Cases	Federal district	Cases	Federal district	Cases
Alabama North	5	Kansas	1	Ohio North	25
Alabama Middle	1	Kentucky East	5	Ohio South	17
Alabama South	1	Kentucky West	3	Oklahoma North	3
Alaska	2	Louisiana East	27	Oklahoma East	0
Arizona	3	Louisiana Middle	10	Oklahoma West	1
Arkansas East	5	Louisiana West	8	Oregon	7
Arkansas West	2	Maine	6	Pennsylvania East	27
California North	30	Maryland	11	Pennsylvania Middle	7
California South	14	Massachusetts	7	Pennsylvania West	4
California East	8	Michigan East	24	Rhode Island	4
California Central	41	Michigan West	7	South Carolina	11
Colorado	3	Minnesota	9	South Dakota	2
Connecticut	13	Mississippi North	0	Tennessee East	9
Delaware	4	Mississippi South	3	Tennessee Middle	2
District of Columbia	11	Missouri East	14	Tennessee West	1
Florida North	2	Missouri West	7	Texas North	24
Florida Middle	42	Montana	3	Texas South	17
Florida South	44	Nebraska	3	Texas East	7
Georgia North	16	Nevada	3	Texas West	8
Georgia Middle	3	New Hampshire	3	Utah	3
Georgia South	0	New Jersey	15	Vermont	7
Hawaii	0	New Mexico	1	Virginia East	23
Idaho	4	New York North	9	Virginia West	10
Illinois North	12	New York South	38	Washington East	1
Illinois Central	2	New York East	25	Washington West	13
Illinois South	10	New York West	7	West Virginia North	0
Indiana North	6	North Carolina East	13	West Virginia South	8
Indiana South	6	North Carolina Middle	2	Wisconsin East	2
Iowa North	2	North Carolina West	3	Wisconsin West	5
Iowa South	4	North Dakota	2	Wyoming	0
				Total	813

APPENDIX B
GRAPHS OF SLOPE RELATIONSHIPS

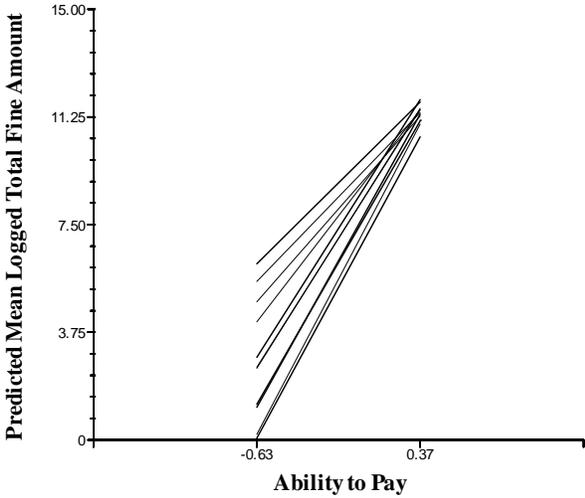


Figure B-1. Predicted slopes of ability to pay and logged total fine amount in a sample of districts

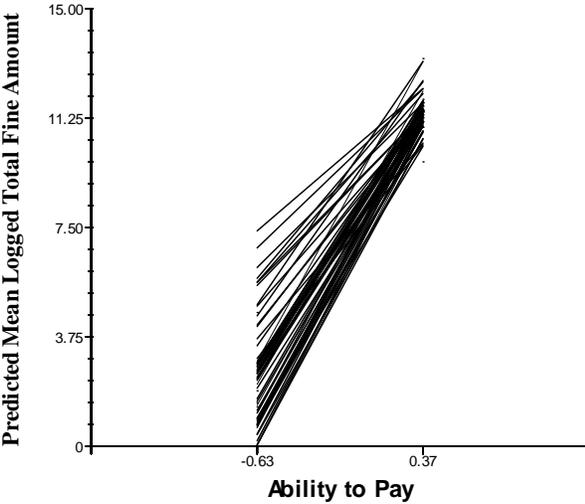


Figure B-2. Predicted slopes of ability to pay and logged total fine amount in all districts

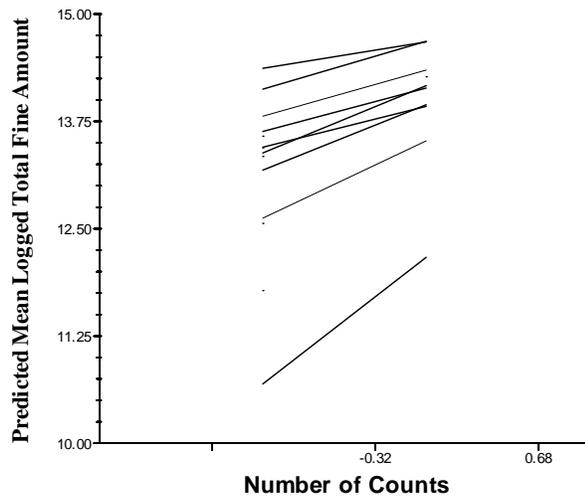


Figure B-3. Predicted slopes of number of counts and logged total fine amount in a sample of districts

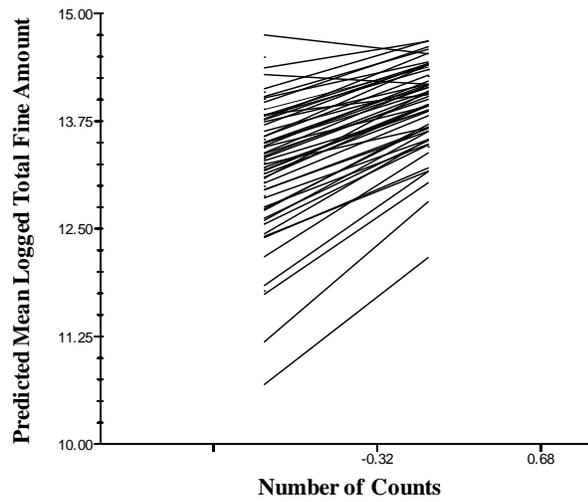


Figure B-4. Predicted slopes of number of counts and logged total fine amount in all districts

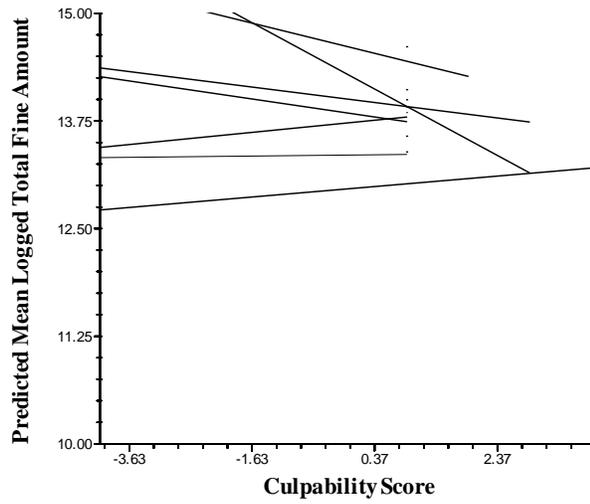


Figure B-5. Predicted slopes of number of counts and logged total fine amount in a sample of districts

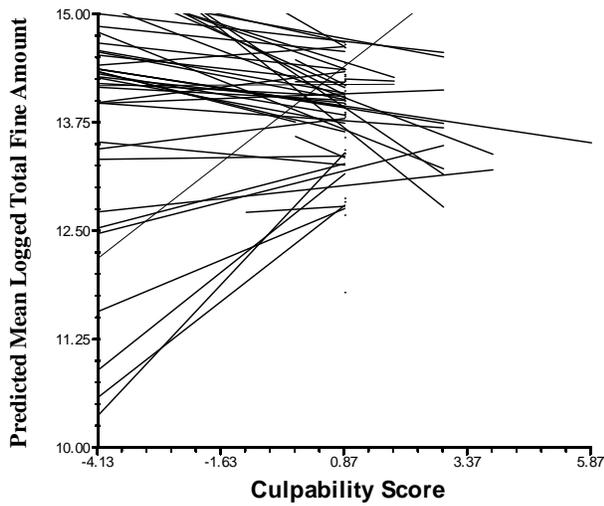


Figure B-6. Predicted slopes of number of counts and logged total fine amount in all districts

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BIOGRAPHICAL SKETCH

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