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Examining the Processes of Social Construction on Decision-making in Domestic Violence Probation Review Hearings

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EXAMINING THE PROCESSES OF SOCIAL CONSTRUCTION ON DECISION-MAKING IN DOMESTIC VIOLENCE PROBATION REVIEW HEARINGS

by

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ABSTRACT

EXAMINING THE PROCESSES OF SOCIAL CONSTRUCTION
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In domestic violence courts, judges and other court actors are often trained on one particular model of understanding domestic violence: the Duluth model of violence as power and control. There are, however, different theories and discourses about the causes and nature of domestic violence. Further, specialized domestic violence courts, which have become more prevalent since the 1990s, employ a problem-solving approach to domestic violence, focusing on offender accountability, rehabilitation, and victim safety. Whether these courts reduce violence and increase safety is less clear. Further, limited research exists on how offenders are processed through these courts, including post-sentencing decision-making. Given the high level of discretion afforded to judges at this stage of court processing, an empirical investigation of whether there is disparity across offender social location is warranted. Prior research on court processing has typically examined disparity across gender, race/ethnicity, age, and family status through employing quantitative analysis of existing agency data or secondary datasets. A smaller body of literature has qualitatively examined the processes of decision-making, interaction styles, and processing of offenders, yet it cannot speak to large-scale patterns of disparity. The purpose of this dissertation is to bridge the two approaches of examining case processing by observing probation review hearings for domestic violence cases. A population census of all hearings during an eight-month period involving some level of non-compliance was

sampled. Qualitative analyses revealed that court actors commonly drew on responsibility, therapeutic beneficence, and mental health discourses regarding compliance issues, while different discourses on domestic violence were used to frame probationers' actions. Probation agents and judges tended to command more power in influencing the social construction of probationers' progress, and often drew upon raced, gendered, and classed assumptions related to responsibility and mental health. Quantitative analyses revealed that social location influenced sanctioning in mixed ways, with gender influencing the initial sanctioning decision, race/ethnicity influencing the length of jail sanction, and family status affecting sanctioning differently depending on the initial decision and length of jail stay. Implications regarding the use of mixed methods, and developing a theoretical framework for understanding decision-making in problem-solving courts are discussed.

This dissertation is dedicated to my grandfather, Dale C. Price.

May your memory be a blessing.

It is also dedicated to my grandmother, Mary E. Romain,

who has been an inspiration to me.

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LIST OF ABBREVIATIONS

Batterers Intervention Programming	BIP
Urinalysis	UA
Probation Officer (Agent)	PO
Defense Attorney	DA
Probationer	D
Judge	J
Relative Increase in Variance	RVI
Fraction of Missing Information	FMI
Variance Inflation Factor	VIF
Alcohol and Other Drug Abuse	AODA
Odds Ratio	OR
Bayesian Information Criteria	BIC
Akaike Information Criteria	AIC
Co-Dependents Alcoholic's Anonymous	COAA
Social Security Income (Disability)	SSI
Wisconsin Circuit Court Access Program	CCAP

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צדק צדק תרדף.

CHAPTER 1: PROBLEM STATEMENT

Background of the Problem

Research on domestic violence has suggested several typologies of violence between victims and offenders. The most commonly cited form of domestic violence in popular culture and practitioner circles is the Duluth model of violence as power and control (Domestic Abuse Intervention Programs, 2011). Johnson and Ferraro (2000), however, note that not all violence within intimate relationships is marked by men predominately exerting dominance and control over a female partner. Indeed, they note that common couple violence is much more prevalent, and is marked by mutual combat over daily stressors for couples with limited coping skills (see also Johnson, 1995; 2005b; Johnson & Leone, 2005). This contrasts the Duluth model's description of domestic violence as men exercising domination and intimidation over a female partner.

Although there are competing theoretical views of domestic violence, the criminal justice system has been largely influenced by the Duluth model. Further, given the historical non-intervention practices by police and courts, changes in criminal justice policy during the 1980s and 1990s led to a re-definition of the State's role in relation to violence within intimate relationships. Domestic violence courts and specialized prosecution units have emerged under the problem solving court movement, attempting to re-frame how these cases are processed through the system, while holding offenders accountable for their actions (Worrall, 2008). Common in these specialized courts are batterers intervention programs (BIP) which attempt to rehabilitate offenders by informing them of the power and control dynamics in unhealthy relationships. Thus, the dominant framework of domestic violence as power and control influences the processing of offenders in these domestic violence courts.

Some scholars have examined program effectiveness of specialized courts at reducing recidivism and quickly processing offenders (e.g. Davis, Smith & Taylor, 2003), yet investigations into the role of defendant characteristics influencing case processing has been less studied (e.g. Kingsnorth & MacIntosh, 2007). Moreover, the extant literature on domestic violence case processing most often examines prosecutorial decision-making (e.g. Henning & Feder, 2005; Kingsnorth & MacIntosh, 2007; Romain & Freiburger, 2015), and is typically atheoretical (e.g. Dawson & Dinovitzer, 2001; Henning & Feder, 2005; Kingsnorth, Sutherland & MacIntosh, 2002; Messing, 2014). The few studies that have examined theories of case processing have commonly used existing data from agencies to examine the influence of extra-legal variables on various decision-making points (e.g. Kingsnorth & MacIntosh, 2007; Romain & Freiburger, 2013; 2015).

Similarly, the existing literature on case processing has often employed quantitative analyses of information from databases or agency records to examine the influence of defendant characteristics on case processing. This literature often draws on theories rooted in social psychology of the role of attributions of crime and perceptions related to gender and race stereotypes (Baumer, 2013; Bushway & Forst, 2013; Mears, 1998). Although these theories were often developed through mixed methods research, such as qualitative interviews to supplement quantitative findings (e.g. Daly, 1987a; 1987b; Steffensmeier, Kramer & Streifel, 1993; Steffensmeier, Ulmer & Kramer, 1998), they have been commonly tested by examining the extent to which defendant gender, age, race, or family status significantly influence decision-making after legally-relevant factors (i.e. prior record, severity of offense) are controlled. Few studies have explicitly tested existing theories, often by using creative coding of case files (e.g.

Bridges & Steen, 1998) or through mock juries (e.g. Herzog & Oreg, 2008). Current approaches are thus unable to definitively state the processes that produce disparity.

Qualitative research, by contrast, has examined the processes of decision-making in various court events. Several scholars have examined the power dynamics inherent in case processing that limit defendants' voices (e.g. Conley & O'Barr, 2005; Feeley, 1979; Heumann, 1977). Others have examined the discourses that are used in legal settings to transform disputes (e.g. Merry, 1990). Several studies have examined the processes of social construction of disputes, including the subjective nature of fact creation, manipulation, and deployment in the processing of defendants (Feeley, 1979). This, combined with research in linguistics on the forms of talk utilized by judges and police in interaction with victims or defendants has found that disputes are transformed from non-legal accounts into legal complaints (Conley & O'Barr, 2005; Thornborrow, 2002). This research, however, is often dated from the 1970s and 1980s, and as such may not extend to case processing today.

Statement of the Problem

The extant literature has examined case processing from two related viewpoints: quantitative studies testing attributions and qualitative studies examining discourses used in social construction of defendants. There is a gap in the literature, however, in fully testing the processes of decision-making that produces disparity. Ulmer (2012) stated that existing quantitative studies cannot fully test the hypotheses of attribution or focal concerns that they utilize in explaining disparity. He further stated that researcher should utilize "new, updated understandings of whether and how race, ethnicity, gender, social class, age, and other extralegal factors influence the assessment of focal concerns, through attributions, availability or representativeness heuristics, or other cognitive processes, and whether and how these are shaped

by local and larger cultural contexts" (Ulmer, 2012, p. 33; see also Mears, 1998). Further, he contended that qualitative or mixed methods designs are more suitable for examining the processes of decision-making. Given that decision-making is often conducted through interaction among court actors (Ulmer, 1997), new methods that directly study this interaction are needed to fully understand how defendant characteristics and facts of a case become implicated in decision-making by judges, prosecutors, and probation officers. Failure to develop new, mixed methods, approaches to studying court processing will lead to a continued reliance on existing theories and a poor understanding of the process of decision-making (Mears, 1998).

Purpose of the Study

This dissertation addressed the gap in the literature by employing a mixed methods design that utilized observations of probation review hearings to collect data on how defendants are socially constructed during probation review hearings. This dissertation examined the process of decision-making sociologically, rather than from a psychological perspective. Qualitative and quantitative approaches in the prior literature examine different, yet related facets of decision-making. Taken separately, these approaches speak to two related aspects of examining case processing: the process of decision-making and the outcome of decisions. Further, given Feeley's (1979) concern about the malleability and manipulation of facts, examination of the language utilized by court actors when talking about, and socially constructing defendants, is needed. Observation of hearings is a necessary research method to capture this construction, and data collected from hearings can be used in quantitative analysis of the framing of defendants.

Additionally, this dissertation incorporated intersectionality, symbolic interactionism, and discourse as a cohesive framework for examining the decision-making processes in probation

review hearings. According to symbolic interactionism, social structure and inequality is reproduced at the meso-level of day-to-day interactions, including court processing involving multiple court actors and defendants (Giddens, 1984; Ulmer, 1997). Court actors make meaning of symbols exchanged in interactions through cognitive maps, which reference to competing discourses, or ways of viewing the world, which are imbued with power dynamics (Foucault, 1980; Snow, 2001). Finally, intersectionality is a framework for examining the ways in which interlocking systems of oppression are reproduced in routine case processing, both through examining quantitative patterns of disparity across social locations and the language and discourse used by court actors.

Importance of the Study

Much of the prior literature in courts has examined sentencing as the dominant focal point for determining whether disparity exists across race and gender, in particular. Yet several scholars have noted that focusing on the "end point" of case processing may provide a limited view of how disparity is produced at various stages, from initial charging decisions though sentencing and even post-sentencing decisions. Further, given the increased judicial oversight at the stage of sentencing and subsequent limits on discretion, it is possible that discretion has moved elsewhere in the court process (Miethe, 1987; Ulmer, 2012). While there has been increased attention to pretrial release (e.g. Ball & Bostaph, 2009), decisions made post-sentencing have not been examined as extensively. Judges are tasked at this stage of the court process with determining whether to incarcerate, or sanction, a probationer who has not been complying with the conditions of probation. Not all probationers who are at such hearings are revoked, or sanctioned. Understanding the processes that factor into this decision can be helpful

for understanding the role of discretion and potential disparity across the length of the court process.

The jurisdiction under study provided one form of offender accountability in the form of probation review hearings after two months, which allowed for sanctioning of offenders with jail time for failure to comply with the terms of probation. Few studies have examined decision-making after sentencing, and none have examined probation review hearings (Albonetti & Hepburn, 1997; Lin, Grattet & Petersilia, 2010; Rodriguez & Webb, 2007). This study can expand our body of knowledge on factors associated with decision-making post-sentencing, and in particular within specialized domestic violence courts. Further, if disparity is found in the processing and outcomes in these probation review hearings, the findings of this dissertation can help inform the Milwaukee County Circuit Courts of potential inequality in order to develop awareness, training, and tools toward equal treatment of offenders.

This study addressed the gap in the literature by systematically studying the processes of decision-making. Given that Ulmer (2012) has argued for more qualitative, ethnographic work on courts, this study has filled the need in the literature. Ethnographies of courts are relatively dated, with most occurring prior to the 1990s. Linguistics and critical legal studies disciplines have also conducted qualitative research, which examine the nature of speech in organizational interactions. By drawing insights their treatment of talk as text, notably discourse used in interactions to construct events and people in shaping outcomes, this dissertation addressed the mechanisms of decision-making that most quantitative studies to date have been unable to directly test. Employing both qualitative and quantitative methods demonstrated how defendant social location became implicated in the social construction of defendants and how this construction influenced decision-making. This dissertation was the first to examine whether

discourses and defendant social locations (specifically gender, race/ethnicity, family status, and employment) influenced the processing of defendants and the imposition of sanctions in probation review hearings. Secondly, this dissertation was the first to employ a mixed methods approach to court processing that quantified observational data. Given that defendants and facts of a case are socially constructed via interactions among court actors, utilization of observations of hearings is a useful strategy to examine decision-making in the future (Feeley, 1979; Ulmer, 1997).

Ulmer (2012) noted that one understudied area of courts is problem-solving courts, including the unique forms of sanctions that these courts employ. Given the growing trend in the courts and prosecution offices toward diversion and alternative treatment in these problem-solving courts, the study of decision-making in these courts is warranted. Previous shifts in court policy reflected a concern with disparity, judicial leniency, and discretion, resulting in sentencing guidelines and mandatory minimums (Tonry, 1996). Yet with the development and expansion of these problem-solving courts, a return toward rehabilitation philosophies and individualized treatment has occurred (Winick, 2002). Whether there is disparity in these courts, which are more apt to draw on individual circumstances and social understandings of the causes of crime, has been less studied.

Research Design

This dissertation utilized a mixed methods research design to examine processes of decision-making and outcomes for defendants during probation review hearings in a specialized domestic violence court in Milwaukee County. Specifically, a Qual + quan parallel design was used, in which both qualitative and quantitative components were collected at the same time, with a greater emphasis on the qualitative component (Creswell & Plano Clark, 2011).

Qualitative observations of probation review hearings for eight months were supplemented by a quantitative analysis of information gleaned from hearings as well as police reports. The population of cases with review hearings during this period were analyzed quantitatively, with a critical discourse analysis of 100 hearings. These hearings were selected for information-rich cases, as well as purposively sampled to have variability in defendant gender and family background.

Given the importance that Ulmer (2012) placed on the process of decision-making by court actors, participant observation of review hearings enabled me to capture how defendants are socially constructed through interactions between judges, probation officers, prosecutors and defendants. Cases were transcribed in the court room in order to conduct a critical discourse analysis of probation review hearings. This analysis consisted of examining the role of institutional power in the ability to speak, what was referenced as an authority during the hearing, discursive repertoires (i.e. rhetoric), and dispositions toward defendant progress. This analysis demonstrated which discourses became implicated when speaking about probationers' progress during hearings, as well as how probationers' actions were framed.

Quantitative analysis of the outcomes of probation review hearings measured whether a defendant was sanctioned, either with jail time or a verbal admonishment. Data was collected from police reports regarding victim and defendant injury, the location of the offense, and the presence of children in the home. Data from the Wisconsin Circuit Court Access Program (CCAP) included conditions of probation, case processing factors, prior record, probationer age, gender, and race/ethnicity, and the seriousness of the offense. Finally, qualitative data were quantized regarding the outcome of the hearing, whether any conditions of probation were not

adhered to, and the framing of these violations. The influence of probationer characteristics, singly and in combination on probation review sanctions was assessed.

Scope of the Study

This dissertation examines probation review hearings to determine what discourses are used in socially constructing defendants through interaction of court actors. The outcome of interest is whether sanctions were invoked for probationers for failing to comply with probation requirements, therefore, only cases in which a probationer failed to comply with at least one condition of probation were included. Additionally, only cases resulting in conviction and a sentence of probation were included in observations and analysis. Probation revocation hearings and sentencing hearings were not included, therefore, the power dynamics and discourses utilized in probation review hearings may not generalize to other decision points which may involve different court actors and concerns. Indeed, other aspects of case processing may involve greater limits on discretion, such as bail and sentencing guidelines, particularly if they are mandatory guidelines (Mears, 1987; Ulmer, 1997). The results of this study may extend to decision points that provide judges with greater discretion in applying justice (i.e. revocation hearings) or those that are more informal and occur out of public purview (i.e. charging and plea negotiations).

The site of this study involved only one Midwest County. Other counties may have different arrangements for evaluation in domestic violence courts, or may have differing risks and needs for domestic violence offenders. Further, this dissertation examined only one type of court processing – namely, domestic violence courts. Concerns brought up in this problem solving court may reflect concerns more generally in problem solving courts that involve therapeutic jurisprudence as a framework for understanding causes of offending and place an

emphasis on offender accountability (Winick, 2002). Other concerns may be more unique to domestic violence courts – such as the diverging discourses on domestic violence that court actors draw upon when talking about women and men offenders.

Definition of Terms

Domestic violence in this jurisdiction refers to criminal cases of physical violence, intimidation, public order offenses, or property damage between current or former intimate partners, as well as cases involving family violence. Thus, this jurisdiction utilizes a broader conceptualization of domestic violence (i.e. family violence), which have differing concerns and theories of violence than violence between intimates. Scholarship in victimology and public health has moved toward using the term 'intimate partner violence,' however court actors typically continue to use the term 'domestic violence' in naming policies and intervention programs.

Discourse has multiple meanings across disciples, including linguistic syntax and structure of sentences, and language framing particular views of the world. This dissertation relies on Foucault's (1980) conception of discourse, in which language becomes a vehicle for power and knowledge of individuals and represents worldviews, or ways of speaking of a particular phenomenon.

CHAPTER 2: LITERATURE REVIEW

Theoretical Framework

Intersectionality and Social Location.

Although much of the literature on court processing utilizes structural explanations of disparity, there is much to learn from interdisciplinary approaches to studying courts and law. Indeed, other disciplinary traditions (e.g. sociology) approach the study of sentencing through frameworks of social worlds of informal social communities (e.g. Ulmer,1997; Nardulli, Eisenstein & Flemming, 1988) through which law is enacted, negotiated, and interpreted through patterned social interactions of actors across the organizational field. Other disciplines (i.e. law & society, anthropology) approach the study of court processing through a Foucualdian discourse framework, examining the process through which power is constituted in defining events, disputes, and individuals (e.g. Merry, 1990; Conley & O'Barr, 2005). Further, intersectionality has emerged as a prominent paradigm in feminist scholarship, challenging identity politics and acts of categorization as tools of oppression, which serve to perpetuate inequality of groups marked as marginalized in multiple ways (McCall, 2005, p. 1771; Burgess-Proctor, 2006). This dissertation seeks to integrate three theoretical frameworks in examining the process of how defendants are socially constructed in probation review hearings: intersectionality, symbolic interactionism, and discourse.

Intersectionality examines the influence of interlocking systems of oppression that marginalize individuals. Inherent in this framework is the acknowledgement that examining one system of oppression fails to take into account how social locations operate in conjunction (McCall, 2005; Burgess-Proctor, 2006). Indeed, Crenshaw (1991) views the "experiences of women of color [as] frequently the product of intersecting patterns of racism and sexism,"

compelling scholars to examine ways that structural inequalities interact in reproducing inequality (p. 1243). Two of McCall's (2005) methodological approaches to intersectionality are particularly useful for examining case processing. Anti-categorical approaches, utilizing methods of discourse analysis, problematize categories (e.g. social identities) as natural, neutral indicators of identity, interrogating how "language [...] creates categorical reality rather than the other way around," (McCall, 2005, p. 1777). Inter-categorical approaches, utilizing quantitative methods, compare outcomes (e.g. charging) across combinations of social positions (e.g. Black, middle-class female to all other race/class/gender combinations) in large datasets. Quantitative methods serve as particularly useful for investigating how prosecutorial and judicial decisions are gendered, raced, classed, and familied, yet these approaches would benefit from discourse analysis in contextualizing the ways in which identities (e.g. defendant, 'good' mother) are socially constructed in court processing as social interaction.

Symbolic Interactionism in Court Processing.

Symbolic interactionism is a useful theoretical framework to capture the processes of categorization inherent in the anti-categorical approach of intersectionality. Inherent in Blumer's (1969) conceptualization is that individuals attribute meaning to others and one's own actions, which are informed by previous interactions. Interpretation of others' actions and demeanor involves transformation of a common set of symbols into meaning or social construction. Fundamental in interactionism is the notion of ongoing, or patterned activity in which interactions and assessments from others inform one's toolkit of meanings (Blunter, 1994). Similarly, West and Zimmerman's (1987) 'doing gender' draws on the interactive process in which gender is enacted by individuals due to anticipated assessments from others. Goffman (1981) delineates two processes of categorizing individuals within social interactions: individual

(i.e. who someone is uniquely, such as tone of voice, name) and categorical (i.e. social locations). This is not unlike Ridgeways' (2011) conception of framing as a mechanism for attributing meaning to others on the basis of primary frames of gender, age, race, and class. Further, Goffman (1981) states that all parties enter into new interactions with prior references, including frameworks of cultural assumptions and cognitive relations.

Others draw on Mead's (1962) conception of the presentation of self and self-indication as an important device for framing and social construction. Role taking involves the interactive process of assessing others' roles in an interaction, which further guides interpretation of actions of others (Blunter, 1994). Snow (2001) argues that identities and roles exist only through interaction, in which roles are interactively determined based on the social order. Symbolic interactionism has been previously utilized in organizational studies of court processing (e.g. Eisenstein & Jacob, 1977; Nardulli, Eisenstein & Fleming, 1988) in which informal norms, going rates, and patterned practices are developed through ritualized interaction among court actors (see also Sudnow, 1965). Further, symbolization occurs through the routinization of interactions and embedding of meaning from both organizational contexts and cultural scripts (Snow, 2001; Goffman, 1974; Giddens, 1984). In this sense, "joint social acts are produced by actors who define situations, interpret the communications and actions of other participants, and processes," which are rooted in institutional roles, power relations among institutional roles, and socio-cultural contexts (Ulmer, 2012, p. 7; see also Blunter, 1994; Feeley, 1979).

Law as Discursive Power.

Several similarities exist between symbolic interactionist approaches and Foucauldian discourse in understanding social construction. Snow (2001) argues that discourse analysis and symbolic interactionism are compatible theoretical frameworks, rooted in social constructionism.

Negotiation, persuasion, joint construction, and contestation of meaning occur in interaction and thus affects decision-making in institutional settings (Goffman, 1981; Feeley, 1979). Further, "people-processing encounters, encounters in which the 'impression' subjects make during the interaction affects their life chances" (Goffman, 1981, p. 8). Goffman's cultural references are concordant with Foucault's discourse that renders individuals knowable, which in turn reproduces social structure at the site of interaction.[1]

Discourse analysis is concerned with examinations of power (i.e. to speak, to judge, to construct) and knowledge (i.e. truth, facts), which are mutually reinforcing (Foucault, 1980). Further, institutions "have their own regime of truth, […], the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable tone to distinguish true and false statements" (p. 131). Inherent in legal settings, asymmetry in the distribution of turn-taking is rooted in institutional roles that preference primary court actors' ability to speak, ask questions, and manage topics (Thornborrow, 2002; Conley & O'Barr, 2005). In institutional settings, this leads to uneven access to institutional discourses (i.e. legal discourse) for laypersons, particularly the working-class (Conley & O'Barr, 2005; Merry, 1990; van Dijk, 1996; Wodak, 1980; Worrall, 1990). This influences which discourses are more apt to be taken up in transformation of disputes and construction of offenses and offenders (Fairclough, 1993; Merry, 1990; Thornborrow, 2002; Worrall, 1990). Thus defendants are often muted in interactions, silenced, yet can reify or contest dominant discourses in construction of themselves.[2]

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[1] The terms cognitive maps and memory traces all relate to a structural normative framework that individuals draw upon in interpreting symbols as events, individuals and social cues. Discourse refers to the ways of talking about phenomenon, which individuals draw on from cognitive maps. Futher Goffman's master statuses are synonymous with Ridgeway's primary frames and Giddens' signification and legitimation.

[2] Several scholars have utilized conversation analysis and critical discourse ananalysis to bridge the two conceptions of discourse rooted in linguistic and sociological perspectives (e.g. Thornborrow, 2002; Conley & O'Barr, 2005; Maynard, 1984).

Discourse, as conceived by Foucault, is the language used to interpret the world, rooted in a particular cultural and historical context (1980, see also Dittmer, 2010; Waitt, 2010; van Dijk, 1996). Language becomes the vehicle for constructing the world through interaction, in which the ideologies behind representations are often taken-for-granted by actors (Althusser, 1971; Dittmer, 2010; Waitt, 2010). Ideologies become enacted in discursive practices to signify the individuals, events, and identities (Fairclough, 1993). Some take a structuralist approach to discourse, citing Gramsci's hegemony as a discursive practice of dominance of political and social ideologies (e.g. Gramsci, 1992; Peet, 2002). In this sense, discourse is a form of class domination in which the powerless are influenced to accept cultural arrangements because the worldviews they draw on legitimize this domination. Others, however, rely on a Foucauldian conception of discourse, in which multiple truths and ideologies compete for dominance and power (e.g. Fairclough, 1993; Laclau & Mouffe, 1985; see Dittmer, 2010 for discussion). In this understanding, there are multiple possible worldviews related to a concept such as domestic violence, each with their own norms and assumptions on the causes of violence and influence of gender. Competing discourses (i.e. gender symmetry and violence as common couple violence) challenge dominant discourses (i.e. violence against women and violence as patriarchal control). Further, discourses are utilized to make meaning of situations and events. Worrall (1990) notes, "a dispute does not exist in isolation from the contexts in which it is expressed. Rather, the account of a dispute that is given at any point in time *is* the dispute" (p. 94). Thus disputes, hearings, and trials become the organizational cite for construction of "representations of the world, social relations between people, and people's social and personal identities" (van Dijk, 1997, p. 273; see also Fairclough, 1993; Mumby & Clair, 1997).

Discourse used by judges in courtroom talk, manifest through language utilized during hearings, socially constructs defendants and victims as gendered, raced, and familied (Smart, 1995). Additional institutional and social discourses may also be implicated in constructing defendants and their actions (i.e. legal, moral, therapeutic; neoliberal; Worrall, 1990; Merry, 1990; Travers, 2007). Applying discourse analysis to observations of hearings challenges the taken-for-granted assumptions that legal categories (e.g. victim, defendant, blameworthy) are natural, and clearly defined, demonstrating the fluidity in which defendants are socially constructed as dangerous or amendable to reform based upon negotiation between judges, prosecutors, defense attorneys, and even defendants themselves (Worall, 1990; Frohmann & Mertz, 1994; Feeley, 1979). Macro-level structures (e.g. patriarchy, race, class, law) operate within organizational contexts, structuring the cognitive scripts available in socially reconstructing criminal events and determining whether someone is 'dangerous' (Frohmann & Mertz, 1994; Giddens, 1984; Smart, 1995). The purpose of discourse analysis is to problematize taken-for-granted discourses as natural, deconstruct power relations, and identify practices of discourse that silence some speakers and alternative discourses (Worrall, 1990; van Dijk, 1997).

An Integrated, Interactional Approach to Court Processing.

As Ulmer (1997) has stated, disparities in court processing "become manifest, and are reproduced, at the meso level of institutional organization and the micro level of face-to-face interaction and the courses of people's lives." (p. 188). Thus, although quantitative studies on case processing can be useful at uncovering patterns across a broad array of cases, as well as examining the ways in which social locations may interact in producing disparity, qualitative methods examining the social interaction of court actors are needed to illuminate the processes in socially constructing defendants (see also Ulmer, 2012; McCall, 2005). Further, by employing

discourse analysis to the study of court interactions, the processes of re-inscribing structural inequality becomes manifest. As Ulmer (1997) notes, "what people define as real becomes real in its consequences," (p. 187) perpetuating inequality in outcomes of decisions by court actors.

Some scholars have suggested there are structuralist and constructionist ontologies of 'doing' intersectionality (e.g. Prins, 2006; see also Barnum & Zajicek, 2008), as well as symbolic interactionism (see Snow, 2001 for discussion), which differentially emphasize power flows, agency, and the nature/use of social categories.[3] Yet structured action and structuration approaches to the study of interaction (e.g. Giddens, 1984; Messerschmidt, 1993; Ridgeway, 2011) are useful for examining how structures of inequality operate within social interactions in communities and courtrooms, which re-produce structural inequality via construction of social identities as 'dangerous' and 'blameworthy'. Given that intersectionality views structures of oppression inherent in categorization as "dynamic, historically grounded, [and] socially constructed" (Burgess-Proctor, 2006, p. 37), research on court processing necessitates a study of the interactional processes and discourses utilized in socially constructing defendants.

This dissertation seeks to incorporate symbolic interactionism, discourse, and intersectionality in understanding the processing of defendants during probation review hearings. That there are multiple actors present at these hearings, and each may offer or learn information regarding the status of probationers. Therefore, viewing hearings as symbolic interaction between attorneys, probation officers, judges, and probationers is a useful concept for understanding the process of decision-making. Further, actors may draw on discourses of

[3] Prins (2006) develops the dichotomy of structuralist and constructionist in delineating her argument for use of constructionist approaches. This unnecessarily creates limits on possibilities of blending structure and construction, further reifying categories that anti-categorical approaches seek to problematize (see also Urbanek 2009). Giddens (1984) critiques functionalism for ignoring agency in construction, while simultaneously critiquing symbolic interactionists for placing too much emphasis on construction to the detriment of structure (see also Snow, 2001; Turner, 1986).

domestic violence, gender, family status, and punishment in discussing probationers' behaviors while on probation. The social construction of offenders and their behavior (i.e. missing sessions, failed UA test) based upon these discourses will influence the outcomes of these hearings, and may reaffirm or challenge dominant discourses and power arrangements. Finally, defendants' social locations are viewed not as single factors (i.e. gender or race), but are viewed as the intersections of these locations (i.e. being a minority male). The meaning attributed to these social locations may also contribute to decision-making when reviewing the progress of offenders on probation.

Domestic Violence Prevalence, Risk Factors, and Theories

Violence within intimate relationships received growing attention by policy makers and criminal justice officials in the last forty years as a significant social problem. The term domestic violence has historically been used to refer to intimate relationships marked by violence, coercion, and control. More recent scholarship has shifted toward the more preferred term intimate partner violence, citing the broadness of the original term, which may include any violence within a domicile – such as familial and roommates (e.g. Rennison & Welchans, 2000). Courts, however, still utilize the term domestic violence in the naming of specialized courts and policy responses. Therefore, the term domestic violence will be used throughout.

Common discourses of domestic violence often invoke images of physical abuse, particularly of the extreme kind, involving bruises, broken bones, or even death. Research from National Violence Against Women Survey (NVAWS) in the 1990s demonstrated that approximately one-quarter of women have experienced physical or sexual assault in their lifetime, with over one and one-half million women assaulted in the previous year (Tjaden & Thoennes, 2000, p. iii). Further, they noted that women experience greater injuries than men

from abusive incidents. More recent research from the National Intimate Partner and Sexual Violence Survey (NISVS) found that over 35 percent of women experienced physical or sexual assault or stalking by an intimate partner in their lifetime, with almost six percent assaulted in the past year (Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011).

Additional forms of abuse may occur within an intimate relationship, and with greater frequency. Indeed, Black and colleagues (2011) defined domestic violence as acts including sexual violence (e.g. sexual battery, sexual coercion), stalking, and psychological abuse (e.g. insults, intimidating, isolation, destroying property or harming pets), in addition to physical abuse. Others include financial abuse (e.g. denial of access to household money, refusal to allow employment), and the use of children (e.g. threatening to harm or take the children) under a general framework of domestic abuse and power and control (Domestic Abuse Intervention Programs, 2011). This broader framework recognized that not all domestic violence involves physical abuse, and may begin as coercion and psychological intimidation (see also Payne & Gainey, 2009).

Domestic violence is typically defined as violence against women, in which a male perpetrator inflicts abuse against their female partner (e.g. Dekeseredy & Dragiewicz, 2007). National victimization surveys, when examining more severe forms of physical violence, found a greater gender gap in victimization rates. Data from NVAWS indicated that over seven percent of men experienced a rape or physical assault in their lifetime, compared to 25 percent of women (Tjaden & Thoennes, 2000). Yet more recently, data from NISVS demonstrated a much smaller gender gap, with 25 percent of men experiencing sexual victimization, physical assault, or stalking in their lifetime compared to 35 percent of women (Black et al., 2011). One possible explanation for these disparate findings is the operationalization of abuse – as NISVS included

broader forms of abuse (i.e. all sexual violence, psychological aggression, stalking) and included behavioral questions as opposed to legally-framed questions.

Other scholars have argued that gender symmetry exists in domestic violence perpetration. Utilizing the Conflict Tactics Scale (CTS) developed by Straus (1979), they often found either no gender differences in perpetration of domestic violence, or that women are more likely to engage in violence against male partners (e.g. Dutton, 2006; Dutton, Hamel & Aaronson, 2010; Straus, 2007; Straus, 2011). Similarly, data from NISVS found a smaller gender gap in more minor forms of violence (e.g. 30 percent of women vs. 26 percent of men experiencing slaps or pushing), with an almost equal proportion of men and women experiencing psychological abuse (e.g. 48.4 percent of women vs. 48.8 percent of men) across the lifetime (Black et al., 2011, p. 44-46). Feminist scholars have criticized gender symmetry, noting that the CTS ignored the context of violence, which is often gendered, as well as history of violence within a relationship (Burgess-Proctor, 2006; Chesney-Lind, 2006; Dasgupta, 2002; Deskeredy & Dragiewicz; 2007; Johnson, 2005a).

Some scholars have criticized defining domestic violence as violence against women, as it perpetuates heteronormative patriarchal assumptions, which silence same-sex victims and male victims (Dasgupta, 2002; Gilbert, 2002; Walters, 2011). The women's movement of the 1970s drew public attention to domestic violence, which led to the domination of patriarchal and power and control frameworks in explaining domestic violence as a crime against women (Bouffard, Wright, Muftic & Bouffard, 2008; Johnson & Ferraro, 2000; Lauritsen & Heimer, 2008; Sigler, 1989; Tjaden & Thoennes, 2000). Similarly, there is a general assumption that domestic violence is cyclical, often escalating in severity until a victim leaves or is fatally harmed (see Johnson, 2010 for discussion). Research has demonstrated that most victims of violence have

experienced multiple incidences, with an average of 6.9 incidences (Tjaden & Thoennes, 2000). Walker's (1977) cycle of violence posited three stages of violence escalation, from a tension-building stage of increased vigilance by the victim, to acute battering episode marked by physical violence, and honeymoon phase involving excuses, rationalizations, and promises to not repeat. Further, she noted the cycle often increases in severity as the relationship continues.

The most commonly utilized explanations of domestic violence are patriarchy and power and control. Patriarchal theory is rooted in historical and socio-cultural contexts of gender inequality that limited women's access to the public sphere. Feminist criminologists argued that the gender system of male dominance extends into the home, normalizing male dominance over spouses and violence as a form of control (Chesney-Lind, 2006; Edwards, 1989; Johnson & Ferraro, 2000). Dasgupta (2002) noted that historically men were allowed legal and normative status as masters of the home, which led to battering "receiving approval if [it] reinforce[d] masculine gender dominance" (p. 1368). Research on patriarchal theory has produced mixed support at the individual-level, with some studies finding that couples who have more traditional gender views are more likely to experience domestic violence (Benson, Wooldredge, Thistlethwaite & Fox, 2004; DeMaris, Benson, Fox, Hill & Van Wyk, 2003). Yet others have found that beliefs in gender roles do not predict domestic abuse, or reduce the likelihood of abuse (Rosenbaum, 1986; see also Felson, 2002, for discussion).

The Duluth model of domestic violence has become the predominant framework for explaining domestic violence. This model was developed in 1984 by community advocates who had worked with victims of domestic violence in Duluth, Minnesota. Their model of violence incorporates patriarchal explanations of domestic violence, while viewing violence as a form of power and control over a female victim. The Duluth model utilizes the power and control wheel

to define domestic violence, including physical violence, financial abuse, sexual abuse, intimidation and isolation as perpetuating total domination of a male perpetrator over a female partner (Domestic Abuse Intervention Programs, 2011). One segment of the wheel also includes male privilege, such as treating one's partner as subservient and using gender roles to define household duties. Their mission statement is to "actively work to change social conditions that support men's use of tactics of power and control over women" (Domestic Abuse Intervention Programs, 2011, para. 2). The Duluth model has become an educational tool for judges, prosecutors, and law enforcement (Klein, 2009), and the power and control wheel has become one of the mostly commonly used curriculum for batterers' intervention programming (BIP) (Domestic Abuse Intervention Programs, 2011). Offenders are required to learn about the power and control wheel and to model behaviors that create equality in relationships in BIP (Pence & Paymar, 1993).

More recent research, however, has noted that qualitative differences exist across domestic violence situations. Johnson (1995a) first conceptualized two distinct types of domestic violence: patriarchal (intimate) terrorism, which is more indicative of the domineering control and increasing violence found in power and control theory, and common (situational) couple violence. The later form of domestic violence is marked by intermittent violent episodes by either partner, often involving mutual conflict over daily stressors (i.e. finances, childcare; see also Johnson & Leone, 2005). Violence in this context occurs in situations where parties have limited coping skills for stress and conflict. Further development of his typology included violent resistance, marked by self-defense or help-seeking by a partner who has been the victim of prolonged abuse, and mutual violent control (Johnson & Ferraro, 2000; Johnson, 2006; see also Johnston & Campbell, 1993). Mutual violent control is thought to be rare, involving both

partners vying for dominance of the other by using coercive strategies. In much of the research on this typology, men are found to be the dominant perpetrators of intimate terrorism, women to be the perpetrators of violent resistance, and situational couple violence to be most common in society, contrary to the dominant paradigm of domestic violence as intimate terrorism (Johnson, 2005b; 2006; 2010).

Other scholars have argued that the dominant discourse of defining women's intimate violence as self-defense or violent resistance reflects a heteronormative, classed, and raced understanding of gender normative behavior. Indeed, Gilbert (2002), noted that women who have used violence are often framed as "neither sane, nor as women" (p. 1282; see also Smart, 1995). This labeling process is particularly salient for those women who fail to conform to White, middle-class notions of femininity, who are therefore labeled as dangerous, and as "batterers" (i.e. lesbians, women of color, and working-class women; Dasgupta, 2002, p. 1380; Kruttschnitt & Carbone-Lopez, 2006). Further, others have noted that women employ a variety of motivations when engaging in violence, including a response to stress, enacting an image of street 'toughness,' jealousy, and revenge for perceived disrespect (Dasgupta, 2002; Kruttschnitt & Carbone-Lopez, 2006). Thus, some scholars have suggested that motivations for violence may be more similar than previously thought, and that continued preferencing of self-defense explanations silences women's agency (Kruttschnitt & Carbone-Lopez, 2006; c.f. Chesney-Lind, 2006; Dekeseredy & Schwartz, 2003).

Although scholars were quick to note that domestic violence cuts across social, racial, and class lines, several risk factors have been found for both domestic violence and intimate partner homicide. Research has demonstrated that perpetrator unemployment increased the likelihood of violence (Benson et al., 2003; DeMaris et al., 2003; Tjaden & Thoennes, 2000).

Further, the victim/offender relationship has been found to predict violence, with cohabitation (Rand & Rennison, 2004; Tjaden & Thonnes, 2000), and separation (Catalano, 2012) having higher prevalence rates than non-cohabiting dating partners. Additionally, substance abuse by perpetrators has been found to increase the risk of violence (DeMaris et al., 2003; Raghavan, Mennerich, Sexton & James, 2006; Tjaden & Thoennes, 2000). Finally, childhood exposure to violence (i.e. child abuse or witnessing abuse) increases the risk of being in an abusive relationship as an adult (Bouffard et al., 2008; Widom, 1989). This body of research has influenced criminal justice policy, with the development of risk and lethality assessments for law enforcement responders (Maryland Network Against Domestic violence, n.d.). These risk factors are also likely concerns for judges when sentencing probationers, given the nature of domestic violence courts and problem-solving courts.

Historical Context of Domestic Violence Policy

Historically and cross-culturally there have been a pervasive passivity in framing spousal violence as a social and legal problem. During the Mosaic and Roman period, women were traditionally seen as an extension of their husbands, treated as property with no legal standing (Dobash & Dobash, 1979; Edwards, 1989). The seventeenth and eighteenth centuries reflected a general cultural permissiveness of domestic violence. French law restricted beatings to minor punches and kicks that "leave no lasting traces," while other restrictions allowed beating with objects that were no wider than the width of a thumb (Epstein, 1999, p. 9; Kelly, 2003). Culturally, however, the view of women as an extension of men continued. Discipline by fathers and husbands was viewed as acceptable informal social control of one's family (Edwards, 1989; Kelly, 2003). Indeed, nineteenth century American appellate court cases permitted the use of violence if wives 'misbehaved' and stated "it is better to […] shut out the public gaze" except in

most severe cases, reflecting discourses of patriarchy, female irresponsibility, and privacy within the home (Epstein, 1999, p. 9). By the end of the nineteenth century most of the country had adopted laws that prohibited spousal abuse (Felson, 2002). Concomitant with this legal prohibition, however, was a pervasive cultural norm of familial privacy, which was reflected in the processing of domestic violence cases by police, judges, and prosecutors.

This trend of police and prosecutor under-enforcement of statutory laws prohibiting spousal abuse continued until the 1970s. In fact, it was common for police departments to have departmental guidelines stating that police were to act as mediators, with arrests avoided except in cases escalating to potential lethality. Further, many jurisdictions relied on officers to witness the assault in order to make an arrest. Organizational policies and informal norms favoring mediation in domestic calls were common across police departments. These reflected widely held beliefs that victims would no longer cooperate and cases would be dismissed (Dobash & Dobash, 1979; Epstein, 1999; MacLeod, 1983).

Domestic violence emerged as a distinct social problem under second wave feminism, the victims' rights movement, and the concomitant conservative shift in criminal justice policy of the 1970s and 1980s. Some scholars cited the pendulum shift from the more liberal and defendant-oriented policies of the Warren Courts towards a more conservative, crime control oriented policy as a catalyst for the victims' rights movement (Garland, 2001; Parenti, 1999; Rapping, 1999). Indeed, the development the Law Enforcement and the Administration of Justice in 1966 led to the creation of the National Crime Survey to more adequately measure crime and by default victimizations (Parenti, 1999). Further, initial victims' rights grassroots movements sought to recognize the equal protection of women from domestic violence and sexual assault, a cause also championed by second wave feminists seeking to break down social norms tolerant of

abuse and legal barriers to provide adequate protection (Daly, 1994; Miccio, 2005; Spohn & Horney, 1992). Prior to the 1970s, laws did not recognize domestic violence victims' safety needs, particularly for married victims. Many states did not include intimate partners under protective orders, and sexual assault statutes excluded marital relationships (Daly, 1994; Epstein, 1999; Spohn & Horney, 1992). Further, women victims of domestic violence began filing lawsuits against police departments for failing to receive adequate protection from abusers (Daly, 1994; Lutze & Symons, 2005). Initial grassroots efforts included battered women's shelters and brought public attention to the practice of non-intervention by the criminal justice system (Daigle, 2013; Micio, 2005).

The development of protection orders and victims' rights coincided with increased police and prosecutorial policies aimed at curbing discretion, increasing the deterrent value, and neoconservative discourses of offenders as dangerous and predatory. The victim-centered approach to domestic violence policy sought to place victims' rights and concerns at the forefront of domestic violence policy. An additional catalyst into the transformation of domestic violence policy was the conservative movement's policies toward increased sentences and crime control. Proponents of these policies cited media depictions of rising crime rates and predatory crime as a growing national concern (Garland, 2001). Further, Miccio (2005) argued that conservative lobbyists and organizations transformed the battered women's movement toward a zero-tolerance policy that had unintended consequences for victims (see also Epstein, 1999; Lutze & Symons, 2003; Spohn & Horney, 1992). Victims' rights advocates had fought for equal treatment of domestic violence and sexual assault crimes, as well as empowerment for victims. In reality the reforms, however, have distorted these goals into policies that focus primarily on mandatory arrest of offenders (Miccio, 2005).

Police and Prosecution Responses.

In response to the battered women's movement, policies were developed to curb discretion and decrease future violence. The first jurisdiction to adopt mandatory arrest was Minneapolis in 1982. By requiring officers to arrest the primary aggressor in domestic calls for service, it was believed that discretion and attitudes toward non-enforcement would be diminished. Further, offenders would be deterred from committing future violence because of the social costs associated with arrest (Sherman & Berk, 1984). The first evaluation of mandatory arrest was promising, as arrested offenders were less likely to recidivate after six months, compared to mediation and party-separation groups (Sherman & Berk, 1984). It was not until the 1990s that replication studies were published, which offered limited support for the deterrent effects of mandatory arrest (Felson, Ackerman & Gallagher, 2005; Pate & Hamilton, 1992).

In addition to mandatory arrest policies, prosecution offices began to develop 'no-drop' policies to further curb case attrition. Felson and Ackerman (2001) noted that historically prosecution of domestic violence was much lower than non-intimate assault and battery cases. MacLeod (1983) found that prosecutors often cited the belief that victims would eventually want charges dropped, which led to domestic violence cases being viewed as a waste of time and court resources (see also Epstein, 1999; Ford, 1991). No-drop prosecution policies were developed during the 1980s in several jurisdictions as a response to the 'problem' of victims 'not cooperating,' which often led to high case attrition (Lerman, 1981). No-drop policies reframe the charging process to reflect the state as the wronged party, thus removing input from the

victims on the decision to press charges (Corsilles, 1994; Epstein, 1999).[4] By the 1990s most jurisdictions had some form of no-drop policy (Corsilles, 1994; Davis et al., 2003). Evaluations of mandatory prosecution policies have demonstrated mixed effectiveness, as well as sharp criticism. Organizations that adopted no-drop policies still experienced a high rate of dismissals (Davis et al., 2003; Davis et al., 2008; Garner, 2005; Peterson & Dixon, 2005; c.f. Guzik, 2007). Critics noted that these policies also disempower victims and may place them at greater risk of future violence (see Daly, 1994; Dixon, 2008; Ford, 1991; Ford & Regoli 1993; Lutze & Symons, 2003). Similarly, activists and scholars highlighted the safety concerns of victims and potential increased threat of victimization due to victims being unable to drop charges (Buzawa & Buzawa, 2008; Corsilles, 1994; Humphries, 2002; c.f. Felson, Ackerman & Gallagher, 2005).

Finally, racial and class disparities may be exacerbated by mandatory policies. Several studies have found that affluent and White women are less likely to invoke formal help (Belknap & Potter, 2005; Humphries, 2002), while others noted that Hispanic women are least likely to rely on police and social services (Ingram, 2007; Lipsky, Caetano, Field & Larkin, 2006). This leads to an over-representation of minority offenders having contact with police, resulting in arrest (Humphries, 2002; Felson, Ackerman & Gallagher, 2005). Richie (1996) noted that mandatory arrest policies enacted to protect women have differentially affected Black women, as they are more likely to be arrested for domestic violence under mandatory arrest policies. In this sense, minority women may have limited options for self-help and may be penalized for engaging in violence as self-help. Finally, several studies have found that mandatory arrest actually increases future violence for minority low-income men (Sherman, Schmidt, Rogan &

[4] Corsilles (1994) highlighted two types of policies. 'Hard' policies place strict limitations on the ability for victims to drop charges, at times issuing warrants for failure to appear. 'Soft' policies require sessions with prosecutors or victim advocates to ensure no victim intimidation is involved, and often require documentation.

Gartin, 1991; Sherman et al., 1992). This places some social locations of victims in a precarious position, as enforcement may exacerbate violence for victims in marginalized social locations.

Specialized Domestic Violence Courts

More recent criminal justice approaches to domestic violence have turned from mandatory policies toward a victim-centered, collaborative approach. Worrall (2008) suggested that the growth in problem solving strategies has re-designed the nature of prosecution, expanding the goals of prosecutors' offices. Problem-solving courts reject traditional court processing in favor of diversion for low-risk offenders and rehabilitation through identifying individual risks and needs (Gover, MacDonald & Alpert, 2003; Nimmer, 1974). These courts rely on a therapeutic jurisprudence framework for viewing crime and offending, which emphasizes the social, psychological, and medical causes of crime (Simon, 1995; Winick, 2002). Therapeutic jurisprudence also involves acknowledgement of how the court process may psychologically affect victims and defendants, with the goal of helping adjustment rather than hindering it (Winick, 2013). Thus therapeutic discourses on criminality become enmeshed in designing treatment programs for offenders within these courts. Further, offender accountability is a key goal of these courts, with increased judicial oversight and active involvement to ensure compliance with treatment plans (Winick, 2002). The origins of problem-solving courts can be traced to the advent of the juvenile justice system, in which reformers sought to socialize the law toward a rehabilitative approach to treating delinquency (Willrich, 2003; Winick, 2002). Incarnations of problem-solving courts have emerged as drug courts, veterans' courts, mental health courts, and domestic violence courts (Goldkamp, 1999; Winick, 2002).

Although practitioners and many scholars view problem-solving courts as favorable alternatives for low-risk offenders, a small body of critical scholarship has arisen. Dixon (2008)

argued that specialized courts reflect a blending of penal welfare and conservative policies, which in effect monitor and control marginalized populations (see also Travers, 2007 on neoliberal and neoconservative discourses in juvenile programming). Similarly, Quirouette, Hannah-Moffat and Maurutto (2015) found that drug courts re-inscribed homelessness as a risk factor, while simultaneously engaging in net widening to pathologize individuals. Willrich (2003) found historical evidence of early problem-solving courts in Progressive Era Chicago. Early court reformers blended social work discourses of criminality and the moral purity movement with legal discourses, which re-inscribed class differences in the processing of offenders. The law became a tool for a system of information collection, surveillance, and punishment (see also Diffee, 2005).

The goals of domestic violence courts are to ensure offender accountability, reduce recidivism, and increase victim safety, while placing emphasis on victims' needs and empowerment (Ostrom, 2003; Simon, 1995; Worrall, 2008). Consistent with therapeutic jurisprudence, all court actors receive educational training on the causes and treatment of domestic violence (Gover, Brank & MacDonald, 2007; Simon, 1995). Judges and prosecutors partner with other agencies in the system and community organizations (e.g. probation and parole, victim advocates, pretrial services) in processing domestic violence cases. Victim safety, needs, explanations of the case process, and referrals are offered through partnerships with victim advocates and non-profit family violence agencies (Cissner, Labrolia & Rempel, 2013; Hartley, 2003). Accountability and individualized treatment planning is accomplished through collaboration between court actors, community staff, probation officers, and pretrial staff (Cook, Burton, Robinson & Vallely, 2004). As of 2000, over 300 court systems have transitioned to specialized domestic violence courts (Gover, MacDonald & Alpert, 2003).

Kruttschnitt and Carbone-Lopez (2006) noted that courts draw upon common, cultural scripts of domestic violence and gendered constructions of violence motivations when processing cases. Epstein (1999) remarked that judicial education on the causes of domestic violence has dramatically increased following the Violence Against Women Act of 1994. The predominance of the Duluth model within specialized domestic violence courts led to a conception that all violence is rooted in power and control, which escalates over time and is a form of intimate terrorism. Indeed, in conversations with judges and prosecutors in Milwaukee County, I have observed numerous referencing of the power and control wheel, and violence as control and intimidation (Peter Tempelis, personal communication; Judge Mel Flanagan, personal communication). Prosecutors and police interviewed by Miller (2001) commonly explained women's violence in terms of self-defense, often referring to suspects as victims, rather than offenders (see Downs, 1996). Kelly and Johnson (2008) argued that treating all domestic violence as intimate terrorism not only homogenizes disparate groups of offenders but has long-term consequences for offenders and their victims. Given these dominant discourses, the potential for differential treatment across social locations of defendants should be investigated.

Another key discourse in specialized domestic violence courts is offender accountability. One of the key components to offender accountability in domestic violence courts is completion of a BIP, which all defendants are ordered to complete during community supervision. These programs are based upon cognitive-behavioral therapy to treat offenders, including challenging thinking errors through group discussions and role-playing pro-social behaviors (Healey, Smith & O'Sullivan, 1998). Often, BIP incorporates the Duluth model of power and control as a central tenet of psychoeducation (Babcock, Green & Robie, 2004). Educational awareness of the

influence of patriarchy on individual's attitudes and behaviors within domestic relationships is a curriculum component (Babcock, Green & Robie, 2004; Healey, Smith & O'Sullivan, 1998; Pence & Paymar, 1993). Although there are national recommendations for BIP programming standards, there is considerable variability in the length of programming (i.e. 12 -52 weeks) and content covered (i.e. more CBT or Duluth education). Often, however, BIP programming follows the curriculum of Pence and Paymar (1993) and offers 26 week sessions heavily drawing on the Duluth model's conception of patriarchy as a form of male power and control over women (e.g. Gover, Brank & MacDonald, 2007; Gover, MacDonald & Alpert, 2003).

Evaluations of BIP have generally found favorable support for reduction in recidivism (Bennett, Stoops, Call & Flett, 2007; Buttell & Carney, 2006; Coulter & VandeWeerd, 2009). Most commonly cited is Gandolf's (2000) four-city study of court-ordered BIP, which found that after two and one-half years, those who completed BIP were less likely to recidivate than those who dropped out. Feder and Wilson (2005), however, in their meta-analysis of quasi-experimental studies found that studies comparing completers to dropouts had large effect sizes favoring BIP, yet those comparing no-treatment groups to BIP groups had a small effect size favoring no-treatment (see also Davis, Taylor & Maxwell, 2000; Dunford, 2000; Feder & Forde, 2000).

The oversight of offenders completing BIP while on probation varies across jurisdictions. One rural South Carolina court required weekly progress reports from probation officers and BIP staff to judges. This allowed for a timely assessment of offenders' behaviors while holding them accountable for their actions (see Cissner, Labrolia & Rempel, 2013). Gover and colleagues (2003) found that recidivism was very low in this specialized court, as defendants were told that if they failed to attend treatment programs, their suspended sentence would be revoked. A

similar model of assessment of offender progress is utilized in the jurisdiction studied in this dissertation. While several studies have examined the effectiveness of BIP and specialized courts, none have addressed judicial decision-making in these courts during review hearings.

Empirical Investigations in Domestic Violence Courts.

There has been a substantial portion of literature surrounding case-processing in general, however, there is a dearth of studies to date that have examined factors associated with domestic violence case processing. Much of the existing literature has examined one decision-point, which is most often the initial charging decision (Davis, Smith & Taylor, 2003; Worrall, Ross & McCord, 2006) or the decision to fully prosecute a case (Dawson & Dinovitzer, 2001; Hirschel & Hutchison, 2001; Messing, 2014). Fewer studies have examined later decision-points such as sentencing (Belknap, Graham, Hartman, Lippen, Allen & Sutherland, 2000), and fewer still have examined decision-making across multiple stages. Kingsnorth and MacIntosh (2007) examined whether defendant factors influenced the initial charging decision, charge reduction, and the decision to fully prosecute in Sacramento. Kingsnorth and colleagues (2001) further examined charging, pretrial release, and sentencing decisions. These studies cast a wider examination into the role of disparity in outcomes for defendants, as earlier disparity may compound over time.

To date, there have been few studies that have examined decision-making after sentencing, such as during probation revocation or review hearings.[5] Kingsnorth and colleagues (2002) noted that prosecutors have additional sanctions at their disposal, particularly for those who are under criminal justice supervision. They argued that prosecutors may decide to not file charges for new offenses, but may instead file revocation petitions for offenders under supervision, as this may utilize fewer resources and time. In a quantitative analysis of factors

[5] Kingsnorth et al. (2002) examined prosecutor's decision to petition for a revocation compared to filing new charges. They did not look at judge's decision-making in revocation hearings.

predicting case filings, they found that prior arrests for domestic violence more strongly influenced the decision to file violation of probation (VOP) proceedings, rather than criminal filings. In these cases, defendants were more likely to be under supervision; the amount of evidence necessary for VOP proceedings was not as strong as required in a criminal proceeding. Evidence demonstrating proof beyond a reasonable doubt is needed during a criminal trial; however, a lower level of proof (i.e. preponderance of the evidence) is required at revocation hearings. They noted that prosecutors find violation of probation hearings an attractive alternative disposition that disposes of cases quickly while allowing increased attention to more serious, felony cases. Although defendant gender did not influence disposition of the initial charging decision, males were more likely to receive VOP as a disposition rather than have their cases fully prosecuted. Further, separated defendants were much less likely to receive a VOP or full prosecution post-intake, compared to unmarried cohabiting defendants. The authors suggested that prosecutors draw on cultural scripts of gender and family status when processing defendants. This research draws attention to the inter-organizational collaboration in criminal processing and the role of offender supervision (Kingsnorth et al., 2002).

Theoretical Tests in Domestic Violence Courts.

Given that domestic violence is typically perceived as a gendered crime against women, female perpetrators may be treated differently by court actors. Further, gendered concerns of prior victimization and family responsibilities may differentially impact defendants processed through the domestic violence courts (see Steffensmeier & Demuth, 2006). The existing literature, however, is mainly atheorietical and simply examines factors associated with decision-making. The few studies that do employ theory to explain decision-making utilize existing theories in court processing, such as chivalry and focal concerns. To date, no research has

examined the influence of Black's behavior of law or racial threat theories in explaining decision-making in domestic violence cases.

Kingsnorth and colleagues (2001) utilized sexual stratification theory, which states that attributions of threat and dangerousness are raced based on the social location of the victim and offender, such that minority offenders are perceived to be more threatening when they commit offenses against White victims. They tested whether racial dyads influenced decision-making across multiple stages of domestic violence case processing in Sacramento County. No differences were found in the decision to charge, charge as a felony, or fully prosecute a case across intra- and inter-racial dyads. Further, sentencing length was not significantly influenced by the racial dyad of the victim and defendant. Thus, there was no support for sexual stratification theory; however, they examined the racial dyads of offenders and victim. Defendant race may influence case processing irrespective of victim race (i.e. additively, not interactively), and further may interact with other relevant case factors in case processing decisions.

Kingsnorth and MacIntosh (2007) examined the influence of selective chivalry and familial paternalism on multiple stages of case processing in Sacramento County. Selective chivalry states that minority females will be treated more harshly than their White counterparts, while familial paternalism suggests that defendants with families will be given leniency (Kingsnorth & MacIntosh, 2007; see also Crew, 1991). They found limited support for selective chivalry, as Black females were more likely to be charged with a felony compared to Black males and White males and females. At all other decision points, there was no support for selective chivalry. Further, they found that employed females were more likely to have their cases dismissed and reduced in severity than males and unemployed females. Although this

finding is contrary to familial paternalism, the authors suggested this could be due to concerns that women are financial providers within the family unit, in addition to caregivers, and as such would experience hardship in caring for family as cases continued.

Romain and Freiburger (2015) also examined the influence of selective chivalry and evil woman hypothesis on charge reduction in the same sample of domestic violence cases. Evil woman states that women who commit crimes deemed masculine, such as violent crimes or crimes against men, are more likely to be judged similar to men, as they have violated gender norms. They found mixed support for this theory, dependent on operationalization of charge reduction. Female-on-female cases of domestic violence were the least likely to be dismissed, compared to male-on-female and female-on male cases, which suggested that there is limited support for the evil woman hypothesis. They argued that female-on-male violence may be viewed as self-defense, which is consistent with Johnson and Ferraro's (2000) violent resistance. In addition, Black females were less likely to have their charges amended from violent to non-violent upon conviction, although this was not found for other forms of charge reduction. The authors stated that there is limited support for selective chivalry, in that racial cultural scripts may influence how Black women's engagement in IPV is labeled as more 'bad' than White women's.

Romain and Freiburger (2013) utilized the focal concerns perspective to examine the influence of defendant race, gender, and age on the decision to fully prosecute in a sample of Midwestern domestic violence cases. The focal concerns perspective states that young Black males are more likely to be perceived as dangerous and blameworthy by court actors, which translates into harsher court outcomes (Steffensmeier, Ulmer & Kramer, 1998). Romain and Freiburger (2013) found that men, Black, and Hispanic defendants were more likely to have their

cases dismissed, contrary to the theory. Split models that separately examined defendant race failed to find support for the interactive effects of gender, race, and age that the focal concerns perspective would expect. Further, there were no significant interactions between defendant race and legal factors such as prior record.

The Role of Defendant Characteristics in Domestic Violence Courts.

Much of the atheoretical quantitative investigations of domestic violence court processing have examined whether offender characteristics influence decision-making. This body of literature has found that gender yields the most consistent effects, with mixed findings for race/ethnicity and relationship status. Defendant gender, when females have been included in samples, has yielded a significant influence on domestic violence case processing. Several studies have examined only male defendants, noting that too few females are found in samples (Schmidt & Steury, 1989; Kingsnorth et al., 2001; Messing, 2014; Wooldredge & Thistlethwaite, 2004). Yet when females have been included in samples, they have consistently been found to receive more lenient treatment. In particular, females are less likely to be charged (Dawson & Dinovitzer, 2001; Henning & Feder, 2005; Worrall, Ross & McCord, 2006), charged with a felony (Kingsnorth & MacIntish, 2007), given bail (Henning & Feder, 2005), more likely to receive a charge reduction (Kingsnorth & MacIntosh, 2007), and have their case dismissed (Cramer, 1999; Henning & Feder, 2005). Further, Henning and Feder (2005) found that male defendants serve longer sentences than female defendants (see Kingsnorth, MacIntosh & Sutherland, 2002 for exception). Romain and Freiburger (2013) are the only study that found the opposite influence of defendant gender, with female defendants more likely to have their cases fully prosecuted. Given that domestic violence is often considered a gendered crime against women, it is not surprising that women offenders are less common and may be treated differently

than male offenders. The research to date, however, has not directly tested whether gendered cultural scripts of domestic violence influences judges and prosecutors.

The influence of race on case-processing has varied, both across studies and dependent on the stage of processing. Most studies found similar rates of dismissal for Black and White defendants (Hirschel & Hitchison, 2001; Kingsnorth et al., 2001; 2002; Worrall, Smith & McCord, 2006). Yet Cramer (1999) found that Whites were more likely than Black defendants to be convicted (see also Romain & Freiburger, 2013). Henning and Feder (2005) found that the influence of defendant race varies according to decision-point. Black defendants were more likely to be charged than Whites, yet racial differences were not found for bail, conviction, or incarceration decisions. Similarly, Wooldredge and Thistlethwaite (2004) found diverging racial influences depending on stage of processing, with Black male defendants less likely to be charged and fully prosecuted, yet receiving longer terms of incarceration. Few studies have included Hispanics to examine differences across ethnicity. Kingsnorth and MacIntosh (2007) found that Hispanic males were less likely to have their cases dismissed (see also Messing, 2014). Romain & Freiburger (2013; 2015), however, found that Hispanic defendants were more likely to have their cases dismissed. These findings suggest that further research is needed to examine whether disparity exists as well as the mechanisms that may produce this.

Although several studies have examined the relationship between victim and offender on case processing (e.g. Henning & Feder, 2005; Worrall, Ross & McCord, 2006), no studies have examined the influence of family status – namely whether or not the defendant has minor children in the home. Given the concern of intergenerational transmission of violence vis-à-vis modeling and social learning of violence in the home (Widom, 1989), court staff may be concerned with the family status of the offender as a practical concern for preventing future

violence. Further, when determining whether to sentence an offender to incarceration or sanction for a short period in jail, the practical constraint of caring and providing for children may be a concern for judges.

Legally-Relevant Factors in Domestic Violence Courts.

Most often, legally-relevant case factors are the strongest predictors of domestic violence decision-making, as judges have concerns regarding the severity of the offense and the prior behavior of the offender. Cases that are considered more serious tend to be processed more fully. Cases with more severe victim injuries were more likely to be charged, charged as a felony and fully prosecuted (Henning & Feder, 2005; Hirschel & Hutchison, 2001; Kingsnorth et al., 2001; Kingsnorth, MacIntosh & Sutherland, 2002; Kingsnorth & MacIntosh, 2007; Messing, 2014; Schmidt & Steury, 1989; Worrall, Ross & McCord, 2006). Additionally, cases charged as felonies have been found to be more likely to be fully prosecuted (Henning & Feder, 2005; Kingsnorth & MacIntosh, 2007; Romain & Freiburger, 2013), yet are more also likely to receive a charge reduction (Romain & Freiburger, 2015). Cases with a greater number of initial charges are more likely to be charged and fully prosecuted (Kingsnorth & MacIntosh, 2007; Romain & Freiburger, 2013). Finally, cases in which the defendant has a restraining order filed against him or her are more likely to be fully prosecuted (Messing, 2014; Romain & Freiburger, 2013) and are less likely to receive a charge reduction (Romain & Freiburger, 2015). Judges and prosecutors may view an order of protection as an indicator of past offending, and may act to protect the victim by continuing the court process.

In summary, the influence of defendant factors on domestic violence case processing has yielded mixed results. Further, there are limited theoretical tests of theories of case processing, which may explain the influence of defendant characteristics on decision-making. Given that

domestic violence is largely viewed as a crime against women, examinations of decision-making should examine whether female defendants are treated differently, as well as whether the power and control theory influences decision-making by prosecutors and judges. Additional theoretical development is needed to disentangle whether, and under what contexts, gender, race/ethnicity, and family status become implicated in domestic violence case processing. Given the results of prior research, it is anticipated that gender will exert direct influences on probation review hearings, with women less likely to be sanctioned. Further, it is anticipated that minorities and minority men in particular will be more likely to be sanctioned. Finally, the interactive influences of gender, family status, and employment status have not yet been examined within the domestic violence court processing literature. This dissertation seeks to add to the literature by examining the processes of decision-making during probation review hearings, a point in decision-making that has not yet received scholarly attention.

Quantitative Research of Court Processing

Much of the courts literature has focused on investigating whether individual and contextual factors influence the processing of criminal defendants. The prominent research question has been whether disparate treatment of offenders exists across social locations (e.g. race/ethnicity, gender, age, county context). This has been examined by employing quantitative analyses to data extracted from case files, or more often, court reporting information systems that list the nature of the offense, prior record, and defendant background characteristics. When defendant characteristics are found to be statistically significant, after legally-relevant variables are controlled for, the results are taken to mean disparity exists (Mears, 1998).

The linkage between significant results and disparity occurs through reliance on theories of decision-making. Early theories of court processing were rooted in conflict theory, which

states that the law is applied unequally to class and racial groups, in society. Turk (1969) argued that conflict, and thus strong reaction by police and courts, is likely to occur when minority or lower class groups are more organized, have gained in power to resist, and a clear history of conflict between those in power and the powerless. Similarly, racial threat theory posits that when communities have a high, or growing, percent of minorities, judges sanction minority defendants more harshly in these jurisdictions because they are seen as threatening to the values and safety of society (Tittle & Curran, 1988).[6] Indeed, Tittle and Curran (1988) found that minority youth were sanctioned more harshly in areas with both a high proportion of minorities and youth (see also Sampson & Laub, 1993; Wang & Mears, 2010). Black's (1976) theory of the behavior of law similarly argued that the amount of formal social control (i.e. law, enforcement, punishment) exerted over an offender depends on the degree of class differences, integration, familiarity, education, whether the offender is a corporation or individual, and whether informal social control has broken down in a community. Taken together, this body of conflict theory would suggest that racial and ethnic minorities, the lower-class urban poor, and those with limited integration in society are more likely to experience harsher treatment by the law (i.e. courts) than wealthier, White individuals connected to their community.

Much of the theories utilized to examine decision-making at the individual-level stem from social psychology of decision-making, suggesting that disparate treatment across social locations is based on stereotypes and attributions of dangerousness and culpability (Bushway & Forst, 2013). Ulmer (2012) suggested that these theories are rooted in symbolic interactionism and labeling theory. Court actors draw on cultural scripts (i.e. schemata) when interpreting a

[6] Wang (2012) found that for non-immigrants, the actual number of undocumented immigrants did not influence people's assessment of whether immigrants commit more crime. Their perceptions of the number of undocumented immigrants, however, directly influenced their assessments of the link between immigrants and crime. This would suggest that people's perceptions, rather than objective measures, of minority and immigrant presence influence perceptions of who is more criminal, dangerous, and a threat to society.

criminal act and an offender's motivations and responsibility. The process of decision-making occurs through negotiation, cooperation, and coordination of multiple court actors during plea negotiations, bail, and sentencing hearings. A brief overview of the most common theories utilized in the courts literature will follow. Given that there are limited studies on domestic violence and none on probation review hearings, this review draws on research in sentencing and case processing more generally.

Chivalry Theory.

One of the earliest theoretical developments in explaining disparity at the individual-level is chivalry theory. Research from the 1970s and early 1980s noted that women were often a minority percentage of offenders convicted and sentenced to prison (Bernstein, Kick, Lueng & Schultz, 1977; Moulds, 1980; Steffensmeier, 1980). Early theorists further argued that most of the court actors were predominately male, and would likely draw upon patriarchal cultural scripts of acceptable behavior for men and women (Moulds, 1980). Gender differences in sentencing were thought to reflect societal images of women as weak, childlike, and irresponsible for their actions, while allowing males to adhere to gender roles of being protectors. Variations of chivalry theory have been extended, such as selective chivalry applying to only White, middle-class women with whom court actors more readily identify, and evil woman/gender typicality suggesting that women who fail to conform to gender normative behavior are punished for being doubly-deviant (Crew, 1991; Farnworth & Teske, 1995).

Most of the research on chivalry theory has tested this assertion of patriarchal benevolence by determining whether defendant gender is statistically significant after control variables have been entered into a statistical equation. This does not test whether judges or other court actors have benevolent sexist views, or whether women offenders are perceived to be

weak, childlike, or in need of protection (see Mears, 1998). A small body of research has begun to examine whether attitudes toward women influence ratings of guilt or sentences. These studies utilized factorial surveys to manipulate case and defendant characteristics to determine whether there is a mediating link between characteristics, perceptions of blame and dangerousness, and outcomes.

This research examined "mock jury" decision-making and asked respondents to rate the seriousness or deserved punishment for a vignette. Herzog and Oreg (2008) found that assessments of offense seriousness for men and women offenders varied by respondents' levels of sexism. Crimes committed by women who engaged in non-traditional crimes were much more likely to be rated as serious for respondents who had high levels of hostile sexism, while crimes committed by women in traditional roles were viewed as much less serious for respondents with high levels of benevolent sexism. Ragatz and Russell (2010), by contrast, found that benevolent sexism mediated the relationship between gender, sexual orientation, and punishment for homicide offenders. Masser and McKimmie (2010) further expanded tests of benevolent sexism on victim characteristics in sexual assaults, and found both adherence to gender-normative roles and victim-normative behaviors mitigated victim blame by respondents who had high levels of benevolent sexism, while women who deviated from these stereotypes were more likely to be blamed. As a whole, this research suggests that research should examine individual attitudes or explanations for sentencing in order to adequately test chivalry theory.

Familial Paternalism and Gendered Dependency.

Other theories of gender disparity suggest different mechanisms through which gender operates in judicial decisions. Daly (1987a; 1987b; 1989) argued that gender differences in sentencing are not due to gender scripts of women as weak, but rather practical concerns of the

role of caregiving for women with dependent children, (see also Steffensmeier, Kramer & Streifel, 1993; Koons-Witt, 2002). Familial paternalism states that gender differences in sentencing are compounded by the influence of being married and having a caregiver role; females married with children receive more favorable pretrial release, case dismissal, and non-punitive sentences (Daly, 1987a; 1987b). Bickle and Peterson (1991) found that Black familied females were less likely to be given probation than White familied females. In fact, Black female caregivers as defendants were given lighter sentences if they were viewed by judges as 'good mothers' - further evidencing how social constructions of motherhood are raced.

More recent research, however, challenges this gendered attribution of parenting roles, and has found that having dependent children, regardless of gender, reduces the likelihood of incarceration (Freiburger, 2010; Pierce & Frieburger, 2011). Further, Freiburger (2010) found that men as single parents received the greatest leniency in sentences, particularly Black men. She attributed this to gendered expectations of parenting and the perceived strain of single parenthood on fathers who typically do not take on this role (see also Daly, 1989). Further, Logue (2011) found that defendants with caregiver roles were less likely to receive downward departures from sentencing guidelines, which she attributed to judges' perceptions of quality parenting at odds with convictions, particularly if they were convicted of a drug crime or were in non-marital households.

Kruttschnitt (1982) suggested that gender and family status differences are due to the amount of informal social control women experience. Her analysis of case files in California demonstrated that women who experienced financial support and lived with their providers were less likely to receive jail or supervised probation sentences than those who were more independent. She triangulated these findings with a content analysis of probation officer files,

and noted that concern for living situation, particularly with family or a husband, was a prominent factor considered in their recommendations.

The early research on familial paternalism and gendered dependency was based on mixed methods research. Quantitative analyses were supplemented with interviews (i.e. Daly, 1987a) and probation officer case notes (i.e. Kruttschnitt, 1982) to give context and meaning to variables that were statistically significant. This is one of the few examples of using complementary methods to address the causal pathway between attributions of responsibility, gendered and raced expectations of family behavior, and sentencing outcomes.

Attribution Theory.

A similar theoretical explanation for gender and racial differences lies in attribution theory. Hawkins (1981) posited that race, gender, and class differences in punishment were the result of individuals' causal attributions of crime. He drew on attribution theorists in psychology, noting that individuals judge others' actions based upon characteristics of the actor, the situation, and the perceiver's background (e.g. Shaver, 1975). Attributions of crime are based on the binary of internal (e.g. personality) versus external (e.g. strain, situational) factors, which are raced, classed, and gendered social constructions of criminality. Albonetti (1991) expanded on this framework, adding the component of "bounded rationality" from organizational theory, stating that judges develop a "patterned response" to the problem of ascertaining defendant's recidivism risk given limited information. Similar to Hawkins (1981), Albonetti (1991) stated that minority, lower class male offenders are perceived to possess personality traits that increase risk of dangerousness and recidivism; perceptions rooted in cultural scripts. The lasting influence of attribution theory has been in the development of the focal concerns perspective.

Early research on attributions was based on surveys of adults' perceptions of internal versus external attributions for behavior (e.g. Hawkins, 1981; see also Sommers & Ellsworth, 2000). Further tests of attribution theory often stated that racial minorities experience disparate treatment because of internal attributions (i.e. personality traits) for crime (e.g. Schlesinger, 2005). Some work within the juvenile justice literature has also found support for attribution theory, in that minority youth are more likely to be detained pre-adjudication (Rodriguez, 2010) and given an out of home placement (Guevara, Herz & Spohn, 2006; 2008). The limitation of these studies is that they do not explicitly test whether different attributions for crime are being constructed for minority youth as compared to White youth; rather, the authors refer to the theoretical framework to make meaning of the quantitative results.

There have been few studies that have more explicitly examined the causal process of attribution theory. Rodriguez, Smith and Zatz (2009) expanded attribution theory by specifying the conditions under which external attributions are more likely to result in pre-adjudication detention and out-of-home placement. They found that when family dysfunction or parental incarceration was mentioned in case files, it increased the likelihood of removal from the home for juveniles. Interviews with probation officers further highlighted that family dysfunction and economic strain were commonly cited as co-occurring for racial minorities, which provided further support for attribution theory. Similarly, Rodriguez (2013) supplemented her quantitative analysis of racial differences in institutionalization with interviews with court actors. These data demonstrated that court actors viewed community disadvantage as more prevalent and a greater concern for minority youth, which resulted in out of home placements. These mixed methods approaches highlight the importance of using qualitative data to examine the processes of decision-making and attribution.

Bridges and Steen (1998) have been one of the few studies that explicitly developed a test of attribution theory in juvenile case processing. Through a content analysis of probation officer reports submitted to judges in juvenile courts, Bridges and Steen found that probation officers typically referenced internal attributes when reporting on Black youth (e.g. dress, attitude, lack of remorse), while reports of White youth mostly included external attributes (e.g. family disruption, delinquent peers). These raced attributions of the causes of delinquency influenced probation officer recommendations, leading to fewer community placements for Black youth because they were seen as more threatening and less amenable to rehabilitation. This study is a prime example of using mixed methods approaches to content analysis, in which the language used by probation officers became quantified to more fully test attribution theory.

Focal Concerns Perspective.

One of the most prominent theoretical integrations of existing frameworks for individual, organizational, and system concerns is the focal concerns perspective. According to Steffensmeier and colleagues (1998), judges are guided by three overarching, focal concerns when processing defendants: how blameworthy the offender is, dangerousness in recidivism, and practical constraints for the system and offender. By drawing on organizational theory (e.g. March & Simon, 1958) and earlier work on inter-organizational constraints (e.g. Dixon, 1995), they argued that external constraints, such as caseload and bed space in jails influence decisions on who to incarcerate. In addition, concerns about breaking up the family unit are seen as a practical constraint for familied defendants (echoing Daly, 1987). Further, like Albonetti (1991), they contended that defendant characteristics compound in producing sentencing disparity. Judges draw on cultural stereotypes of the young, Black male as dangerous and blameworthy, re-inscribing inequality in their decisions. They supported this contention through employing mixed

methods, and analyzed interview data from judges to determine what causal mechanisms produce racial disparities.

Spohn and Sample (2013) built on focal concerns by examining the extent to which stereotypes of dangerous drug offenders (e.g. male, prior record, weapon use, conformity to racial stereotype of drug offense) influenced sentencing outcomes for Black, Hispanic, and White males. They found that Black defendants matching the racial stereotype of dangerous drug offenders were more likely to receive longer sentences, including departure above sentencing guidelines. While this study extends the research on focal concerns by drawing on explicit stereotypes related to drug offending, it does not explicitly test whether judges' attributions of dangerousness or blameworthiness occur for only minority drug offenders. Again, inference from the theoretical framework is used to explain quantitative findings.

Additional nuances to the focal concerns perspective have been suggested by several scholars. Ulmer (2012) has stated that different focal concerns may arise in varying contextual conditions (e.g. political climate, degree of urbanization). Further, Spohn, Beichner and Davis-Frenzel (2000) contended that prosecutors are guided by similar focal concerns, with the addition of convictability as a specific organizational imperative. This would suggest that additional research should examine the stated goals of organizations, how these are translated into concerns during processing, and whether cultural scripts are used in addressing these concerns during case processing.

Methodological Concerns of Theory Testing.

The existing theories of decision-making are rooted in social psychological theories of attribution and stereotypes. Ulmer (2012) noted that current theories in sentencing are not mutually-exclusive and rely on similar assumptions of attribution and blame. This leads to

overlapping assumptions of disparate treatment of males and minorities without distinct mechanisms through which this treatment operates. Further, most of the extant literature tested these theories by using variables for defendant gender, race, age, or family status in a statistical model. This approach to testing theories of attribution does not directly test whether judges or other court actors attribute different causes of crime, degrees of dangerousness, or practical constraints to men and women, or Black and White defendants (Baumer, 2013; Mears, 1998; Ulmer, 2012). It also does not test whether race and gender stereotypes are factors in decision-making, thus there is no direct test of the pathway of attribution in statistical models. Baumer (2013) argued that relying on archival records or court information systems of case dispositions does not directly address biases. He highlighted the work of Rachlinski and colleagues (2009), which found that some judges exhibit racial bias that they are not even aware of and thus creates a path between racial disparity and attitudinal attributions. The few studies which have examined the process of attribution have employed creative quantification of case notes (e.g. Bridges & Steen, 1998), mock juries (e.g. Herzog & Oreg, 2008), or interviews (e.g. Daly, 1987a; 1987b). The use of mixed methods is particularly suitable to examine outcomes as well as the processes of decision-making that generate these outcomes (Lin, 1998).

Extra-Legal Factors and the Importance of Control Variables.

Formal rationality requires legally proscribed criteria to factor into the decision-making process, which ensures fair treatment of offenders and a bureaucratic approach to court processing (Savelsberg, 1992). Given the increased role of formal rationality since the development of sentencing guidelines in many states, it is not surprising that legally-relevant factors exert the greatest influence on sentencing decisions (Engen, Gainey, Cruthfield & Weis, 2003; Tonry, 1996). In particular, offense severity and defendant prior record have been found

to exert the greatest influence on the likelihood of further case processing (Albonetti, 1987; Franklin, 2010; Free, 2002; Freiburger & Hilinski-Rosick, 2013; Nagel & Hagan, 1983; Steffensmeier, Ulmer & Kramer, 1998). Ulmer (1997) noted that these two factors contribute to over 45% of the explained variance in sentencing models. He found a curvilinear relationship between prior record and sentencing. Offenders with less extensive prior records experienced the greatest increase in sentencing severity for every additional prior conviction, while those with more extensive prior records did not receive similar increases in severity for additional prior convictions. Nagel and Hagan (1983) also found that gender differences in sentencing became diminished among those convicted of the most serious offenses. Additional legally-relevant factors found to influence case processing include offense type (Spohn & Beichner, 2000; Steffensmeier & Demuth, 2006) and multiple counts (Logue, 2011; Pierce & Freiburger, 2011; Spohn, 1999; Steffensmeier & Demuth, 2006). Engen and colleagues (2003) found that departure above and below sentencing guidelines are largely determined by legally-relevant criteria, such as prior record, weapon use, and offense severity.

There is some support for the contribution of defendant characteristics on decision-making beyond the influence of legally-relevant factors. One of the criticisms of early studies of sentencing is the lack of adequate control variables for prior record and offense severity (see Baumer, 2013 for discussion). Many studies found support for the direct influence of gender on pre-trial release (Freiburger & Hilinski, 2010; Pinchevsky & Steiner, 2013; Demuth & Steffensmeier, 2004; Wooldredge, 2012) and sentencing (Blackwell, Holleran & Finn, 2008; Spohn, 1999; Spohn & Beichner, 2000; Spohn & Sample, 2013; Wooldredge, 2012), favoring female defendants. This would appear to be consistent with chivalry theory, yet direct tests of chivalry are often lacking. Less consistent is a direct influence of defendant race. Although

several studies have found that Black defendants are more likely to be given bail (Demuth, 2003; Patterson & Lynch, 1991; Schlesinger, 2005; Demuth & Steffensmeier, 2004) and receive longer terms of incarceration (Logue, 2011; Spohn & Sample, 2013), the effect size of this influence is typically quite small (see Baumer, 2013). Further, several studies that adequately controlled for legally-relevant case characteristics found no influence of race on case processing (Demuth & Steffensmeier, 2004; Wooldredge, 2012). Finally, older offenders typically receive leniency during sentencing (Griffin & Wooldredge, 2006, see Spohn & Sample, 2013 for exception), with some finding support for a curvilinear effect that benefits young and older offenders (Johnson & Kurlychek, 2012; Steffensmeier & Demuth, 2006; Steffensmeier, Ulmer & Kramer, 1998). Taken together, there is consistent support for the influence of defendant gender, with more limited support for the direct influence of defendant race and age, on case processing.

One of the potential problems with existing studies is that they fail to account for potential compounding disparate treatment across multiple stages. Further, defendants' social locations are likely viewed as a whole, rather than as separate statuses. Race effects in additive models may mask the true influence of race if they fail to take into account the interactive effects of race, gender, and other social statuses. More recent research has addressed these methodological concerns through employing interaction terms to statistically model the multiplicative influence of defendant characteristics.

The Multiplicative Aspect of Defendant Social Location.

Congruent with the feminist theory of intersectionality, quantitative research of court processing has shifted its examination of disparity from examining separate social structures of inequality (i.e. additive models of race and gender) toward understanding that these social structures intersect, or interact, in reproducing inequality. The focal concerns perspective began

a trend in the literature toward taking into account the multiplicative ways in which defendant characteristics may produce compounding disparity. This trend has continued for scholars utilizing the focal concerns perspective as well as variations of chivalry (i.e. selective chivalry on disparate treatment of minority women). This research has typically found that the influence of gender, race, or family status as a single variable does not exert as strong of an influence on decision-making as the interactions of gender and race (Steffensmeier & Demuth, 2006; Steffensmeier, Ulmer & Kramer, 1998; see also Baumer, 2013) or gender, family status, and race (Freiburger, 2010).

Focal concerns has become the most prominent theory tested within the literature, as studies often found support for the interaction of age, gender, and race/ethnicity leading to more punitive sentences for young Black males (Steffensmeier & Demuth, 2006; Spohn & Holleran, 2000; see Spohn & Beichner, 2000; Koons-Witt, Sevigny, Burrow & Hester, 2014, for exception). Freiburger and Hilinski-Rosick (2013), however, found that influence of race and gender was confined to jail sentences, rather than prison. Further, several studies have found that Black females received more lenient pretrial release outcomes (Freiburger & Hilinski, 2010), were less likely to be sentenced to incarceration, and received shorter terms of incarceration (Griffin & Wooldredge, 2006; Shermer & Johnson, 2010; Williams, 1999). Two studies have found that Black females were least likely to receive a charge reduction, compared to White females and males (Farnworth & Teske, 1995; Romain & Freiburger, 2015). Steffensmeier and Demuth (2006), however, noted that race and gender interactions on sentencing were largely confined to males – in that females irrespective of gender received similar outcomes while Black and Hispanic males were more likely to be incarcerated and received longer terms (see also Cano

& Spohn, 2012). Taken together, this body of research suggests that minority males receive harsher treatment at various stages of case processing.

Additionally, research has demonstrated that legally relevant factors may exert differential outcomes across gender and race (e.g. Koons-Witt, Sevigny, Burrow & Hester, 2014; Spohn, 1999). Ulmer (1997) found racial differences in sentencing were more pronounced among offenders with more serious prior records, benefiting White defendants in urban counties compared to Black males. This may reflect different attributions of crime across racial groups, as prior record may be socially constructed to mean that minority males are viewed as more dangerous than White males. He further found that gender differences in incarceration length were less prevalent among offenders with more extensive prior records (see also Koons-Witt et al, 2014; Spohn, 1999). Several studies have found that women offenders convicted of drug crimes are more likely to be sentenced to incarceration and serve longer terms (Griffin & Wooldredge, 2006; Spohn, 1999; see Koons-Witt et al., 2014; Rodriguez, Curry & Lee, 2006, for exception). Additionally, Rodriguez, Curry and Lee (2006) found that women convicted of property offending received more lenient sentences, yet other studies have found no differences across crime type and gender (Farnworth & Teske, 1995; Romain & Freiburger, 2015). The process of decision-making involves more than examining just one factor (i.e. race), but rather the totality of a defendant's social location, as well as assessments of legally relevant factors that may be raced or gendered. This body of research is a prime example of the inter-categorical method of intersectionality, as multiple possible social locations are examined simultaneously in determining whether and which social locations experience disparity and inequality.

The Process of Decision-Making and Case Processing.

Although court processing is, indeed, a process, much of the literature has focused on sentencing decisions, with more recent attention to pretrial release (e.g. Ball & Bostaph, 2009; Demuth, 2003; Freiburger & Hilinski, 2010; Hartley, Miller & Spohn, 2010; Franklin, 2010; Pinchevsky & Steiner, 2013; Schlesinger, 2005). A more limited body of work has been produced on prosecutorial decisions, such as the initial charge, decision to fully prosecute, and charge reduction (e.g. Adams & Cutshall, 1987; Beichner & Spohn, 2005; Bishop & Frazier, 1984; Hartley, Miller & Spohn, 2010; Miethe, 1987; Shermer & Johnson, 2010; Spohn, Gruhl & Welch, 1987; Vance & Olesson, 2014). Few studies have examined decision-making after sentencing, such as probation and parole revocation hearings (Albonetti & Hepburn, 1997; Lin, Grattet & Petersilia, 2010; Rodriguez & Webb, 2007). Examining probation review hearings, which examine offender progress during the early stages of probation, have not yet been examined.

The Interactive Nature of Court Decision-Making.

Ulmer (2012) argued that court decision-making is a multi-staged process involving several actors, including prosecutors, judges, defense attorneys, probation officers, and legislators, whom are driven by different goals and latitudes of discretion. Mears (1998) posited that court actors are cognizant of previous and potential future decisions by other court actors, suggesting that research develop analytical models for the diverging goals of each actor across various stages (see also Baumer, 2013). Further, Ulmer (2012) stated that decisions are created not by single individuals, but through interaction, and thus influenced by goals, interpretations, and discourses used by other actors and within a particular local community.

Ulmer (1997) replicated the propositions of Eisenstein and colleagues on the role of court community contexts in producing plea and sentencing disparities. He compared the influence of legal, defendant, and process characteristics across three county types (i.e. urban, rural, and suburban) in Pennsylvania. Sentencing guidelines varied among county organizational contexts – with strong courtroom workgroups less influenced by external guidelines. In urban counties marked by constant turnover, however, guidelines became more influential in negotiating pleas and recommending sentences; in counties marked by inter-organizational conflict, the guidelines become tools of power in asserting dominance. This suggests that some court communities are marked by conflict, rather than consensus, particularly when there is little agreed upon norms and goals (c.f. Walker, 2011). Further, race differences were most prominent in the suburban county, while Black defendants with more extensive prior records experienced greater odds of incarceration in the urban county. This suggests that the influence of defendant status characteristics may depend on the context of inter-organizational arrangements, in addition to how legally relevant factors are interpreted in conjunction with one's status (see also Sudnow, 1965).

Additional constraints on the system may include available bed space, political pressure, and demographic factors (see Steffensemeir, Kramer & Ulmer, 1998). Several studies found that defendants in urban jurisdictions were less likely to receive incarceration, likely because of high case flow and limited bed space (Steffensmeier, Kramer & Streifel, 1993; Ulmer, 1997; Ulmer & Johnson, 2004; c.f. Britt, 2000). Studies have also found that a greater percent of Black residents is associated with more punitive sentencing practices (Johnson, Ulmer & Kramer, 2008; Myers & Talarico, 1987; Wang & Mears, 2010; c.f. Britt, 2000; Kautt, 2002; Ulmer & Johnson, 2004). In counties with an increasing proportion of minority residents, cultural scripts of minorities as

dangerous and crime prone are heightened as they are viewed as a threat to the dominant power relation. Ulmer and Johnson (2004) noted that court actors within the workgroup "might be affected by and reinforce racial ideologies and stereotypes while rationally pursuing other goals or interests" (p. 145). In this sense, cultural scripts of threat and dangerousness become implicated in ascribing meaning to offenders' actions while processing cases (Ulmer, 2012).

Summary.

Several theories have been developed to explain disparity across defendant social locations. Most of these theories share the notion that cultural scripts of dangerousness and culpability are gendered and raced, producing harsh treatment of Black males in particular. Empirical research has demonstrated that contextual factors, such as degree of embeddedness of a courtroom workgroup and racial composition exert influence on sentencing outcomes. Decision-making is a process and may reflect informal group norms, cultural scripts, and local concerns. Research on defendant and case factors demonstrate stronger support for the role of legally-relevant factors, in addition to defendant gender. More recent research has begun untangling the extent to which social location and legally-relevant (e.g. prior record, offense type) condition the influence of race/ethnicity and gender. These findings suggest that cultural scripts may influence how particular offenders are viewed in relation to their social location and the circumstances surrounding their offenses. Most studies, however, have not directly tested these assertions, and rely on theory and inference to explain their findings. Few studies have explicitly tested the causal pathways of attributions via quantitative analysis. This dissertation seeks to fill this gap in the literature by quantifying the nature of assessments of defendant character and behavior, which has to date not been examined.

Qualitative Research of Court Processing

Qualitative research on court processing has developed from three disciplines: law and society scholars critical of the legal system, criminologists' work on courts as social worlds, and linguists who analyze the everyday talk of lawyers, judges, and lay persons. These distinct bodies of literature have a common theme of using observations from court hearings, victim interviews, or plea negotiations to understand the mechanisms of processing defendants. Although there is a rich body of literature in these disciplines, much of it is dated from the 1970s through the 1990s and none has looked at domestic violence courts. Qualitative research can examine the processes that render decisions, yet it cannot produce examinations of disparity in outcomes.

Courts as Distinct Communities.

Early ethnographic work built on organizational theory of courts as open systems and examined the ways in which different intra-organizational and inter-organizational relations create distinct communities. Eisenstein and Jacob (1977) contended that courts exist as communities, in which a distinct culture exists in the inter-organizational setting (i.e. a courtroom) of shared expectations and goals for judges, prosecutors, and defense attorneys. Beyond intra-organizational goals, such as convictability within the prosecution office, a degree of shared goals, norms, and inter-dependence may exist in courtroom workgroups, depending on the degree of stability and power-relations between members (Nardulli, Eisenstein & Fleming, 1988). Heumann (1977) noted that socialization toward shared goals and norms occurs largely through observation of others and sanctions for violating informal norms (see also Nardulli, Eisenstein & Fleming, 1988).

The degree to which community cohesion exists within the courtroom workgroup depends on whether there is a shared consensus about goals of the court community, including shared expectations about 'how things are done,' goals of sentencing and punishment, the importance of processing cases quickly, and a common preferred practice of adjudication (Nardulli, Eisenstein & Fleming, 1988). Nardulli and colleagues found that courts established "going rates" for certain crimes, which were typical sentences given to offenders convicted of particular crimes. These going rates were based on court actors' construction of "normal crimes," such as what a common simple battery or residential burglary involves for amount of harm, as well as "typical offenders" or who is a common perpetrator of these crimes, including their social background and motivation (Sudnow, 1965). The development of these normal crimes, typical offenders, and going rates create a cognitive schema for the routinization of case processing.

Feeley (1979) examined case processing in limited jurisdiction courts, and found that routinization in the processing of defendants was related to norms of case processing and a general orientation toward moving cases quickly. He argued that these courts operate as open systems in which functions and duties are decentralized and most cases are talked about as "garbage." This tends to lead to quick, routine processing of defendants (see also Heumann, 1977; Hagan, Hewitt & Alwin, 1979 on loosely coupled systems). He contended that the function of these lower courts is to act as punishment for offenders, rather than adjudication or sentencing. All court actors share the dominant goal of processing cases quickly, encouraging guilty pleas early because it saves time and costs. Defendants also become oriented toward pleading guilty, as "pretrial detention, bail, repeated court appearances, and forfeited wages all

exact their toll on the criminally accused" (p. 15). Thus courts may vary by type of caseload, in addition to political context and inter-organizational power arrangements.

Although Nardulli and colleagues (1988) viewed sentencing codes as a source of constraint on the courtroom workgroup during plea negotiations and sentencing, more recent scholarship has suggested that the workgroup has more agency than constraint. Ulmer (1997) found that judges began to circumvent guidelines after they were implemented in Pennsylvania because they were seen as too harsh (see also Tonry, 1996). Indeed, Hall (1997) noted that although legislators are able to define statues and punishment through legal language, actors applying these laws and frameworks at the local level can "reinforce, clarify, subvert, or amend" existing laws and the discourses they are drawn from (p. 401).

Further, local political and media can exert external pressures on the workgroup toward more punitive sentencing patterns if these systems are more tightly-coupled (Nardulli, Eisenstein & Fleming, 1988). Feeley (1979) argued that in court contexts where all local judges, prosecutors, and public defense attorneys are politically appointed, a system of patronage ensues. In New Haven courts with this contextual arrangement, prosecutors yielded greater power in proceedings. Ulmer (1997), however, reiterated the propositions of Nardulli and colleagues (1988) in that court communities vary in the degree of political and media influence. In his comparison of urban, rural, and suburban counties, he found that the influence of media varied depending on the degree of cohesiveness of the workgroup. In groups marked by conflict, the media became a tool used by prosecutors to coerce judges; yet in more urban counties courts were relatively free from media exposure. Media and political attention given to certain crimes may create constraints on the discretion afforded to judges during sentencing and probation review hearings, as they may not want to upset the community.

Ulmer (1997) further expanded the court community framework, and argued that courts exist in distinct social worlds marked by patterned routines and interaction. These social words are in turn shaped by the degree of interaction and mutual dependence of organizations. He asserted that sentencing is enacted as a process, such that courts' "social worlds [have] their own local processual orders of legal culture, court politics, inter-organizational relations, and case processing" (p. 4). In processing cases, actors within the workgroup have several possible tools of interaction at their disposal: negotiation, cooperation, persuasion, threats, and manipulation. Tools commonly utilized by court actors vary according to the degree of shared goals and power balances across organizations, as well as intra-organizational structure.

Ulmer's ethnography of three Pennsylvania courts supplemented his quantitative work on the role of legal, defendant, and case processing characteristics for sentencing outcomes. He noted that courts in social worlds that had high degree of consensus on informal norms regarding cases, shared goals of processing cases quickly, and were characterized with little turnover tended to use negotiation tactics to process cases. Court actors did not want to disrupt the existing institutional arrangement or 'rock the boat.' Those with little consensus and a high degree of power imbalances favoring prosecutors tended to be marked with threats and manipulation styles, such as drawing negative media attention and pushing for continuances (Ulmer, 1997).

Symbolic Interaction in the Processing of Defendants.

Ulmer (1997) expanded upon the work of Eisenstein and colleagues' courtroom workgroup framework by integrating it with symbolic interactionism. This theory states that meaning is co-created by individuals during interactions through the exchange of symbols and interpretation of these symbols (Blumer, 1969). During hearings and trials, then, meaning is

attributed to defendant's actions in rendering a verdict, issuing a pretrial release decision, or issuing a sentence. Judges do not simply create meaning by themselves, but through interaction with other court actors, such as defense attorneys and prosecutors, or through statements the defendant makes. Several scholars have drawn on symbolic interactionism as a useful framework for understanding the role that defendant social location plays upon case processing.

Ulmer (1997) stated that "identities [are] situated transactions in which people identify, define, and place one another in social locations or positions" (p. 187). Inherent in these categories of identity are cultural attributions of personal character (e.g. demeanor, background, prior record), which reflect assessments of past behavior (i.e. culpability) and future behavior. Ulmer argued that actors utilize cultural scripts in constructing offender identities, such that assessments of family status, employment, and education are viewed as potential sources of social control for offenders. These factors, taken together with prior record and the ascribed demeanor of suspects, are utilized in determining dangerousness and culpability. Racial and gender disparities, then, are the result of interactional processes that draw upon available scripts and categories to socially construct an offender and apply sanctions based on these scripts.

Ulmer (1997) began to develop the connection between symbolic interactionism and disparity in case processing, although his focus addresses the role that contextual factors plays upon case processing tools (e.g., the role that inter-organizational conflict plays on whether negotiations or threats are used in processing cases). More recent, Ulmer (2012) called for investigations into the processes of social interactions among court actors that produce outcomes. This may include a prosecutor reading a police report (produced by an officer), two attorneys negotiating a plea deal, or multiple actors speaking during a sentencing hearing. Daly (1994) further drew the linkage between attribution theory and symbolic interaction, as offender

background (e.g. prior record and family status) is socially constructed by probation officers in presentence recommendations. Travers (2007) noted that information contained in presentence investigation reports involved constructions of offender background and risk assessments, which reflect attitudes and preferences of probation officers regarding punishment and culpability. Judges rely on these sources of information as powerful tools to assess blameworthiness and risk to the community. Information contained in reports frames offenders in a particular light, positive or negative, and has implications for the processing of defendants. This framing of facts, such as prior record, suggests that facts are socially constructed and employed in particular ways by court actors in order to attribute meaning to offenders' prior and current behavior.

Social Construction and the Malleability of Facts.

Some scholars have more explicitly focused on the role of symbolic interactionism in the social construction of defendants. Early ethnographic research discussed the ways in which police officers drew inferences about suspects based on prior record (Circourel, 1968). This suggests interactions between actors through interpretation and translation of 'facts.' Feeley (1979) further commented on the "elusive nature of the 'facts,'" within cases, as any statement or piece of text can be subject to multiple interpretations (p. 167). Court actors have the tools of mobilization of facts, manufacturing 'facts' to mitigate harm, and the inherent malleability of facts to advantage their position. Thus, the 'fact' of no prior record may be mobilized to demonstrate a rare exception to a normally law-abiding person, or be constructed as requiring intervention to prevent future criminal offending. Through employing various tools of interaction, and multiple possible 'facts' in the translation of documents, interviews, and reports, several possibilities exist in constructing the 'facts' of a case or background of a person during any case. Heumann (1977) asserted that often the circumstances of a particular offense are easily

translated into several possible offenses. Defense attorneys often pushed for amended charges to socially construct an offense more in line with how offenders viewed themselves (e.g. disorderly conduct vs. battery). The facts of a particular case may be framed to fit a simple battery or a disorderly conduct, for example, dependent on what information is mentioned and how it is framed.

In addition to the malleability of 'facts' of a case, character assessments of offenders are subject to social construction. In the enforcement of laws, court actors determine to what extent violators are culpable for their crimes. Those that appear to "buy-in" to dominant cultural discourses are described as repentant, yet those that are constructed as Other are viewed as rebellious (Gusfield, 1967). Thus demeanor, aspects of an offender's background, and aspects of the case become potential factors used to socially construct and punish an offender. Worrall (1990) found that younger women offenders were often attributed to having "dumb insolence" in court because their demeanor and posture did not fit with classed expectations of femininity (p. 62). Heumann (1977) argued that defendants' demeanor is constructed based upon social locations of defendants, such that college students are viewed as remorseful and "a nice kid," therefore not a "real criminal" (p. 40). Feeley (1979) noted that beyond construction of the nature of a charge, court actors seek to construct a defendant in relation to the charge – such that character becomes important in determining culpability, while character assessments reflect underlying discourses of race, class, and gender. Further, character assessments related to employment and family ties are seen as stabilizing forces of informal social control, which leads to disparate treatment because of concerns for substantive justice.

Which social construction will emerge as 'fact' is the result of negotiation and power relations between actors. Heumann (1977) found that in assessing the worth of a case, court

actors anticipate the attitudes, goals, and strategies of others about the crime, the offender's social location, and the victim. Negotiations between prosecution and defense attorneys often involve disparate readings of 'facts' of a case, with concessions offered by each side toward reaching an agreed upon translation of the complaint, as well as needs for probation. As one prosecutor stated "It all depends on how the facts are presented," (Feeley, 1979, p. 169). Each actor's perceptions and personal background may influence how they construct the case, as well as which discourses they draw upon.

Discourses in Case Processing.

Additional avenues of inquiry into the processing of defendants have emerged in linguistic and critical legal studies disciplines. These approaches to the study of court processing treat talk as text in examining the discourses used by court actors, victims, and offenders. Discourse represents a worldview, or language used to interpret the world, which can limit how people think about ideas, people, and events (Foucault, 1980). Merry (1990) asserted that discourses contain "categories, a vocabulary for naming events and persons" which imply underlying normative assumptions through which to construct an interpretation of events (p. 4). Yet these categories are rendered fluid, interpreted and negotiated in terms of which categories apply to which defendants (i.e. reformability, dangerousness, feminity) through interaction, negotiation, and contestation by court actors (Frohmann & Mertz, 1994; Mertz, 1992). Which discourse emerges as the dominant worldview is the result of social interactions among people using competing discourses. Macro-level structures (e.g. patriarchy, race, class, gender, law) operate within organizational contexts, structuring the cognitive scripts available in socially reconstructing criminal events and determining whether someone is 'dangerous' and blameworthy (Frohmann & Mertz, 1994; Smart, 1995).

Institutional roles are laden with power, which influences which discourse will be utilized during case processing. Power is inextricably linked with discourse – including the power to speak and the power to render statements as true (Foucault, 1980). Through examining the role of power in interactions, including institutional roles that enact power dynamics, competing discourses emerge – language frameworks reflecting ideologies about the world (Conley & O'Barr, 2005; Mertz, 1992). Court actors draw on dominant discourses (i.e. passivity of femininity) when speaking about defendants and attributing meaning to their actions. This in turn may reify existing dominant discourses, or alternately, challenge these discourses if alternative discourses are used (i.e. assertive femininity). By examining the site of social interaction and contextual social factors, those employing discourse analysis investigate the role of language in the social construction of offenders, events, and victims.

Worrall (1990) examined the discourses that court actors draw on in socially constructing women offenders and making meaning of their offenses. Through a discourse analysis of interviews with various court actors, she found that women are constructed via cultural discourses of femininity: domesticity, sexuality, and pathology. She problematized the social construction of women criminals as familied, hypersexual, or ill. In speaking with binaries of 'good' and 'bad' mothers/wives, 'pious' and 'promiscuous' women, 'sick' or 'responsible and manipulative', court actors draw upon underlying dimensions of class and race. Further, judges utilize the concept of "individual merit" to assess women offenders, (p. 52) which is a moral laden judgment that claims to be individualized justice but are based on gendered discourses of appropriate behavior (e.g. drinking for women), and personal backgrounds that preference White, middle-class experiences and logics (p. 52). Like Smart (1995), she noted that women offenders are seen as doubly-deviant, and are always viewed in relation to men.

Merry (1990) drew on the role of discourses in framing the construction of disputes in mediation court, finding support for the distinction of institutional roles in the ability to influence the construction of disputes. Through ethnographic observation of over 70 cases in mediation, juvenile, and domestic relations courts, she found three dominant discourses employed by all parties in the construction of disputes: legal, therapeutic, and moral. She found that all parties may utilize these discourses in the construction of the dispute, often shifting between discourses when others in the interaction do not share similar understandings. Moral discourses relied more upon character assessments of responsibility, personal failings, and relationships; legal on the rights to speak and own property; and therapeutic on a medicalized conception of social factors (i.e. self-seeking narcissism; see also Travers, 2007 on moral discourse and neoliberalism). This is not dissimilar to Worrall's (1990) finding of discourses surrounding women being 'mad, bad, or sad' and the role of therapeutic discourse in constructing women as offenders (see also Komter, 1998; Mather & Yngvesson, 1980; Philips, 1998).

Other research has examined the practices of court actors during sentencing for discourses drawn on by these actors in describing their actions. Travers (2007) conducted interviews and observations with Australian judges in juvenile courts, finding that they drew upon welfare-state discourses in interpreting state goal of rehabilitation in juvenile courts and ultimately processing of juvenile offenders (see also Tata & Hutton, 2002). Judges were found to utilize discourses on punishment (e.g. blameworthiness, irresponsibility) mixed with social welfare (e.g. social causes of crime), often suggesting that offenders were immature due to their age and would grow out of offending. The importance placed on these discourses was reflected in their sentencing practices; rarely were juveniles placed in detention because of concern for criminogenic influences. Yet neoliberal discourses of responsibility were also present in judges'

talk – as they often cited not wanting to get help as a lack of taking responsibility. Gray and Salone (2006) similarly found rehabilitative, individualized justice discourses intertwined with punitive discourses in the talk and practices of juvenile correctional staff. Notably, neoliberal discourses translated into concerns about responsibilizing offenders, creating opportunities for offenders to develop treatment plans through the rhetoric of co-operation, while simultaneously marking offenders as morally inferior. The extent to which moral and therapeutic discourses are drawn on in domestic violence case processing has not been empirically examined, yet BIP clearly invokes attributions of personal responsibility not dissimilar to these discourses.

An additional body of work within critical legal studies has examined the way in which discourses of gender and rape are reproduced through daily interactions in the criminal courts. Frohmann (1991) conducted several months of participant observation in charging units, finding that post-rape law reform, prosecutors employed a variety of tools to discredit rape victims that did not fit typfications of 'real rape.' Through description of the victim's background, demeanor, and behavior, they subtly construct an account of the rape that invokes disbelief in the genuineness of the victim. Prosecutors' "repertoire of knowledge" of rape stems from existing cultural scripts (i.e. schemata, discourse) of what rape is and is not, what victim behavior is common and typical, versus abnormal, which translates into practices of *nolle prosecqui* for cases that do not fit this dominant discourse of rape (see also Frohmann, 1998; Spohn et al., 2001). A woman's account of rape is translated into a legal construction of the event, yet legal discourse is not value-free, and serves to reproduce power imbalances between victim and offender (Conley & O'Barr, 2005).[7] Courtroom talk reproduces "deep structures and symbolic

[7] Conley and O'Barr (2005) found that defense attorneys utilized their turns at talk to portray the victim in a negative light, often subtly shifting blame on the victim for behavior prior to the assault, while also silencing alternative constructions of the rape from victims while on the witness stand. Thus, legal institutional roles regarding speaking may re-inscribe power imbalances between victim and offender.

constructions" through the institutional structures that limit what can be said, and by whom (Frohmann & Mertz, 1994; p. 883; see also Matoesian, 1993).

Similar influences may be found in the degree of embeddedness the Duluth model has reached in criminal justice organizational training on domestic violence, perceptions of court actors, as well as BIP. This reflects a dominant ideology of domestic violence, reproducing gendered, heterosexist ideals that may not reflect the lived experiences of offenders and victims who do not fit this normative image (Dasgupta, 2002; Walters, 2011). Miller and Barbaret (1994) conducted a cross-cultural examination of criminal justice responses to the problem of domestic violence through interviewing social service, law enforcement, and political leaders from Spain and the United States to determine what factors influenced policy approaches from each country. In the United States, individual factors such as strain over finances, alcohol, and learning abuse as a child were dominant explanations for domestic violence, which followed policy endorsements for deterrence measures with mandatory counseling. In Spain, violence was said to stem from to gender inequality and a culture of machismo, which was related to policy endorsements of changing youth socialization and greater social acceptance of divorce. Thus, dominant discourses surrounding threat and dangerousness influence the creation of laws and programming, in addition to the court actors' interpretations of events and offenders through social interaction.

Discourse and Institutional Power Arrangements.

The previous studies subtly infer that judges have discretionary power afforded to them regarding sentencing philosophies, and that this power influences which discourses are utilized

in the courtroom. Much of the Law and Society tradition explicitly examined the role of institutional power in determining which discourse would be dominant in courtrooms. Worrall (1990) examined the institutional arrangements that give voice to certain actors, while silencing the voices and discourses of others. In drawing on a Foucualdian conception of power, she noted that "certain personnel are given more authority to define than others and certain accounts more credibility than others. The common sense which magistrates claim to be universally recognizable by all citizens is, rather, a specific discourse sanctioned by law and elevated in practice to the status of expertise" (Worrall, 1990, p. 19). Because judges are institutionally defined as legal experts, they self-proclaim an inability to define women, which renders their reliance on cultural scripts of gender, class, and race as 'commonsensical,' limiting challenges to ascribed identities by women themselves. Given their backgrounds, their assessments of criminality, domesticity, sexuality, and pathology privilege a middle-class lens through which to ascribe meaning. Further, like Conley and O'Barr (2005), she suggested that re-presentation occurs by transforming a telling rendered non-legitimate (i.e. by defendants) into legal discourse, while simultaneously silencing offenders from constructing themselves.

Most research on interaction processes and power has focused on the role of prosecutors during plea negotiations. In his analysis of one Connecticut lower court, Feeley (1979) found that prosecutors enjoy a privileged position in plea negotiations, resulting in defense attorneys employing mobilization and malleability of facts to construct the defendant as someone atypical and deserving of leniency. Heumann (1977) also found that prosecutors have greater power due to their institutional role during plea negotiations, as well as during sentencing proceedings, with judges often going along with recommendations by prosecutors. Yet this imbalance of institutional power may be reflective of the political patronage system of appointment in

Connecticut, as well as frequent judge rotations across circuits (see Ulmer, 1997). During alternative court proceedings, such as diversion programming, different power dynamics emerged. Pretrial staff became more influential in framing the offender. If they constructed the offender as taking responsibility for their actions or working the program, prosecutors were more likely to *nolle* charges or terminate supervision early (Feeley, 1979). This suggests that in hearings post-adjudication, those with more direct supervision of offenders may have more institutional power at their disposal in constructing offenders during hearings.

Not unlike Eisenstein's conception of the courtroom work group, linguists have utilized the community of practice framework to examine the process of socialization toward common goals and shared discourses, reflecting particular views of the world (Holmes & Meyerhoff, 1999, p. 167; Eckert & McConnell-Ginet, 1992). Further, they distinguished between central (e.g. judges, prosecutors, defense attorneys) and peripheral members (e.g. defendants, witnesses, and victims). Central members, engaged in ongoing interactions, develop a pattern of practices, while peripheral members are often aware of existing dynamics, norms, and the discourses utilized in the processing of defendants.

Gathings and Parotta (2013), however, found that defendants had agency in socially constructing themselves via gender discourses. They conducted a series of ethnographic observations of sentencing hearings in two South Carolina courts to examine the ways in which defendants "do gender" in socially constructing themselves based upon hegemonic gender narratives. This social construction serves as a form of identity management to induce leniency from judges for adhering to cultural scripts of being good providers for males and caregivers for women. Their findings demonstrated the primary role that defendants and their attorneys play in sentencing. They further stated that judges and prosecutors remained relatively passive actors

during the sentencing process (c.f. Conley & O'Barr, 2005; Maynard, 1984; Thornborrow, 2002). They also noted that through construction of gendered identities, defendants exert agency in contesting stigmatized offender identities, while at simultaneously re-inscribing gender inequality.

Worrall (1990), by contrast, argued that women offenders often have limited power to successfully construct themselves with alternate identities in court. Women in her study tended to rely upon domesticity discourses, viewing themselves in relation to their children, while often resisting labels of being sick or hypersexualized (see also Opsal, 2011 on identity work). To examine the process of labeling an offender, qualitative methods that "explicitly capture the construction of defendants" via identity construction, negotiation, and contestation of existing discourses is needed to link outcomes to processes (Kramer & Ulmer, 2009, p. 699; Gathings & Parotta, 2013). It appears that there is limited ability of defendants to construct themselves via available discourses, yet they tend to rely on dominant discourses of gender and family when they are given access to institutional power.

Law, Discourse, and Institutional Talk.

Within the linguistic tradition, discourse has been examined both at the macro-level (e.g. worldviews and language) and the micro-level (e.g. speech practices and word choice, language as utterance). This tradition has examined the role of institutional power in what people are able to say and what discourses are used to construct an account. Thornborrow (2002) drew on conceptions of institutional roles as power resources that structure the tools available in turn-taking (i.e. structure of an interaction between two or more participants) and defining social reality. Her methodological approach was a close study of talk as text, via conversation analysis, while simultaneously employing a form of critical discourse analysis that examined the

discourses invoked in constructing an event, an offender, or a victim (see also Conley & O'Barr, 2005; Maynard, 1984). Four components to institutional talk reproduce asymmetry in power relations: pre-existing roles in the institution regarding who can speak under what condition, unequal turn-taking, unequal ability to manage topics and be heard, and conversational resources (e.g. silence, tag questions, direct questions, and paired actions) favoring core court actors at the expense of laypersons.[8] Thus, "institutions structure, but do not determine, what may be said in social setting, how it may be said, and who may say it," providing agency for laypersons to invoke alternative discourses and challenge existing interactional patterns (Silverman, 1997, p. 188). Conley and O'Barr (2005) noted, "the law's power is more accessible to some people than to others" (p. 3), which precludes victims, defendants, and witnesses from having free reign to speak and frame an account.

Thornborrow's (2002) analysis of a police interview with a victim of sexual assault demonstrated the existing power relations between actors in constructing the assault as it is recorded in a police report. Although detectives are institutionally inscribed to have more resources available to them in interviews as social interactions (e.g. asking questions, eliciting responses, topic management), she noted that victims are not powerless in the interaction. Indeed, the victim refutes the social construction that the detectives attempted to create of the assault as a false report and the victim as an unstable person by inserting questions that challenge their assumptions. Further, she found that officers drew on discourses of women as hysterical and liars when constructing the woman in relation to the assault. Discourses of sexual assault

[8] Tag questions create a space for monologue and conjecture not normally allowed in question sequencing in court, yet appear as questions with follow-up tags such as "isn't that right?" which lead witnesses down a particular construction of an event. Direct questions involve yes or no answers, precluding additional information or subverting the intent of the question. Paired actions involve a simultaneous construction of an individual's action with an alternative that he or she did not enact, often used to subtly invoke dominant discourses and assert culpability, such as "why didn't you…?"

and gender were reflected in question wording, often through the use of tag questions and paired action statements, which were used to shift blame from offender to victim. While Frohmann (1991) focused her analysis on discourse as social context, Thornborrow accounted for the language tools and institutional roles that reproduce gender inequality and rape myths (see Estrich, 1987 for discussion on rape myths).

Conley and O'Barr (2005) more explicitly drew connections between the linguistic and law and society traditions, rendering a clear linkage between microdiscourse and macrodiscourse. They noted that macrodiscourses influence interactions between court actors in how they talk about particular cases, such that "dominance can be expressed, reproduced, or challenged" (p. 8).[9] Linguistic microdiscourse examines the structure of turn-taking and tools employed in syntax, use of silences and pauses, and question formatting involved in social interactions and co-creation of meaning (see also van Dijk, 1996). Unlike Thornborrow (2002), Conley and O'Barr (2005) relied on Fairclough's (1993) conception of interactions as dominance exercises by those in institutional positions of power.

Their analysis of a cross-examination of a rape victim during trial highlighted the necessity to examine social interaction as a site for construction through discursive practices. They contended that rape reform laws did not change the practices of judges, prosecutors, and defense attorneys because dominant discourses on gender, sexuality, and sexual assault continue to inform how these actors view cases (see also Matoesian, 1993). Common courtroom practices and rules of procedure, while gender-neutral in other legal settings, re-victimize women because they enact a similar form of disempowerment as the initial act of rape. Like Thornborrow (2002), they noted that defense attorneys utilize several tools during cross-examination in

[9] The term macrodiscourse, employed by Conley & O'Barr (2005) is synonymous with Foucauldian discourse, or the work of Fairclough (1993) in critical discourse analysis.

managing witnesses and socially constructing the criminal act within dominant discourses of gender and rape: silence, question form, topic management, evaluative commentary, and challenges to the witnesses' capacity for knowledge. Lawyers often used silence after their questions to subtly demand an answer, or after answers were not deemed adequate would employ silence to force an expanded answer. Further, although statements are not allowed in questioning, lawyers would often give an evaluative assessment of the witness's character, framed within a question to socially construct them in a negative light during cross-exam. Conley and O'Barr also documented the prevalence of repeating and paraphrasing questions to victims as a tool for forcing victims to yield to their construction of the event, as well as inserting evaluative commentary that reflect common gender stereotypes on women as manipulative and too calculating or too emotional (and therefore not credible). Thus, the outcomes observed in quantitative studies may be made manifest by examining the processes of socially constructing events and individuals, which occurs within a particular institutional power arrangement.

Maynard (1984) utilized a similar framework of conversational analysis and the role of macrodiscourse in studying plea bargaining negotiations and hearings in a California city. His focus, like Conley and O'Barr (2005), was on the speech styles, question formatting, and syntax occurring during plea negotiations between lawyers, as well as presentation of deals to clients. He found that defendants are dependent upon their attorneys in translating legal information, given their limited access to the law, and express frustration over this institutional arrangement (see also Feeley, 1979; Conley & O'Barr, 2005; Merry, 1990). When conducting bargaining sequences, a patterned sequence of narration is followed, providing background factors to frame the 'type of person' a defendant or victim is, including deployment of particular background information to infer the character of a person in framing the context of their actions (Maynard,

1990). The opposing side may respond with denials of the 'facts' presented, offering alternative readings of the same information, or presenting excuses to mitigate the initial assessment of culpability. Defense attorneys utilize rhetorical skills when interacting with defendants, skillfully presenting 'hypothetical scenarios' of maximum penalties in order to frame the plea offered as ideal (Maynard, 1984; see also Heumann; 1977). Further, defendants' character was socially constructed during plea negotiations between attorneys, as well as sentencing hearings with judges and attorneys. Maynard noted that presentation of defendants in court, including demeanor, is actively constructed to influence the reading of a defendant and ultimately the punishment enacted (see also Feeley, 1979). These studies document the linguistic tools that lawyers often use when interviewing or cross-examining victims and defendants that serve as institutional power dynamics. They do not, however, document the role of discourses used or challenged as strongly as their microdiscourse analysis.

Summary.

Qualitative research on criminal case processing has emerged from several disciplines and focused on organizational, interactional, and discursive practices. Much of the work in ethnographies in criminology has taken an organizational approach to the study of courts as communities, finding that going rates, court practices, and typifications of normal crimes vary depending on contextual factors. Additional work in criminology and critical legal studies has focused on the role of discourses in constructing cases and influencing outcomes, what Ulmer (1997, 2012) has called for as a supplement to quantitative studies of extralegal factors on case outcomes. Finally, within linguistics and critical legal studies disciplines, conversation analysis is employed to study the microdiscourses that are utilized in court interaction, which draws upon macrodiscourse in reproducing inequality. Although focusing on different levels of inquiry and

frameworks for analysis, this body of literature is rooted in the theoretical framework of symbolic interactionism in producing meaning and constructing of events and persons. Much of the existing research is dated, however, and does not directly examine the processing of domestic violence cases.

Purpose of the Study

Domestic violence policies are often imbued with the discourse of violence as patriarchal control. This framework is based on gendered expectations of violence, and sees violence as an escalating form of domination of a female partner by a male perpetrator. One of the policies stemming from the battered women's movement is the development of specialized domestic violence courts. The Duluth model of violence as power and control informs the development of these courts, the BIP programming it offers, and the processing of cases of domestic violence. Research on domestic violence case processing is limited and mainly atheoretical. Further, existing studies have mainly examined prosecution stages, within no attention to decision-making after sentencing. Given the importance of BIP programing and probation as a common sentence for domestic violence offenders, examining decision-making for probation review hearings is warranted.

Quantitative research on court processing tests theories of attribution and stereotypes rooted in social psychology. This body of research has found that disparities exist across defendant characteristics, particularly when combined such as age, gender, and race. These disparities are explained through relying on theoretical assumptions of the role of perceptions of defendants as raced, gendered, and classed. Qualitative research on court processing has examined the discourses used by court actors in attributing meaning to defendants' actions and is often based on interviews and observations of hearings. Further, qualitative research is often

framed in symbolic interactionism and examines the processes of attribution, negotiation, and interaction between court actors, victims, and defendants. Quantitative research examines outcomes; qualitative research examines the processes of decision-making. Taken separately, these approaches speak to two related aspects of examining case processing: the process of decision-making and the outcome of decisions.

The extant mixed methods studies rely on mainly interviews to supplement their quantitative findings, yet they do not conduct observations in how cases and defendants are talked about. Given Feeley's (1979) concern about the malleability and manipulation of facts, this represents a gap in the literature in how the facts of a case are socially constructed by court actors prior to rendering a decision. There has been no study to date that has combined discourse analysis from observations of case processing with quantitative analysis. Further, few studies have examined decision-making after sentencing, yet this area provides judges discretion in whether and how to sanction offenders who may not be complying with the terms of their sentences. There may be more disparity present after sentencing, as judges have limited constraints imposed on them regarding whether and how much to punish for violation of conditions of probation. The purpose of this dissertation is to examine decision-making more fully by examining the discourses used by court actors in socially constructing probationers and their behavior on probation, supplemented by a quantitative analysis of outcomes of probation review hearings. This dissertation answers Ulmer's (2012) call for mixed methods approaches that examine the mechanisms of decision-making that produce disparity for defendants.

Research Questions

Several research questions are investigated in this dissertation:

1. What are the underlying power dynamics in probation review hearings between court actors in speaking about a probationer?
2. What discourses are drawn on in socially constructing probationers? How might these discourses differ depending on social location?
3. How might power dynamics and discourse interact in creating an account of an offender and their progress on probation? Specifically, whose account will be more influential in the decision-making process?
4. How is probationer behavior inscribed with meaning during the review hearing? Are there differences in attribution, or framing, based upon social location?

5a. Which probationer characteristics predict the type of sanction given to offenders?

5b. Do probationer characteristics interact in predicting sanctioning (e.g. race*employment, race*family status)

CHAPTER 3: RESEARCH METHODS

Setting

Milwaukee County is the largest urban county in Wisconsin, with 947,736 residents as of the 2010 Census. It is located in Southeastern Wisconsin, and its metropolitan statistical area includes over 1.5 million persons (US Census Bureau, 2015). The racial makeup of the county is predominately non-Hispanic White (53.4%), followed by Black (27.1%), and 14% Hispanic/Latino. There are slightly more female residents than males (51.7%) and approximately one-quarter of the population is under the age of 18. Finally, slightly over 21% of the population lives below the poverty line, with the median household income of $43,193. Compared to the state of Wisconsin, Milwaukee county has a higher percentage of people in poverty, a lower median income, and a more racially and ethnically diverse population.

Milwaukee County has a long history of developing innovative responses to the problem of domestic violence. It was the site for a replication study of mandatory arrest for domestic violence in 1989 (Sherman et al., 1991; 1992), an evaluation of prosecution policies for domestic violence (e.g. not requiring victim presence at a charging conference) (Davis et al., 2003), and the development of a specialized domestic violence court. Mandatory arrest was enacted by Wisconsin state statute in 1987 for all misdemeanor domestic violence cases in which a suspect is present at the scene (Davis et al., 2003). As of 2015, twenty-two states and the District of Columbia have enacted mandatory arrest for at least some circumstances of domestic violence (Hirschel, 2008).

Both prosecutor's and public defender's offices have decentralized organizational units, with specialized teams that work solely with domestic violence cases. The Milwaukee County District Attorney's Office has a specialized domestic violence unit for both case screening and

prosecution ("Domestic Violence Services and Resources," n.d.). New assistant district attorneys are typically assigned to general misdemeanors or domestic violence misdemeanors, with more seasoned attorneys assigned to domestic violence felonies (Peter Tempelis, personal communication). All attorneys in the unit receive educational training on domestic violence, and advocates from Sojourner Family Peace Center, a local domestic abuse shelter, operate a confidential office within the physical location of the unit. Similarly, the public defender's office assigns specific attorneys to their domestic violence team (Nelida Cortes, personal communication). Specific teams of prosecutors and defense attorneys, combined with three judges, allows for familiarity and informal socialization consistent with a courtroom workgroup (Ulmer, 1997; Walker, 2011).

The specialized domestic violence court was initiated in September of 1995, first involving two judges to process all domestic violence cases (Davis et al., 2003; Judge Mel Flanagan, personal communication). Initially this included only intimate partner violence (i.e. violence between current and former spouses, current and former partners who cohabited, individuals with children in common), yet because the volume of cases was initially low, the court administration expanded the definition of domestic violence to include family violence (i.e. adult siblings and children living together) as well as child neglect cases (Judge Mel Flanagan, personal communication). Additionally, a third judge was assigned to the domestic violence courts to process cases and reduce backlog. Victim/witness specialists are assigned to each courtroom to help coordinate victims and witnesses who wish to speak during a hearing, maintain a separate waiting room for victims' safety, and assist with sending subpoenas.

The purpose of the specialized domestic violence court was twofold: to increase the number of convictions while decreasing the amount of time between initial appearance and

adjudication, while simultaneously employing a problem-solving approach to domestic violence. Most defendants with limited criminal histories of domestic violence are sentenced to probation, with the purpose of providing rehabilitation through batterers' intervention programming (Judge Mel Flanagan, personal communication). Any additional needs that are identified from pretrial screening are included (i.e. anger management, AODA screening and services).

Previously, there was no measure of success for completion of BIP and conditions of probation prior to a revocation hearing. The judges in the domestic violence court felt there was no accountability for offenders, and therefore began scheduling probation review hearings set for sixty days post-sentencing hearing. The purpose of these hearings was to act as a measure of accountability during the early portion of a probation sentence. Probationers and their agents attend hearings, as well as one assigned prosecutor, and at times defense attorneys and family members. Probation agents supply the judge with a report of the probationer's progress, while also vocally presenting the progress notes in open court. Judges take into account these reports, defendant's responses, and agent's recommendations when determining whether to schedule a second review hearing, sanction the offender with a short jail period, or allow the defendant to continue on probation.

Operationalization of Universe

Domestic violence includes harmful acts committed within an intimate relationship (including former intimate partnerships) that excludes violence against children (i.e. abuse of children by parents). According to Wisconsin statute 968.075, domestic abuse includes "A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2., or 3." (Wisconsin Legislative Documents, n.d.). This broader definition includes property crimes that inflict fear of harm (e.g. criminal damage to

property, trespass to dwelling), false imprisonment, violation of domestic abuse injunctions, and public order offenses such as disorderly conduct. In this respect, the statutory definition of domestic violence may capture more than the mere physical battery that commonly comes to mind – and as such may tap into abuse beyond mere physical brutality that some equate with masculine socialization (e.g. Messerschmidt, 1993; Steffensmeier & Allan, 1996).

Only cases resulting in conviction and a sentence of probation were sampled, given that the research focus is on probation review hearings. All cases that appeared for review hearings over an eight-month period were collected, excluding probationers incarcerated prior to the probation review hearing.[10] The decision at the probation review hearing is whether to sanction a probationer for non-compliance, and does not include those facing revocation. The final sample excluded probationers who have complied with the terms of probation, as there was no decision for judges to make. Only those who have not fully complied were sampled. Second, those that fail to appear are automatically given a bench warrant by the judge, and are also excluded from the sample, as there was not a hearing held. In this jurisdiction, judges rotate review hearings over the month, with each judge holding review hearings for their assigned cases one Friday afternoon each month (Judge Mel Flanagan, personal communication). Each judge is responsible for their own calendar of review hearings, which are typically scheduled for Friday afternoons from 1:30-4:30 pm approximately 60 days after sentencing. Approximately 15-40 cases are scheduled on the docket for each review hearing, with most probationers not failing to appear. Appendix A includes the IRB letter of approval for conducting this dissertation.

[10] IRB required excluding these individuals, as they are technically "prisoners" and as such have limited freedom and may face greater risk than non-prisoners.

Research Paradigm

Quantitative research in sentencing relies on several philosophical assumptions in investigating case processing outcomes (e.g. factors relevant to decision-making can be readily identified, and statistically modeled for patterns). By focusing on outcomes (i.e. decisions by actors) in an aggregate, patterns emerge that will proxy the process of attribution involved in the processing of offenders (Ulmer, 1997; see also McCall, 2005 on quantitative intersectional methods). Additionally, by coding agency records for legally relevant factors and extralegal factors, any statistical significance of offender characteristics is supportive of the theory under investigation and evidence of disparate treatment (for discussion on limitations of this approach, see Baumer, 2013; Mears, 1998). Although often not directly stated, these approaches are rooted in positivism or post-positivism, with the assumption that there is one objective, observable reality (Teddlie & Tashakkori, 2009). Yet as Ulmer notes, quantitative approaches can examine outcomes, but fail to capture the processes inherent in producing these outcomes (Ulmer, 1997, 2012). Further, Ulmer (2012) notes that "causal mechanisms of sentencing decisions, and aggregate sentencing patterns, lie in the interpretive processes and joint acts in context" (p. 8).

Additional paradigms may be useful for examining the interactive process of court hearings, and are often found in qualitative research of court processing, including constructivism (Conely & O'Barr, 2005; Gathings & Parotta, 2013) and post-structuralism (Worrall, 1990; Frohmann, 1998). Constructivists and interpretivists diverge from positivism in their ontological framework of multiple realities, which are subjectively experienced (Teddlie & Tashakkori, 2009; Creswell & Plano Clark, 2011). Further, these approaches focus more specifically on the relativism of individual's social reality, and produce ideographic insights into individuals' justifications for their attitudes and actions (Lin, 1998). Both of these frameworks

focus largely on ideographic descriptions and do not place emphasis on the role of causation (Teddlie & Tashakkori, 2009). Lin (1998) notes that quantitative research can detect patterns of association, however, it requires theoretical insights and plausible insights into the mechanisms of causation. Qualitative research, by contrast can suggest possible mechanisms of causation through detailed pictures of the processes of interaction that produce outcomes, yet it cannot answer questions of generalizability or confirmability. She argues for mixed methods approaches to bridge these two paradigms when researchers are seeking to understand both processes and outcomes of social interactions.

Mixed methods have become more common in criminology within the past twenty years. Ulmer's (1997) mixed methods investigation of court processing was predominantly quantitative and detected patterns of case processing and extra-legal factors across three counties. His findings were further explained with qualitative data from interviews and observations, which examined how political and organizational characteristics informed the processual order styles of each county. Additional research on sentencing often supplements quantitative findings with interviews from judges or prosecutors to illuminate the meaning behind patterns detected in statistical analyses (e.g. Daly, 1987a, 1987b; Beicher & Spohn, 2005; Nardulli, Eisenstein & Fleming, 1988; Steffensmeier, Kramer & Streifel, 1993; Steffensemeier, Ulmer & Kramer, 1998). More recently, Tasca (2014) utilized quantitative analysis of case files and interviews with children of incarcerated parents to examine how parental incarceration can produce both positive and negative social outcomes for children.

This dissertation is informed by a pragmatist paradigm, which is informed by both constructivist and post-positivist paradigms. Pragmatism views reality as both multiply constructed and single, and seeks to demonstrate both objective (i.e. quantitative analysis) and

subjective (i.e. qualitative) realities during the research process. This paradigm views research as ideographic descriptions of the phenomenon of interest, and involves both inductive and deductive reasoning, depending on the stage of the research process. Further, pragmatism emphasizes using practical methods to answer one's research questions, thus the questions drive the methods (Teddlie & Tashakkori, 2009; see also Ulmer, 1997). [11]

The research questions for this dissertation require two different methodological approaches to bridge these questions (Creswell & Plano Clark, 2011). Questions one through four require the use of qualitative methods of observation to examine the way in which hearings are structured and probationers are socially constructed using existing discourses on domestic violence, gender, family status, and employment status. Question four further informs question five, which requires a quantitative analysis of defendant characteristics, case characteristics, and outcomes.

Research Design

There are several existing design typologies for mixed methods, which are often categorized by degree of emphasis on qualitative or quantitative methods, function of the research study (i.e. triangulation, exploration, confirmation), implementation process, and stage of integration of approaches (Creswell & Plano Clark, 2011; Teddlie & Tashakkori, 2009). This design focused primarily on qualitative methods, as the first four questions are suitable for

[11] Qualitative approaches provide one avenue to inform patterns detected through quantitative analysis with meanings attributed to events, individuals, and sanctions. Indeed, Ulmer (2012) suggests that ethnography is better suited to capture the process of decision-making among court actors engaged in social interactions. Ethnography of court processing addresses the local context of inter-organizational norms and power balances (Ulmer, 1997; Nardulli, Flemming & Eisenstein, 1988). Further, ethnographic observations are suitable for critical discourse analysis, as recordings of talk can be analyzed as text (Conley & O'Barr, 2005). An ethnographic approach to discourse analysis can uncover the ways in which characteristics of probationers (e.g. race, gender, marital status) subtly or overtly influence processing of offenders via symbolic interaction, thus complementing quantitative findings and illuminating further theoretical developments (Ulmer, 2012; Zatz, 2000; Spohn, 1999). Further, quantitative analysis of probationers' characteristics and case factors (i.e. failed UA, missed treatment session) can yield confirmatory support for themes and discourses identified as meaningful in qualitative observations (Teddlie & Tashakkori, 2009).

observations and discourse analysis, with a second phase of quantitative methods. Second, given that the research questions are largely exploratory in nature, a more qualitative focus with quantitative methods offering confirmation of the emergent patterns and themes were utilized. Although there are several designs possible depending on research questions and level of integration, a QUAL + quan parallel design with conversion of qualitative findings was used (Creswell & Plano Clark, 2011). This design prioritizes qualitative methods, which are used to inform quantitative analyses that will confirm emerging themes. Further, the data were collected for both portions of the design concurrently (i.e. parallel design), as police records and public record information were able to be obtained while observations were occurring. Finally, qualitative data collected during observations of probation review hearings were subsequently converted (i.e. quantized) to statistically model outcomes (i.e. sanction, warning, no negative outcome) (Teddlie & Tashakkori, 2009). Data were analyzed separately for each strand of the project, with an integration of findings occurring after both strands concluded. This meta-inference drew upon each strand in describing the role that discourse and institutional arrangements had on symbolic interactions in probation review hearings (Teddlie & Tashakkori, 2009)

Qualitative Data Sources

Ethnographic observations of probation review hearings were utilized to examine the discourses and power dynamics in socially constructing probationers. Participant observations of probation review hearings in the specialized domestic violence courts were conducted as the role of complete observer (Maxfield, 2015). Because critical discourse analysis is time-consuming to observe, transcribe, code, and analyze, I took a purposive sample of 100 cases for analysis. Cases sought were information rich, such that they filled at least one-half page and included

longer responses or questions by court actors and probationers (Teddlie & Tashakkori, 2009; Waitt, 2010). As recommended by Waitt (2010), I purposively sampled areas that were under-represented, such as mental health issues addressed for male probationers, probationers who dominated part of a hearing, and White males. Additionally, an oversampling of females was conducted, as questions 3 and 4 are concerned with social location of probationers, and domestic violence predominantly consists of male offenders (Black et al., 2011; Tjaden & Thoennes, 2000). The final sample included 21 females and 79 males, with 65 Black, 19 White, 15 Hispanic, and 1 Asian probationer. Of all selected cases, 58 resulted in no sanction; for those with a jail sanction the period of incarceration ranged between 2-30 days, with most cases involving shorter periods of incarceration (i.e. 2-7 days).

Qualitative Data Collection

Probation review hearings were recorded in the field as the hearings unfolded, requiring me to develop my own shorthand to capture verbatim the exchanges, as much as possible. When direct quotes were not able to be captured, I made distinctions by using parentheses to denote a paraphrase. In addition, I captured intonations, pauses, and silences using a similar method of parentheses, ellipses, and underlines to denote a raised tone, emphasized word, or a pause. Additional notes taken prior to hearings included the physical description of the courtroom, demeanor or appearance of probationers, judges, and probation agents, and any pre-analytical thoughts that occurred while observing the hearings. After hearings, I sat at a nearby restaurant for approximately 30-45 minutes writing down additional insights, analytical notes, and common issues found in a day's set of hearings. At times, I included comparisons between judges, or made note of cases with similar issues that seemed to be treated disparately. These initial post-observation notes became instrumental in developing the first round of descriptive coding, as

well as thinking about potential discourses. Transcriptions of each hearing were typed into a word processing document for an electronic copy, which was subsequently used for analysis.

Qualitative Data Coding and Analytic Strategies

Critical discourse analysis was used in treating hearing transcripts as text. Discourse is power laden on what can be accepted as fact, who can render this decision, and who can speak (Schram, 2006). Therefore, qualitative analysis consisted of two parts: power relations and discursive practices. I conducted additional research into the background of the setting, history of the courts, and intertextuality of sources (i.e. referencing probation officer reports) (see Waitt, 2010). Prior to hearings, a description of the courtroom was written down in field notes to capture both the physical and social setting of these hearings. After interviews were transcribed, analysis consisted of two stages: descriptive and interpretive (Jackson, 2001). Additionally, a positionality statement and constant reflexivity was conducted to ensure that any personal biases were made explicit, as well as to document the analytic process through memoing for each transcript as well as analytical memoing the process of conducting a discourse analysis (Waitt, 2010).

Initial coding phases were conducted in Nvivo, a commonly used qualitative software package. Cases were entered individually, with nodes created for codes. Based upon the recommendations of Jackson (2001), descriptive coding began with reading the hearings, looking for common phrases and words (i.e. keywords), as well as affect toward probationers (e.g. terse tone, sarcasm, disbelief, sympathy; see also Waitt, 2010). I chose to code exchanges that were based on a particular topic, rather than line-by-line, in order to capture interaction, contestation, and different keywords that were used among different court actors. Further, descriptive coding for each hearing contained codes for context (i.e. judge, whether a defense attorney was present,

and who was involved in different exchanges), turn-taking (i.e. question, response, interruption, diatribe, silence), and knowledge references (i.e. bench experience, scientific studies) (Waitt, 2010).

Discourse analysis is concerned with the interplay between knowledge, power, and persuasion (Wait, 2010; Fairclough, 1993; Van Dijk, 1996). Analysis of probation review hearings explicitly addressed questions one and three through coding of each hearing for setting, control of interaction, and audience control (Van Dijk, 1996). Setting includes the participants in the hearing, their speaking roles, and any aspect of the physical environment that contributes to institutional speaking roles. Control of interaction includes language used (i.e. legal, rhetoric), knowledges referenced, turn taking, and format of turn (i.e. who is able to question, speak, manage topics, use rhetoric or discourse). Audience control refers to the ability to influence others' cognitive maps. An analysis of who is more able to speak, manage topics, and use discourses to frame the review hearing answered question one. Table 1 displays the interpretive coding schemes for discourse analysis. Appendix B includes the descriptive codes that emerged from reading the transcripts.

Through an inductive approach, initial patterns were identified in phrases and terms used, thinking critically about deeper meanings, and positing the ways in which factors such as family caregiving, gender, and race/ethnicity might be inter-related in the social construction of a defendant. The initial categories and codes provide the basis for descriptive codes of the structure of the court process and underlying themes drawn upon by court actors. The process of analytical coding also included determining ways that keywords were related, and reflected key discourses as discursive repertoires. Discursive repertoires are "cultural resources everyday speakers may use" (i.e. rhetoric) when talking about court cases to attribute meaning to past and

future behaviors (Jackson, 2001, p. 208). This inductive analytical approach generated discursive themes, repertoires, and dispositions (Jackson, 2001). Focus was given to the ways in which discourses on domestic violence and additional discourses that emerged from coding of the data as worldviews in case processing. These emergent discursive themes that became important in talking about offenders during these hearings addressed question two.

Table 1.
Initial Coding Scheme for Qualitative Analysis.

Discourse Aspect	**Aspect Examined**
Power	Setting (participants, role, physical environment) Control of Interaction (language, turn taking, topic management) Audience Control (influence on other's speaking)
Discursive Repertoires	Use of rhetoric, polemics
Discursive Dispositions	Contestations of other's repertoires Framing of defendants' actions
Discursive Authority	What is referenced when speaking about domestic violence or the offender
Discourse influences court actor's cognitive maps, and thus the discursive repertoires and dispositions used.	

Additional analysis of discourses and power were used to address question three. Previous analysis of institutional power informed which discourses and rhetorical devices were more likely to be accepted and used to render decisions. An examination of which discourses and rhetoric were more likely to be accepted by judges bridged the space between power and discourse. What is counted as "valid, trustworthy, or authoritative" statements emerged from "who is tasked with being authoritative" (Waitt, 2010, p. 234). More specifically, coding of what was referenced as an authority (i.e. report, statistics, anecdote) or who was referenced as an authority (i.e. probation officer, defendant) in referencing discourses describes the relation between power and discourse. Lastly, any aspects of contestation of discourse and discursive repertoires (i.e. discursive dispositions) by defendants were coded for possibilities of

contestation and agency. The presence of this suggests alternative discourses rendered non-valid by court actors. The two aspects of discursive repertoires and discursive dispositions addressed question four. More specifically, the framing of defendants' actions positively or negatively and rhetoric employed by court actors in making sense of their actions reflect the discursive dispositions and repertoires that will likely influence practices (i.e. sanctions) during probation review hearings.

Quantitative Data Sources

The final sample of cases included 350 cases in which at least one condition of probation was not met. Schwab (2002) recommends 20 cases per one independent variable, requiring a minimum of 360 cases if 18 independent variables are included in a model. An a-priori power analysis for logistic regression was conducted with G*Power software (version 3.1), to determine the adequate number of cases for a study with a power of .80, α-level of .05, and an odds ratio of 1.3. It was determined that a desired sample of 473 cases would be needed, using a two-tailed significance test. It was initially anticipated that 860-930 cases would be included in the sample, as it was assumed that each judge carried a docket between 35-40 cases every week. One judge carried a significantly smaller docket, averaging between 15-20 cases. This assumption was also based on including all cases, rather than only those in which there was a violation of conditions of probation and that non-appearance would be relatively low. On any given hearing day, approximately 10% of cases did not meet this inclusion condition. Information from these hearings was coded directly from the notebooks used to transcribe what was said in court, and became the source of data for factors related to the hearing (i.e. if any conditions not met,

framing of these issues).[12] As such, power is lower than anticipated, with large effect sizes able to be detected, while smaller effect sizes may suffer from Type II error.

Much of the current literature on courts utilizes existing agency records to examine court outcomes (e.g. Kingsnorth & MacIntosh 2007; Messing, 2014). Following this tradition, two sources of agency records were utilized to capture case, probationer, and processing information in predicting review hearing sanctions. Prior to attending weekly probation review hearings, I printed the docket for the day, which was available from a publicly viewable website detailing criminal court records (Wisconsin Circuit Court Access Site, CCAP, http://wcca.wicourts.gov). The case numbers and names were used to collect case processing information and prior record from CCAP searches, matching name and date of birth to eliminate possible errors with common names (i.e. John Smith). Records prior to 2000 have limited information available, typically statute number and disposition (e.g. conviction, dismissal, acquittal). The statute number was matched with the Wisconsin State Statues to determine nature of prior record. The third source of data was police reports from these criminal cases. Open record requests at the Milwaukee Police Department and suburban police departments were used to obtain a copy of the police report that initiated a criminal complaint. Information on CCAP included the date of offense and address of the probationer, which were used to query open records for the correct police report. These requests were made in-person for suburban departments, and via email for MPD.

Quantitative Data Coding and Collection

Collected data was based on prior literature searches and theoretical relevance (e.g. Kingsnorth & MacIntosh, 2007). Coding from CCAP included measures of offense seriousness at conviction, prior record, type of attorney (Guevara, Herz & Spohn, 2008), number of failures

[12] As CCAP has limited information on the sanctioning of probationers during review hearings, coding from field notes of whether he or she has missed treatment sessions, tested positive for alcohol or drugs, or failed to abide by additional probation conditions provided a more valid measure.

to appear (Peterson, 2006; Steffensmeier & Demuth, 2006), date of adjudication, conditions of probation, race/ethnicity, and gender. Date of adjudication and conditions of probation served as descriptive data on the sample. Data collected from police reports from this source included family status, relationship to victim, and case characteristics (e.g. victim or suspect injury, hospitalization, weapon use). Date of adjudication and sentencing were recorded for pure descriptive purposes for the sample, as well as the conditions of probation. Finally, data on sanctions and probation progress were collected during probation review hearings and quantized. This includes results of any drug tests and treatment progress, as well as employment status, given that most probationers were required to obtain or maintain employment while on supervision.

I developed a coding sheet with a code book, which contained clear operational definitions of the attributes of variables. To reduce errors in data collection, one coding sheet was used per case, which contained codes for all three data sources. Subsequently, I conducted a pilot test of a small sample of police reports (i.e. the first two review hearing sessions) to assess whether any issues with validity and reliability were present (Singleton & Straits, 2010). I observed that I failed to include probation agent appointments, condition time, and relationship with the victim in the initial coding sheet, and found that housing issues were exceptionally infrequent. Coding sheets were changed to reflect these issues. I also conducted a test-retest reliability check by coding a random sample of 10 cases twice over a three-day period (Maxfield, 2015). Inter-class correlation coefficients were above .70 for all variables except "other issue" (r=.690) and weapon (r=.372).

One limitation that was encountered is that cases in which children are victims were denied under open records laws. This meant that victim injury, hospitalization, and weapon use

were unable to be recorded for 8.3% of cases. In addition, record requests from MPD encountered problems when their records liaison was unable to match a report with the probationer's name and the incident date for 29.1% of cases. This meant that there were missing data on victim injury and weapon use for 37.4% of cases, family status for 10% of cases, and relationship to victim for 30.9% of cases.

Dependent Variable.

The dependent variable was operationalized as the outcome of the probation review hearing, namely, whether a sanction was given, and if so, the severity of the sanction. From previous observations of probation review hearings, several options exist for judges. Probationers who have some failures during probation may be verbally admonished with a second (or third, fourth) review scheduled to track future progress, or may be sanctioned with jail time. Jail time may include one or several days, up to sentenced condition time (e.g. 20 days). The first dependent variable was coded as a dichotomous variable, capturing 'no sanction, verbal admonishment' or 'sanction, jail time.' The second dependent variable was the count of days sanctioned to jail. For this second dependent variable, only those with at least one day of jail were included.

Table 2.
Coding Scheme for Quantitative Analysis.

Variable	Coding Scheme
Sanction Number of days jailed	Verbal = 0, Jail = 1 Continuous measure
Probationer Age	Continuous measure
Probationer Gender	Female = 0, Male = 1
Probationer Race/ethnicity	White = 0, Hispanic = 1, Black = 2, Other = 3
Probationer Employment Status Type of Employment	Unemployed = 0, Employed =1 String
Probationer's Minor Children Did they Witness?	No = 0, Yes = 1 No = 0, Yes = 1, Not Applicable=2
Prosecutor Gender	Female = 0, Male = 1

Prosecutor Race/Ethnicity	White = 0, Hispanic = 1, Black = 2, Other = 3
Judge Gender	Female = 0, Male = 1
Judge Race/Ethnicity	White = 0, Hispanic = 1, Black = 2, Other = 3
Judge Name	String
Probation Agent Gender	Female = 0, Male = 1
Probation Agent Race/Ethnicity	White = 0, Hispanic = 1, Black = 2, Other = 3
Attorney Type	Private = 0, Public Defender = 1, Court-Appointed = 2
Attorney Present at Hearing	No = 0, Yes = 1
Order of Bail Amount of Bail	ROR = 0, Bail = 1 Continuous
Made Bail	No = 0, Yes = 1
Failures to Appear	Continuous
Date of Adjudication	Numerical date
Date of Sentence	Numerical date
Conditions of Probation	Condition Time in Days, BIP, Anger Management, Sobriety, Substance Abuse Treatment, Parenting Classes, Employment, School, Housing, Mental Health Treatment/Medication, Changed Contact Order, Other
Location of Offense	String
Statute Conviction Type of Offense	String & Ranking (Level & Class, i.e. Felony H) Violent = 0, Property = 1, Public Order = 2, Other = 3
Number of Counts	Continuous
Bail Jumping Conviction	No = 0, Yes = 1
Repeater Conviction	No = 0, Yes = 1
Weapon Use	No = 0, Yes = 1
Victim Injury Nature of Injuries Hospitalization	No = 0, Yes = 1 String No = 0, Yes = 1
Suspect Injury Nature of Injuries	No = 0, Yes = 1 String
Prior Restraining Orders	No = 0, Yes = 1
Prior Convictions Prior Violent Convictions Prior Felony Convictions	Continuous Continuous Continuous
Session Behavior Attended All Participated/Attendance	 No = 0, Yes = 1, Not Mentioned = 2 Positive rating = 0, Negative rating = 1, Not Mentioned =2
Dirty UA Tests	No = 0, Yes = 1, Not Mentioned = 2 Positive explanation = 0, Negative explanation = 1, Not Mentioned = 2
Employed or in School	No = 0, Yes = 1, Not Mentioned = 2 Positive explanation = 0, Negative explanation = 1, Not Mentioned = 2

Probation Agent Visits Attended All	 No = 0, Yes = 1, Not Mentioned = 2 Positive explanation = 0, Negative explanation = 1, Not Mentioned = 2
Contacted Victim	No = 0, Yes = 1
Additional Concerns	String – from which "Other Issue" and framing of "Other Issue" was coded.

Independent Variables.

The independent variables of interest were probationer social location characteristics. Table 2 contains the list of dependent, independent, and control variables and the coding scheme for these variables. Age was coded as a continuous variable from the CCAP record of birthdate to the date of the review hearing. Gender was coded as a dichotomous variable with females as the reference category, and race/ethnicity coded as a categorical variable to include White (=0), Black, Hispanic, and Other. For analysis, these variables were re-coded into dummy variables, with White excluded as the reference category. Given that there were few 'other' probationers (n=3), they were excluded from statistical modeling. Previous research on probation and parole revocation decision-making has found that males and Black and Hispanic offenders are more likely to receive revocations and longer terms of incarceration (Albonetti & Hepburn, 1997; Lin, Grattet & Petersilia, 2010; Rodriguez & Webb, 2007).

Additional independent variables included employment status and family status. Employment status was a trichotomous indicator of unemployed (=0), employed, and no mention of employment at the time of the probation review. A string variable of what type of employment was also included, although not all mentions of employment included job title or place of employment. Previous research has found that employed individuals received shorter incarceration terms at revocation hearings (Rodriguez & Webb, 2007). Finally, family status was measured as whether there were minor children in the household, as well as whether the

children witnessed the violence. This was measured at the offense *or* at the time of review, and includes probationers who are pregnant or have partners who are pregnant. Several studies have found that defendants with child care responsibilities are less likely to be incarcerated (e.g. Daly, 1987b; Freiburger, 2010), yet research on parole or probation hearings have not examined this potential influence.

Control Variables.

Additional information about the processing of the case and hearing was coded. The gender and race/ethnicity of the prosecutor, judge, and probation officer for each defendant were coded with White and female as the reference categories. These measures were coded from qualitative observations. The type of attorney was captured as a trichotomous variable comparing those with private representation (=0) to those with public defenders and court-appointed attorneys. Prior research has found that defendants with public defenders were more likely to be detained and received higher bail amounts compared to "other" attorneys (Ball & Bostaph, 2009), as well as less likely to receive a charge reduction (Romain & Freiburger, 2015). Alternatively, research on the courtroom workgroup has suggested that more stable attorneys in a courtroom (i.e. public defenders) may be better able to negotiate with prosecutors and influence the construction of an offense (Walker, 2011; see also Feeley, 1979). Additionally, a dichotomous indicator of whether their attorney was present at the hearing was measured.

Additional variables for case processing included pretrial release factors and conditions of probation. Case processing variables of bail, failure to appear, and dates of adjudication and sentencing were collected for descriptive purposes. Bail was measured with three variables. First, a dichotomous variable of whether defendants received an order of bail or release on own recognizance (ROR = 0) compared to held on cash bail. Second, for those ordered bail, a

measure of the amount of bail in dollars. Finally, a dichotomous measure of whether those who were ordered to bail were detained prior to adjudication. Prior research in sentencing and charge reduction has demonstrated that pretrial release decisions, as well as the ability to make bail, influences subsequent case processing decisions (Brennan, 2006; Jeffries, Fletcher & Newbold, 2003; Romain & Freigurber, 2015). Those detained are likely viewed as more dangerous, with fewer ties to the community. These perceptions may influence probation review hearings.

A continuous measure of the number of failures to appear during the duration of the case was also included, as were conditions ordered for probation. Failure to appear in previous court cases has been demonstrated to be a predictor of pretrial decisions, as it is an indicator of risk (e.g. Taxman, Soule & Gelb, 1999), with defendants with failures to appear more likely to receive jail than probation in voluntary guidelines states (Wang, Mears, Spohn & Dario, 2013). It could be that judges view prior missed court dates for the active case as a signal of irresponsibility, or risk of failing to complete probation. Finally, conditions of probation at sentencing were coded to note which are applicable for each defendant, including BIP, anger management, sobriety, substance abuse counseling, parenting classes, employment, school, and mental health treatment/medication (see Albonetti & Hepburn, 1997). These were collected for descriptive data, rather than included in statistical modeling.

Additional relevant case factors were coded from police reports, including the location of the offense, victim injury and whether the injury required hospitalization, and suspect injury and hospitalization.[13] The severity and nature of the offense at conviction were captured from CCAP, including the statute on conviction, level of severity based on level and class (e.g. Felony

[13] Due to state open records laws, victim information, including gender, race, and age, were redacted from police reports and unavailable on CCAP. It could be that the gender and race of victims influence decision-making in probation review hearings, however, the data were unavailable.

H, Misdemeanor A), type of offense, number of counts, whether any counts involved bail jumping, and whether the offender was convicted with a repeater enhancer.

Prior research has found that prior record, severity of the violation, and nature of offense (i.e. violent or sex offenses) increase the likelihood of revocation, as well as longer terms of incarceration (Lin, Grattet & Petersilia, 2010; Rodriguez & Webb, 2007). Probationer prior record was measured with a continuous variable of the number of prior convictions, violent convictions, and felony convictions. A dichotomous indicator of whether the probationer had a history of restraining orders was also captured, as research has previously demonstrated this influential in domestic violence case processing (Messing, 2014; Romain & Freiburger, 2015).

Finally, progress on probation was coded from qualitative observations of the review hearings. Measures included treatment attendance and participation at BIP, positive UAs for drugs and alcohol, whether the defendant was employed or in school at the review date, attendance and cooperation with their probation agent, and whether they had any contact with the victim. Treatment progress was measured as an indicator of whether any sessions were missed. AODA screening measured the number of failed, altered, and missed UA tests. Any additional issues that were raised (e.g. attendance at mental health programing, couples counseling, or parenting class, failure to pay court and supervision costs) were coded as a string variable and transformed into an indicator of 'other issues present.' Finally, given the initial findings from qualitative coding, these issues were coded as whether they were 'positively framed' (i.e. mitigation factors were emphasized, such improved attendance more recently, missing due to work) or 'negatively framed' (i.e. simple statement that there was missed sessions or dirty tests, aggravating factors mentioned, such as continued drug use, disrespect at treatment programing).

Quantitative Analytic Strategies

As there were two dependent variables (i.e. the decision to sanction, and the amount of days sanctioned), two tests were used to examine the influence of probationer characteristics on the sanctioning decision. The decision to sanction is dichotomous in nature, and therefore required the use of binomial logistic regression. Assumptions of binomial logistic regression include that the dependent variable is dichotomous, coded to examine the probability of Y (P(Y=1)), independent error terms, a linear relationship between independent variables and the log odds of the dependent variable occurring, and relatively large sample sizes, given the decreased power of logit models (Heeringa, West, & Berglund, 2010; Schwab, 2002).

A series of models were used to predict the likelihood of sanction in probation review hearings:

1. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + Judge\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPMiss\beta_{m|b} + UADirty\beta_{m|b} + POMiss\beta_{m|b} + OtherIssue\beta_{m|b} + VicContact\beta_{m|b} + \varepsilon$
2. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + JudgeGender\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPMiss\beta_{m|b} + UADirty\beta_{m|b} + POMiss\beta_{m|b} + OtherIssue\beta_{m|b} + VicContact\beta_{m|b} + \varepsilon$
3. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + Judge\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPFrame\beta_{m|b} + UAFrame\beta_{m|b} + POFrame\beta_{m|b} + OtherFrame\beta_{m|b} + VicContact\beta_{m|b} + \varepsilon$
4. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + JudgeGender\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPFrame\beta_{m|b} + UAFrame\beta_{m|b} + POFrame\beta_{m|b} + OtherFrame\beta_{m|b} + VicContact\beta_{m|b} + \varepsilon$
5. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + Judge\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPMiss\beta_{m|b} + UADirty\beta_{m|b} + POMiss\beta_{m|b} + OtherIssue\beta_{m|b} + VicContact\beta_{m|b} + BlackEmployed\ \beta_{m|b} + \varepsilon$

6. $ln\frac{(Pr(y=m)}{Pr(Y=b))} = x\beta_{m|b} + Gender\beta_{m|b} + Race/Ethnicity\beta_{m|b} + Age\beta_{m|b} + Employment\beta_{m|b} + Children\beta_{m|b} + Judge\beta_{m|b} + AttPresent\beta_{m|b} + Severity\beta_{m|b} + PriorFelony\beta_{m|b} + PriorViolent\beta_{m|b} + BIPMiss\beta_{m|b} + UADirty\beta_{m|b} + POMiss\beta_{m|b} + OtherIssue\beta_{m|b} + VicContact\beta_{m|b} + BlackParent\ \beta_{m|b} + \varepsilon$

The first equation examines the influence of probationer characteristics (e.g. gender, race/ethnicity, employment status, family status) net of control variables, which include violations of the conditions of probation, judge, severity of offense, prior record, and whether an attorney was present at the hearing. The second equation is the same as equation one, with the exception of judge gender. Given that two judges were male, and three female, one could argue that differences among judges in their sanctioning patterns could be due to gender differences. The third equation is the same as equation one, with the exception of the framing of issues on probation. Given Feeley's (1979) concern with the mobilization and manipulation of facts, substituting the objective measures of issues on probation with the framing of these issues addresses the point that judges may view some failures as positive (i.e. missing BIP because of childcare issues, one dirty UA test followed by several clean tests). The fourth equation is the same as equation three, yet substitutes judge gender for the actual judges, again to examine whether there are differences in sanctioning across gender. The fifth equation adds the interaction term for being Black and employed, examining the multiplicative influence of these social locations, compared to White probationers. The sixth equation adds the interaction term for being Black and a parent, compared to White probationers. Hispanic probationers are excluded for the fifth and sixth equations, given their low representation in the sample.

Secondly, for those defendants sanctioned with incarceration, a count model (e.g. Poisson or negative binomial) was used to model the number of days sanctioned. Given that this is a count variable, ordinary least squares regression would be an inappropriate model because of

violation of assumptions of normality, and dispersion (Heeringa, West, & Berglund, 2010; Long & Freese, 2006). An initial Poisson model was first fit including the same independent and control variables identified in the above binary logistic regression. The 'countfit' command in Sata 12.1 was used to determine which count model provided the best fit for the data, given the concern about overdispersion with Poisson models (Long & Freese, 2006). Both AIC and BIC criterion resulted in a preference for negative binomial regression over Poisson models. The G^2 test was significant (G^2=181.69, p<.001), indicating that there was sufficient evidence of overdispersion and a negative binomial model was preferred to a Poisson model. A Heckman correction was estimated prior to model building, utilizing the explanatory variables from the logistic regression model as selection variables (Bushway, Johnson & Slocum, 2007; Heckman, 1976). The hazard variable was entered into the final count model to address the impact of selection effects on the length of incarceration. Further, given that the results were zero-truncated (i.e. only those with at least one day of jail are included), a zero-truncated negative binomial model was utilized to examine the influence of the independent variables on the percent increase of days sanctioned. Assumptions of a negative binomial model include independence of error terms, heteroscedasticity of variance, and variance greater than the mean (Heeringa, West, & Berglund, 2010; Long & Freese, 2006). The same series of equations were estimated for the count model as seen above.

Prior to model building, tests for multicollinearity were conducted using pair-wise correlation matrices for each outcome and an examination of the tolerance and variance inflation factors (VIFs), utilizing Allison's (2012) recommendations as a guideline. All tests utilized an alpha-level of .05 to determine statistical significance. In addition, odds ratios are reported as a measure of association for the significant coefficients.

CHAPTER 4: QUALITATIVE RESULTS

Coding of the sampled transcripts and field notes before and after hearings were analyzed iteratively, for both descriptive and analytic coding. During the observations, some of the themes and main 'issues' for judges became apparent through seeing repeated assertions, rhetorical questions, and extensive diatribes. Although the judges differed in their approaches and main concerns, the most common issues across judges were drug use, missing programming in general (i.e. BIP sessions, AODA treatment, counseling or parenting classes, and office visits with probation agents), and employment. These issues elicited different explanations offered by probation agents, judges, defense attorneys, and probationers, rooted in underlying themes of personal responsibility, therapeutic benefit, and mental health. Additional discourses were utilized at times to describe probationers' actions with regard to parenting and, to a lesser extent, domestic violence. These dominant discourses reflect the main purposes of the problem-solving courts, notably offender responsibility and accountability while addressing underlying biological, social, and psychological needs of offenders (e.g. Simon, 1995; Winick, 2002). Further, whether discourses of responsibility and personal choice, as compared to mental health, were employed depended on probationers' social location.

The final construction of issues through these discursive lenses reflected differing power dynamics at play both through prescribed institutional roles within the courts as well as speaking turns utilized by court actors and probationers during hearings. This chapter will outline the power dynamics at play in domestic violence courts, including the use of speaking roles as asserting power in hearings. This will be followed by an examination of discourses used in the hearings, as well as how power is enacted in probation review hearings to elevate certain constructions of a probationer and discourses utilized at the detriment to alternative constructions

and discourses. Finally, the chapter will conclude with a comparison of discourses utilized dependent upon a probationer's social location.

Power Dynamics in Probation Review Hearings

Power Within the Physical and Social Setting.

The domestic violence courts are located on the fifth floor of the main courthouse, at the far end of one hallway. In each courtroom two rows of dark stained pews, each four rows deep, make up the seating for the gallery. Upon entering the domestic violence courtrooms, one is drawn to the plexiglass wall that separates the gallery from the courtroom proper. These are present in many of the criminal courtrooms – historically there was an incident where a defendant saw his victim in the gallery and leapt over the typical short wooden separation wall, assaulted her, and killed her (Nelida Cortes, personal communication). The installation of these glass walls was intended to increase the safety of victims who may be in the gallery during a court hearing. They also serve to place a clear distinction between those with insider status (i.e. court actors) and those as outsiders (i.e. defendants, victims, family members) (see also Van Cleve, 2016).

Separate from the gallery is the courtroom proper, containing sparse dark stained furniture for desks, chairs, and the jury box. There are more chairs next to the jury box and lining the glass dividing wall where attorneys, probation officers, and police officers sit waiting to be called. On the other side of the room, directly next to the door within the glass dividing wall is a desk for the bailiff. Additional chairs for attorneys and additional bailiffs line this side of the glass dividing wall as well. In the middle of the courtroom are two large rectangular desks – one for the defense, the other the prosecutor. When court is not in session, the defense desk lies bare, with the exception of a microphone and a placard with a directive to speak clearly. The

prosecutor's table has a bare metal file folder, and often has case law books perched on one corner. When court is in session, the defense table stays bare, with the exception of folders and papers placed upon it by defendants and defense attorneys that circle in and out of the room. The prosecutor's table, however, has the entirety of files for the afternoon on it in the filled file folder, as well as often a beverage for the prosecutor. On the back wall there is two rows of connected desks separated from the rest of the court by a wooden barrier – the first containing workspace for the clerk and court reporter, the second a space for the judge.

Probation review hearing Fridays are typically a cacophony of sounds, constant movement, and an organized chaos. Bailiffs typically unlock the doors to the courtroom approximately 15 minutes before court, although there are times when they are late due to other court activity. Defendants typically check-in with the bailiff seated just inside of the glass dividing wall, receiving a copy of the memo, or report, by their probation agent. Judge A has a smaller docket, typically between 5 and 20 cases scheduled, resulting in a less crowded courtroom. Judges B, C and D, and Alternate Judge E, however often have caseloads between 30-40. With the courtroom packed with probationers and family members, it is often hard to find a seat if one comes late to these hearings. Most probationers sit quietly in the gallery, while some talk softly to their family members or each other about their reports, or for newcomers, what to expect at the hearings. Most probationers dress casual, in jeans and a basic t-shirt or in sweats. Some dress business casual – cargo or chino pants with a button down shirt or nice top. It is rare to see probationers dressed up for court – and often judges take note of it at the beginning of the hearing. Court personnel, by contrast are dressed up for court, with attorneys and prosecutors in suits, probation agents in dress pants or dresses, and judges donning their robes. The majority of probationers are people of color and male, largely Black and Hispanic.

Occasionally there are women and White probationers. This contrasts with court personnel, who are largely White. [14] These contrasts in dress style and background create clear distinctions between insider and outsider status.

Probation agents check-in at a makeshift desk off the side of the judge's desk with another bailiff, then moving to sit in the jury box. Often the bailiff checks to see if there are multiple cases for an agent, arranging the order of files for the judge so that all cases for an agent are heard sequentially. There are typically between 12 and 20 agents at a given hearing, with as many as 26, taking up the jury box and extra chairs along the glass diving wall. They typically chat amongst themselves, occasionally talking with a defense attorney about a client or talking to bailiffs. Others sit silently, reading books, perusing files and reports, or looking at their phones. Similarly, extra bailiffs dot the opposite side of the glass dividing wall, on standby until someone is sanctioned and taken into custody. The number of bailiffs in the court range between 3 and 17, often with Judge A having more bailiffs present. They too talk amongst themselves, occasionally with defense attorneys and the clerk. Most agents do not interact with their clients, instead taking their seats in the jury box immediately after check-in, as if they are symbolically the jury, weighing the progress of their clients and giving their recommendation to the judge.

Defense attorneys come in and out of the courtroom, checking with the bailiffs if their clients have checked in, often calling out the names of clients, at times unsure of who they are.[15] Other attorneys clearly have an established working relationship with their clients, going directly to them in the gallery to talk about the reports. Most take their clients into the hallway for a brief

[14] All 5 judges observed where White, all prosecutors were also White, with the exception of two Black females. Bailiffs were predominately White men, with few women. Defense attorneys were also largely White, although there were a few Hispanic and Black attorneys. Probation agents were somewhat more diverse including Asian, Hispanic, and Black agents, but upon counting at the beginning of each hearing, the majority were still White and largely female.

[15] It should be noted that many of these attorneys are from the public defender's office, often rotate who will cover probation review hearings, and as such may be representing a client who is not their assigned client.

review of the report, ask for any additions, and for new probationers give a quick explanation of what will occur. Several also coach their clients on what to say during the hearing with issues such as employment. Although defense attorneys are a fixture in these hearings, most probationers are not represented by an attorney at this stage of the court process. Most hearings have between two and five defense attorneys present. Given the insider knowledge of attorneys in the socialization process of new probationers, as well as the familiarization with the court process, having an attorney at a review hearing places probationers in a position of power (Conley & O'Barr, 2005; Merry, 1990). Further, the juxtaposition of interaction between probationers and their attorneys, compared to their probation agents mirrors the adversarial system in which prosecutors, as agents of the state, do not interact directly with defendants. It was rare to observe probation agents approach a client and go over the report, asking questions for clarification and updates. There were a handful of agents that did meet with clients in the gallery to briefly go over their reports and ask if they had any questions.

Further contrasts between the insiders and outsiders are present in the behaviors of court actors and probationers during court. Most probationers come alone, sitting in the hard pews, reading their reports, staring at the ground, or watching the interaction among court actors who chatted about mundane topics (e.g. sports, the weather, high profile cases, vacations taken or planned, and office scheduling). The gallery for the most part is silent, with occasional murmurings between probationers who know each other or family members. The front of the court, however, is abuzz with conversation between bailiffs, probation officers, the clerk, and defense attorneys chatting with one another. This ability to talk or not talk is reinforced by posted signs for silence, and intermittent sharp reminders by bailiffs for silence in the gallery. These contrasts in role (i.e. court actor or probationer), rules of conduct, and the dividing wall re-

inscribe power differences between insiders and outsiders. Insiders are able to speak more freely before court and during recesses, while probationers are reminded to remain silent (see also Van Cleve, 2016).

Judges often come into the courtroom, sans robe, before court begins to survey the courtroom, talk briefly to the clerk or bailiffs, and then walk back into chambers. They are typically the last to formally arrive, entering from their chambers, robe on or putting their robe on to formally begin the session. The judges are all White, with Judge A and alternate Judge E male[16], while Judges B, C, and D are female.[17] Judge A is more stern, using sarcasm, and a raised voice to get his disappointment across. He also tends to sanction probationers more frequently than the other judges, with the exception of alternate Judge E. Judges B and C tend to not raise their voice as much as Judge A, although their disappointment is evident in a mildly scolding tone, with Judge B often drawing out the probationer's name when she is unhappy with their progress.

Power Within Turn-Taking.

Within sequences of turn-taking, judges were involved in the majority of sequences, followed by probationers, probation agents, and to a smaller extent defense attorneys.[18] Foucault (1980) argued that power and knowledge are intertwined, such that who is able to speak and to judge is afforded greater power, and those with greater power utilize their knowledges and discourses in the construction of an event or account. Given the roles that court actors have within the legal setting, there is an asymmetry in the ways in which court actors and probationers

[16] Alternate Judge E was a last minute replacement for Judge B one week in spring. He is a retired judge with nearly 20 years of experience (The Third Branch, Winter 2006).
[17] During the observation period, a local election was held and Judge C lost her position to a challenger. Judge D was appointed less than one year before taking the bench, and spent part of the summer observing in the three courts, socialized into how existing judges make decisions, the concerns they have, and how they sanction (Balletopedia, n.d.). She replaced Judge C in August, leaving one month of observations in her court.
[18] Given that 44 of the 100 cases sampled involved defense attorneys, it is not surprising that they, in aggregate, have less turns to talk.

are able to speak (Thornborrow, 2002; Conley & O'Barr, 2005). Power, in the ability to speak, and to influence others' speech, lies in several aspects of turn-taking: the ability to question, the ability to respond, and the ability to interrupt or assert. Although judges and probation agents have greater ability to ask questions and make assertions during a hearing, defendants and their attorneys were able to influence others' speech through longer responses, diatribes, and interruptions.

Power in the Form of Questions Asked and Responses Given.

The ability to ask questions is a defining feature of power, as it has the potential to limit what the other person can speak about (Conley & O'Barr, 2005). Questions have differing levels of power or force behind them, dependent on whether they are open (e.g. What's going on? Counselor?) or pointed (e.g. When was the last time you used marijuana? Did you call to get your absence excused?), rephrasing or repeating of previous questions within a turn at talk, or rhetorical. Judges used questions more often than other court actors, whether to obtain new information, as a response from a party to another's claim, or further elicit details on an issue. They often used open questions more frequently with probation agents and defense attorneys, which allowed these court actors to command the floor for longer periods of time, if desired, as well as to address a breadth of topics.

In the opening sequence of the hearing, judges always asked if there were any additions, updates or corrections – which allowed probation agents the ability and power to talk as much as they chose about anything related to their client. Most probation agents gave moderate to lengthy responses to open questions for more information. This tended to lead the hearing down a specific path laid out by what the probation agent chose to highlight in their response. At other times, probation agents included even more detailed information about the progress of their

clients, such as attitudinal statements about their ability to complete probation and cooperation while under supervision. Most probation agents engaged in medium to longer responses to judge's initial open questions for updates in order to highlight the issues most important to them, thus setting the topic for the beginning of the hearing.

Defense attorneys also utilized the space provided to them by judges asking open questions to expound on issues brought up by probation agents or judges, while including additional information to frame an account as less serious or to complicate a sanctioning decision by offering hypothetical job loss or continued addiction if the probationer was sanctioned to jail. One defense attorney utilized the space afforded to him by Judge E's open-ended question to expound at-length for his client. After hearing the agent's assertion that "Mr. _____ is not doing well, has not followed through with anything," the attorney responded by drawing on his beliefs about his client:

> Judge E: Yes?
> DA: Up until recently… Mr. _____ has brought in work stubs from jobs, now he's with Burger Chalet, but they won't allow him time off. He would lose his job. At least he's got a job. He has a lot to lose if he's incarcerated today. Consider stayed time if he doesn't do well – he's made personal progress for himself and his family. He had no money for BIP, which is why he didn't go, not a good solution but what he had at the time. I'm asking for another chance.[19]

In this longer response, the attorney cites time issues with scheduling, finances, and employment as inter-connected in terms of his missed attendance at BIP, as well as the potential impact on his family if he were to be sanctioned. In this case, however, the concern with missed BIP classes and continued marijuana use outweighed the judge's concern about the probationer losing his job, as he sanctioned him to 15 days in jail. Both probation agents and defense attorneys are

[19] All quotes from hearings exclude names of judges, probation agents, defense attorneys and probationers. Judges are referred to by letter, which is consistent with the quantitative coding in the subsequent chapter. Any places referenced for employment are pseudonyms to protect confidentiality. DA stands for defense attorney, D for probationer, and PO for probation agent.

insiders in the court, familiar with the format of hearings. These court actors tended to use longer responses to open questions from judges to assert as much information as possible to support their framing of an account. This also meant that they commanded the floor for a longer period of time, and offered the judge more information, attempting to influence the judge's final decision on whether to sanction.

By contrast, judges tended to use pointed questions more frequently with probationers, which placed limits on what probationers could speak about. By specifying a particular kind of response through the phrasing of questions (e.g. such as what, why, when something occurred or failed to occur), judges limited the power of defendants to change topic or expound at length. Additionally, when judges did not believe a probationer, or felt that they were evading giving a clear response, they employed repetitive, or rephrased, questions designed to challenge their responses. This also had the implication of limiting the power of probationers, requiring them to acquiesce to judges' construction of the issue (see also Conley & O'Barr, 2005). Further, like Thornborrow's (2002) findings on power within institutional roles, judges also employed longer assertions and evaluative assessments, paired with questions. These tended to place emphasis on their social construction of the issue, while limiting the way in which probationers could respond to their value-laden assessment. One exchange embodies all three types of questions that judges tended to use with probationers:

> Judge A: When was the last time you smoked?
> D: 9/1.
> Judge A: A little over two weeks ago. Mr. _____, marijuana does not stay in your system for two weeks – are we clear? When was the last time you smoked?
> D: Thirty days ago.
> Judge A: No, sir, marijuana (speech here on the length of time it stays in one's system). When was the last time?
> D: Thirty days.

Judge A: No, sir, I will not take 30 days <terse, angry tone, voice rising in inflection>. I don't know where you got that from, I'm not buying it, it's nonsense, every study does not support it. I know it's an urban myth. Try again – when was the last time?
D: 8/17.
Judge A: You have one more chance – you know baseball? Three strikes – when was the last time?
D: My birthday, on 9/11.
Judge A: So why did you just lie?
D: I have no explanation.

In this exchange, the phrasing of questions is pointed, requiring the probationer to acquiesce to a specific amount of time as an answer. The judge expressed disbelief in the probationer's response by repeating in direct and slightly paraphrased words "When was the last time you smoked?" and engages in repetition of "No, sir" for both offers of time by the probationer. What follows a long speech referencing his knowledge on the sensitivity of UA tests as more valid than the probationer's knowledge, framed as an "urban myth." These speeches, followed by the repetitive question, "When was the last time?" are at first met by resistance from the probationer, who holds with his answer of 30 days three times, until a last question with an inherent threat to sanction if he does not change his answer.

Judges also utilized rhetorical questions and sharp retorts to assert their beliefs about the probationer and his or her answers during a hearing. Although probationers at times responded to these questions, the intent behind the asking of the question was to assert a particular construction of the probationer and his or her actions to be met with silence. Although probationers were often faced with questions that tended to place limits on what could be said in response, some probationers gave longer responses, breaking out of the typical question and short response format that dominated many hearings.

Power in the Form of Diatribes and Impassioned Speeches.

An additional rhetorical device utilized in probation review hearings included diatribes about topics that court actors, most often judges, felt passionate about. Similar to longer responses and assertions, these diatribes command the floor for a period of time, while also including underlying assumptions that court actors hold, whether about a person, an idea, or the criminal justice system. Judge's diatribes were often in response to what probationers had previously said within an exchange on a topic, disagreeing and expounding on their views. Judges took this opportunity to exercise their power by talking at length, almost as if the bench was their personal soapbox for their views on the system and society. Judge A typically used these diatribes to express his beliefs on the science behind UA testing. Additionally, he would expound on his beliefs on the purpose of probation for domestic violence offenders, while reaffirming his power in the decision to grant someone a chance to seek help. In one hearing, after hearing that the probationer had continued marijuana use and altered tests, expounded at length his disappointment, while projecting himself as a belief in the therapeutic benefit of probation:

> Judge A: The whole thing of probation is to help you, not to create jobs for us, or to do this on a Friday afternoon. I don't want or get satisfaction putting someone in jail. I never met a judge who did – I take no pleasure in it. I don't look forward to it. When I look at the history and see seven or eight bad reports, I get disappointed in myself. Did I pick the wrong person? I am disappointed in myself when it's a second review and you don't take advantage of the opportunities given. When you came in saying you have a problem and the pull of drugs, but you also say you don't need treatment – it's disappointing.

It was rare for defense attorneys to utilize diatribes to advocate for their clients, while also acknowledging the beliefs and concerns of judges. When given the floor through an open-ended question by the judge (e.g. typically "Counsel? Attorney _____?), some attorneys chose to not only respond at length to the issues that the agent or judge had raised about their client, but

to include their beliefs about the system or acknowledge the beliefs that the judge may have. In one hearing, the probationer continued to use methamphetamine, blaming a prescription interaction or his 16-year-old son for his use. After the judge said that the probationer was not compliant, the defense attorney responded:

> DA: I got involved yesterday, and said "oh my". I looked at his meds (listed them), and researched if they could show up as amphetamines. It became obvious to me, and likely to the agent as well as the court, that he has a serious meth problem. He will admit it, and it is due to loneliness and the divorce. What he needs is inpatient treatment – he can't get that with a misdemeanor. He has to check himself in, but he has no insurance, no job. They only have outpatient treatment – I don't think it will work. So there's jail, but that won't help. He has a problem, but jail won't help. It just says "don't use meth", but he will get out and will use. He says now "I want AODA", but you and I both know why – he wants to avoid the 30 days. So you can make him go on Monday or throw his butt in jail for 30 days. We don't have crystal balls.

In this exchange, the attorney is clearly acknowledging what the judge will later state, "You're absolutely right, it's clearly use," as well as most judge's assumptions about a sudden increase in activity or desire for treatment right before a court date – that they are doing this not because they want to make a change, but to avoid jail. The attorney also asserts his belief that jail does not help people with drug problems or addiction, as well as the problem of getting access to treatment. This is consistent with Thornborrow's (2002) finding of laypersons (i.e. victims of crime) challenging law enforcement's institutional power and social construction of their victimizations through questions and assertions.

Power in the Form of Interruptions and Assertions.

Power exists not only in the ability to question, or in the ability to command the floor with longer responses, but through the ability to interrupt an exchange between other participants. Interruptions within the back and forth between two actors provided further information, or corrections, while signaling that the speaker had something of value for the exchange. Additionally, interrupting when one participant is speaking is an act challenging the

power another has in speaking, not only with challenging what they are saying, but their ability to speak (Thornborrow, 2002). Judges often interrupted probationers when they gave answers that did not satisfy the judge. In one hearing, Judge A relies on assertions, interruptions, and rhetorical questions to challenge the account of the probationer as to why he was unable to get his requirements completed within an appropriate time span:

> Judge A: Mr. _____ – what's going on? Why so many problems?
> D: I wasn't able to move around, I'm still catching up with my ID, my paycheck to cash.
> Judge A: Mr. _____ I sentenced you on 7/8, over two months ago.
> D: My probation gave me –
> Judge A: <interrupting> I sentenced you over two months ago – where do you work?
> D: Home health care – three hours a day.
> Judge A: Three hours a day, that gives you five to six hours a day to get stuff done. You didn't go to Alma, your picture wasn't taken.
> D: It's time consuming.
> Judge A: Time consuming? What else do you do?
> D: I had my paper ID, it takes six to eight weeks, I had to switch my living situation with my auntie.
> Judge A: Here's where my sarcasm comes in – with all you had to do you still found time to get cocaine and marijuana.

Within this exchange, Judge A employs an open question to allow the probationer to give whatever response he chose about a general set of 'problems.' Upon the probationer's response about the challenges of getting his license and finances, the judge asserts, in a challenge, that there was plenty of time to get the requirements done – two months, in fact. After the probationer tried again to give a response, the judge interrupted his turn, signaling that it was over and anything said would not be taken seriously, repeating what he had stated. This interruption challenges their account, while also reinforcing the institutional power that judges have in their role as arbiter. To him, any excuse would be futile. Interestingly, the probationer stays on the topic of time by supplying additional information not asked by the judge about the number of hours worked, which opens the door for another assertion challenging the probationer's overall accounting of the requirements being arduous when he has plenty of free

time in the day to accomplish setting up BIP and getting his license. Indeed, when the probationer responds that it's "time consuming," the judge follows with a rhetorical question, echoing the probationer's statement in question format, expressing disbelief. He further links this issue of time with the drug use habits of the probationer, suggesting time wasted and irresponsibility.

Probation agents at times also interrupted turns at talk between probationers and judges, or judges and defense attorneys to provide a correction or further information in framing the probationer's actions. In some instances, the probation agents interrupt to provide helpful information for the probationer's account. In contrast, other probation agents used interruptions to highlight negative notes about the probationer's progress. Defense attorneys would engage in interruption of exchanges between other participants in order to provide information aimed at influencing the framing of a probationer's actions and ultimately the sanctioning decision. The attorneys, however, framed their interruptions in the best interests of their clients, highlighting positive steps the probationer has taken, and hypothetical consequences for the probationer and his or her family if sanctioned.

Probationers at times also exercised power through interruptions of a participant's speech or an exchange between other participants, challenging their statements about himself or herself. These interruptions, however, tended to be disregarded or treated with hostility by judges:

> PO: One thing, he has been compliant but seems to turn a mountain out of a mole hill. He is upset about fees.
> D: I was not told about this.
> Judge C: Wow <voice raised>… not appropriate courtroom behavior.
> D: I didn't know I had to pay $1,000.
> PO: I reported he's doing well, but he goes from 0 to 100 like that.
> Judge C: The state law is that there are criminal costs.
> D: I didn't know.
> Judge C: Didn't the judge say that you assume all costs and fees?
> D: It wasn't on my paperwork.

> J: (Judge delineates costs) If you interrupt again, you will have time to think. The judge convicted you – after the case you were ordered by the court, then it was put on forms. It's not a surprise, it's mandatory on every case. It was ordered on your case. <long silence>

In this exchange, the probationer interrupts the probation agent's assertion characterizing him as upset and over-reactive by asserting that he did not know about the court costs. The judge, with voice raised, clearly expresses her dissatisfaction with the probationer's interruption, signaling that he spoke out of turn and was disrespectful toward his agent.

Summary.

Power is inscribed through both physical setting, institutional roles, and turn-taking styles all in the effort to command the audience and influence other participants' constructions of an account. The physical setting and institutional roles reinforce the concept of insider and outsider status, and the limited power of outsiders, namely probationers, consistent with previous research (Conley & O'Barr, 2005; Frohmann, 1991, 1997; Mertz, 1992). The use of open questions by judges for insiders (i.e. probation agents and defense attorneys) allowed for greater power for insiders in speaking about a probationer at length. Further, when these court actors used diatribes, long responses, and interruptions, they were more successful in being able to speak without challenge via interruption by the judge.

Power tended to be limited to probationers in exchanges, not only through their institutional roles, but through the limited access afforded to them by judges during turn-taking. Judges often employed closed questions, evaluative comments, repetitive questions, and interruptions when probationers spoke to indicate their disagreement with probationers' social constructions. Although judges tended to use their institutional role to enact power in exchanges through the use of targeted questions, probationers at times fought to challenge the unequal distribution of power through longer responses and interruptions, consistent with work in

linguistic analysis (Thornborrow, 2002). Yet these attempts to secure power were often met with interruptions and rhetorical questions aimed at silencing probationers' abilities to speak and their constructions of an account.

Power as Dominance in a Hearing.

In addition to power as enacted through turn-taking roles, power is enacted in the commanding, or dominating, of the floor during an exchange. Dominance during hearings often occurred as long responses to questions, as well as long assertions, diatribes, or evaluative comments based upon a previous response. In this sense, power commands silence and deference by other participants while a court actor or probationer is speaking at length. As previously stated, probation agents and defense attorneys often dominated the exchange with longer responses and assertions in order to provide information while framing the probationer within a particular light. Judges also tended to dominate exchanges, particularly at the end of hearings in the framing of their decision to sanction based on the factors that they highlighted as most relevant.

Although some attorneys took advantage of the opportunity given to them by judges to command the floor with lengthy assertions, responses, and even diatribes to address each issue brought up by judges and probation agents, others gave minimal responses, and fewer did not speak at all. In these types of cases, the silence or relative absence of defense attorneys from exchanges does not provide the probationer with a proxy insider status in constructing an alternate account that may transform the reading of the probationer.

Less common, probationers engaged in longer responses that dominated an exchange, offering a lengthy construction of their actions. Rarely, were these accepted by judges, often with reservations about sincerity and ability to succeed. In addition, the ability to speak and to

dominate a hearing typically required introduction by one's attorney or agent without being interrupted by the judge. In one example,

> Judge D: Attorney – anything to add?
> DA: Yes, a few statements appear untrue or misstated, I will turn it over to my client. For example – the drug Percocet – she did have a prescription for one year – is an issue that wasn't addressed. If it's okay with the court, she'll address this.
> […]
> D: I want to add, the psych eval was rocky in the beginning, I moved it up, it was on 8/11. I asked how long it would take, they said about a month. I am depressed, I was sent information a psychiatrist could see me right away. I see there's restitution- I can pay $50 a week. Being in jail, hearing people die, I don't want to be that person, I want to be there for my child.
> Judge D: What about sitting in custody for seven days will make you take this seriously? I read the report, I know you disagree. You missed one, rescheduled, but this is blatant disregard. Your agent is reaching out to give you the opportunity to be the best mother, but in the past you didn't accept any help. Convince me – what about sitting in jail will make you?
> D: I don't want to be that mother – that person, a loser, a disappointment. Being in custody jam packed, people being in prison. I want to make it a priority. Monday – I'll do the drug screen, parenting class. I want to show you on the next review, I want to prove myself.
> Judge D: Good, I think you have people around you that want you to succeed, I do, your agent does. The first step – you have to think you can succeed, listen to yourself.

What is important to note about this exchange is the previous exchange in which the judge invites the defense attorney to respond to the agent's framing of the probationer as non-compliant. In his response, he reiterated twice that his client would like to speak. This followed the typical conscription at first of being invited to respond or speak at length by court actors, yet further in the hearing, as shown above, the probationer asserted additional information about her struggles with mental health, a plan to pay court costs, and a positive construction of herself as wanting to be a good mother. Although several probationers who dominated an exchange through longer responses tended to receive favorable reception of their constructions of themselves and their situations, a few were met with continued skepticism. With domination of

the exchange comes the power to speak at length and frame the probationer's actions in a particular light, with the potential to influence how others view the probationer.

Power Through Topic Management.

In addition to turns at talk and domination of an exchange, power is enacted through managing the topics of exchanges, including the ability to successfully change topics. Prior research in the linguistic and law and society traditions have identified this ability to manage topics as inscribed into institutional roles during hearing and interviews (Conley & O'Barr, 2005; Thornborrow, 2002). In this reading of topic management and power, topic management is inherent in the ability to ask questions and give evaluative commentary, which is tied typically to lawyers, judges, and police in their roles as adversaries, arbiters, and investigators. Indeed, when examining the frequency of topic management across court actors, judges lead at least one exchange in 90 percent of hearings, with probation agents leading at least one exchange in over 80 percent of hearings.[20]

Often probation agents would begin hearings with information on the progress of the probationer, such as updates on more recent UA tests, attendance issues, or employment changes. While one could read these as neutral statements, often they provided a particular framing of the probationer, such as "trying," "improving," or "failing." In one such exchange, the probation agent carefully stated her updates regarding drug use and employment, offering that his attorney was on board with the plan to focus on treatment for addiction, rather than custody for continued use:

> Judge C: I reviewed the report, anything to add?
> PO: Mr. ____ documented this morning, urinalysis is positive for suboxone, negative for anything else. He has a new training schedule he brought with him. I spoke with his

[20] In the cases where probation agents did not lead, they typically did not give any information at the begging as an update or correction. This led the judge to take the first turn at topic management.

attorney – we discussed a plan if tests positive one more time, I would take him into custody.
Judge C: You don't want custody?
PO: He needs an incentive to stay clean, he can see his child but not while he's using. I spoke with the BCW. He has a part time job and school – some positives in his life. BCW said he was ordered to move from home with a man who has alcohol and drug issues. I am working to find him a place.
Judge C: He's in treatment but still uses?
D: I am scheduled 7-3:30 including Saturdays and I deliver pizza. The dynamics of life changed, I have a lot on my plate, which is good. Before there was too much free time.

This exchange supports the work of Feeley (1979) on the mobilization of facts designed to influence others' perceptions of the defendant while including language used to construct him in a positive light. Further, the probation agent demonstrates her commitment to working with her client in the broader issues of housing and access to treatment. This initial exchange led to the majority of the hearing focusing on the probationer's employment and vocational training, allowing for an alternative construction of the probationer as a worker dedicated to making himself marketable.

At other times, judges would change topics after responses from other court actors, signaling a closure to the previous exchange and turning toward another issue. Judges would change topic from what probation agents had included as an update, focusing on issues they had read in the reports prior to Friday hearings. Thus, judges utilize their power to manage topics through the ability to ask questions during hearings to carefully construct an account of the probationer based upon the factors that they consider most important. At other times, topic management and frequent topic changes were made in order to draw connections between issues, such as drug use and unemployment in implying that the probationer was dealing drugs, and support their framing of the probationer. In one such exchange, the probation agent gave no updates, giving the opportunity for the judge to frame the probationer as in a negative light during her exchange with the agent:

Judge B: Any updates?
PO: No.
Judge B: I was concerned when I read the report, so you tell me where I've gone wrong at manipulative, irresponsible behavior and instead of sanctioning, programs were deleted.
PO: CGIP?
Judge B: Bridge – she missed 1/12, 1/14, 1/21, was rescheduled numerous times, bus tickets were sent.
PO: Yes, she completed the AODA assessment.
Judge B: Finally?
PO: Yes, it was determined she did not need services because of clean UAs.
Judge B: How many?
PO: Two – 1/16 and 1/28. Prior to that in December all were negative.
Judge B: I'm glad to hear, because it read as clear disregard for her agent.

In this exchange, the judge started her topic change with a vague allusion to programs deleted, requiring the probation agent to respond to this allegation of a failure to hold the probationer accountable and the construction of the probationer as manipulative. During this exchange, however, the agent provided information of the negative UAs and lack of need for AODA treatment that alleviated the judge's concerns and challenged her initial construction of the probationer. Thus, the power to influence constructions of the probationer lies not only in the ability to manage topics, but in how others respond to this construction and supply information that may contradict a particular framing.

Probationers, at times, also were found to manage topics, often eliciting a topic change through interruptions and providing longer responses. In the same vein as probation agents and judges, they attempted to provide additional information to construct themselves in a particular way, often mitigating their issues with constructions of themselves based on roles within the family and trying to make a change. In one such case, the probation agent began the hearing with recounting an instance in which the probationer became upset with BIP staff, framing it as "rude to the staff." In this exchange that follows, the defendant talks at length, changing topics

to a death in the family, a theme that is referenced again by the judge when deciding not to sanction him:

> PO: It would be more beneficial if the court would address his poor attitude toward his agent and BIP.
> Judge B: I amend the conviction to include 30 days condition time. Mr. ____?
> D: I lost my grandma on the day of BIP, I told them, she died in Mexico. I'm the keeper of her estate, I had a lot of international phone calls, and I am getting a divorce. I had to fix my wife's car, and had 72 hours to vacate the premises.

In this sense, the connection between institutional role and power is challenged through breaking with prescribed roles and responses to directed questions, *offering more than what is asked*. The judge did utilize an open question when addressing the probationer, which allowed him the space to offer an alternative construction of himself as a family man who had a lot on his plate. Indeed, as Gathings and Parotta (2013) noted, some defendants utilized their space to manage topics and socially construct themselves within the acceptable discourses of the court. Although topic change is one aspect of power within probation review hearings, not all topic changes are successful in moving the hearing toward a different topic, nor at eliciting the desired effect on influencing others' perceptions of the probationer.

Summary.

Power is enacted in multiple ways during probation review hearings. Previous research has argued that power lies primarily with court actors due to their institutional roles that grant them the opportunity to manage topics, ask questions, and offer evaluative comments and diatribes (e.g. Connely & O'Barr, 2005; Heumann, 1979; Mertz, 1992; Frohmann, 1991, 1997; c.f. Gathings & Parotta, 2013). These findings, however, demonstrate that probationers did challenge the institutional power arrangements through interruptions, longer responses, and topic management. At times these contestations proved successful in not only commanding the floor, but offering an alternative construction of themselves. For many probationers, however, these

challenges to the turn-taking built within institutional roles were met with hostility, denial of power (i.e. threats to sanction), and denial of competing constructions.

Discourses Utilized in Probation Review Hearings

The discourses that emerged from descriptive coding, analytic memoing, and post-observation writings focused primarily on two concepts: responsibility and the therapeutic benefit of probation. These concepts were tied to a multitude of issues highlighted by court actors and probationers themselves when speaking about progress, programming, and issues that arose. These discourses were common across hearings – mental health, sobriety, and parenting were often referenced at times reflecting discourses of responsibility and therapeutic benefit. Finally, less common, there were discourses on domestic violence that emerged through iterative analysis of hearings. This is somewhat surprising, given the focus of the domestic violence courts on violence within intimate relationships. More common, issues of sobriety, AODA, mental health, employment, and finances, along with progress with BIP became the focus of hearings. It should be noted that BIP talk tended to reference the therapeutic benefit of it and responsibility much more than domestic violence. These themes will be addressed throughout this section.

Neoliberal Discourses and Responsibility.

The most commonly used discourse in probation review hearings was that of responsibility. Concerns with attendance at programming, meeting and communicating with one's agent, and obtaining employment were framed with discursive repertoires that commanded "follow through," "timeliness," "being in contact," and chastising "doing nothing or not enough." The common theme of "timeliness" was utilized in talk of whether a probationer missed or was late to an appointment, the number of appointments missed, or when there was a

significant delay in starting programming. Mentions of dates of attendance, the number of times something occurred, or the amount of time in delay were often asserted by judges, or asked of agents for further clarification. Indeed, timeliness is seen as a component of being a responsible adult by judges. Further, judges would often chastise probationers who were framed as "doing nothing" or "not doing enough" for wasting the court's time and their agent's time. In this sense, time became a powerful concept in framing the actions of probationers as either responsible, using time wisely, or irresponsible, and wasting the time of others.

In one hearing, the discursive repertoires of "timeliness" and "doing nothing" were utilized by the judge in asking about progress with BIP and employment:

> Judge C: I am amending to 45 days condition time for use in the future for, say, you don't make it to the Alma Center. Do you want to elaborate, agent?
> PO: No.
> Judge C: When you go, you gotta be there the whole time. Why didn't you go on 5/20?
> D: I tried to reschedule…
> Judge C: Where is it?
> D: 4th and Hadley.
> Judge C: Does a bus go there? You gotta learn to take a bus. AODA is good, what going on with employment?
> D: I'm going.
> Judge C: That's vague, you're lookin around, interviewing – where?
> D: Sears.
> Judge C: When?
> D: Monday.
> Judge C: What do you do all day?
> D: I watch the kids and think.
> Judge C: (repeats his statement, in a mocking tone) You're not gonna do that anymore, you'll do our thinking. You don't get to pick and choose. How many kids do you have?
> D: 2.
> Judge C: Not having a ride to chauffer you to the Alma Center is not an excuse – you're a healthy young man. You can walk, ride, roller skate, take the bus, there's lots of ways to get there. I will see you in August.

In this hearing, the judge emphasizes the importance of timeliness in asserting that the probationer either comes late or leaves early, as well as missing a session. She also asserts that lack of transportation is not an acceptable excuse, as someone who is responsible would use

public transportation or an alternate means of transportation to get to BIP, citing a litany of ways that "healthy" people can get places without a car. Given that the probationer is unemployed and constructed as not actively seeking employment, she further draws on discourses of responsibility, implying that he is lazy by asking "what do you do all day," with the vast amount of time he has while not working. The assertion "you'll do our thinking" further emphasizes that the purpose of probation is to instill responsibility in individuals constructed as being irresponsible. At times, judges would note the amount of things a probationer was doing, phrasing it as "doing a lot" or having "a lot on your plate." Although it these phrases were used to mitigate an issue with attendance or starting programming for some probationers, others were asked pointedly how they would schedule their time to accomplish everything. This implies that even though judges may be sympathetic toward probationers with multiple competing priorities, they are ultimately responsible, as an adult, for finding a way to 'make it work.'

Additionally, discursive repertoire of "following through" and "being in contact" were utilized to construct probationers as lacking dedication and responsibility for their progress with probation. "Follow through" typically was a phrase utilized when appointments had been made, yet were not completed due to rescheduling or repeated absences. For others, "follow through" was utilized when probationers had stated they wanted to start programming, find a job, or make a change in their lives, yet had not taken steps necessary for accomplishing these goals. Some probationers were constructed as being hard to reach, as evidenced by probation agents noting lack of a cell phone, lack of answering machines, sharing phones with others deemed unreliable to relay messages to clients, and not answering doors or phones for scheduled home visits. In addition, judges often drew on "being in contact" when inquiring about absences from programming, asking probationers if they had called the facilitator beforehand, and asserting that

they could get absences excused and made-up if they "let them know." These concerns about contacting agents and programming staff indicates a viewpoint that people who do not call, or are not prompt with contact, are unreliable, or irresponsible.

An additional theme in hearings was whether the probationer had been honest and accepted responsibility for one's actions. This concept of responsibility emphasizes the view of probationers as responsible for their actions and the outcomes in their lives. Indeed, honesty, or "owning up" to their actions, was a key theme that emerged in several aspects of these hearings. Probationers often employed this discursive repertoire of "owning up" when probation agents and judges discussed positive UAs, failure to attend programming, or having contact with the victim. This language was used in an attempt to mitigate the severity of an issue, such that "I was honest with [my agent]" suggested that they were responsible individuals who owned their bad decisions. Dishonesty, in particular, was viewed as more serious than the issue of attendance or drug use. Judges often raised their voice and changed tones to indicate scolding, annoyance, mocking, and hostility, when they constructed the probationer's response as dishonest. Connected to the issue of honesty is accepting responsibility for one's actions. Often BIP talk focused on whether a probationer "had accepted responsibility" for the offense or "continues to minimalize responsibility." Similarly, accepting responsibility for life events beyond the abusive incident cited in the court case was seen as important for probation agents. Those who denied responsibility for outcomes in their lives were framed as not "taking probation seriously" and as trying to manipulate or "game" the system. The issue of honesty and accepting responsibility is indicative of a discursive repertoire of "personal choice" including a moral judgement on whether choices were bad, while reaffirming that blame lies within, not externally.

Discourses of responsibility vis-à-vis honesty are present in one hearing:

> Judge A: The thing is – other people today would have tested positive, but I didn't sanction. Do you know why?
> D: No.
> Judge A: They were honest with their agent, they told the agent right away, but you brought someone else's urine. You showed up one day smelling of alcohol. It's also against the rules. You used being late because of employment but you only work 15 hours. Aside from all that, you pled guilty, right?
> D: Correct.
> Judge A: That means you admitted it, but you explained to your agent you didn't do anything wrong, and it's a set up. Be honest with your agent, or you won't complete BIP if you go in with an attitude. They'll work with you but if you don't acknowledge you did it, you'll be out. Seven days.

In this exchange, both dishonesty and minimalizing responsibility for one's actions are viewed as negative by the judge. Dishonesty by not admitting to drug use is clearly more important to the judge than a positive UA test, as he specifically references the leniency he gave to other probationers that afternoon who had been forthcoming with their agents. In this sense, honesty is seen as the responsible thing to do when one makes a mistake. Further, the judge references statements that the probationer made about the offense, that "you didn't do anything wrong, and it's a setup" as not owning one's actions and placing blame on others. Here, as in other hearings, accepting responsibility is seen as one of the first steps in BIP programming toward change.

Finally, responsibility was inscribed as a dominant discourse in viewing probationers through the discursive repertoires that emphasized "motivation and independence." When probationers stated they had not followed through with conditions (i.e. looking for a job or scheduling an assessment), their "doing nothing" is framed by judges as being unmotivated. Judges constructed this as a rejection of the help and programming offered, implying laziness or irresponsibility. Indeed, when probationers were not actively looking for work, filling out job logs, or attending job-readiness programs, judges framed their lack of motivation and initiative as being lazy, expressing incredulity that they do not want to work, and be a productive member of society. Similarly, independence is a trait that is valued by judges, in that taking initiative to

begin programming and not wanting to ask for help or assistance are lauded by judges. Those who express that they are struggling, trying, or need assistance with conditions of probation, such as finding a job or beginning programming, are often reminded that they should be independent.

Responsibility as a dominant discourse in probation review hearings took many forms in the discursive repertoires utilized by court actors, and to a lesser extent, probationers. Most often the themes utilized in hearings re-inscribed what Travers (2007) called neoliberal logics, valuing independence, timeliness, and maintaining contact with program staff. The use of these themes placed a dichotomy between responsible and irresponsible people. Court actors, most commonly judges, utilized their turns at talk to demonstrate that the purpose of probation in these courts was to responsibilize these individuals, thus framing probationers in a negative light. Court actors also re-inscribed accountability and responsibility as a central goal to these review hearings, both in terms of one's choices and actions while on probation (i.e. failing to do something, making 'bad' decisions) and by emphasizing the role of one's actions in the offense (i.e. asserting blame to the perpetrator). These findings are consistent with prior research on sentencing of juvenile offenders (Tata & Hutton, 2002; Malkin, 2005; Mirchandani, 2006).

Social Work Discourses and the Therapeutic Benefit of Probation.

A second primary discourse utilized in probation review hearings was probation as a therapeutic benefit, drawing on social work and psychological logics that view the root cause of criminality as social, biological, and psychological factors (Simon, 1995; Winick, 2002). Given the historical importance placed on socializing the court to these factors (Willrich, 2003), it is not surprising that probation agents have taken on a central role in these review hearings in describing the progress in programming and condition requirements. Further, problem-solving

courts have adopted a therapeutic jurisprudence model of administering justice, identifying internal and external risk factors in need of change, and characterizing individuals as in need of help (Daly & Bouhours, 2013; McIvor, 2009; Winick, 2002). This emphasis on the "benefit of probation" and the "help" that agents can provide was referenced continually, particularly when probationers had "done nothing" or were seen as not being proactive in finding solutions to their issues with employment, housing, and programming. In this sense, probation agents were constructed as providing access to resources and advocating for their clients. In one hearing, the judge ends the hearing with an assertion about attendance at BIP, while emphasizing the importance of going to class:

> Judge D: I read the report, Mr. ___, it sounds like based on the statements here you could have been going to class, I'm concerned you miss them. You're not going with an open mind to better yourself, that's not what this is all about. I could have sentenced you to jail, this is to benefit you, we believe in you. With some support, give you the tools you need, and stay out of custody.

In this statement, the judge constructs programming, and probation as a whole as an opportunity to "better yourself," by learning skills and "tools you need" to avoid recidivism. Failure to see the benefit is seen as wasting an opportunity, being irresponsible with the chance given.

Additional discursive repertoires that emerged from hearings included the "desire or need for treatment" and "getting something out of it," most often with respect to BIP programming. Indeed, desire for treatment was viewed positively, suggesting that the probationer had acknowledged some behavior or thought pattern was problematic and wanted to "make a change." Those who denied a problem, or expressed that they did not want or see the benefit of programming were met with challenges, often with judges expressing disappointment and belief that they would fail at probation if they were not going to "make changes." Most often in hearings, judges would ask about whether probationers "had learned anything" in BIP

programming after hearing attendance updates. This concern with learning or "getting something out if it" was often met with responses about learning skills for de-escalating conflict, learning about anger, and programs being "informative." At times probationers would offer, unsolicited, change-talk and demonstrate that they had used the skills learned in BIP with everyday conflicts at work or in relationships. This emphasis on learning suggests that judges care not only about attendance as a sign of responsibility, but behavioral and cognitive change, clearly viewing the programs as beneficial, and something that 'works' at reducing the risk factors for domestic violence.

The Blending of Responsibility and Therapeutic Benefit Discourses.

Often both responsibility and therapeutic benefit discourses were often invoked in speaking about probationer's progress. At times they were used in tandem to demonstrate the importance of being a responsible, "changed" person. For others, the emphasis on benefit and assistance was outweighed by a concern with responsibilizing probationers who were constructed as being irresponsible, making poor choices, and "not doing enough" on one's own. In one hearing, the repertoire of "getting something out of it" was referenced by both the probation agent and the judge in constructing the probationer's progress:

> PO: I spoke to the victim – she is pleased at how the relationship is going. I did discuss her previous concern on him not taking responsibility, she said she was concerned but he comes home and shares what he is learning and they talk together after group. They learn together. The can do conflict resolution together.
> Judge B: Mr. ____, that's outstanding. You have successfully completed BIP, there's a big star here "you've taken responsibility for your act, you strive to be a better person, to better yourself and to be a productive member of society." I don't see that a lot – very good to see. Good job.

Within this exchange, the agent employs both responsibility *and* benefitting from programming in constructing the probationer's progress as having greatly improved. The mention of specific skills applied within the relationship, and learning taking place sits well with the judge, as she

clearly frames his progress as "outstanding." Again, both responsibility *and* therapeutic benefit are used in conjunction by the judge when speaking of his change toward becoming "a better person" and to "be a productive [responsible] member of society." These discursive repertoires were referenced not only with respect to BIP and Anger Management programming, but parenting classes, counseling, and AODA treatment. This is similar to what was found by Daly and Bouhours (2013) when examining the sentencing of juveniles for sexual assault cases. In their study, responsibility discourses were utilized in framing the missed opportunities for probationers who did not take advantage of the programming offered.

Like Travers (2007), these findings demonstrate that court actors draw upon both responsibility discourses rooted in neoliberal logics of independence and therapeutic benefit discourses rooted in social work logics of rehabilitation (see also Dixon, 2008; Gray & Salone, 2006; Mirchandani, 2008; Winick, 2013). Further, these discourses were used often in conjunction with one another in framing the need for help, benefit of probation, and irresponsibility of probationers who "did not take it seriously." These discourses were also reflected in how probation agents talked about their clients. Some agents saw helping as their primary role, and would frame issues with programming attendance, employment, and UA tests as "struggling" or "in need of help," while asserting that they "wanted to work with them" on treating their underlying needs. Others, by contrast followed more of a responsibility and accountability framework in viewing their role with clients, highlighting the hostility, non-cooperation by probationers constructed as "doing nothing" and being "irresponsible" in their actions. This dualism in roles is indicative of the larger discourses of responsibility and therapeutic benefit that were used, at times in conjunction with one another, when framing a probationer's progress.

Mental Health and Psychological Logics.

Mental health became a common issue in probation review hearings, including the referencing of specific disorders, framing issues in psychological discourses, and a concern for obtaining necessary treatment. Discourses used in discussing mental health, or referencing specific disorders, medicalized issues, drew on psychological rhetoric, and placed emphasis on the benefit of treatment for underlying conditions. When responding to issues of non-compliance with probation, defense attorneys and some probation agents framed clients' behavior as due to underlying conditions, such as anxiety and depression. In addition, probationers and their agents mentioned specific disorders in reference to the need for additional treatment beyond the prescribed BIP or anger management. Counseling, in addition to BIP, was framed as beneficial for people who were constructed to have anger issues and anxiety. Thus, for many probationers, the cause of domestic violence was medicalized, using psychological discourses that construct the issue as a defect of person, rather than an individual choice or extension of patriarchy.

Psychological discourses were commonly utilized by probation agents and defense attorneys in talking about the readiness for treatment, necessity of treatment, and recommending additional treatments. Similar findings have been found when looking at diversion courts, juvenile courts, and early progressive reform courts (Daly & Bouhours, 2013; Feeley, 1979; Travers, 2007; Willrich, 2003). In one exchange, the defense attorney introduces his clients' financial concerns in affording treatment, and frames his request for free programming with Co-Dependency Alcoholics Anonymous as beneficial utilizing rhetoric indicative of psychological talk:

> DA: Cost of co-payments and therapy is a problem – she has not had AODA but has codependency issues. There are CO meetings free where there's no problem with co-pays. I ask for COAA meetings for her to become an actualized person.

At other times, probation agents employ psychological rhetoric to demonstrate the progress a client has made in treatment.

Less common, judges expressed reservation and concern when mental health issues were highlighted by probation agents. Often these were cases involving discussion of medication, or disorders that were beyond more common issues such as anger, anxiety, and depression:

> PO: He has auditory hallucinations, it's gotten better and he can ignore it.
> Judge B: What's the treatment regime?
> PO: Medication, he has verbalized concerns with medication. They're working with him slowly at WCS, he had a bad experience in the past with medication.
> J: WCS will work on it, and he receives SSI. Mr. ____, I will see you one more time, I hope they are able to work with you. Your hallucinations give me some concern.

The agent's assertion that the probationer is reluctant to receive medication to help with hallucinations re-inscribes the discourse medicalizing issues of mental health, viewing treatment as necessary to alleviate symptoms. These findings reflect what Worrall (1990) found with women probationers as being labeled 'too sick,'(i.e. dangerously mentally ill) and thus viewed with caution.

Drug Use as Responsibility or Addiction.

Drug use was a common discussion in probation review hearings, whether reporting the results of UA tests or discussing the need for AODA treatment. UA tests are routinely administered by agents for those on community supervision, and as such, are often discussed when probationers test positive, alter tests, or contest recent use of a drug. Two competing discourses emerged with respect to continued drug use – that of personal choice, and that of addiction – yet the utilization of these discourses differed by drug type. Marijuana and cocaine use tended to be framed under rhetoric suggesting that probationers were irresponsible, making

bad decisions, and exhibited personal failings. Court actors often drew on responsibility discourses referencing scientific knowledge on the limited addiction potential for these drugs. This reliance on scientific knowledge reflects an underlying principle of problem-solving courts, which promotes the consumption and application of scientific knowledge on the causes of psychological and social issues (Hora, Schma, & Rosenthal, 1998). Opioids, heroin, and alcohol, by contrast, were more commonly framed under discourses of continued drug use as caused by addiction, framing positive UAs as relapses and substance dependence. Given the current public health panic over heroin and other opioids as highly addictive, with potential for abuse, overdose, and death in Southeastern Wisconsin (Handelman, 2016), court actors emphasized more strongly a need for treatment, and often more intensive inpatient stays, when constructing a probationer's drug history. One hearing demonstrates the discourses used to frame both drugs:

> PO: Before court, he had a UA that was positive for marijuana. He says benzos on 9/4 and marijuana use was in July. I did get a letter that he is starting counseling. […] I'm concerned about him – he's got some addiction issues, he minimizes – I'm trying to get him to accept responsibility.
> Judge A: Mr. ____ – what's going on?
> D: It's stressful, I miss my babies.
> Judge A: How old are they?
> D: Four – well I take care of her, and one. I just don't see them on a daily basis.
> Judge A: So because you miss them you take opiates and benzos?
> D: I hurt my back, I talked to my grandma, my auntie overheard and gave me some pills – I felt better.
> […]
> PO: He said he had a Percoset issue since he was 22, this is what I'm talking about.
> Judge A: What about the THC?
> D: I'm a chronic user, I'm working on stopping.
> Judge A: What? Marijuana doesn't have a physiological addiction – you can stop any time you want.

Initially the probation agent frames the probationer's issue as both addiction and responsibilizing – taking responsibility is tied to acknowledging having a problem. After the judge asks a

rhetorical question, denying credibility to the probationer's claim of drug use as a coping mechanism, he asks about marijuana use, again countering the implied claim of the probationer that being a "chronic user" suggests dependence and addiction. The emphasis on "you can stop" denotes the view of marijuana use as a personal choice, and an irresponsible one at that, while discursive repertoires on addiction were used to construct, the legitimate use of opiates for pain management leading to dependence. As can be seen from this hearing, probationers often utilized alternative constructs to frame their drug use.

When describing reasons for use, probationers and their attorneys most often framed their decisions under two main themes – that of a "bad habit" or "bad decision," and those which placed responsibility for positive tests externally. Some probationers specifically referenced observing previous hearings in which others gave excuses for drug use as a reason for "owning up" to their actions. Utilizing the dominant discourses applied by court actors of personal choice, probationers attempted frame themselves in a more positive light by constructing drug use as a "mistake" or a "bad choice," while also asserting that they had been honest with their agent. These value judgements of "bad" and "wrong" anticipate how judges view their actions, while also offering a mitigation through taking ownership of one's decisions.

Discursive repertoires often included not only "bad habits," but "celebrating" for birthdays or other life events, "peer influence" as a source of socialization and pressure, "bad coping skills" when faced with life's stressors or the loss of a loved one, and legitimating use of opioids by citing "physical conditions" such as back pain and toothaches. Indeed, in the previous hearing, drug use was framed as both a coping mechanism for the sadness of missing one's children and as a normalized action in response to pain. These statements suggested that probationers engaged in drug-use as a form of self-medication.

Parenting, Gender Discourses, and Responsibility.

Many probationers had minor or adult children, which became an important issue for judges during probation review hearings. Two discourses emerged regarding the role of parents during hearings – that of providers of basic needs and caregiving. In these discourses, parenting is seen as a responsibility of mothers and fathers. Most commonly, providing of basic needs was reflected in how judges talked about issues related to employment, drug use, and housing. Concerns with these factors were framed as being an irresponsible parent, placing one's needs before one's children, or failing to provide the basic needs that a responsible parent would. Although prior literature has suggested that men and women are talked about differently in relation to parenting (e.g. Daly, 1987a, 1987b), reflecting dominant paradigms of women as caregivers and men as providers, parenting discourses on providing tended to be employed with both men and women. Further, several male probationers expressed the frustration and stress they had in being single parents, essentially taking over the role of both provider and caregiver. Indeed, being a responsible parent in these courts is defined as providing the environment and needs for children to thrive, rather than spending time or money on oneself.

Parenting discourses also reflected the connection between employment and providing for one's children, which was referenced for both men and women probationers. With women, when unemployment was referenced by judges or probation agents, agents often asserted that these women, as mothers wanted to find work. This suggests that while caregiving is seen as a primary concern in speaking about parenting for women as mothers, providing for one's household is also seen an important criterion for being a parent. Further, when women probationers were pregnant and unemployment was brought up, judges often asked if they indented to work after the child was born. Often, defense attorneys asserted a probationer's

employment when a potential sanction was imminent, attempting to frame the incarceration of their clients as a hardship financially for the family.

For women, issues with health or mental health were also framed as integral in being able to care for one's children.

> Judge C: How are you doing, how's the baby?
> D: Good.
> Judge C: Sometimes there's an issue with fevers – make sure you follow up with it. Take care of yourself, make sure you keep up with things going on. You had a rescheduled intake with Sojourner?
> D: They told me to make sure to wait to get to the hospital.
> PO: I have many concerns – the main is to follow doctor's orders. I feel she is doctor shopping, not taking care of herself. I have extreme concerns about the baby, she was ordered not to get an apartment with the baby or any kids until she got her health under control.
> Judge C: Where do you live?
> PO: With her mom.
> […]
> Judge C: You don't want to lose consciousness and the baby is alone. I'll set another review, you need to take better care of yourself. It will make it so much easier if you feel good.

In this exchange, caregiving ability is referenced with several concerns highlighted by the judge and probation agent. A physical health condition is constructed as concerning for supervision and basic care for a baby. Further, her current treatment response is invalidated by the probation agent as "doctor shopping," suggesting she is incapable of caring for herself, nor her child. In other instances, women probationers who were in an abusive relationship were constructed as irresponsible parents, placing their children in danger. In both of these concerns – health and abuse in the home, safety of children is viewed as a paramount concern in discussing parenting ability.

Parenting as providing caregiving or emotional support was also referenced as an important factor, most commonly for women probationers. Similar to prior literature, issues that interfered with providing care for one's children were seen as distractors for women probationers

with children (e.g. Daly, 1987a, 1987b). In one hearing, the probationer framed her recent unemployment as caused by inflexible scheduling by her work:

> Judge B: Ms. ___, I reviewed your report. Your UA was negative, excellent, your employment at Shake Shack time has ended?
> D: Yes.
> Judge B: What happened?
> D: They weren't complying with day care schedule, I worked until 12 at night, day care ends at 12:00 and I'm on the bus.
> Judge B: It's good you're taking care of your kids, what are you doing to do?
> D: I've been looking.
> PO: She did apply for assistance, and is looking, she wants to work.

In this exchange, the judge validates this decision by stating "it's good you're taking care of your kids," reinforcing the decision to put caregiving as a first priority. Yet being a provider through obtaining employment is also a concern for the judge, which is alleviated by both the probationer and her agent asserting that she "wants to work." In a few instances, probationers brought their children with them to court when they lacked childcare, which was met by a terse scolding by judges that "court was not a place for children."

Domestic Violence.

Largely absent from most of the hearings was discussion of domestic violence, whether mentioning specific acts, understandings of the causes of domestic abuse, or referencing issues that led to the particular offense. Just as there are divergent theories on the causes of domestic violence, court actors and probationers referenced competing discourses on both what domestic violence is, as well as the causes of abuse. With female probationers, discourses typically reflected defining domestic violence as violence against women, while framing women probationers as 'true victims.' Often in these courts, the probationer or her agent would inform the court about ongoing issues with threats and stalking, expressing fear for their and their children's lives. Judges would ask them to report it to authorities, accepting this view of women

probationers as 'true victims,' thus reflecting the dominant discourse of domestic violence in American society, as well as the dominant paradigm in academic writing (e.g. Klein, 2009; Kruttschnitt & Carbone-Lopez, 2006; Mirchandani, 2006; Schwartz & Dekeseredy, 2008; Tjaden & Thoennes, 2000). In such cases, victims are constructed as controlling, harassing partners, perpetrating emotional abuse through intimidation and threats of harm.

Less common were assertions that male perpetrators had control issues and exhibited hostility toward women. In one such exchange, the judge infers from the report that the probationer is hostile toward all women, based upon the report constructing him as "argumentative' to his agent:

> Judge E: <Reading the report> On 1/15, client scheduled, called to be late, failed to report one hour later. After tampered UA, client failed to report for new UA. Client argumentative. Agent admitted that Nevermore dropped the ball. Despite this, you are still responsible. It's his responsibility. What are you on probation for?
> DA: Battery.
> Judge E: Of whom?
> D: A woman.
> J: I think I know what the problem is here… That's on him. He's got to adjust his beliefs on the world.

The use of hostility toward women as a discursive repertoire, reflecting domestic violence as power and control, and violence against women, tended to be used in similar cases, involving male probationers who were constructed to be hostile toward female probation agents, programming staff, and women in their lives generally. Thus, discourses of domestic violence are at times gendered, reflecting underlying assumptions of violence, and in particular violence in the home as perpetuations of male aggression (Dasgupta, 2002; Gilbert, 2002). Similarly, several cases referenced probationers having anger, or control issues more generally, without tying it to control of women. Often identification of anger and control issues were connected to

seeking treatment, mental health assessments, or a desire to change, suggesting that anger issues in general were framed with a psychological discourse suggesting a trait needing to be fixed.

Previous research has suggested that specialized domestic violence courts have defined domestic violence as intimate terrorism in a controlling relationship due to training on the Duluth model (Klein, 2009). Court actors here, however, more commonly referenced issues with conflict resolution, similar to Johnson's notion of common couple violence (Johnson, 1995; Johnson & Ferraro, 2000). Indeed, it was equally common for judges and probationers to construct violent incidents as stemming from conflict based on anger and jealousy. In one hearing, the judge begins the exchange with framing a recent incident with the victim as a "couple's argument," rather than as a domination and control of a victim:

> Judge A: The situation with (victim's name) that you got into a couple's argument with her, what was it about?
> D: She suspected I was cheating on her.

In response to this construction, the probationer supplies a motive for the argument – jealousy, suggesting that the victim initiated the violence, rather than a one-sided domination indicative of the Duluth model. At times, drug and alcohol use were mentioned in relation to the offense. These 'facts' were included to frame issues related to contact with the victim, as well as the need for AODA treatment. Given previous research on the role of alcohol in predicting domestic violence incidents, it is not surprising that court actors are concerned with alcohol and drug use, and with AODA treatment as a necessary condition of probation (Goldkamp, Weiland, Collins & White, 1996; Leonard, 2001). Further, this reflects an alternate discourse of domestic violence rooted in conflict, exacerbated by the influence of drugs and alcohol, rather than an extension of patriarchy within the home.

Summary.

In probation review hearings, several discourses emerged as influential in constructing an offender and his or her progress. The most common discourses used to explain progress on probation centered on responsibility and therapeutic benefit. Indeed, when referencing issues such as BIP progress, program attendance, and employment – responsibility was integral in how court actors discussed probationers, whether as a responsible person in society displaying independence and timeliness, making poor choices with drug use, or as a parent in the care of children. Further, psychological logics were instrumental in how probation was viewed by court actors as therapeutic for probationers, as well as how issues of drug use, mental health, and BIP programming were discussed. Yet these discourses were used in tandem in constructing probationers' progress – as initiative and independence were mentioned in conjunction with the help of probation, accepting responsibility mentioned as well in conjunction with getting something out of programming. At times, other discourses were used to construct issues related to domestic violence, mental health, and parenting. Which discourses are more influential in constructing an offender's behavior requires an examination of both discursive repertoires and power in institutional roles and turn-taking.

Discursive Power in Framing an Account of an Offender's Progress on Probation

Personal Responsibility and Choice.

Discourses reflecting personal responsibility permeated most of the probation review hearings, often being invoked by court actors in framing attendance issues and contact with staff as irresponsible. Often probationers attempted to challenge these discourses and constructions of themselves as irresponsible, citing external sources of stress, accidents, and other issues that displaced blame from themselves to being "not their fault." Inherent within these contestations

is a rejection of the assertion that violations were the result of personal choices. Judges, however, utilized their turn-taking to challenge these alternate discourses, often employing rhetorical questions, repetitive questions implying rejection and disbelief of an answer, and diatribes to assert their power over defining the actions of a probationer.

In one hearing, the probationer frames his missing of BIP as an "accident":

> Judge A: You missed two BIP?
> D: I accidentally missed.
> Judge A: <interrupting> Wait, wait, how did you accidentally miss?
> D: I was at Golden Corral and it was 7:00 and I realized I missed it.
> Judge A: How did you miss twice?
> D: The first time I didn't know to go, the second time I ended up at Golden Corral.
> Judge A: That's not accidental, that's intentional. You were placed on probation on 2/1 and you missed two BIP, one positive marijuana, and you had contact with the victim twice. You haven't paid any court costs or supervision fees. What are you on? Are you taking this seriously?

In this exchange, the probationer attempts to downplay his responsibility in missing programming by framing it as an accident, yet the judge interrupts his turn at talk, cutting him off from further explaining and rephrases the probationer's response as a question. The first explanation explains only one absence, with the judge repeating his question of "miss[ing] twice" to require further explanation. The probationer constructs his first miss as not his fault because he "didn't know to go," suggesting blame lay elsewhere, such as with programming staff or his agent. The judge responds to this was an assertion that rejects the probationer's claim, calling it "intentional." He lists additional violations in framing his rhetorical question at the end "are you taking this seriously?" finalizing his construction of the probationer as irresponsible and silencing any alternative discourses on the matter. These findings replicate those of Daly and Bauhours (2013), who found that judges tended to engage with offenders mainly in the asking of rhetorical or pointed questions, thus allowing for limited opportunity for alternative discourses.

Additionally, some probationers utilized the discursive repertoire of "timeliness" to construct themselves as responsible individuals that struggled with competing priorities. Often, these probationers would mention the amount of time they were working, caring for children, distances traveled to work, or being otherwise busy to downplay issues with missed programming or failing to be in contact with one's agent. These discourses, however, were met with annoyance, hostility, and a rejection of the construction of probationers as being "too busy."

At times, probationers used responsibility rhetoric to their advantage, drawing on discursive repertoires of "accepting responsibility", "timeliness" and "doing a lot" to suggest a character change toward becoming a more responsible citizen.

> Judge C: He's in treatment but still uses?
> D: I am scheduled 7-3:30 including Saturdays and I deliver pizza. The dynamics of life changed, I have a lot on my plate, which is good. Before there was too much free time. Big step to get into the program. They always reserve the right to test me. Fair enough not to… that's positive things.
> Judge C: They are positive, but I am extra concerned that the report says you tested positive on 1/21, 1/26, positive for marijuana 2/8 and positive on 3/3 without a prescription. I don't know what you are doing at Big Step.
> D: Training for construction.
> Judge C: What are you learning?
> D: I haven't chosen; it makes me marketable. I have had orientation but haven't chosen a trade.

In this hearing, the concern about continued drug use was met with a response that included timing, work, and vocational training. The time of treatment demonstrates the lack of free time to use drugs or spend otherwise "irresponsibly," combined with having a part time job delivering pizzas, likely during evenings and weekends – time that is also spent doing productive, responsible things. He further frames his drug use as due to having a lot of free time, demonstrating that keeping himself busy, "doing a lot," lessens the temptations to engage in drug use. Finally, he includes information on a vocational training program, framing it as making him "marketable", thus preparing him to be a productive member of society by joining the full time

workforce. Although the judge continued to express reservations, she ultimately stayed a sanction, hoping to see continued improvement with negative UA tests.

Drug Use as Personal Choice and the Infallibility of UA Tests.

Most commonly when drug use was cited as a concern for the court it was framed under personal choice. Probationers framed their use with language that deflected responsibility or minimalized the issue, thus contesting discourses used by court actors. Some emphasized use of drugs as a celebration of a life event, such as a birthday, while others blamed life stressors and having poor coping skills. Often, these life events were met with challenge by judges, invalidating these excuses as legitimate coping skills. Thus, marijuana use as personal choice is reaffirmed in how judges responds to these alternative constructions. Others framed their use as caused by bad peers, whether through peer pressure or through alleging they tested positive due to second-hand smoke. Judges often challenged these explanations, reasserting that probationers had made these decisions themselves. In one hearing, peer influences are cited in two ways by the probationer attempting to explain his positive UA for marijuana:

> Judge A: Mr. _____, how do you think it's going?
> D: At the beginning it was rough, I went up north, I used a little. Since then it's stopped, I had a negative one.
> Judge A: <interrupting> Stop, the drug test is positive or negative – it's not like a little pregnant. Your UA on 9/1 was positive, when was the last time you smoked?
> D: Mid to end of July.
> Judge A: Over a month.
> D: I was also around people who used.
> Judge A: Are you trying to say second-hand?
> D: No, it was faint.
> Judge A: *NO*. <voice raised, stressed tone> That line may have been faint, but it wasn't faint. When was the last time?
> D: A few weeks ago.
> […]
> Judge A: Mr. ___, a couple of things – one is the big problem is who you hang around with, and what kind of thinking process you use with making decisions. If you hang around with people with criminal motivations… it almost has the problem of saying – if

everyone comes in saying it – you're one of those people. It's a two-way street. Two days.

Within this exchange, the probationer attempts to imply second-hand smoke by stating "I was also around people who used" and that the line "was faint." The judge, however interrupts his turn at talk, asserting a counter claim that faint lines do not mean second-hand smoke. The judge also utilizes the construction of peer influence, yet frames it as not a mitigating influence, but rather 'birds of a feather' who are all "criminals" making poor choices. Most often when probationers contested discourses used that framed themselves as making poor personal decisions, the turn-taking styles that judges employed, including rhetorical questions, assertions, interruptions, and diatribes reinforced their power, and thus the discourses utilized. Often judges would change topics or end the hearing by delivering their sanction, effectively silencing further challenges from probationers.

At times, probationers denied use completely, or denied more recent use that UA tests would suggest. This challenging of the infallibility of UA tests resulted in two competing discourses employed about UA tests themselves – that of the scientific accuracy of tests, and common sense, experiential understandings about decreasing levels and false positives. As seen with a previous example, probationers often cited "levels going down" and "faint" lines as evidence that they had not engaged in drug use recently. They further would often cite 'common knowledge' understandings of UA tests sensitivity that marijuana stays in one's system for 30 days, or that they had a false positive, insisting they had not used recently. One judge was notorious for utilizing scientific knowledge to counter these claims, framing UA tests as infallible. He often utilized a similar diatribe about studies on UA sensitivity finding that marijuana only stays in one's system for 7-10 days, and for 14 days for only chronic users. The other judges, by contrast, were more open to these challenges on the validity of UA tests, citing

bench experience with false positives and "levels going down." For them, experience on the bench with similar cases, and anecdotes from other cases, were seen as equally valid as scientific studies in examining the validity of probationer's claims on the timing of drug use.

Although personal responsibility discourse employed by judges tended to dominate the framing of drug use, some probationers were able to successfully challenge dominant discourses of personal choice by drawing on challenges in coping with life stressors. In one exchange, the probationer utilizes two discourses to frame his drug use as a "mistake" – coping with the loss of a loved one, and making a change to become a more responsible father:

> Judge A: You were placed on probation on 2/22 – why did you use marijuana and cocaine?
> D: I don't do it regularly. A couple of weeks ago I lost a friend of over 30 years, I was with a high school friend, I didn't know it was cocaine. I don't make excuses, I am trying to spend time with my daughter, I try to do things to occupy my time. I volunteer with Mr. __, even if I don't have to. I show initiative. My daughter – her mom is sick; I have to be there for her. I have the medical documents. I spend all my free time with my daughter.
> Judge A: How old?
> D: Seven, she'll be eight in two days. I have her today. I made a mistake, I feel bad. It was a childhood friend I've known since I was 10 years old.

Indeed, in this hearing, the judge ends the hearing by giving him the benefit of the doubt, but also tasking him with "earning" his way out of jail at the next hearing by proving he is clean. Success in this case meant both domination of a turn at talk, and offering a construction of oneself that is compatible with discourses often used in these hearings – that of responsibility.

Mental Health, Trauma, and Labels.

Although judges often utilized psychological discourses when speaking about mental health concerns for probationers, not all judges expressed statements that supported this dominant discourse. In one hearing involving a female probationer, after the probation agent

expressed concern about a "serious violation" and ongoing mental health concerns, the probationer asserted that treatment needed to be trauma-based:

> D: Only trauma based treatment, AODA based. I have fibromyalgia. I want to get my kids back.
> Judge E: Trauma informed care is the vogue thing of the day.
> D: It's a condition of probation and a condition to be able to see my kids. I have court next Friday.

This judge's assertion about the buzz-word status of "trauma-informed" implies his critical stance toward the discursive repertoire of mental health issues caused by traumatic experiences. The probationer, however, does not accept this statement, responding with an assertion that the sentencing judge had ordered it as a condition, suggesting that this construction of her mental health issues as rooted in trauma is legitimated by another judicial authority. Thus, her power lies in the ability to utilize another judge's ruling to add credibility to her statements.

At times, however, probationers were resistant to psychological discourses that framed counseling and medication for mental health issues as beneficial. Some cited bad experiences with medication, while others resisted the "label" of having a mental health issue. This suggests that probationers often viewed mental health as a disease, or stigma, that one actively resisted being labeled. Others were constructed as skeptical of the necessity of treatment, similarly resisting both label and treatment. In one hearing, the probation agent asserts that the probationer is "reluctant" to increase therapy and take medication for an issue:

> PO: I heard from the therapist, he's currently seen once a month but they want to increase it to twice a month. He's reluctant to do that. He had been in discussion on taking medication for anxiety for his diagnosis of intermittent explosive disorder.
> Judge C: How is it going?
> D: Pretty good.
> Judge C: I know it is often difficult to address issues when someone says medication. If I take my glasses off, I can't see you. It doesn't do me any good to not wear glasses, I can't see the time, I don't know what's going on. It's almost the same thing – take what's offered. I hope you aren't saying "nope, I don't want to do it." Now I can see you with my glasses on. It's the same, no one is served by me without glasses. No one by you

without it. I remember, it seems like you really hate all of this – I hope you can open up your mind. It can suck or it can be better. I hope you open up. Good luck.

This is not uncommon, given individuals' reluctance to frame mental health concerns as an issue requiring treatment. Yet what is largely absent is the probationer speaking himself about his concerns – instead his agent and the judge speak for him, asserting his beliefs and intentions. The judge, however, utilizes an analogy to frame mental health as similar to physical health needs. Further, mental health concerns are framed under the larger discourse of being a therapeutic benefit, that one should avail oneself, not unlike other programming in probation.

Parenting and Responsibility.

The dominant discourses of being a responsible parent vis-à-vis provider and caregiver were reflected in judges concerns about employment, drug use, and housing. At times, probationers framed their drug use as a coping strategy for missing one's children. Judges engaged in interruptions, rhetorical questions, and diatribes about responsible parenting in order to reject and silence these constructions of drug use. In one hearing, the judge allowed the probationer a chance to talk about his drug use, yet issued a barbed rhetorical question that frames his drug use as an irresponsible act:

Judge A: Mr. ___ – what's going on?
D: It's stressful, I miss my babies.
Judge A: How old are they?
D: Four – well I take care of her, and one. I just don't see them on a daily basis.
Judge A: So because you miss them you take opiates and benzos?
[…]
Judge A: […] What made me mad – you start to tell how you care for your kids – you're taking away your money from them.

In this exchange, parenting as providing for one's children is referenced in relation to the 'irresponsible' choice to use drugs as a coping strategy and 'irresponsible' choice to spend money on drugs instead of providing for one's children.

Additionally, when probationers attempted to frame their actions as providing, or a support for children, judges often questioned their definitions a 'good parent.' Unemployed probationers with attendance issues for programming and meetings with agents were chastised for not being a role model for their children by having a job and being a responsible adult. Others were met with questions that challenged their parenting ability, while asserting that setting an example and providing for one's children are more important than 'being there' or 'giving experiences' to children. In one exchange, the judge expresses concern about the probationer taking his children out of school and potentially placing them in a dangerous situation if he had been using while on his trip:

> Judge C: Please explain why you took your kids out of school to stay in a hotel?
> D: I wanted to get away, I know school is important.
> Judge C: I'm concerned on the timing of it – the first week of March, then you were positive on 3/8. You said you used cocaine at a party with your cousin. You weren't binging and had them with you?
> D: The kids weren't with me when….
> […]
> Judge C: How did you get the money? Are you employed?
> D: No.
> Judge C: How did you pay?
> D: Tax money.
> Judge C: Oh, here we go, big money, wasted <sarcastic tone, voice raised>. Mr. ___, they don't care where you go, they want to be with you.

Similar to the previous example, drug use is seen as being irresponsible, if not dangerous, while caring for children. Additionally, the judge issues a value judgment of his parenting choices of spending his limited income while unemployed on what is deemed an unnecessary trip. Further, she uses directed questions and an assertion of what children want and need to effectively invalidate his claims.

Domestic Violence as Violence Against Women.

Discourses on domestic violence utilized by court actors and probationers mainly fell within two views – violence as power and control of women, typically expressed as hostility toward women in authority, and violence as conflict engaged in by both parties. At times, probationers attempted to challenge these discourses, reframing their actions or character assessments. In most cases, judges changed topics after these challenges. This use of institutional role, in the ability to speak, question, and change the line of discussion effectively silences the probationer from further defining themselves with an alternate discourse. Indeed, when defendants framed themselves utilizing alternative discourses, often shifting blame on the victim, judges used institutional roles of turn-taking to assert dominant discourses, interrupting and changing topics to silence alternate discourses. In one hearing, both the probationer and his attorney challenged the report of alleged contact with the victim, and continued abuse:

> Judge A: Allegations of contact with the victim?
> D: Yes. It's not what I normally do, so…
> Judge A: You don't need to respond because it could be the basis for charges – I read the victim's statement and it has a strong ring of truth.
> DA: He holds the position that he has not had contact, she laid out why she lied.
> Judge A: I read, but awfully, her words and demeanor are consistent with what was done.
> DA: The system emphasizes strong liars.
> Judge A: I don't believe that.
> DA: She had a motive for recanting. There's nothing else that my client can do, there's no pending charges.
> Judge A: Why did you show up three hours late at your agent's office?

In this hearing, the interruption of the probationer's speaking is twofold – to assist him in not incriminating himself, and to silence his alternate construction with "it has a strong ring of truth," asserting that alternate constructions are invalid. When the defense attorney attempts to construct the victim as a manipulative liar, the judge asserts his disbelief and references his years on the bench as the source of his knowledge and authority in judging whether the act had indeed

occurred. Further, when the defense attorney persists in this challenge to the discourse of continued power and control, the judge changes topic, effectively silencing any continued discussion of the issue.

Probationers, at times, attempted to reframe violence in the home as mutual combat, or as themselves as victims by female perpetrators. When male probationers frame themselves as victims of both a female perpetrator and a system that reflects the hegemony of domestic violence as violence against women, judges often silenced these alternate discourses and constructions utilizing interruptions and directing questions at other court actors. There was one hearing, however, that stood out in the relative silence by the judge in response to the probationer's framing of himself as the true victim in an abusive, controlling relationship by a female perpetrator.

> PO: I received information from the Alma Center, he focuses on himself being the victim of the system, he doesn't identify his shortcomings of seeing himself as the victim.
> Judge B: (repeats statement) – What's going on?
> D: It's a false restraining order, my wife threatened to kill me if I leave, she filed multiple false allegations. My landlord said my child is being abused and neglected, I was told by multiple people, they said because of the restraining order there would be no investigation. I did see pictures. I have a five-year paper trail, I can prove she's lying.
> Judge B: He pled no contest?
> PO: Yes.
> Judge B: Mr. ____, I don't know the underlying circumstances, you pled no contest, but you're doing everything you're supposed to do, everything with the exception of ____. I don't need to see you again.

The judge did not chastise or interrupt the probationer, but rather allowed this construction to stand. The relative silence by the judge on the issue, coupled with her assertion that he is doing all that is required of him suggests that she believed his story. In this instance, power relations and discourse were interrupted by a probationer who dominated the exchange, and was successful in faming his issue of not taking responsibility by deflecting blame to the victim.

Summary: Whose Account is More Influential.

What judges say reveals much about how judges make sense of probationers' actions and what or who is viewed as valid in providing information about probationers' violations of conditions. Judges are largely dependent on probation agents for information on progress when determining whether to sanction. This places probation agents with an enormous amount of power, both in what they say in memos that judges read prior to hearings, and with how they frame an issue. Indeed, in one exchange in which the probationer wanted permission to delay or change programming that interfered with her work schedule, the judge deferred to the judgment and insight of the probation agent, who had clearly spent more time and had been constructed to have greater, more valid knowledge, than anyone on the probationer:

> Judge B: She <referencing agent> knows you better than me, but you could screw up around the state thing if you test positive.

This assertion of the reliance on what agents have to say about a probationer is reaffirmed in how most judges tended to defer to what the agent had recommended, and how they framed issues.

> Judge C: Mr. ____, I bet you feel like a lot of things are working against you. You know what is working for you? Your agent. It is *ONLY* < voice raised, intoned> because of her that you're not going to jail today.

Indeed, the two main female judges tended to defer to agents' recommendations, even when they expressed that they disagreed with the recommendation and felt a jail sanction was more appropriate. Thus probation agents have enormous power in *what* they choose to include in memos and in hearings, as well as *how* they frame the issues (see also Travers, 2007).

At other times, however, judges expressed their disagreements and overruled probation agents' framing of an issue and recommendation. This was most common with Judge A, who tended to sanction probationers more frequently for minor issues. These assertions reflected the overarching power that judges tended to have in probation review hearings, given their

institutional role as final arbiter and the knowledge sources they used in making sense of probationers' progress. Indeed, judges' framing were at times more powerful in defining an issue and constructing a probationer than agents, defense attorneys, or probationers. The knowledges referenced included scientific sources, such as studies published and pieces in newspapers, as well as social science sources on the causes of addition, trauma, and mental health. Given the deference to science, including social science, as a source of objective knowledge about the world (Hora, Schma, & Rosenthal, 1998), it is not surprising that these sources of knowledge are given higher priority as valid compared to common sense, anecdotes, and personal stories by probationers and their attorneys. Often, however, judges relied on their experience on the bench as a source of knowledge about 'typical cases' and 'common excuses' when determining whether a probationer's statements were considered valid, similar to Sudnow's conception of typologies based on experience (1965; see also Tata, 2007).

Although institutionally at a disadvantage, probationers and their attorneys were successful in framing issues when they utilized the discourses of the court, framing themselves as responsible persons and parents. Although less commonly employed, when probationers did construct themselves within the discourse of responsibility, particularly as parents in providing for their children, judges were more likely to change their decision on a sanction and to 'take them at their word.' Similar to the findings by Gathings and Parotta (2015), probationers in these courts were not completely powerless in hearings, yet they were successful only in their ability to frame themselves under the dominant discourses of the court.

The Inscription of Meaning to a Defendant's Behavior

Typical Concerns by Judges and Agents.

The concerns most often brought up by judges and probation agents were programming attendance, UA tests, AODA assessments and treatment, employment, contact with and respect for probation agents, and contact with the victim. These concerns were not brought up individually, but were often referenced in relation to each other, suggesting that the overall context of how a probationer was doing mattered more than one individual issue. Upon missing programming, reasons often cited included employment, financial, and parenting concerns. Almost all probationers were also required to undergo an AODA assessment, regardless of their history with addiction or prior UA tests. UA tests were discussed with respect to need for AODA treatment, employment, parenting ability, addiction, personal choice, and situational contexts. Probationers and their actions were socially constructed by court actors and probationers through drawing linkages between these issues, while also drawing upon discourses of responsibility and therapeutic benefit, as well as judges' assessments of character, based upon their worldviews and bench experience. Further, these discourses and characterizations reflected raced, classed, and gendered assumptions, leading to differences in how probationers' actions were constructed.

Linkages Between Drug Use, Employment, and Caregiving.

Judges often discussed drug use, as noted by positive UAs, in connection with employment and caregiving. At times judge would assert that drug use is illegal, as well as a prohibited act while on supervision, when chastising probationers for continued marijuana and cocaine use. Most commonly, however, judges would assert that testing positive would preclude probationers from employment, thus rendering them unemployable based on their drug use. This

connection between drug use and employability reflects the dominant discourse of responsibility, connecting employability as a necessary condition for a successful adult. Thus, judges saw continued drug use as bad not only because it violated the conditions of probation and was a personal choice, but because it was viewed as affecting other aspects of the probationers' lives necessary for rehabilitation. At other times the connection between employment and drug use referenced the probationer's unemployment as a concern. With these connections, judges drew on cultural scripts of unemployed people living in poverty as drug dealers (Beckett, Nyrop & Pfingst, 2006; Ramasubramanian, 2011). One judge in particular often invoked employment in conjunction with drug use to imply that the probationer was "employed" as a drug dealer.

For defendants with children, however, drug use was constructed as an irresponsible act for a parent. At times, the timing of drug use was discussed to assuage judges' concerns that probationers were caregiving while high, thus being an irresponsible caregiver because of a diminished cognitive state to ensure safety. More often, however, judges would utilize their turn at talk to assert that probationers with children who used drugs were irresponsible as providers for their children. In one hearing, the judge makes explicit connections between drug use and parenting ability:

> Judge A: You used cocaine and marijuana? You tested positive two times, you used more than once. I'm not saying you spent a fortune. How many kids do you have?
> D: Seven.
> Judge A: That's a lot of kids. I want you to keep a picture in your head – a quantity of marijuana and something for any one of your seven kids. Every time you pick up the marijuana, that's one thing your kid doesn't get. It's not like you had all the money in the world – then you could do both. Most people have to make the choice between those two things.

There is an inherent assumption that the probationer placed his own personal wants for cocaine and marijuana over that of his children's needs. Thus, drug use is framed under responsibility discourses in the caring for children.

Linkages Between Missed Programming, Employment, and Childcare.

Absences from programming were often framed by probationers and their attorneys in relation to work duties, having to balance work and programing schedules. At times, including these details as a response to the 'fact' of missing programming helped to construct the probationer in a positive light, demonstrating their responsibility as a self-sufficient adult. Parents who missed programming often cited childcare issues, such as a lack of a sitter or a sick child at home when offering an excuse for missing programming.

> Judge B: Good, she's also complaint with office visits. Why did you miss two visits there?
> D: I had parenting class and my son has an appointment.
> Judge B: Make sure you make your appointments.
> PO: The programs will work with each other, the program is very important for her son.
> Judge B: You get candy.

In this exchange, the miss of office visits is constructed as mitigated because the probationer had a scheduling conflict with an appointment for her son. The agent helped with this alternative construction by adding that the programming for the child is "very important," further emphasizing the construction of the probationer as a 'good mother' who is considering her son's interests first. Judges often reminded probationers to call ahead for an excused absence, if they had not done so. For others, however, the emphasis and "focus" placed on work over programming was seen as detrimental to successfully completing probation. More often, these probationers had multiple missed sessions, and the assertion that they are "working, working, working" is met with resistance by judges, who counter that part of being a responsible adult is learning how to balance multiple priorities, and taking initiative to schedule all activities without conflict.

Linkages Between Employment, Finances, and Programming.

When attendance at programming was constructed as a serious issue (e.g. multiple absences), probationers and their attorneys cited the financial burden of affording classes while also facing limited hours for employment. Although judges framed programming as "there for your benefit" to "take advantage of," not all judges were aware of the costs of programming, in addition to paying court costs, supervision fees, and any restitution that may be ordered. Judge A in particular emphasized the need for programming, stating that employment could wait until after probation, thus ignoring the issue of un- and under-employment in paying weekly fees for BIP, AODA treatment, parenting class, or any other programming required. Other judges, however, were sympathetic toward the financial issues faced by probationers:

> Judge B: What's your attendance since mid-May?
> D: I missed two, I don't work. I have to pay to go to classes… with no work…
> Judge B: You have to pay to go to classes? Any updates since?
> PO: No updates.
> Judge B: How can he go if he doesn't have money?
> PO: I don't know their structure.
> Judge B: What do they tell you – pay $20 each time?
> D: Yes, I just started working full time.
> Judge B: So you can pay?
> D: Yes.

In this exchange, the judge asks the agent a pointed question about the probationer's ability to afford programming and therefore comply with the conditions of probation, given that he was unemployed. For probationers with AODA issues requiring in-patient or more intensive treatment, and those requiring counseling, insurance coverage became an important issue framed as a barrier for getting treatment. Judges often expressed concern, and hope, that probationers would get the level of treatment needed, yet also reminded them that if they could not get clearance for more intensive treatment, they would have to "make it work." In both of these concerns – finances from un- and under-employment and insurance coverage – judges and

probationers constructed missed programming as less negative than missing due to forgetting, oversleeping, or not wanting treatment.

Differing Discourses by Social Location.

Often, discourses used to frame a probationer and his or her progress on probation reflected underlying assumptions that are raced, classed, gendered, and familied. As previously stated, the main discourses used in probation review hearings were personal responsibility and therapeutic benefit. Whether someone was framed under these discourses depended, in part, on their social location. Finally, judges at times expressed raced and classed cultural assumptions in the 'free advice' they gave, comments made, and laughs in responses to probationers' statements. Like the findings of Van Cleve (2016), raced and classed discourses operated in the interjections and side-commentary.

Responsibility Tied to Family Status.

Responsibility discourses were employed differently, and tied to different ideas, depending on whether the probationer was familied. For non-familied probationers, unemployment, lack of beginning programming, and positive UAs for drugs, particularly marijuana and cocaine, were constructed by judges and probation agents as evidence of irresponsibility for failing to be a productive member of society. When these probationers had not attempted to look for work, made no effort at scheduling programming, or used "overslept" as an excuse, judges relied on discourses of being a responsible, productive adult. Often judges would rhetorically ask probationers if they "wanted to buy things for themselves" when hearing they were not looking for a job, or assert probationers needed to set an alarm clock and be on time like a typical adult. Positive UAs for non-familied probationers were framed as being

irresponsible because of the concern that positive UAs would preclude these individuals from the job market.

Familed probationers, however, had their actions constructed within the rhetoric of familial responsibility, rather than being a responsible adult and citizen. Missing programming, particularly parenting classes, was framed as a concern for those with child custody issues or Bureau involvement. Health and mental health concerns, such as failing to care for one's physical illness or start therapy, were also seen as a concern for caregiving. This was particularly true for female probationers who often had issues of mental health, anger issues, or physical illnesses. In these cases, lack of caring for oneself was seen as being irresponsible as a parent. Drug use was framed for familied probationers as a threat to being a provider for one's children. In these hearings, judges drew on responsibility discourses of being a financial and material provider for one's children – assuming that spending money on drugs meant that one's children went without a material need such as clothing, shoes, and school supplies.

Race and Personal Choice.

Although discourses on drug use differed according to drug type, trends emerged in how drug use was framed for probationers of color compared to White probationers. In particular, Black probationers' drug use was mostly framed as a personal choice, and as a moral failing. White probationers, by contrast, often had their drug use framed as addiction and a problem that 'needed help,' thus mitigating their responsibility. In one exchange, the judge makes a distinction between 'addictive' drugs and 'personal choice' drugs in speaking with a Black male probationer:

> Judge A: Do you work?
> D: I'm an apprentice in industrial mechanics.
> Judge A: I gotta ask – where do you get the money for the marijuana?
> D: The wrong people.

> Judge A: They share?
> D: Yes.
> Judge A: It's your third test positive – I can't ignore it… not the worst…. The problem is here worse than if you were an addict and you were fighting addiction. But you say you can stop and before you stopped. You're spending the weekend in jail. Two days.

In this exchange, the judge makes reference to other drugs as more harmful, but less of a problem because of their addictive potential. The connection between employment and drug use was more commonly addressed for probationers of color, often with judges asking how they could afford drugs if they were unemployed, or considered to be underemployed. This "I gotta ask" implies that one is unable to pay for drugs, and therefore viewed as a potential drug dealer, further re-inscribing men of color as the "criminalblackman" (Alexander, 2012; Heitzeg, 2015; Russell-Brown, 2009).

In addition, probationers of color who used opiates and prescription pills tended to have their drug use framed as problematic compared to Whites. Often when asked about why they tested positive for opiates, probationers would cite health problems – back problems, toothaches, even being a gunshot victim. The difference, however, lies in how probationers' opiate use and reasons for use were framed by judges and probation agents. Opiate use was most often framed as addiction for White probationers regardless of their reasons for starting to use prescription drugs. For probationers of color, however, discussion of opiate use centered on the reasons for use, with judges dismissing their reasons as having a "story for everything." In one case, however, a Black male probationer's opiate use was framed by both the judge and agent as an addiction:

> PO: No, he said he gets it from a cousin, mentioned a prior gunshot. I said he needed his own prescription, he is denying he has an addiction. I called treatment, and they said he used oxy on Monday – I'm not sure how long it stays in the system but marijuana is negative.
> Judge B: Are you requesting time?
> PO: It's a mixed review, it may be the bigger issue than he admits with prescription pills.

Judge B: What are you on?
D: I took the first one two months ago and it worked.
Judge B: It's not something you should be taking. I sort of believe you – normally people say they're taking a family member's prescription for back pain or a bad tooth, I hear that all day every day.

Within this exchange, the judge's knowledge from her experience on the bench on 'legitimate' reasons for prescription use or misuse renders his history, as provided by his agent, as 'legitimate,' and not a personal failing. Framing of someone's drug use as addiction, or personal choice, as a 'legitimate' or 'dishonest' reason often influenced whether the probationer would be sanctioned.

Further, racial differences emerged with respect to progress on probation. Often personal responsibility was referenced in regard to probationers of color 'doing nothing' or 'not doing enough' while on probation. Delays with starting programming, missed or tardiness at sessions, and unemployment were most often met with rhetorical questions about why they were not 'doing enough' or were 'doing nothing.' Responses given by probationers of color were often met with admonishments that suggested laziness, lack of independence, and a failure to take personal ownership over one's actions. In one hearing, the Black male probationer's unemployment, continued marijuana and prescription pill use, two misses at BIP, and previous termination from another BIP program for non-attendance was framed by the probationer as lacking help:

Judge A: He has no financial money, at this point I don't know he's taking this seriously.
D: I'm trying.
Judge A: Because you have a hearing today? Or because you are taking it seriously? I am disappointed, you're not doing well on any score.
D: I'm trying, I'm trying. I'm not able to see my son for his first birthday. It's overwhelming.
Judge A: How did that happen?
D: I don't know.
Judge A: It's you. You have to get out there and find a job, try day after day.
D: It's hard to start over. I have no income, no transportation, people won't help me.

Judge A: It's on you!

Within this exchange, the concern about employment is framed as being irresponsible, not "taking this seriously." The probationer's mention of struggling with limited finances, transportation for finding a job, and social support from others is met with a challenge that reiterates a judgement of making poor personal choices, and thus being irresponsible in not finding work. This emphasis on responsibility in evaluating probationers of color mirrors the use of "mopes" as a trope within Cook County courts, as found by Van Cleve (2016).

White probationers who "did nothing," by contrast were constructed as being an anomaly, requiring a mental health evaluation. Indeed, one White probationer had not looked for employment, seen his agent for months, or started AODA treatment, and continued to test positive for alcohol. The judge's response differs from what was typical for probationers of color with similar issues:

> PO: After absence, a family friend offered to help, but he has no motivation.
> Judge B: <to D> Put those things down. Why don't you have motivation?
> (Back and forth about "What do you do all day?" "I'm at home")
> Judge B: Laying around and watching TV?
> D: Yes.
> Judge B: Has he had a mental health evaluation?
> PO: He already met… at this point I don't know what to do with him anymore.
> Judge B: I ordered a mental health evaluation… he was supposed to have a mental health evaluation – did they recommend anything?
> PO: No.
> Judge B: Is there no recommendation for this lethargy? I haven't seen anything like it – isn't it boring?

The connection between "motivation" to do anything with mental health is striking – rather than framed as a personal choice or act of laziness, his actions are described as something that is beyond his control – such as suffering from depression. Further, White probationers who were not on public assistance, while reminded that they could apply for help, were also congratulated for being resistant to asking for help. These individuals had the same cluster of issues –

unemployment, lack of insurance or identification cards, and drug issues – yet their lack of progress was often framed in a different light, utilizing discourses of responsibility via being independent or mental health.

Mental Health Tied to Gender.

Mental health was commonly brought up in probationers' cases, irrespective of gender. There were, however, gender differences in the ways mental health was addressed, and illnesses or issues mentioned. Mental illness was most often discussed in women probationers' cases, while men tended to have their mental health framed as "anger issues" more commonly than women. Indeed, depression, anxiety, trauma, and co-dependency were more commonly cited by women, their agents, and their attorneys when framing failure to comply with conditions of probation. The need for a mental health assessment and treatment was expressed more commonly with women as a "focal point" for getting treatment with other issues, such as AODA and employment. In one exchange, the inability of the probationer to get mental health treatment is seen as a primary concern for the judge:

> Judge B: I'm unsure on mental health – it was the focal point. She was to use primary care provided to schedule an appointment but didn't follow through and the department is upset and frustrated that a critical need is ignored.
> DA: She needs her mom to be present, but her living situation is toxic. She doesn't have other options, her daughter lives with her. I think the level of reflection and input is high. It's what common people deal with mental health, anxiety and depression, not schizophrenia. Additional issues in a toxic environment, which can exacerbate the helpless feeling preventing making a change. She has an appointment.

In this exchange, the lack of "follow through" by the probationer on getting mental health treatment is reframed as "helplessness" due to living in a "toxic environment" with her mom compounding symptoms of anxiety and depression. Thus, like Worrall's findings (1990), women were often constructed under "pathology" discourses, of being sick, fragile, and in need of help. For men, by contrast, most of their issues were framed as "anger issues," with one

referencing his "intermittent explosive disorder." Mental health discourses, in these cases, were used to frame the offense under a larger issue of uncontrolled anger. When male probationers and their agents attempted to frame their non-compliance with probation as due to gendered "female" mental health concerns (i.e. depression, anxiety, trauma), they were often met with resistance.

Domestic Violence Tied to Gender.

Domestic violence, when discussed in hearings, reflected a gendered discourse on violence. Consistent with the dominant discourse of domestic violence as violence against women, most women probationers were framed as 'true victims.' Often, agents and judges included information about situations in which the probationer was harassed, threatened, or otherwise experienced violence at the hands of their 'victim.' These women were encouraged to get help, report their abuse, and document it. Although for most hearings the cause of domestic violence was framed under what Johnson (2005) would call "common couple violence" – conflict and alcohol and drug exacerbations – when domestic violence was framed under power and control discourses, these discourses were reserved only for men. Indeed, men who were constructed as hostile toward their female agents, female programming staff, and women in their lives were seen as having "control issues" and were told they needed to change their thinking. When male probationers asserted that the victim had initiated contact, was violent, or had filed a false report, most were met with reprimands reminding them that "It's on you" – further suggesting that domestic violence is largely viewed as violence against women.

Character Assessments of Probationers as Raced and Classed.

Social location differences emerged through raced and classed assumptions that were made manifest in the interjections that judges used when asking questions or giving a lengthy

assertion. These interjections are subtle, and while part of the record in court transcripts, do not typically pertain to evaluating a missed appointment or a lack of employment. Within these statements, assumptions of what is 'typical' or 'expected' behavior are expressed. In one instance, I observed a hearing in which the judge asked a Black male probationer about his occupation. He responded that he worked as bookkeeper for a local supermarket chain. The judge responded with the question "do you have a degree?". White probationers with supervisory or white-collar types of professions, however, were not asked of their credentials. Thus, probationers of color who did not fit expected molds of employment may be subjected to scrutiny, challenging the experience or educational background of someone based on raced assumptions of employment. At times one judge in particular used humor and rhetorical questions to mock probationers of color who utilized slang and incorrect grammar when giving responses. In one hearing, after the judge asked where supervised visits with children are, he mocked the Black male probationer's response by repeating it, stretched out for emphasis, and laughed: "baby mama's mom." While largely absent from most hearing, class was eluded to in a few hearings, often with reference to spending habits of lower and working-class people when faced with a large sum of money. One judge, when hearing from a probationer that he was recently granted disability and would receive SSI payments, lectured the probationer with "free advice" to not spend money foolishly, as if it was burning a hole in one's pocket.

More frequently, judges would expressed raced assumptions of men of color that reflected stereotypes of Black men as hyper-sexed with multiple children, or as hyper-aggressive. Although judges often asked probationers about their children, including the number and ages, Black and Hispanic men tended to have value-judgements associated with the responses

provided. In one hearing, the judge interjects between a series of questions about continued drug use and current employment status with:

> Judge A: How many kids do you have?
> D: Seven.
> Judge A: Seven kids – how many different women?
> D: Three.
> Judge A: Three?! The report says seven children with four different women. You have not paid child support.

Although there is a connection to lack of paying child support at the end of the line of questioning, the question of the number of women and shocked "Three?!" reflect the cultural stereotype of men of color as having multiple children from varied partners. At times the assumption of Black men as aggressive was reflected in 'reading' the behavior of these probationers as hostile toward agents or other authority figures. In one exchange, the judge interjected at the end of the hearing with a 'free piece of advice' on how to approach an employer:

> Judge C: I noticed, I don't know if it was the way it was written, when you requested a raise at your job, however your hours were reduced because you seek alternate employment. It could be how it was said, be careful on how you do that. (said that if you go in and demand a raise or you'll find a different job is not helpful)
> D: Actually, I applied for a higher paying job, and she reduced my hours. (stated she had found out with a reference check)

In this exchange, the memo on the Black male probationer's progress included a note on his employment status that the judge drew on in framing her construction of his actions as hostile and aggressive when meeting with his employer to demand a raise. As can be seen, however, this assumption, which drew on cultural scripts of Black men as threatening and aggressive in interpersonal relations, was unfounded.

Beyond referencing specific issues, such as employment and number of children, judges often utilized diatribes to express their character assessments of probationers, drawing on

cultural scripts of men of color as aggressive and irresponsible (Brezina & Winder, 2003; Cesario, Plaks, Hagiwara, Navarrete & Higgins, 2010; Todd, Thiem & Neel, 2016). These character assessments often began with the preface "I get the sense" and followed with an assessment of a probationer as lazy, irresponsible, or manipulative. These assessments were most often given to probationers of color, most commonly male. During one hearing, Judge A engaged in an exchange with a probationer about why the probationer needed to have two cell phones. After the probationer stated he a "government phone" that he believed President Obama paid for, the judge responded:

> Judge A: This may not be fair… I watched you come in this morning, I read people. You came across real slick, quick with answers, you don't want to change. Within 15 years of sitting on the bench with domestic violence, I've never seen someone refer to the victim as your better half and when a question about how the victim would feel about the offense you replied "she understands".
> D: When did I say that?
> Judge A: To your agent (reads question and his response).
> D: I never said that.
> Judge A: That's my point, you're slick with responses. You're spending the weekend in jail. Two days, get serious, Mr. ___.

Within this exchange, clear reference is made to the extra-legal judgments rendered by the judge in "read[ing] people" and making assumptions based on minimal observations prior to a court hearing of the 'true character' of a probationer. These assessments, although not specifically referencing racial or class factors, were provided almost solely to probationers of color.

Summary

The discursive themes prevalent in these probation review hearings focused on personal responsibility, therapeutic benefit, and mental health. These themes, while commonly utilized across issues such as employment, program attendance, and drug use, were employed differently across social location. Responsibility discourses were more prominent with probationers of color and lower-classed individuals in framing their actions, such as drug use as a personal

choice and being irresponsible when missing appointments. Mental health discourses were more readily utilized when talking about women probationers, as well as White probationers. Responsibility discourses also differed depending on whether a probationer was familied or non-familied, reflecting implicit underlying assumptions of the necessity to be a good parent or a productive citizen while being responsible for one's actions.

Further, the dominant discourses utilized to socially construct a probationer's actions reflected underlying power dynamics in which probationers' accounts were often silenced or discredited through the use of institutional roles and turns at talk. Indeed, judges often would utilized their institutional role to change topics, repeat questions, and dominate the floor, thus silencing alternative constructions. Most often, judges would rely on scientific and social science knowledge of domestic violence, abuse, and addiction, as well as their own experience on the bench as 'valid' knowledge, often discrediting anecdotal knowledge proffered by probationers. This did not mean that probationers were unable to speak and influence the construction of their behavior, however. Probationers who were successful in offering an alternative construction and different discourse tended to use discursive repertoires that were favored by the court – such as taking responsibility for one's family, 'owning up' to bad decisions, and 'proving oneself' to the court that reflected the dominant discourse of personal responsibility. In addition, probationers at times challenged power dynamics, interrupting exchanges of others and commanding the floor for longer periods of time.

CHAPTER 5: QUANTITATIVE RESULTS

Chapter 5 examines quantitatively the influence of probationer social location on the sanctioning decision in probation review hearings, and answers research question 5. This chapter begins with descriptive statistics on both conditions of probation commonly ordered for defendants, as well as relevant variables. Issues with missing data and collinearity diagnostics follow. Finally, multiple regression results are presented, answering research questions 5a and 5b (i.e. the direct and interactive influences of social location). Finally, a summary of the main findings of the analysis conclude the chapter.

Descriptive Statistics

Table 3 presents the descriptive statistics from the sample of 350 cases. The first set of descriptive statistics include the dependent and independent variables of interest for this research study. Although probationers often had issues raised regarding compliance with the conditions of probation, a jail sanction was relatively uncommon, with only 24% of probationers receiving jail time. For those ordered to jail, the average jail stay was 9.57 days, yet there was heterogeneity of variance around the mean, with a strong positive skew to the data (s=13.03). Most probationers were male (82.86%), Black (65.71%), and the average age was 32.32 years (s=9.67). Few probationers were Other race (<1%), requiring the exclusion of these cases from the final sample for statistical modeling. Almost half of probationers were employed at the time of the review hearing, yet there was a non-marginal percentage of hearings in which no mention of employment was made by the judge or probation agent (28.57%). Finally, almost three-quarters of probationers in the sample had minor children. In 10% of cases there was missing information on children, due in part to missing police reports.

Relevant case characteristics included the nature of the offense and victim injury, severity factors at conviction, and pretrial factors. Weapon use was uncommon in the criminal offense (14.86%), yet there was missing information on 37.43% of cases due to missing police reports. Victim injury, however, was more frequent, with 42.29% of incidents having some complaint of injury or pain by the victim. Missing data on victim injury also equaled 37.43%, as the same cases had missing police reports. The most common victim/offender relationship in the sample was current partner (i.e. partners, married) (38.57%), followed by former partner (i.e. ex-partners, divorced) (21.42%), and other relationship (9.14%). Again, data were missing on 30.86% of cases. Most offenses at conviction were relatively minor (M=2.85, s=1.05), which translates to a class B or A Misdemeanor. In addition, most cases had between one to two counts (M=1.58, s=.76), had a violent charge (44.00%) or a public order charge (54.57%). In terms of case processing factors, the vast majority of cases had a public defender (79.71%) while a court-appointed attorney and private attorneys were less common (13.14%; 7.14%, respectively). Most probationers had bail ordered to them during pre-trial proceedings (57.71%), yet very few failed to appear at court (M=.19, s=.58). Finally, probationers typically had few prior violent convictions (M=.23, s=.60) and prior felony convictions (M=.52, s=1.20). Both variables were positively skewed, with many probationers having no criminal record prior to the offense. It was less common for probationers in the sample to have a prior restraining order (33.71%).

Table 3.
Descriptive Statistics on Dependent, Independent, and Control Variables.

Variable	Frequency	Percent
Sanction		
Verbal (=0)	266	76.0
Jail	84	24.0
Days Sanctioned		
(Range 1-60)	M=9.57	s=13.03
Gender		
Female (=0)	60	17.14

Male	290	82.86
Race/Ethnicity		
White (=0)	72	20.57
Black	230	65.71
Hispanic	45	12.86
Other	3	.86
Age		
Range (18-62)	M=32.32	s=9.67
Employment Status		
Unemployed (=0)	78	22.29
Employed	172	49.14
Not Mentioned	100	28.57
Minor Children		
No Children (=0)	53	15.14
Children	262	74.86
Missing Information	35	10.00
Prior Violent Convictions		
Range (0-4)	M=.23	s=.60
Prior Felony Convictions		
Range (0-7)	M=.52	s=1.20
Severity at Conviction		
Range (1-8)	M=2.85	s=1.05
Judge		
Judge A (=0)	99	28.29
Judge B	147	42.00
Judge C	64	18.29
Judge D	18	5.14
Judge E	22	6.29
Judge Gender		
Female (=0)	229	65.43
Male	121	34.57
Attorney Present at Hearing		
No (=0)	220	62.86
Yes	130	37.14
Missed BIP		
No (=0)	80	22.86
Yes	186	53.14
Not Mentioned	84	24.00
UA Issue		
No (=0)	112	32.00
Yes	152	43.43
Not Mentioned	86	24.57
Missed PO Visits		
No (=0)	29	8.29
Yes	60	17.14
Not Mentioned	261	74.57

Other Issue		
No (=0)	89	25.41
Yes	183	52.29
Not Mentioned	78	22.29
BIP Framing		
Positive (=0)	201	57.43
Negative	88	25.14
Not Mentioned	61	17.43
UA Framing		
Positive (=0)	164	46.86
Negative	100	28.57
Not Mentioned	86	24.57
PO Visits Framing		
Positive (=0)	45	12.86
Negative	55	15.71
Not Mentioned	250	71.73
Other Issue Framing		
Positive (=0)	159	45.43
Negative	113	32.29
Not Mentioned	78	22.29
Contacted Victim		
No (=0)	314	89.71
Yes	36	10.29
Weapon Use		
No (=0)	167	47.71
Yes	52	14.86
Missing Information	131	37.43
Victim Injury		
No (=0)	71	20.29
Yes	148	42.29
Missing Information	131	37.43
Relationship to Victim		
Current Partner (=0)	135	38.57
Former Partner	75	21.42
Other Relation	32	9.14
Missing Information	108	30.86
Type of Attorney		
Private (=0)	46	13.14
Public Defender	279	79.71
Court-Appointed	25	7.14
Bail Ordered		
ROR (=0)	148	42.29
Bail	202	57.71
Number of Failures to Appear		
Range (0-4)	M=.19	s=.58
Counts		

Range (0-5)	M=1.58	s=.76
Restraining Order		
No (=0)	232	66.29
Yes	118	33.71
Type of Offense[a]		
Violent	154	44.00
Property	38	10.86
Public Order	191	54.57
Other	86	24.57

*Note: for continuous variables, means and standard deviations are reported.
[a] Type of offense was not mutually exclusive, as different charges were present for multiple cases. As such, percentages do not add to 100.

Hearing-relevant factors are also presented in Table 3. As can be seen, Judge B presided over most of the hearings (42.00%), followed by Judge A (28.29%), and Judge C (18.29%). Judges D and E only presided over one hearing each, and as such had a smaller number of cases (5.14% and 6.29%, respectively). Most cases were presided over by female judges (65.43%), which is not surprising, given that Judges B, C, and D were female. It was less common for attorneys to be present at hearings (37.14%), meaning that most probationers were represented *pro se*. With respect to issues with adherence to the conditions of probation, most probationers had at least one issue. Over half of probationers missed at least one BIP session (53.14%), yet BIP attendance was not mentioned in 24% of cases. It was more common for probationers to have at least one dirty or faked UA test (43.43%), while in 24.57% of cases there was not a mention of UA tests. PO visits were least commonly mentioned (74.57% not mentioned), yet there were 17.14% of cases in which probationers missed at least one PO office or home visit. Other issues encompasses conditions such as parenting classes, mental health counseling, couples counseling, or failure to pay court and supervision costs. It was more common for probationers to have some 'other' issue (52.29%), yet there were 22.29% of cases in which no other issue was mentioned. Finally, contact with the victim when it was prohibited (i.e. outside of a third party contact or no-violent contact amendment to the no contact order) was uncommon

(10.29%). For these conditions, most were framed negatively by judges. BIP was framed negatively in 25.14% of all cases, dirty UA tests were framed negatively in 28.57% of all cases, and PO visits were frame negatively in 15.71% of all cases. For other issues that were discussed at probation hearings (i.e. missed parenting classes, AODA treatment), issues were framed negatively in 32.29% of all cases. Although there are similar percentages across "issue" and "framing" variables, the different numbers suggest that not all "issues" are viewed as problematic by judges. Thus, context, prior interaction, and assumptions about probations matter in how violations of conditions of probation are framed.

Table 4 presents the conditions that were ordered on probationers at sentencing. These variables were not included in statistical models, but are used here to give an illustrative sense of what conditions were more commonly ordered. As can be seen, the average sentence of probation was 18.29 months (s=6.06), demonstrating some variability around the mean. It was not uncommon for probationers to be ordered condition time (i.e. incarceration ordered as part of the probation sentence to be used at the discretion of the judge or probation agent) (n=131). The average length of condition time in days was just over one month (33.23 days), yet there was significant variability around this mean (s=26.33). This condition time served as the amount of time a judge could sanction at review hearings. Most probationers were required to complete a BIP program (72.86%) or anger management classes (14.29%). Most probationers were required to complete one of these courses. Less common was a requirement of a mental health assessment or to take prescribed medications (30.00%). Most probationers were required to maintain sobriety during probation (76.00%), while an AODA assessment was even more commonly ordered (78.57%). A substantial minority of probationers were required to attend parenting classes (46.00%), which is not surprising given that the majority of probationers had

minor children. Employment and school were commonly required of probationers (81.14% and 17.14% respectively). Most probationers were asked to obtain employment or begin schooling (i.e. GED, vocational classes). Other conditions of probation were less common (16.29%), but included couple's counseling, complying or cooperating with their agent or the Bureau of Child Welfare, completing community service, or attending specialized programming for repeat offenders (i.e. CIGIP). Finally, modifications to the no contact order were more common than not (57.14%). Given the prevalence of multiple types of conditions on probationers, the variables related to issues with probation are more clearly related to the sanctioning decision when reviewing the progress of a probationer.

Table 4.
Descriptive Statistics on Conditions of Probation Ordered.

Variable	Frequency	Percent
Months Probation		
Range (7-60)	M=18.29	s=6.06
BIP		
No (=0)	95	27.14
Yes	225	72.86
Anger Management		
No (=0)	300	85.71
Yes	50	14.29
Mental Health/Medication		
No (=0)	245	70.00
Yes	105	30.00
Sobriety		
No (=0)	84	24.00
Yes	266	76.00
AODA Assessment		
No (=0)	75	21.43
Yes	275	78.57
Parenting Class		
No (=0)	189	54.00
Yes	161	46.00
Employment		
No (=0)	66	18.86
Yes	284	81.14
School		
No (=0)	290	82.86

Yes	60	17.14
No Contact Order Modified		
No (=0)	150	42.86
Yes	200	57.14
Condition Time		
Range (0-180 days)	M=33.23	s=26.33
Other Conditions		
No (=0)	293	83.71
Yes	57	16.29

*Note: for continuous variables, means and standard deviations are reported. If a probationer was ordered BIP *or* Anger Management, Employment *or* Schooling, it was coded as only one condition to avoid duplication.

Missing Data Approaches

Because there were missing data on one variable of interest – the family status of the probationer – three approaches were modeled to address this issue. The first set of models included creating a separate category for 'missing information' on the variable "Children" to have a complete dataset of 347 cases, after exclusion of cases with a race other than White, Black, or Hispanic. The second set of models utilized list-wise deletion of the 10% of cases missing information on the variable "Children", resulting in a reduced sample of 312 cases. The final set of models required multiple imputation, given that the information is assumed to be missing at random, and not dependent on the variable of interest (Rubin, 1987). The imputation procedure included the relevant control variables, independent variables, and dependent variable, as well as bail, prior restraining orders, modification of no contact orders, and if it was a violent offense. A multiple imputation regression equation was completed to impute whether the probationer had children with 10 imputations and a random seed of 125. The total imputation variance was .001, with an RVI of .285, FMI of .232, and relative efficiency of .977, suggesting that the imputation did not greatly increase the sampling variance and is efficient in estimating the population parameter (UCLA Institute for Digital Research and Education, n.d.). Results from these three methods of analysis were compared to examine the influence of missing data for the variable "Children" on the fit of the model and coefficients of the independent and control variables. The analyses

reported below included cases missing data on children. Those missing this information were coded under a "missing information" category to compare the influence of missing to those with this information.[21] These models are included in the text to demonstrate any potential differences between having children and those with missing information. In addition, regular models are easier to interpret model fit than multiple imputation.

Collinearity Diagnostics

Prior to multivariate analysis, cross-tabulations and bivariate statistics were analyzed. It was determined through bivariate statistics that restraining order, weapon use, offense type, bail, attorney type, failure to appear, and relationship to victim were not statistically significant in chi-square tests for independence ($p>.05$), as well as number of counts and failures to appear. Given the small sample size, these variables were eliminated from multivariate modeling for parsimony and statistical power. In addition, variables related to what occurred at the hearing (i.e. attorney present, judge, missing BIP classes) were viewed as more relevant to the sanctioning decision.

Prior to model building, tests for multicollinearity were conducted for the independent and control variables. None of the pair-wise correlations were above .50 for any non-categorical variables with reference categories. When examining correlations between issues on probation (i.e. missing BIP, dirty UA tests) with the framing of these issues (i.e. positive, negative), it was determined that these variables were too highly correlated to be both included in models ($r>.7$). As such, two separate models were used to assess first the influence of having an issue on the sanction decision, and subsequently the framing of issues on this decision. Collinearity diagnostics assessed the variance inflation factors (VIF), tolerance, and condition index for all model variables. VIF scores were all less than 2, and tolerance scores were above .5, with the

[21] Additional analyses were completed and are in Appendix D. List-wise deletion and multiple imputation results revealed limited differences in comparing models to the "missing category" model.

exception of the categorical variables for missing PO visits (tolerance =.36). Given that these variables (Missing PO, No Mention of PO) have a reference category for comparison (i.e. No PO Missed), it was determined that these low tolerance values were not detrimental (see Allison, 2012). Additional variables that had tolerance scores between .5-.7 had similar issues, with one category left out as the reference variable (e.g. Race, Judge, Employment, Kids, BIP Miss, UA Test). In addition, the condition index ended at 28.88, which suggests no issue with large proportions of variance and collinearity.

The Decision to Sanction

The fifth research question was:

> **Which defendant characteristics predict the type of sanction given to offenders? Do defendant characteristics interact in predicting sanctioning (e.g. race*family status; race*employment status).**

This question required two analyses – one that examined the decision to sanction, and the other that examined length of a jail sanction.[22] Further, the first question examined the direct influence of probationer characteristics (i.e. being a parent, race, gender, employment status), while the second question examined interactive effects of race *and* family status, and race *and* employment status. Given these questions, two sets of analyses were conducted – the first set contained series of logistic regression equations with models for the additive effects of probationer characteristics, net of control variables. The second was a series of logistic regression equations with models for the interactive effects of probationer characteristics, net of control variables. The second set of analyses examined the count of days sanctioned to jail for the subset of offenders receiving a sanction by utilizing zero-truncated negative binomial regression

[22] Much of the sentencing literature has argued that judges make two decisions – the initial "in/out" decision and the subsequent decision on length of incarceration (e.g. Steffensmeier, Ulmer & Kramer, 1998). Bushway and colleagues (2007) refer to this as an incidental selection process, in which a two-step model is appropriate.

equations. Again, the first series of models presented the additive effects of probationer characteristics, while the second series of models included the interactive effects. The results below are organized according to the research questions.

Probationer Characteristics Predicting Sanctioning.

Table 5 presents the results for the first set of models examining the influence of probationer characteristics on whether a probationer was sanctioned, net of control variables. Model 1 included variables that examined whether various issues while on probation (i.e. missed BIP, dirty UA tests) impacted the decision to sanction a probationer. Model 2 included variables that examined whether the framing of an issue (i.e. positively, negatively, or issue not mentioned) influenced the sanctioning decision. These two models tap into different aspects of failure to abide by conditions of probation – one is a simple dichotomous indicator of if there was an issue, while the other examined the ways in which judges, through interaction with others in the courtroom, made sense of, or *framed* a particular issue. As was found through qualitative analyses, not all issues were viewed negatively by judges. The context, mitigating factors, and even a probationers' social location influenced how these issues were viewed. Results will be discussed first with respect to probationer social location, answering research question 5a, and then with respect to other variables that exerted a significant influence on the sanction decision. For all models, model fit was relatively high, with Pseudo-R^2 above .30.

As can be seen, most probationer characteristics did not influence the decision to sanction. In both model 1 and model 2, there was not an effect of probationer age ($p>.05$), and Black and Hispanic probationers were no more likely to be sanctioned than Whites. In addition, employment status did not influence the decision to sanction, whether comparing employed to unemployed probationers, or cases in which employment status was not mentioned to those

unemployed. Gender did, however, exert an effect in model 1, with the odds of male probationers 4.07 times higher to receive a jail sanction than female probationers ($p<.05$). This gender difference was not found in model 2, which examined the framing of issues. This may suggest that gender differences that are apparent, net of having missed sessions, failed UA tests, or additional issues are possibly due to gendered interpretations of these issues as either negative, or mitigated by gender expectations. Finally, family status did predict sanctioning, albeit in the opposite direction than anticipated given prior literature (e.g. Daly, 1987a, 1987b). Probationers who had children had odds 3.12 times greater to be sanctioned than childless probationers when taking into account issues while on probation ($p<.05$), and odds 3.63 times higher when controlling for the framing of these issues ($p<.05$). Interestingly, cases in which there was missing information on parenting status was marginally significant in the second model, with these cases more likely to receive a sanction compared to non-familied probationers ($p=.063$).

Table 5.
Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail (n=347).

Variables	Model 1			Model 2		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.013	.021	---	-.016	.022	---
Male	1.402*	.594	4.065	.990	.614	---
Black	-.242	.465	---	-.529	.502	---
Hispanic	-.215	.324	---	-.277	.339	---
Children	1.133*	.543	3.106	1.289*	.570	3.628
Children-Missing	.855	.761	---	1.491^	.801	4.439
Employed	-.081	.462	---	-.275	.475	---
Employment Not Mentioned	.524	.519	---	.370	.519	---
Prior Violent Convictions	-.371	.388	---	-.195	.418	---
Prior Felony Convictions	-.279	.175	---	-.285	.185	---
Severity of Offense	.045	.184	---	.076	.193	---
Judge B	-.440	.434	---	-.699	.470	---
Judge C	-1.246*	.574	.288	-1.674**	.623	.187
Judge D	-1.011	.806	---	-.865	.889	---
Judge E	.044	.673	---	-.064	.708	---
Attorney Present	.706^	.366	2.026	.842*	.388	2.320

Missed BIP	1.101*	.465	3.008	---	---	---
BIP Not Mentioned	.348	.583	---	---	---	---
Failed UA Test	2.203***	.476	9.056	---	---	---
UA Test Not Mentioned	.583	.575	---	---	---	---
Missed PO Visits	1.116	.711	---	---	---	---
PO Visits Not Mentioned	-.731	.641	---	---	---	---
Other Issue	2.516***	.449	12.381	---	---	---
Other Issue Not Mentioned	1.046*	.491	2.845	---	---	---
Contacted Victim	.902	.544	---	.975^	.558	2.652
BIP Negative Rating	---	---	---	2.026***	.438	7.586
BIP Not Mentioned	---	---	---	.026	.621	---
UA Test Negative Rating	---	---	---	2.193***	.495	8.963
UA Test Not Mentioned	---	---	---	.283	.602	---
PO Visits Negative Rating	---	---	---	.782	.749	---
PO Visits Not Mentioned	---	---	---	-1.075	.688	---
Other Issue Negative Rating	---	---	---	2.457***	.496	11.667
Other Issue Not Mentioned		---	---	1.202*	.527	3.327
Constant	-5.848***	1.598	---	-4.886**	1.673	---
	Log Likelihood = -115.82, chi-square = 150.17, p<.001, Pseudo R^2 = .393			Log Likelihood = -104.614, chi-square = 172.57, p<.001, Pseudo R^2 = .452		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Salient Factors that Influence the Sanctioning Decision.

Additional variables were statistically significant in models 1 and 2, and likely played a significant role in judges' determinations of whether to sanction a probationer. There were differences between judges on their proclivity to sanction, net of other case factors and background of the probationer. Judge C was significantly less likely to sanction in cases presented before her than Judge A (p<.05 model 1, p<.01 model 2). In fact, the odds of cases before her were 71.2% less likely to be sanctioned than Judge A, when taking into account issues on probation, and 81.3 percent less likely to be sanctioned when controlling for the framing of said issues. In addition, having an attorney present at one's hearing also affected the likelihood of a sanction, net of other control variables. Although this variable approached significance in model 1 (p=.054), it was significant in model 2 (p<.05). Contrary to what was expected, given

the knowledge and experience defense attorneys have in the courtroom, compared to probationers as laypersons, the odds of cases in which an attorney was present were 2.32 times higher to be sanctioned, when taking into account the framing of probation issues.

When examining the influence of having various issues read into court during hearings, most factors became significant predictors of the sanctioning decision and yielded strong influences on this decision. First, the odds of probationers who missed at least one BIP session were three times higher to be sanctioned ($p<.05$), and if this issue was negatively framed, they were 7.59 times more likely to be sanctioned ($p<.001$). Second, the odds of probationers with at least one failed, falsified, or missed UA test were 9.06 times more likely to be sanctioned ($p<.001$), while if the issue was negatively framed the odds of a sanction were 8.96 times that of probationers with a clean UA history ($p<.001$). Third, probationers who had other issues highlighted by judges, probation agents, or themselves, had odds of sanctioning 12.38 times higher ($p<.001$), while those whose issue was framed negatively had odds 11.67 times greater to be sanctioned ($p<.001$). Interestingly, probationers who did not have 'other' issues mentioned were also more likely to be sanctioned than those whose cases were highlighted for having completed or attended additional aspects of programming (i.e. parenting class, therapy, AODA assessment or treatment) ($p<.05$, O.R. = 2.85 model 1, O.R. = 3.33 model 2).

Interaction of Probationer Characteristics in Predicting Sanctioning.

The results in Table 6 present the interactive influence of probationer social location on the sanctioning decision, net of control variables and the additive effects of race, family status, and employment. These results answered question 5b on the potential compounding effect of social locations, consistent with intersectionality as a framework. Model 3 presents the results for the interaction of family status and race, while model 4 presents the results for employment

status and race.[23] In these analyses, only White and Black probationers were examined, and missing information, or not-mentioned statuses were excluded in order to appropriately model the compounding influence of race and family status, and race and employment status. As can be seen, there were no differences between Black and White probationers on the likelihood of being sanctioned for non-compliance (p>.05). The influence of being a parent in these models decreased in statistical significance (p=.059, p=.09, respectively), and the influence of employment status continued to be non-significant (p>.05). Neither interaction terms of race and parenting (i.e. being a Black parent), nor race and employment status (i.e. being a Black employed individual) were significant predictors of the decision to sanction (p>.05).

Table 6.
Logistic Regression Results Predicting Whether Race Interacts with Parenting and Employment in Predicting Whether a Probationer was Sanctioned to Jail.

Variables	Model 3 (n=269)			Model 4 (n=233)		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	.000	.025	---	-.011	.030	---
Male	1.715*	.680	5.559	1.892^	.984	6.633
Black	.224	1.200	---	-1.192	1.239	---
Children	2.046^	1.084	7.737	1.562^	.921	4.769
Children-Missing	---	---	---	1.522	1.176	---
Employed	-.333	.523	---	-.954	1.264	---
Employment Not Mentioned	.146	.643	---	---	---	---
Black Parent	-1.014	1.360	---	---	---	---
Black Employed	---	---	---	1.022	1.411	---
Prior Violent Convictions	-.613	.479	---	-.363	.492	---
Prior Felony Convictions	-.244	.181	---	-.340	.209	---
Severity of Offense	.254	.201	---	.451^	.253	1.569
Judge B	-.439	.523	---	-1.052^	.592	.349
Judge C	-1.189^	.689	.305	-1.417^	.746	.242
Judge D	-1.643	1.012	---	-2.976*	1.318	.051
Judge E	-.077	.788	---	.815	1.100	---
Attorney Present	.551	.425	---	.991*	.488	2.695
Missed BIP	1.661**	.619	5.262	.732	.616	---

[23] Additional analyses were run using the framing of probation issues, and can be found in Appendix D. There were no significant differences between the two models with respect to the additive or interactive terms for race, employment status, or family status.

BIP Not Mentioned	.695	.740	---	-.607	.862	---
Failed UA Test	2.326***	.558	10.239	2.077**	.598	7.982
UA Test Not Mentioned	.680	.683	---	-.123	.810	---
Missed PO Visits	2.162*	.854	8.684	.917	.882	---
PO Visits Not Mentioned	-.118	.761	---	-.762	.800	---
Other Issue	2.676***	.547	14.532	2.711***	.616	15.043
Other Issue Not Mentioned	1.206*	.602	3.339	.882	.702	---
Contacted Victim	.471	.640	---	.647	.717	---
Constant	-8.489***	2.042	---	-6.169	2.333	---
	Log Likelihood = -86.48-, chi-square = 129.02, p<.001, Pseudo R^2 = .427			Log Likelihood = -67.42, chi-square = 116.51, p<.001, Pseudo R^2 = .464		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Missing children category was omitted in Model 3 and Employment not mentioned category was omitted in Model 4 in order to examine the interaction of race with parenting and employment. Odds ratios are reported only for significant variables.

The results from these models for age, gender, and control variables were similar to those in the additive models of Table 5, with few exceptions. The odds of probationers who missed PO visits were 8.68 times higher to be sanctioned than those with perfect attendance (p<.05) in model 3. Severity of the offense became marginally significant (p=.074), such that a one-unit increase in the offense severity at conviction increased the odds of a sanction by 56.9%. Additionally, Judges B and C were marginally less likely to sanction probationers than Judge A (p=.075, p=.057, respectively), and Judge D became less likely to sanction than Judge A (p<.05, O.R. = .051) in model 4.

Additional Analyses – Judge Gender.

Table 7 presents the results from logistic regression models for the influence of judge gender on the sanctioning decision. Given that two judges were male, and three were female, it could be that differences observed across individual judges are a function of gender. As was noted in models 1 through 4, one female judge had a significantly less likelihood of sanctioning than one male judge, with additional models suggesting the other female judges also had less likelihood of sanctioning their probationers. Further, Judge A and E were not statistically

different from one another on their sanctioning decisions, and were both male. Model 5 presents the results when including issues on probation, while model 6 contains the framing of said issues. In both models, male judges were significantly more likely to sanction their probationers to jail for non-compliance, compared to female judges ($p<.05$). In particular, male judges' odds of sanctioning were 2.07 times higher when including the issues of non-compliance, and were 2.64 times greater when including how these issues were framed by judges. The influence of probationer characteristics in these models was not different from models 1 and 2, which controlled for individual judges.

Table 7.
Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail with Judge Gender (n=347).

Variables	Model 5			Model 6		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.0128	.021	---	-.015	.021	---
Male	1.342*	.589	3.827	.937	.603	---
Black	-.249	.461	---	-.605	.499	---
Hispanic	-.233	.315	---	-.336	.333	---
Children	1.033^	.530	2.808	1.181*	.556	3.256
Children-Missing	.663	.752	---	1.278	.782	---
Employed	.041	.444	---	-.104	.459	---
Employment Not Mentioned	.601	.506	---	.462	.512	---
Prior Violent Convictions	-.438	.387	---	-.263	.418	---
Prior Felony Convictions	-.272	.174	---	-.280	.181	---
Severity of Offense	.038	.182	---	.084	.189	---
Male Judge	.729*	.368	2.073	.969*	.400	2.636
Attorney Present	.742*	.361	2.099	.852*	.382	2.344
Missed BIP	1.157*	.461	3.180	---	---	---
BIP Not Mentioned	.290	.580	---	---	---	---
Failed UA Test	2.120***	.464	8.330	---	---	---
UA Test Not Mentioned	.465	.562	---	---	---	---
Missed PO Visits	1.027	.704	---	---	---	---
PO Visits Not Mentioned	-.763	.637	---	---	---	---
Other Issue	2.488***	.446	12.036	---	---	---
Other Issue Not Mentioned	1.092*	.484	2.981	---	---	---
Contacted Victim	.957^	.539	2.605	.976^	.555	2.654

BIP Negative Rating	---	---	---	2.007***	.433	7.440
BIP Not Mentioned	---	---	---	-.195	.599	---
UA Test Negative Rating	---	---	---	2.085***	.484	8.043
UA Test Not Mentioned	---	---	---	.138	.589	---
PO Visits Negative Rating	---	---	---	.603	.738	---
PO Visits Not Mentioned	---	---	---	-1.189^	.685	.304
Other Issue Negative Rating	---	---	---	2.379***	.487	10.798
Other Issue Not Mentioned	---	---	---	1.214*	.520	3.368
Constant	-6.376***	1.574	---	-5.514**	1.615	---
	Log Likelihood = -117.01, chi-square = 147.78, p<.001, Pseudo R^2 = .387			Log Likelihood = -106.067, chi-square = 169.67, p<.001, Pseudo R^2 = .444		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

The Length of the Sanction

Probationer Characteristics Predicting the Length of the Sanction.

The second aspect of modeling sanctioning decision-making required count models to the decision of how long to sanction probationers who violated conditions of probation. A series of models were estimated to examine the influence of probation issues, framing of these issues, interaction terms, and the potential influence of judge gender. Models included a Heckman correction for possible selection effects based on the initial sanctioning (e.g. "in/out") decision. Table 8 presents the results of the influence of probationer characteristics on the length of a jail sanction, net of control variables. It should be noted, however, that the Pseudo-R^2 were much lower for these models (i.e. .123, .141), suggesting that the variables included did not yield much explanatory power on the length of the sanction.

Model 1 presents the results with probation issues included as control variables, while model 2 presents the results with the inclusion of the framing of these issues. As can be seen, several aspects of probationer social location were statistically significant. Age was significant, as a one-unit increase in a probationer's age decreased the expected number of days jailed by

approximately 6%, holding all other variables constant (p<.001 for both models). Interestingly, probationer gender did not influence the length of a jail sanction if the issues of probation were modeled, however, male probationers had an increased expected count of days jailed by a factor of 3.448 compared to women probationers when the framing of issues was included in the model (p<.05). Race/ethnicity also had a significant relationship with days jailed, albeit in a direction contrary to much of the prior literature (e.g. Steffensmeier, Ulmer & Kramer, 1998). In model 1, Black probationers had a decreased expected count of days jailed by 53.9% compared to White probationers (p<.01), while Hispanic probationers had a decreased expected count of days jailed by 50.7% (p<.01). Model 2 produced similar findings on the influence of race/ethnicity, such that Black probationers had a decreased expected count of days jailed by 45.2% (p<.05), with Hispanic probationers experiencing a decreased expected count by 43.2% (p<.01). Probationers who were familied also had a decreased expected count of days jailed compared to non-familied probationers when the framing of issues was included in the model (p=.069; OR= .528). The influence of probationer employment status, however, did not reach significance.

Table 8.
Zero-Truncated Negative Binomial Regression Results Predicting the Length of a Jail Sanction (n=76).

Variables	Model 1			Model 2		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.063***	.018	.939	-.067***	.017	.936
Male	.868	.727	---	1.238*	.548	3.448
Black	-.775**	.296	.461	-.601*	.294	.548
Hispanic	-.708**	.235	.493	-.566**	.218	.568
Children	-.243	.580	---	-.751^	.414	.472
Employed	.208	.314	---	.361	.295	---
Employment Not Mentioned	.078	.427	---	-.059	.376	---
Prior Violent Convictions	-.622*	.286	.537	-.531^	.271	.588
Prior Felony Convictions	.215	.145	---	.149	.131	---
Severity of Offense	-.184	.147	---	-.162	.133	---
Judge B	.651^	.365	1.198	.965**	.308	2.626
Judge C	.680	.751	---	.822	.576	---

Judge D	1.083	.674	---	1.532**	.589	4.625
Judge E	.648	.440	---	.703^	.406	2.020
Attorney Present	.234	.512	---	-.015	.318	---
Missed BIP	.970	.685	---	---	---	---
BIP Not Mentioned	.529	.473	---	---	---	---
Failed UA Test	2.854*	1.293	17.353	---	---	---
UA Test Not Mentioned	2.162**	.629	8.691	---	---	---
Missed PO Visits	.185	.443	---	---	---	---
PO Visits Not Mentioned	-.436	.444	---	---	---	---
Other Issue	2.232	1.645	---	---	---	---
Other Issue Not Mentioned	.969	.933	---	---	---	---
Contacted Victim	-.436	.312	---	-.195	.302	---
BIP Negative Rating	---	---	---	.404	.280	---
BIP Not Mentioned	---	---	---	1.303**	.481	3.680
UA Test Negative Rating	---	---	---	2.373**	.764	10.729
UA Test Not Mentioned	---	---	---	2.309***	.546	10.065
PO Visits Negative Rating	---	---	---	.157	.414	---
PO Visits Not Mentioned	---	---	---	-.435	.424	---
Other Issue Negative Rating	---	---	---	1.726^	.935	5.620
Other Issue Not Mentioned	---	---	---	1.102^	.626	3.011
Hazard	1.943	1.682	---	.917	.848	---
Constant	-2.631*	5.203	---	-.807	2.680	---
	Log likelihood = -210.61, chi-square = 61.06, p<.001. Pseudo R^2 = .123.			Log Likelihood = -206.92, chi-square = 68.44, p<.001, Pseudo R^2 = .141		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Missing children category was omitted due to collinearity with the variable children. Odds ratios are reported only for significant variables.

Salient Factors that Influence the Length of a Jail Sanction.

Additional background factors and hearing-related variables also influenced the length of a jail sanction. Surprisingly, probationers with more extensive prior records had a decrease in the expected days jailed (p<.05, O.R. = .463, model 1; p=.05, O.R.= .412, model 2). The influence of which judge presided over the hearing also influenced the length of a sanction. For model 1, cases in front of Judge B had tended to have an increased expected number of jail days by a factor of 1.198 compared to Judge A, holding all other variables constant (p=.075). For model 2, the influence of which judge presided over the hearings exerted similar influence, for

Judge B. Cases in front of Judge D had an increased expected number of jail days by a factor of 4.625 ($p<.01$), while those in front of Judge B had an expected increase by a factor of 2.626 ($p<.01$). When taking into account the framing of probation issues, cases in front of Judge E trended toward an increased expected count of days sanctioned by a factor of 2.020, compared to Judge A ($p=.084$).

With respect to issues on probation, and the framing of said issues, fewer factors were significant predictors of the sanctioning length. When the issues while on probation were included in model 1, only having a failed UA test was significantly associated with the sanction. Cases with at least one failed UA test had an increase in the expected count of days jailed by a factor of 17.353, compared to mention of all clean UA tests ($p<.01$), while those without mention of UA issues had an increase in the expected count of days jailed (O.R. = 8.691, $p<.01$). When examining the framing of issues while on probation, similar findings were observed for dirty UA tests and no mention of UA testing (O.R. = 10.729, $p<.001$, model 1; O.R. = 10.065, $p<.001$, model 2), with two additional significant relationships. No mention of BIP progress or attendance issues increased the expected count of days jailed by a factor of 3.680 ($p<.01$) compared to praise and positive framing of BIP progress. In addition, negative framing of other issues, as well as no mention of other issues trended toward an increase in the expected count of days jailed (OR=5.620, p=065; OR=3.011, p=.078, respectively).

Interaction of Probationer Characteristics in Predicting Sanctioning.

The results in Table 9 present the interactive influence of probationer social location on the length of the jail sanction, controlling for the additive influence of these factors, as well as other relevant variables. As with the results from the logistic regression presented in Table 6, these analyses only included Black and White probationers, and excluded cases with no mention

of employment status for model 4. As can be seen neither the interactive influence of race and family status, nor race and employment status were statistically significant. Put another way, Black parents had no difference in their days sanctioned compared to White parents, non-parents, and Black non-parents, when controlling for relevant factors (p>.05). Further, Black employed probationers had no difference in their days sanctioned compared to White employed, unemployed, and Black unemployed probationers (p>.05). The influence of age exerted similar effects as was seen in the additive models from Table 8, with older probationers having a decreased expected count of days sanctioned compared to younger probationers (O.R. = .933, p=.087, model 3; O.R. = .931, p<.001, model 4). The influence of being a Black probationer also trended toward decreasing the expected days jailed compared to White probationers when the interaction of race and parenting status were modeled (O.R. = .232, p= .051), however it did not reach significance when the interaction of race and employment status were modeled. Similar trends were found for parenting status – being a parent decreased the expected count of days jailed by 79.6% when the interaction of race and employment status were modeled, however it did not reach significance when the interaction of parenting and race were modeled. Employment status was also not a significant predictor of the days sanctioned (p>.05). While gender did not influence the number of days sanctioned in model 3, there was a trend toward males having an increased expected count of days jailed by a factor of 3.851 compared to females in model 4 (p=.057).

Table 9.
Zero-Truncated Negative Binomial Regression Results Predicting Whether Race Interacts with Parenting and Employment in Predicting the Length of a Jail Sanction.

Variables	Model 3 (n=67)			Model 4 (n=52)		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.069***	.019	.933	-.072***	.020	.931
Male	1.111	.796	---	1.348^	.708	3.851
Black	-1462^	.853	.232	-.493	.764	---

Children	-1.076	.855	---	-1.588**	.552	.204
Employed	.250	.336	---	-.386	.791	---
Employment Not Mentioned	.567	.542	---	---	---	---
Black Parent	.922	1.060	---	---	---	---
Black Employed	---	---	---	.793	.953	---
Prior Violent Convictions	-.799*	.346	.450	-.875**	.320	.417
Prior Felony Convictions	.234	.150	---	.326*	.130	1.371
Severity of Offense	-.130	.182	---	.168	.170	---
Judge B	.618	.419	---	.646^	.345	1.909
Judge C	.652	.826	---	1.234^	.699	3.434
Judge D	.966	.695	---	-.039	.582	---
Judge E	.530	.470	---	.230	1.004	---
Attorney Present	.358	.555	---	.682	.393	---
Missed BIP	.894	.754	---	.747	.480	---
BIP Not Mentioned	.462	.555	---	1.296*	.652	3.656
Failed UA Test	3.043*	1.379	20.976	1.848	.582	---
UA Test Not Mentioned	2.293**	.685	9.904	1.368^	1.257	3.928
Missed PO Visits	.170	.527	---	.289	.405	---
PO Visits Not Mentioned	-.468	.531	---	-.446	.402	---
Other Issue	1.994	1.782	---	.607	1.521	---
Other Issue Not Mentioned	.827	1.027	---	.632	.938	---
Contacted Victim	-.550	.365	---	-.704*	.320	.495
Hazard	1.884	1.850	---	.448	1.562	---
Constant	-2.174	5.579	---	.069	5.074	---
	Log likelihood = -190.82, chi-square = 53.71, p<.001. Pseudo R^2 = .123.			Log likelihood = -130.45, chi-square =56.45, p<.001. Pseudo R^2 = 178.		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Missing children category was omitted due to collinearity with the variable children. Odds ratios are reported only for significant variables. Results include the sub-sample of only White and Black probationers for interaction terms.

The influence of control variables was relatively consistent with the additive models in Table 8. A greater number of prior violent convictions decreased the expected count of days jailed in both models (OR=.450, OR=.417, respectively). The influence of which judge presided over hearings however, was not significant in model 3, which included the interaction term for race and parenting status, yet cases in front of Judges B and C were marginally significant model 4 (OR=1.909, p=.061; OR=3.434, p=.077, respectively). Failing a UA test increased the

expected count of the sanction in model 3 (OR=20.976, p<.05), yet it failed to reach significance in model 4. No mention of UA testing increased the expected sanction count in both models (OR=9.904, p<.001; OR=3.928, p=.056, respectively). Although having contact with the victim did not influence days sanctioned in model 3, it decreased the expected count of days sanctioned in model 4 (OR=.495, p<.05).

Additional Analyses – Judge Gender.

Additional models were analyzed to examine whether judge differences in the length of sanctions were attributable to gender differences across judges. Table 10 presents the results from zero-truncated negative binomial regression models that included judge gender, in addition to probationer characteristics and relevant control variables. As was found in the previous models (1-4), cases in front of Judge B, and at times Judges C and D (i.e. all female judges) all had greater expected days sanctioned compared to Judge A (i.e. a male judge). Further, Judge E had similar sanctioning patterns as Judge A (i.e. both male judges). As can be seen in model 6, judge gender exerted a significant influence on days sanctioned. In particular, cases in front of male judges had a decreased expected count of days jailed by 52.5%, compared to female judges, when the framing of probation issues were included in the model (p<.05). Yet judge gender was not a significant predictor if probation issues (i.e. not the framing) were included in the model. All probationer characteristics had similar influence on the days sanctioned compared to the additive models in Table 8. Additionally, the influence of failed UA tests, no mention of BIP, and no mention of other issues had similar results to the additive models from Table 8 that included controls for each judge.

Table 10.
Zero-Truncated Negative Binomial Regression Results Predicting the Length of a Jail Sanction with Judge Gender (n=76).

Variables	Model 5			Model 6		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.057**	.017	.944	-.059***	.017	.943
Male	.876	.615	---	1.095*	.503	2.988
Black	-.859**	.298	.424	-.715*	.301	.489
Hispanic	-.759**	.237	.468	-.641**	.222	.527
Children	-.028	.459	---	-.580	.385	---
Employed	.144	.300	---	.306	.290	---
Employment Not Mentioned	-.101	.426	---	-.004	.370	---
Prior Violent Convictions	-.590*	.291	.554	-.519^	.278	.595
Prior Felony Convictions	.212	.144	---	.143	.133	---
Severity of Offense	-.160	.145	---	-.127	.134	---
Male Judge	-.435	.327	---	-.745*	.292	.475
Attorney Present	-.416	.395	---	.103	.282	---
Missed BIP	.980^	.586	2.664	---	---	---
BIP Not Mentioned	.444	.479	---	---	---	---
Failed UA Test	2.864**	.918	17.525	---	---	---
UA Test Not Mentioned	2.205***	.581	9.071	---	---	---
Missed PO Visits	.163	.453	---	---	---	---
PO Visits Not Mentioned	-.410	.451	---	---	---	---
Other Issue	2.466*	1.213	11.805	---	---	---
Other Issue Not Mentioned	1.095	.798	---	---	---	---
Contacted Victim	-.533^	.308	8.218	-.351	.298	---
BIP Negative Rating	---	---	---	.356	.272	---
BIP Not Mentioned	---	---	---	1.164*	.496	3.202
UA Test Negative Rating	---	---	---	2.121***	.606	8.427
UA Test Not Mentioned	---	---	---	2.260***	.532	9.930
PO Visits Negative Rating	---	---	---	.146	.428	---
PO Visits Not Mentioned	---	---	---	-.404	.436	---
Other Issue Negative Rating	---	---	---	1.694*	.748	5.443
Other Issue Not Mentioned	---	---	---	1.071^	.579	2.919
Hazard	2.106^		---	.787	.610	
Constant	4-2.759	3.974	---	.201	2.188	---
	Log Likelihood = -211.96, chi-square = 58.36, p<.001, Pseudo R^2 = .121			Log Likelihood = -209.050, chi-square = 64.18, p<.001, Pseudo R^2 = .133		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Summary

To summarize, the influence of probationer characteristics on the sanctioning decision were mixed, and varied according to whether it was the decision on whether to sanction, compared to the length to sanction. Logistic regression models on the decision to sanction found that only having minor children and probationer gender influenced the sanctioning decision. Male probationers were more likely to be sanctioned than females only when issues related to probation were modeled; when the framing of issues was included in models, there were not significant differences between genders on the likelihood of a sanction. Familed probationers were more likely to be sanctioned than non-familed probationers. Zero-truncated negative binomial regression models found that only age, race, and family status influenced the length of a jail sanction. Contrary to the logistic regression findings, familied probationers received shorter jail stays, compared to non-familed probationers. Black and Hispanic probationers also received shorter jail stays compared to White probationers. Finally, older probationers were sanctioned to shorter days in jail, compared to younger individuals. For both analyses, employment status did not influence the sanction given, and neither interaction term of being a Black parent or an employed Black probationer influenced the sanctioning decision.

Interestingly, while several factors related to following the conditions of probation predicted whether a probationer was sanctioned (i.e. missed BIP sessions, dirty UA tests, and other conditions not abided by), only dirty UA tests increased the number of days jailed. Similar trends were observed for negative framing of these issues. Finally, the type of judge had an influence, albeit in opposite ways for the initial decision to sanction, and subsequent decision on the number of days to jail someone. Women judges were less likely to sanction offenders to jail, when taking into account issues with compliance while on probation, yet for those probationers

who were sanctioned, having a female judge actually increased the length of a jail stay compared to having a male judge. Finally, the presence of a defense attorney increased the likelihood of a probationer being sanctioned, opposite to what would be expected given the legal experience and knowledge of these individuals.

CHAPTER 6: DISCUSSION AND CONCLUSION

The results from chapters four and five addressed several research questions outlined in this dissertation. The first four questions were qualitative in nature, requiring critical discourse analysis to examine the power dynamics and discourses utilized by court actors during hearings to make sense of a probationer's conduct. Discourses that were most commonly present included responsibility, therapeutic beneficence, mental health, and drug use. Lesser prevalent themes included discourses on parenting, gender, and domestic violence. Within these themes, court actors and probationers often constructed probationers by contesting and drawing on alternate discourses. The built and social environment in the domestic violence courtrooms re-inscribe the power imbalance between probationers as laypersons.

Judges and, to a lesser extent, probation agents utilize their roles at turn-taking to dominate hearings, manage topics, and silence alternative discourses. Judges' discourses of responsibility, therapeutic beneficence, and drug use often became more powerful in the final construction of a probationer's behavior, given their institutional role and use of turn-taking techniques such as interruptions, diatribes, and repetitive or pointed questions. Yet probationers were at times successful in interrupting the power dynamics and challenging judges' social construction of themselves. Social construction of probationers in probation review hearings, however, often differed based upon social location of the probationer – such that responsibility, drug use, and mental health were talked about differently depending on whether the probationer was familied, White, or female.

The last question was quantitative in nature and required an examination of the role of probationer characteristics on the sanctioning decision net of other relevant factors. The results of the first set of analysis on the decision to sanction revealed that male probationers and those

with children were more likely to be sanctioned, compared to female probationers and non-familied probationers. Differences were not found across race/ethnicity, employment status, nor when looking at the compounding influence of race and family status, or race and employment status. The second set of analyses on the length of the jail sanction demonstrated that Hispanic and Black probationers received shorter jail sanctions than White probationers. Older probationers, as well as those with children also received shorter days jailed compared to younger and non-familied probationers. There were no differences in the length of a jail sanction, however, across gender or employment status. Similarly, the compounding influence of race and family status, and race and employment status, did not affect sanction length. Thus, the influence of probationer characteristics on sanctioning was mixed, and at times led to opposite outcomes depending on how the sanction decision was operationalized. The next section outlines the findings in more detail, connecting them to prior literature and between the two different methods.

Conclusions

Discourse in Courtrooms.

Several discourses emerged as important in probation review hearings. Most notably, hearings often centered on discourses of responsibility and therapeutic beneficence. Probationers were chided for not being responsible adults and 'following through' with making appointments, rescheduling appointments, or getting paperwork necessary to apply for jobs and get identification cards. Others were praised for being independent by not asking for handouts and taking initiative to schedule appointments on one's own. Yet social work logics also played a prominent role in judges chastising probationers for 'doing nothing' while they were being given the 'benefit of probation' and the help from an agent. In this sense, responsibility discourses

were intertwined with responsibility discourses, reifying distinctions between the 'deserving' and 'undeserving' poor. Further, judges emphasized the need to 'get something out of' classes and programming and made frequent references to whether a probationer had 'made changes' toward becoming a productive member of society. In this sense, deficiencies identified by probation agents were viewed not only as social and psychological causes of criminal behavior, but as endemic to being an irresponsible adult. These discursive repertoires reflect what Travers (2007) identifies as part of the neoliberal shift in penology toward 'get tough' policies that emphasize individual responsibility while blending this discourse with social welfare discourses of rehabilitation and help for the 'deserving poor' (see also Gray & Salone, 2006; Daly & Bouhours, 2013).

Additional discourses that became prevalent in probation review hearings included those related to mental health, drug use, parenting, and domestic violence. Mental health became implicated more readily with certain groups of probationers, both with respect to non-compliance and the need for treatment. Defense attorneys and probationers often brought up specific psychological disorders as potential mitigating factors for why they have used drugs, missed appointments, or failed to find employment. At other times, mental health discourses reflected psychological and social work discourses of the need for treatment, as well as framing drug use as due to addiction, rather than a personal choice. For other probationers, drug use was constructed referencing either addiction (qua psychological discourses) or personal choice (qua responsibility discourses), based upon drug type, as well as other factors judges considered relating to race and class expectations. Again, this dichotomy between 'deserving' and 'undeserving' of leniency reflected divergent approaches to viewing probationers via neoliberal and social work (i.e. penal welfare) lenses (see Daly & Bouhours, 2013; Travers, 2007).

Parenting, too, reflected discourses relating to responsibilities as a parent. When issues arose with employment or drug use, both male and female probationers were chastised for not being a provider for their children. Several probationers also spoke of parenting as providing emotional support and care for their children. These two discursive repertoires of 'provider' and 'caregiver' reflect what Daly found in her interviews with judges, probation officers, and attorneys (1987a, 1987b).

Finally, largely absent in probation review hearings was actual discussion of *domestic violence*. When domestic violence was addressed, it often was referencing requests for modification of no contact orders, progress in BIP, or instances when probationers became hostile toward their agent. Three main discourses emerged: one of 'violent resistance' from women who continued to face threats and violence from their partners, who were named as victims in the case. In these cases, only women probationers were viewed as 'true victims' and were given sympathy by judge, reflecting underlying assumption of intimate partner violence as *violence against women*, similar to what is seen in dominant scholarship and theories (e.g. Domestic Abuse Intervention Programs, 2011; Schwartz & Dekeseredy, 2008; Tjaden & Thoennes, 2000; see also Johnson & Ferraro, 2000 on their typology of violent resistance). Although much of the dominant discourses in academic scholarship and educational resources (e.g. Duluth Model) frame domestic violence as power and control (i.e. Johnson's type of intimate terrorism (1995; Johnson & Ferraro, 2000), fewer cases referenced the discourse of men as hostile toward women and having control issues. To be sure, there were hearings in which judges made explicit judgments on male probationers for being hostile toward their female probation agents or agency staff, yet more often than not domestic violence was spoken about as caused by conflict, often exacerbated by drug and alcohol use. Indeed, anger and jealousy issues

were often supplied by probationers when asked about why the offense or recent incidents had occurred. This reflects research on the factors associated with domestic violence, as well as what Johnson has called 'common couple violence' (1995; Johnson & Ferraro; 2000; see also Goldkamp et al., 1996; Leonard, 2001).

Power in Decision-Making.

A second key finding from this dissertation is that power dynamics are unequal, both in the environment and in the turn-taking roles adopted by court actors and probationers. The glass dividing wall acts as a reinforcement of the social and institutional power divisions between laypersons and court personnel (see Van Cleve, 2016). Those on the outside are looking in toward a social world largely unfamiliar, and are subject to different rules regarding phone use and talking than insiders. New probationers are also unfamiliar with the process, and receive 'schooling' from seasoned probationers, lawyers for the few that have representation, or even more infrequently their agent. The lack of communication between agent and probationer once each checks-in and is seated further conveys the power imbalance.

Power dynamics became manifest through examining the turn-taking roles that each court actor and probationer had during exchanges. The main findings demonstrated that judges and probation agents tended to command hearings given their institutional roles in asking questions and providing 'valid' information about the progress of a probationer. Judges would often employ pointed questions and diatribes to limit what probationers could say during hearings. If they believed a probationer was not giving a satisfactory answer, repetitive questions would force the probationer to respond and acquiesce to the judge's construction of the issue. Judges would often use long responses and long-winded diatribes as well to assert their institutional power to silence others in the courtroom, while referencing science, psychology, probation

agents' knowledge of the clients, and their own experience on the bench as more valid and 'truthful' than what probationers said. This became most prevalent when probationers contested the results of UA tests. Prior research has consistently found similar results for judges, prosecutors, and police when talking with victims, suspects, and offenders (Conley & O'Barr, 2005; Frohmann, 1991; Frohmann, 1997; Thornborrow, 2002). Feeley (1979) noted that in early diversion courts probation agents and pretrial release staff also enjoyed elevated power and status in hearings, given their specialized and individualized knowledge of each defendant. To this extent, the dominant discourses of responsibility, mental health, and therapeutic beneficence became important references in the final construction of a probationer. Similarly, Worrall (1990) found that women probationers had little power themselves to contest dominant discourses of domesticity, sexuality, and pathology.

Yet probationers were not completely powerless in these hearings. Some probationers attempted to interrupt proceedings to challenge statements made by their agents or judges, offering alternative framings of themselves as responsible parents, receiving limited help, or casting doubt on claims regarding drug use. These probationers, while not successful in regaining power, did displace a challenge to the institutional arrangement regarding turn-taking and dominance by judges and other court actors. Others who were more eloquent dominated parts of exchanges by utilizing responsibility and mental health discourses to frame themselves as responsible parents, changing their habits for the better. This echoes the findings by Gathings and Parotta (2013) of defendants' speech during sentencing hearings as dominating the proceedings while constructing themselves under dominant discourses utilized by judges of gender and responsibility.

Construction of Probationers as Raced, Classed, Gendered, and Familied.

Discourses of responsibility, therapeutic beneficence, and mental health dominated probation review hearings, yet which discourse was utilized to frame a probationer's non-compliance often reflected raced, gendered, and familied assumptions. Drug use became imbued with meaning – such that Black and Hispanic probationers' drug use, most often of marijuana and prescription pills, was framed as a personal choice, and moral failing, while White probationers' drug use, most often heroin and opiates, was framed as due to addiction. Further still, when Black probationers had extensive issues with attendance and compliance with probation (i.e. multiple dirty UA tests, excessive attendance issues, not attempting to find employment) it was constructed as being irresponsible, lazy, and wasting time. When White probationers had similar issues, although they were also chastised for their behavior, judges framed their lack of progress under mental health discourses, as if they were suffering from severe depression. These findings further echo the qualitative results of Lara-Millan and Van Cleve (2017) in studying felony courts and jails in which defendants and detainees were evaluated and treated differently based upon neoliberal logics of 'deserving' and 'undeserving' poor, rooted in cultural stereotypes surrounding welfare (see also Gough, Eisenschitz & McColloch, 2006; Van Cleve, 2016). Individual responsibility, inherent in neoliberal discourse, produces situations ripe for racial projects of incarceration and punishment (Roberts & Mahtani, 2010).

Raced and classed assumptions of probationers also became apparent in the unsolicited advice and character assessments judges would make when speaking to probationers. Judges would assert raced assumptions of behavior in their statements "I get the sense…" followed by constructing probationers of color as manipulative, not taking probation seriously, or hostile.

White probationers never had these assertions. Often the rhetoric used was "trying to game it" – suggesting both manipulation and irresponsibility. 'Reading' a probationer's character as manipulative, hostile, or overtly aggressive re-inscribes racial stereotypes. Alexander (2012) argued that under the political correctness of colorblind policies, racism evolves to deep grammar connections under the coded language of 'criminal' and 'predator' which perpetuate disparity (see also Crenshaw 1991). Further, judges at times would give unsolicited advice to poor and working-class probationers, assuming that lower-class individuals are irresponsible with their money. These short speeches reflect neoliberal distinctions between 'deserving' and 'undeserving' poor (Van Cleve, 2016).

Additionally, gender differences emerged in the discourses that were utilized in talking about parenting and employment issues, as well as the role of mental health. Probationers, their agents, and their attorneys more commonly brought up mental health issues for women probationers, including the need for trauma-informed treatment, psychological talk of becoming a "self-actualized person," and issues of depression, co-dependency, and anxiety. Anger issues were more commonly attributed to male probationers, particularly when attributing causation to the offense. Similarly, Worrall (1990) found pathology as a key discourse used to construct women probationers, such that sickness was seen as a cause for criminal behavior. Second, although being a parent (and even single parent) was common across both genders, judges emphasized the caregiving role with women probationers, particularly when issues of employment were mentioned. One judge in particular preferred mothers to stay home or delay finding employment in order to fulfill their role as caregivers. This echoes the findings of Daly (1987a; 1987b) on the importance judges placed on gendered assumptions of parenting roles as a factor in weighing sentencing decisions. Unlike Allspach (2010), I did not find any differences

in how Black women and White women as mothers were socially constructed by judges and probation agents regarding their role as a caregiver and provider. Taken together, these findings suggest that judges are influenced by discourses that also reflect gendered, raced, and classed assumptions regarding roles in a family, mental health, amenability to treatment, and responsibility. This, in turn, affects the nature of hearings and how probationers are socially constructed regarding their issues with compliance.

The Influence of Race/Ethnicity, Gender, Family Status and Employment.

The quantitative branch of this dissertation examined the ways in which probationer characteristics influenced the sanctioning decision. The results of the first analysis demonstrated that males were more likely to receive a jail sanction than females only when issues of probation were controlled for. This supports research that has found that women receive more lenient treatment at pretrial release and sentencing stages, namely in the decision on whether to grant bail and whether to incarcerate (e.g. Freiburger & Hilinski, 2010; Spohn & Sample, 2013; Demuth & Steffensmeier, 2004; Wooldredge, 2012). If the framing of these issues was taken into account, however, the effects of gender diminished to non-significance. This suggests that apparent gender differences in sanctioning, as would be traditionally modeled with indicators or counts of the number of issues with adherence to the conditions of probation, are largely due to differences in *how these decisions are framed* by judges, probationers, and probation agents. Gender differences may reflect attributional differences that are gendered by judges and other court actors – such that women who face issues may have their actions framed more positively than men. Thus, notions of attribution theory (i.e. focal concerns, chivalry) may be tapped into when including variables that examine the framing of issues, rather than issues as 'facts' (see Ulmer, 2012). Gender differences did not emerge, however, when examining the length of a jail

sanction. Prior research has found differences for bail at pretrial and the length of incarceration, yet these studies have examined general courts (e.g. Demuth & Steffensmeier, 2004; Spohn, 1999). It may be that during probation review hearings, most of the gender differences that would have been observed were in fact due to relevant factors, such as extent of dirty UA tests and attendance issues for treatment programming.

Secondly, being a parent had an influence on both the initial sanctioning decision and length of jail sanction, albeit in different directions. Prior literature has often found that being a mother decreases the likelihood of incarceration (Daly, 1987b; Koons-Witt, 2002; c.f. Stacey & Spohn, 2006; Griffin & Wooldredge, 2006), while more recent research has found that being a primary caregiver, regardless of gender reduces the likelihood of incarceration (Freiburger, 2010). Other research has found that fathers who take on the role of provider and caregiver (i.e. single parents) receive more leniency because of the perceptions that judges have on the additional burden placed on fathers traditionally considered women's roles in the family (Bickle & Patterson, 1991; Freiburger, 2010). These studies draw on familial paternalism (Daly, 1987a; 1987b) and the focal concerns perspective (Steffensmeier, Kramer & Streifel, 1993) which both suggest that judges take into account family status due to 'practical constraints' and a concern over caregiving for minor children if one or both parents become absent from the home.

Although Daly (1987a; 1987b) initially suggested that the role of women as caregivers was viewed as more important to preserve than men as providers, changes in the family unit toward increased single parenthood for both genders suggests that judges may evaluate losing a parent as concerning regardless of gender (Freiburger, 2011). This study finds the opposite for the initial sanction decision – namely that familied probationers were actually *more likely* to be jailed for non-compliance than non-familied probationers. It could be that judges view

responsibility as important for being a parent, and signs of irresponsibility while on probation (i.e. dirty UA tests, missed appointments) are seen as concerning for providing a stable environment for children. Zingraff and Thomson (1984) examined sentencing of male and female defendants convicted of felonies and found gender differences emerged in only child abandonment cases. They attributed this difference to judges' assumptions that women convicted of child abandonment fail to meet traditional gender roles as mothers, thus being a 'bad' mother deserving of punishment. Spohn (1999) also found gender differences in sanctioning that differed by family status, such that women offenders with children convicted of drug crimes were more likely to be sentenced to incarceration. She attributed this disparity to judge's view of these mothers as unable to provide a safe and stable living situation for their children. Similarly, Worrall (1990) noted that women probationers convicted of prostitution crimes or whose children were in the juvenile system for truancy matters were socially constructed as 'bad' mothers. It was also found, however, that probationers who were parents received shorter jail sanctions than non-parents. This may suggest that while judges are concerned with parents being responsible in their daily lives, they are also concerned about child placement if the probationer is sanctioned to lengthier jail says for non-compliance, which would be consistent with prior literature.

Similarly, mixed findings were found with respect to probationer race/ethnicity in the current study. There were no differences between White, Black, and Hispanic probationers in the likelihood of receiving a sanction, yet Black and Hispanic probationers received shorter jail sanctions compared to their White counterparts. This finding is contrary to much of the theoretical perspectives in the courts literature, such as attribution theory (Albonetti, 1991; Bridges & Steen, 1998) and the focal concerns perspective (Steffensmeier, Ulmer & Kramer,

1998). It is, however, consistent with a small body of recent research that finds minority defendants, and in particular minority females to receive more lenient sentences and prosecutorial decisions (e.g. Romain & Freiburger, 2013; Shermer & Johnson, 2010). This could mean that judges are taking into account the experiences of probationers of color with challenges in transportation, housing, and limited financial resources to fulfill all of the often competing conditions of probation. Further, several studies have failed to find any racial or ethnic differences in court decision-making once relevant controls are accounted for (e.g. prior record, severity of offense) (e.g. Wooldredge, 2012). Further discussion of this finding will follow in the next section.

Finally, there was limited support for the potential role of employment status and interactions between race and employment status or parenting on the sanctioning decision. Although Ulmer (1997) has argued that employment is an important factor that judges consider during pretrial release and sentencing as an indicator of social control, and a stake in conformity, the current study finds no differences between employed and unemployed probationers in their likelihood of being sanctioned. This is interesting, given that most probationers were required to obtain or maintain employment as a condition of probation. Further, there were no differences between Black and White employed and unemployed probationers in the likelihood of a sanction. Unlike prior literature that found leniency for Black parents (e.g. Bickle & Peterson, 1991; Freiburger, 2010), the current study did not find any differences across race and parenting status for Black and White probationers. It could be, however, that due to the small sample size, relationships were unable to be captured due to low statistical power.

Bridging the Gap: Making Sense of Both Findings.

The findings from the qualitative chapter demonstrate several important discourses, or worldviews, that judges and probation agents have when evaluating a probationer's behavior, and that these discourses may be employed differently depending on a probationer's social location. The quantitative findings demonstrate that gender, race/ethnicity, and parenting status influence sanctioning decisions, albeit in different ways depending on how the sanctioning decision is operationalized. At times, the findings from both chapters appear to be in contradiction to one another – most notably for race, family status, and judge. At other times, the quantitative findings give credence to the qualitative findings – most notably for gender, UA tests, and other probation issues. How might we make sense of these mixed methods findings?

First, the findings converged for gender and UA tests on the impact these factors have during hearings. Gender differences persist when we enter probation issues in the model, even taking into account children, employment, prior record, severity of offense. Yet gender differences are non-significant if instead we enter framing of these issues in the model. This would suggest that it is not the issue per-se that automatically leads to sanctions, but the framing of the issue in light of other circumstances about the probationer. In this sense, individualized justice, as a core tenant of problem-solving courts such as DV courts is actively employed in probation review hearing decision-making. Judges on the whole take into account other factors, such as missing BIP due to childcare issues, connecting reasons for missing or testing dirty with other factors present in the person's life – and even gendered assumptions about mental health, parenting, and responsibility when framing a probationer's missteps.

Similarly, UA tests became an important topic during probation review hearings, often one of the major factors that judges referenced when framing their decision on whether to

sanction. It is not surprising, then, that this factor became one of the strongest influences in the quantitative models, and in fact, the only factor that influenced the length of incarceration. Quantitative analysis tells us that UA tests, BIP attendance, and other issues such as missing parenting class or therapy matters to judges, while the qualitative results give nuanced details in *how much* these factors matter, *why* they are viewed as important to judges, and *the discourses and contextual factors that judges use* when framing a factor as 'positive' or 'negative.' Missing BIP, as a 'fact' can influence a sanction, but it is the context of the miss (i.e. only missed once, attendance has improved recently, missed due to work) that judges take into account when ascribing responsibility to probationers and determining whether to sanction.

By contrast, there was a divergence in the qualitative and quantitative findings with respect to race/ethnicity and family status. Qualitatively, probationers of color were found to have their drug use, attendance issues, and general non-compliance with probation framed negatively by judges drawing on rhetoric of personal responsibility. Quantitatively, probationers of color received shorter sanctions than White probationers, while there were no differences across race/ethnicity for the initial sanctioning decision. This gap between the two findings is because of the differences in judges framing White probationers' drug use and non-compliance as due to mental health, compared to Black and Hispanic probationers' similar actions as due to being irresponsible. Further, judges tended to sanction Black and Hispanic probationers for minimal amounts of drug use (i.e. testing dirty once for marijuana), yet they also tended to receive short sanctions for such violations (i.e. 2-7 days). White probationers received longer sanctions if *and only if* they had extensive multiple issues (i.e. continued dirty UA tests, extensive attendance issues, failure to start programming, contact with victim). In this sense, the perceived 'leniency' toward Black and Hispanic probationers that was observed in the

quantitative results is actually due to the differential treatment of their non-compliance, something that was unable to be captured with precision quantitatively, and the framing of their non-compliance as being irresponsible and 'undeserving.'

Secondly, probationers with minor children were both more likely to be sanctioned for non-compliance, yet also tended to receive shorter sanctions compared to their non-familied counterparts. This appears at odds with several theories of decision-making in the courts (e.g. familial paternalism). When taking into account the qualitative results, these findings can be made clearer – judges relied on discourses of parenting related to responsibility (i.e. as providers, as caregivers) when making sense of their drug use, failure to get help for physical or mental health issues, or maintain employment. Given the connection between parenting and responsibility, it is not surprising that those deemed irresponsible were sanctioned (see Spohn, 1999; Worrall, 1990; Zingraff & Thompson, 1984). Indeed, when probationers attempted to get leniency from judges with last ditch assertions that they have children, or their partner is pregnant, judges remained unmoved. Yet these probationers tended to receive shorter sanctions, possibly because judges are still concerned with the 'practical constraints' regarding minor children when their caregiver is incarcerated. This would be consistent with the tenants of existing theories (e.g. focal concerns perspective). One limitation with the quantitative data is that family status as sole or co-caregiver was unable to be captured. It could be that the coefficients are dominated by male parents who, on the whole, tended to have female co-parents who could provide caregiving in their absence.

Women as parents rarely were sanctioned, often because they were noted by judges to be single parents and their issues with program attendance and employment were constructed in light of the caregiving role. Bickle and Peterson (1991) found that Black mothers, regardless of

living with a partner, were less likely to be incarcerated. They attributed this to the assumption that Black women were more likely to be primary caregivers to their children, yet they also noted that Black women received greater leniency only if they were constructed as 'good mothers' by judges. This evaluative commentary suggests that simply being a parent, mother, or single parent is not enough for judges to be concerned about protecting the family unit – assumptions about parenting ability are made, which may be raced, classed, and gendered.

Similarly, when examining the influence of individual judges on sanctioning, there appears to be some mismatch between qualitative and quantitative findings. It became apparent early on that Judge A and Alternate Judge E tended to sanction much more frequently than Judges B and C, particularly for drug-related issues. The quantitative findings support these qualitative findings, yet they also demonstrated that Judges B, C, and D sanctioned probationers for longer days. While this may seem contradictory, the qualitative findings shed light on this discrepancy. Judges A and E tended to sanction more readily for minor issues, yet when they sanctioned probationers for these minor issues, the length of the jail stay was often short – between 2-7 days. When Judges B, C, and D sanctioned, probationers tended to have multiple issues, and extensive issues for individual items, such as consistent dirty UA tests for several months or being terminated from BIP due to non-attendance. Given the gravity of non-compliance, these judges tended to sanction for longer periods of time, while relying on verbal warnings for minor infractions. Quantitatively, these nuances were unable to be captured with the precision necessary to note the quality of these issues. Taken together, these findings on gender, race, parenting status, and judges, demonstrate the need to utilize mixed methods and observe court proceedings in order to more fully understand if and how probationer characteristics and additional factors influence decision-making by judges.

Toward a Theory of Decision-Making in Problem-Solving Courts.

The results from this dissertation demonstrate qualitatively and quantitatively which factors become salient in determining whether to sanction a probationer for non-compliance. Problem-solving courts are by their very nature focused on individualized treatment to identify key causes of criminality for each offender, rehabilitation needs, accountability, continued interaction between judge and offender, and collaboration between various treatment providers, probation staff, and court actors (Porter, Rempel & Mansky, February 2010). The provision of social services is endemic in these courts, given the focus on rehabilitation and therapeutic jurisprudence, blending the emphasis of offender accountability with a socialized view of the causes of criminality (Winick, 2002). Indeed, the two most common discourses utilized were that of personal responsibility (via neoliberal logics) and therapeutic benefit (via social work and psychological logics). These courts, then, became interesting sites in which judges weighed information provided by collaborators (i.e. agents, social service staff, caseworkers, prosecutors, defense attorneys) with their own philosophies of punishment, addiction, mental health, and domestic violence. Further still, judges came into these courts with their own cognitive maps, or schemata, based upon discourses they are inundated with from interactions in larger society about welfare, the urban poor, criminality, drug use, and responsibility that may reflect raced, classed, and gendered expectations separating 'deserving' and 'undeserving,' those as 'dangerous' and 'benign,' or those as 'genuine' and 'manipulative.'

Lara-Millan and Van Cleve (2017) have noted that shifts in the criminal justice system, such as expansion of problem-solving courts, task judges with "simultaneously evaluat[ing] individual criminal risk and social need" (p. 60). This may reproduce racial and class inequality through re-inscribing the urban, minority poor with stereotypes that reflect laziness,

irresponsibility, and being 'undeserving.' Further still, Roberts and Mahtani (2010) argued that the interjection of neoliberal discourse in corrections (and arguably courts) has become raced in application, such that racialized attributions of criminality become imbued with neoliberal discourses of individual responsibility through talk of personal choice, moral failings, and irresponsibility. Similarly, Van Cleve (2016) found that judges in Cook County often referred to tropes of defendants, particularly poor people of color as 'mopes,' reflecting a racialized sense of justice in a colorblind criminal justice system. This dissertation adds to the current theoretical discussion on the role of disparity, stereotypes, and attributions within the criminal courts given the increased prevalence of problem-solving courts. It finds that judges often socially construct probationers' failures to abide by the conditions of probation differently depending on the social location of probationers. These differences reflect raced, gendered, familied, and classed understandings of responsibility, therapeutic beneficence, and mental health, which in turn influence sanctioning decisions.

Ulmer (2012) argued that problem-solving courts are an understudied area in the courts literature, both in examining decision-making and employing a theoretical understanding of decision-making. Given the organizational goals of individualized treatment, accountability, and collaboration between key partners, theoretical explanations for decision-making in these courts should be different from traditional theories of court processing. Collaboration requires a symbolic interaction approach to developing theory for problem-solving courts, given the institutional roles and power dynamics between court actors. Judges rely heavily on what the probation agent says and *how he or she frames particular issues* both in the memos they receive prior to hearings and verbally during the hearings. What they write or speak about is further dependent on the information (quality and framing) of treatment staff, which intertextually

becomes imbued with their own interpretations and worldviews. Further still, Foucauldian discourse is required to make sense of how decisions are made, examining how discourses of responsibility and therapeutic beneficence in particular become utilized to speak about defendants and probationers as 'deserving and responsible' or 'undeserving and irresponsible.' These are what Steffensmeier, Ulmer and Kramer (1998) would call the 'focal concerns' within problem-solving courts.

Limitations

Every study is prone to some limitations in validity (credibility & transferability) and reliability (dependability & confirmability). With respect to the qualitative aspect of this dissertation, there is the potential for missing relevant information that guided judge's framing of a probationer and decisions on whether to sanction. At times, judges and probation agents would reference a specific event or issue, but would not call it by name. This, and what is *unsaid*, by judges and probation agents suggests that there are other factors that are taken into account in the framing of the probationer. There is the potential for bias when conducting qualitative analyses. My positional statement and continued reflexivity while coding and analyzing the hearing transcripts helps to temper this to some degree. Yet my position as a White female may mean that certain discourses are easier for me to see (i.e. gender) while others are more difficult (i.e. race). In addition, dependability of my coding and analyses has potential limitations. I conducted a thick description of the environment, had prolonged engagement in the courtrooms, and did peer debriefing with colleagues and my dissertation chair during data collection and coding, yet I was the only coder. The lack of having external coders or multiple researchers may limit the dependability of the results; however, I wrote memos for each case coded quantitatively, as well as detailing the analytical process to leave an audit trail of my work.

Quantitatively, several limitations became apparent during the process of data collection. The first, it was difficult to track down all police reports in the city of Milwaukee – as MPD stated they did not have records for over 100 reports. Second, cases involving minor children are prohibited from being disclosed to the public under Wisconsin open records statutes, further increasing the amount of missing data for several variables. Third, it was anticipated that the sample size would be between 860-950 cases; however, one judge carried a substantially reduced caseload (i.e. 5-25 cases compared to 35-40). Further, as there was only three judges, the first week of each month had no hearings scheduled. Finally, there were no issues with compliance for several cases each week. I anticipated that data collection would last six months, yet it took eight months to gather 350 cases. The small sample size, and limited variation on the dependent variable, left the study under-powered. Additional issues with sample size and analyses arose from this issue. Only 60 cases involved women probationers, 72 for White probationers, 45 for Hispanic probationers, and 53 without minor children. These numbers significantly impacted the ability to do interaction tests, whether interaction terms such as Jaccard (2001) recommends for gender*family status, gender*employment, and race*gender, or the ability to do split models to more fully examine potential interactions with gender or race and relevant variables.

Additional issues with quantitative data collection and analysis included what was said in the hearings, compared to what was left *unsaid*. Judges and probation agents would often speak about an issue, such as missed BIP, but would not give the exact number of sessions missed, times tested dirty, or rescheduled appointments. In the quantitative aspect of this study, I attempted to capture issues on probation by recording both the indicator of an issue and the number of times it occurred; however, it became apparent that a substantial portion of hearings did not have the specific level of quantitative detail needed to capture adequately the severity of

the issue. One can assume that judges would evaluate one slip up differently than a pattern of continued or even intermittent issues with attendance or drug usage. To this extent, there was a reduction in the precision of measures of probation issues. Further, not every condition of probation was referenced during hearings, which led to the creation of a 'not mentioned' category for each variable. Most models demonstrated no difference between issues not mentioned and those completed or positively framed, yet there were some instances in which the 'not mentioning' of a condition actually was associated with an increase in sanction or days sanctioned. It is unclear why this might be, or whether judges in these cases have information in probation memos that they choose not to discuss in open court.

Finally, the generalizability of these results to other kinds of problem-solving courts, jurisdictions, or even other judges is limited. The themes that were present in these courtrooms are congruent with the stated purpose of domestic violence courts – namely to establish offender accountability, provide victim safety, and required BIP programming. Similar discourses of responsibility, accountability, and domestic violence may be present in other domestic violence courts, yet the focuses of these individual judges may not extend to other judges in other jurisdictions, or even in with other judges who may rotate into the domestic violence courts in Milwaukee County. Findings from the statistical analyses suggest that certain judges are more prone to sanctioning; qualitative findings suggest differences in approaching probationers across these judges. Given that each judge has a unique background, experience, and philosophy regarding their role in problem solving courts, researching the same court in five years' time might provide different findings depending on which judges are assigned. Further, the social context of Milwaukee County may limit generalizability in the types of cases presented in court. Issues that probationers face when attempting to abide by conditions of probation in Milwaukee

County, given the social and economic landscape of increased joblessness and poverty in inner cities and segregation (Schmidt, 2011; Zupan, 2011), may not apply to other cities and suburban centers. In addition, challenges that judges here felt are important, and their concerns about the causes of domestic violence, may be different than those identified by judges in other counties.

Research Implications

When studying decision-making in courts, it is imperative to examine not only the outcomes (i.e. sanction decisions) and issues (i.e. dirty UA tests, missed treatment) but *the construction of these issues* as well. Indeed, issues typically were not discussed in a vacuum, or singly; often two or more issues were tied together through judges, other court actors, and probationers utilizing speaking roles to interject, change topics, and command the floor, drawing connections between seemingly separate issues. Employment became connected to drug use, childcare, and missed programming. Drug use became connected to childcare. Further, these issues existed not simply as 'facts' existing outside of context, as Feely (1979) has argued. Facts, or issues, are imbued with meaning by court actors, drawing on cultural scripts across social location, as well as making sense of probationers' actions through discursive repertoires of responsibility, mental health, and therapeutic beneficence. Quantitative analysis typically fails to address these processual issues of interconnection of issues and the meaning-making, or construction, of a 'fact.'

Research on court decision-making should focus on utilizing similar mixed methods to better capture the ways in which defendant social location may influence decision-making. The dominant method in the courts and sentencing literature of testing existing theories (i.e. chivalry, focal concerns) by utilizing existing agency databases or secondary data, treats defendant characteristics as simple variables to be added to a model. In addition, this method

operationalizes variables often on dichotomous, categorical, or continuous measures regarding factors such as prior record, severity of offense, nature of the offense, and factors associated with culpability and dangerousness. It misses, however, the point that these 'facts' are not created in a vacuum, but are framed, or made sense of, within the context of other factors about the person or offense, such as his or her background, prior experience with the person, and demeanor of the person. 'Facts' can further be constructed according to discourses utilized by judges and other court actors, which may reflect underlying assumptions of people that are raced, classed, or gendered. Relying on existing databases misses the nuances of these factors.

Research that begins to blend quantitative and qualitative methods may better test, refine, or refute existing theories of sentencing. As Ulmer (2012) has aptly noted, existing methods cannot test the theories they purport to test without reliance on alternative or additional data sources (c.f. Bridges & Steen, 1998; see also Baumer's 2013 discussion of current limitations of the literature). Tests of focal concerns and chivalry would benefit greatly from blending traditional sources of data (i.e. databases, case files) with observations at hearings to see *how* defendants are talked about. Sentencing and bail hearings would be primary focuses for future research to collect both qualitative data from the hearings themselves on *what is said* by each actor, supplemented by quantitative data sources to better examine if and how defendant characteristics matter in these decision-making points.

The results of this dissertation suggest avenues for future research in both problem-solving and traditional courts. The discourses found at work in these courts, namely responsibility, therapeutic beneficence, and mental health, could be found in other problem-solving courts. These courts, however, have their own focus and understanding of the underlying causes of criminal behavior given their populations, and may have different

discourses emerge when conducting hearings for defendant progress. Qualitative research in the courts and sentencing literature has declined significantly since the 1970s and 1980s. While other disciplines have continued to utilize this method for examining court communities, discourses, and the everyday talk of court actors (e.g. Conley & O'Barr, 2005; Merry, 1990), it is less common in sociology and criminology (c.f. Gathings & Parotta, 2013; Van Cleve, 2016). Research should begin to examine bail and sentencing hearings qualitatively, identifying themes and discourses that court actors utilize in making sense of defendants and determining whether they should receive bail or incarceration. This can provide more nuanced information regarding if and where gender, racial, and class disparity exists based on examining patterns in how defendants of different social locations are *talked to* and *talked about* with respect to their offense.

Future research in domestic violence courts, and in Milwaukee County specifically, should examine whether sanctions and probation review hearings in general impact recidivism. If the purpose of these courts is to address probationers' individual needs for AODA, mental health, employment, and other issues, as well as to provide BIP or anger management for all offenders, it is important to determine whether these courts do, in fact, reduce recidivism through impacting the social, biological, and psychological causes of intimate partner violence. Further, as more domestic violence courts utilize similar models of review hearings to ensure accountability, it is imperative that this policy shift be examined to determine the overall impact on recidivism.

Policy Implications

The results from this dissertation can provide fruitful information to address policies related to domestic violence courts in Milwaukee County and across the nation. The main goals

of specialized domestic violence courts are victim safety and offender accountability. Reviews of the current state of the literature demonstrate that state courts have demonstrated that these courts provide services and processes (i.e. review hearings) without any evidence-based standards (Daly & Pelowski, 2000). Indeed, there are no "best practices" standards that exist from national organizations such as National Institute of Justice and National Center for State Courts. Further, scholars have noted that current BIP practices across the nation often differ in frequency, intensity, and focus, without any attempt toward conducting research to find "what works" in BIP or implement evidence-based practices (Bennett & Williams, 2001; Corvo, Dutton & Chen, 2008; Maurio & Eberle, 2008; Ver Steegh & Dalton, 2008). Indeed, meta-analyes find small to no effect sizes when comparing across experimental and quasi-experimental designs (Feder & Wilson, 2005). Scholars have argued that courts, and BIP practices typically treat all batterers with a 'one-size-fits-all,' while ignoring that offenders may be low, moderate, or high-risk for recidivism, and as such may have different causes or risk factors for violence (Cavanaugh & Gelles, 200; Corvo, Dutton & Chen, 2008; Day, Chung, O'Leary, & Carson, 2009). Indeed, BIP or Anger Management were ordered of most offenders, yet it is unknown whether these programs tailor their interventions toward the unique needs of clients.

Policy in Milwaukee County and in other jurisdictions with specialized courts should be based on the factors that have been identified to increase violence, recidivism, and increase the likelihood of drop-out from BIP. Prior research has found that drop-out is more likely among unemployed, people with psychopathy and other mental health disorders, those with substance abuse issues (i.e. alcohol), lower education, and those with less motivation or desire to change (Bennett & Williams, 201; Daly & Pelowski, 2000). These factors were indeed mentioned by judges during probation review hearings – those unemployed with lower education that were not

actively seeking employment or schooling were chastised for not being productive members of society. Further, those who did not seek mental health help or AODA treatment were also likely to be sanctioned. One important caveat should be noted in this focus on substance abuse – the main substance found to increase risk of drop out and recidivism was alcohol (Bennett & Williams, 2001; Daly & Pelowski, 2000). The focus in these courts, however, was on marijuana, and to a lesser degree opiates, cocaine, and heroin. Marijuana led to sanctions more readily, particularly for people of color, yet there is not an established link between marijuana use and domestic abuse. In this sense, the focus by judges during probation review hearings became more about changing a person generally, and operating as defacto marijuana police. Much of their talk focused on responsibilizing a person in general to become a productive member of society, rather than talking about violence, causes of violence, and whether or not the probationer was actively learning skills and changing attitudes towards violence. Judges may be unaware of the differences in how they talk to probationers of different backgrounds, yet this unconscious bias can have lasting effects for the reproduction of inequality within the criminal justice system (see also Van Cleve, 2016).

Given that domestic violence courts focused so heavily on the results of UA tests, with more limited discussion on BIP programming, policy stakeholders would benefit from determining what the focus should be on these hearings and for probation as a whole. More research needs to be conducted, particularly in evaluating BIP programs for establishing best practices, as well as developing a common set of "best practices" in domestic violence courts. This also requires better screening tools to assess level of risk, particular needs, and subsequently to tailor interventions to these identified needs (see Maurio & Eberle, 2008 for discussion). One strength of this jurisdiction is the review hearing itself. Prior research noted that drop out of BIP

was lower when there was monitoring of offenders (Bennett & Williams, 2001; Daly & Pelowski, 2000; Day et al., 2009). Combining evidence-based treatment with monitoring can better address the issue of recidivism as well as the need for victim safety.

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APPENDIX A

Department of University Safety & Assurances New Study - Notice of IRB Expedited Approval
Date: February 16, 2016
To: Tina Freiburger, PhD
CC: Danielle Romain, MS
IRB#: 16.206 Title: Examining the processes of social construction on decision-making in domestic violence probation review hearings

After review of your research protocol by the University of Wisconsin – Milwaukee Institutional Review Board, your protocol has been approved as minimal risk Expedited under Category 5, 6, and 7 as governed by 45 CFR 46.110. Your protocol has also been granted approval to waive informed consent as governed by 45 CFR 46.116 (d).

This protocol has been approved on February 16, 2016 for one year. IRB approval will expire on February 15, 2017. If you plan to continue any research related activities (e.g., enrollment of subjects, study interventions, data analysis, etc.) past the date of IRB expiration, a continuation for IRB approval must be filed by the submission deadline. If the study is closed or completed before the IRB expiration date, please notify the IRB by completing and submitting the Continuing Review form found in IRBManager.

Any proposed changes to the protocol must be reviewed by the IRB before implementation, unless the change is specifically necessary to eliminate apparent immediate hazards to the subjects. It is the principal investigator's responsibility to adhere to the policies and guidelines set forth by the UWM IRB, maintain proper documentation of study records and promptly report to the IRB any adverse events which require reporting. The principal investigator is also responsible for ensuring that all study staff receive appropriate training in the ethical guidelines of conducting human subjects research.

As Principal Investigator, it is your responsibility to adhere to UWM and UW System Policies, and any applicable state and federal laws governing activities which are independent of IRB review/approval (e.g., FERPA, Radiation Safety, UWM Data Security, UW System policy on Prizes, Awards and Gifts, state gambling laws, etc.). When conducting research at institutions outside of UWM, be sure to obtain permission and/or approval as required by their policies.

Contact the IRB office if you have any further questions. Thank you for your cooperation and best wishes for a successful project.

Respectfully,

Melissa C. Spadanuda IRB Manager

APPENDIX B

Descriptive Coding Scheme for Qualitative Analysis

Interaction (Power)	*Domination* -By Whom - Silence -Probationer Largely Responding	*Speech Type* -Question: Open -Question: Pointed -Assertion -Interruption -Response -Rhetorical Question -Diatribe	*Topic Management* -By Whom -Topic Change
Keywords	*AODA* -Addiction -Drug Type -Altered Test -Chronic User -Continued Use -Denial Problem -Denial Use -Desistance -Drug Problem -Inconsistent Use -Personal Choice -Prescription -Desire Treatment -False Positive UA -No History of AODA Issue -Relapse Backwards *Children* -BCW -Child Support -Childcare Issue -Number of Kids -Parenting Ability -Threaten Children -Extended Family Care -Parenting Class *Employment* -Unemployed -Employed -Looking/ Applications -School *Probationer* -Age Mentioned -Ambivalent	*BIP* -Issue -Already Learned -Changing Thinking -Participation -Does Not Want -Informative -Minimizes Responsibility -Not Learning/ Taking Seriously -Responsibility Actions -Skills: Apply or Utilize *Behavior* -Change or Desire to Change -Choice -Continued Behavior -Cooperation -Could do Well -Court Date Looming -Doing Well -Drop the Ball -Doing a Lot -Doing Nothing -Follow Rules -Follow Through -Improvement -Make it Work -Not Doing Enough -Prove Self -Responsibility -Trying or Made Effort *Financial Issues* -Court Costs -Finances/Income	*Mental Health* -Disorder Mentioned -Need/Desire for Treatment -Not Want Treatment -Not Want Label -Therapy/Counseling *Reason for Use/Failure* -Accident/ Not Fault -Bad Decision/Own Up -Birthday -Coping -Death of Family/ Friend -Evades Responsibility/ Denies -Out of Town/ Vacation -Peer Influence -Set Up Fail -Stress -Toxic Environment *Eviction/Housing Issue* -Homeless/ Unstable -Residency *Phone* *PO/Program Staff* *Parenting Class* *Domestic Violence* -Cause Mental Health -Defendant as Victim -Alcohol/Drugs -Conflict -Anger Issues -General Control Issues -Hostility Toward Women -Specific Acts Mentioned

	-Character Assessment -Dishonesty/ Untruthful -Disrespectful -History with System -Honesty -Hostility/ Uncooperative -Irresponsible -Laziness -Lethargy -Motivation -Physical Health -Respectful -Support System	-Insurance *Legal* *PO Visits* -PO Bias -Missed Visits -Saff Non-PO Rude -Try to Work With *Victim Contact* *Relationship to Victim* *Time* -Wasting -Dates/ Length -Court/ Agent Time	-Victim Blame *Judge Talk* -Concern -Serious -Focus -Take Care of Yourself *Probation* -Accountability -Failure -Assistance -Help from Someone -Helpless -Independence -Struggling -Benefit *Transportation*
Knowledge Reference	*Personal Experience* -Bench -PO	*Common Sense* -Common Sense -Urban Myths	*Scientific Knowledge* -Science/Studies -Psychological/Social Work

Interpretive Codes for Qualitative Analysis

Discourse	**Discursive Repertoires**		
Responsibility	*Parenting* -Caregiver Roles -Provider Roles -Parenting Ability	*General Responsibility* -Timeliness -Follow Through -Being in Contact -Doing Nothing or Not Enough -A Lot on Plate -Taking Probation Seriously -Motivation -Independence -Asking for Help/Assistance -Prove Oneself	*Responsibility for Actions* -Owning Up -Dishonesty -Accepts Responsibility -Playing Games -Character Assessments
Therapeutic Benefit	*Of Probation* -Benefit of Probation -Help from Agents -Tools Needed	*Change Talk* -Better Oneself -Making Changes vs. Resisting Change -Desire for Treatment	*Learning Something* -Getting Something Out of It -Informative -Applying Skills -Learned Anything
Mental Health	*Due to Disorder or Addiction* -Medicalizing Reason -Addiction or Drug Problem	*Readiness for Treatment* -Level of Treatment -Resisting Treatment -Resisting Label	*Psychological Rhetoric* -Trauma Talk -Psychological Jargon
Domestic Violence	*Violence Against Women* -Probationer as Victim	*Power and Control* -Hostility Toward Women	*Conflict* -Jealousy -Anger Issues -AODA During Offense

APPENDIX C

Case Number: _____ Defendant Name: _____

DOB: _____ Age: ____ Gender: _____ Race: _____

Incident Date: _____ Location Offense: _____

Offense on Report: _____

Weapon Use: ___ No ___ Yes

Victim Injury: ___ No ___ Yes: _____

Suspect Injury: ___ No ___ Yes: _____

Hospitalization: _____ Victim ____ Suspect _____ None

Relationship: ____ Married _____ Divorced _____ Current Part. _____ Former Part.

Minor Children: ____ No ___ Yes Witnessed Violence: ___ No ____ Yes

Prior Convictions: _____ Prior Violent: _____ Prior Felony: _____

Restraining Orders: ____ No ____ Yes

Attorney Type: ____ Private ____ Public Defender ____ Court-Appointed

Bail Ordered: ____ ROR ____ Bail Amount Bail: $_____

Detained Until Sentencing: ___ No ___ Yes

Number Failures to Appear: _____

Conviction Offense: _____

Type Offense: ___ Violent ___ Property ___ Public Order ___ Other

Number Counts: _____ Bail Jumping: ___ No ___ Yes Repeater: ___ No ___ Yes

Date Adjudication: _____ Date Sentencing: _____

Conditions of Probation: Number Months _____ Conditions (check all):

BIP ___	**Sobriety ___**	**Parenting ___**	**School ___**
Anger ___	**AODA Tx ___**	**Employment ___**	**Housing ___**
Meds ___	**Other:**		

_____

_____

Date of Hearing: _____

Sanction: ___ Verbal ___ Stayed ___ Jail Number Days Jailed/Stayed: _____

Prosecutor Gender: ___ Male ___ Female Prosecutor Race: _____

Judge Gender: ___ Male ___ Female Judge Race: _____

Judge Name: _____

Probation Officer Gender: ___ Male ___ Female PO Race: _____

Attorney Present: ___ No ___ Yes

Defendant Employed: ____ No ___ Yes: _____

Full time: ___ No ___ Yes

Probation Status:

BIP Attendance: ___ All ___ Missed

Number Missed: _____

Participation & Attendance:

___ Positive ___ Negative

UA Tests: ___ Clean ___ Dirty

Number Dirty: _____

Dirty UA Tests:

___ Positive ___ Negative

Employed/School: ___ No ___ Yes

Unemployed/Not in School:

___ Positive ___ Negative

Missed PO Visits: ___ No ___ Yes

Number Missed: _____

PO Visits/Interaction:

___ Positive ___ Negative

Contacted Victim: ___ No ___ Yes

Additional Concerns: _____

_____

_____

_____

APPENDIX D

Table 1.

List-Wise Delete Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail (n=312).

Variables	Model 1			Model 2		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.017	.022	---	-.018	.023	---
Male	1.589*	.618	4.898	1.029	.627	---
Black	-.283	.496	---	-.688	.533	---
Hispanic	-.184	.336	---	-.305	.346	---
Children	1.033^	.549	2.809	1.172*	.566	3.227
Employed	-.014	.481	---	-.271	.489	---
Employment Not Mentioned	.735	.565	---	.439	.554	---
Prior Violent Convictions	-.466	.417	---	-.265	.443	---
Prior Felony Convictions	-.271	.178	---	-.252	.184	---
Severity of Offense	.101	.184	---	.128	.194	---
Judge B	-.224	.456	---	-.491	.487	---
Judge C	-.549	.609	---	-1.115^	.658	.328
Judge D	-.639	.837	---	-.559	.913	---
Judge E	.371	.690	---	.161	.719	---
Attorney Present	.511	.381	---	.662	.402	---
Missed BIP	1.423**	.526	4.150	---	---	---
BIP Not Mentioned	.530	.642	---	---	---	---
Failed UA Test	2.208***	.498	9.102	---	---	---
UA Test Not Mentioned	.594	.602	---	---	---	---
Missed PO Visits	1.533*	.734	4.634	---	---	---
PO Visits Not Mentioned	-.571	.653	---	---	---	---
Other Issue	2.374***	.466	10.742	---	---	---
Other Issue Not Mentioned	1.067*	.518	2.907	---	---	---
Contacted Victim	1.105^	.579	3.019	.993^	.579	2.700
BIP Negative Rating	---	---	---	1.905***	.441	6.716
BIP Not Mentioned	---	---	---	-.188	.676	---
UA Test Negative Rating	---	---	---	2.053***	.516	7.790
UA Test Not Mentioned	---	---	---	.244	.629	---
PO Visits Negative Rating	---	---	---	1.096	.769	---
PO Visits Not Mentioned	---	---	---	-.807	.701	---
Other Issue Negative Rating	---	---	---	2.299***	.508	9.965
Other Issue Not Mentioned		---	---	1.245*	.551	3.473
Constant	-6.578***	1.701	---	-4.972**	1.715	---
	Log Likelihood = -105.94, chi-square = 134.55, p<.001, Pseudo R^2 = .388			Log Likelihood = -97.18, chi-square = 152.07, p<.001, Pseudo R^2 = .439		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Table 2.

List-Wise Delete Logistic Regression Results Predicting Whether Race Interacts with Parenting and Employment in Predicting Whether a Probationer was Sanctioned to Jail.

Variables	Model 3 (n=233)		
	Coeff.	**S.E.**	**Exp(B)**
Age	-.011	.030	---
Male	1.892^	.984	6.633
Black	-1.192	1.239	---
Children	1.562^	.921	4.769
Employed	-.954	1.264	---
Employment Not Mentioned	---	---	---
Black Parent	---	---	---
Black Employed	1.022	1.411	---
Prior Violent Convictions	-.363	.492	---
Prior Felony Convictions	-.340	.209	---
Severity of Offense	.451^	.253	1.569
Judge B	-1.052^	.592	.349
Judge C	-1.417^	.746	.242
Judge D	-2.976*	1.318	.051
Judge E	.815	1.100	---
Attorney Present	.991*	.488	2.695
Missed BIP	.732	.616	---
BIP Not Mentioned	-.607	.862	---
Failed UA Test	2.077**	.598	7.982
UA Test Not Mentioned	-.123	.810	---
Missed PO Visits	.917	.882	---
PO Visits Not Mentioned	-.762	.800	---
Other Issue	2.711***	.616	15.043
Other Issue Not Mentioned	.882	.702	---
Contacted Victim	.647	.717	---
Constant	-6.169	2.333	---
	Log Likelihood = -67.42, chi-square = 116.51, p<.001, Pseudo R^2 = .464		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Employment not mentioned category was omitted in Model 4 in order to examine the interaction of race with parenting and employment. Odds ratios are reported only for significant variables. Give that missing children was omitted in the models presented in the chapter, it is not re-modeled here.

Table 3.

List-Wise Delete Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail with Judge Gender (n=312).

Variables	Model 4			Model 5		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.018	.022	---	-.018	.023	---
Male	1.544*	.612	4.682	1.017	.622	---
Black	-.283	.489	---	-.747	.528	---
Hispanic	-.212	.325	---	-.359	.338	---
Children	1.003^	.537	2.726	1.128*	.554	3.256
Employed	.030	.465	---	-.150	.472	---
Employment Not Mentioned	.781	.550	---	.536	.546	---
Prior Violent Convictions	-.490	.414	---	-.310	.443	---
Prior Felony Convictions	-.269	.178	---	-.251	.182	---
Severity of Offense	.094	.184	---	.136	.191	---
Male Judge	.440	.391	---	.693^	.417	2.636
Attorney Present	.549	.376	---	.671^	.396	2.344
Missed BIP	1.426**	.461	4.161	---	---	---
BIP Not Mentioned	.499	.580	---	---	---	---
Failed UA Test	2.195***	.464	8.979	---	---	---
UA Test Not Mentioned	.590	.562	---	---	---	---
Missed PO Visits	1.517*	.704	4.557	---	---	---
PO Visits Not Mentioned	-.541	.637	---	---	---	---
Other Issue	2.393***	.446	10.952	---	---	---
Other Issue Not Mentioned	1.111*	.484	3.038	---	---	---
Contacted Victim	1.103^	.539	3.011	.977^	.578	2.654
BIP Negative Rating	---	---	---	1.877***	.435	7.440
BIP Not Mentioned	---	---	---	-.346	.647	---
UA Test Negative Rating	---	---	---	2.018***	.512	8.043
UA Test Not Mentioned	---	---	---	.213	.624	---
PO Visits Negative Rating	---	---	---	1.005	.763	---
PO Visits Not Mentioned	---	---	---	-.872	.696	---
Other Issue Negative Rating	---	---	---	2.282***	.504	10.798
Other Issue Not Mentioned	---	---	---	1.263*	.545	3.368
Constant	-6.894***	1.652	---	-5.491**	1.658	---
	Log Likelihood = -106.37, chi-square = 133.69, p<.001, Pseudo R^2 = .386			Log Likelihood = -97.79, chi-square = 150.86, p<.001, Pseudo R^2 = .436		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Table 4.
Multiple Imputation Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail (n=347).

Variables	Model 1			Model 2		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.013	.020	---	-.014	.021	---
Male	1.42*	.592	4.137	1.053^	.610	2.866
Black	-.205	.464	---	-.469	.500	---
Hispanic	-.211	.321	---	-.308	.337	---
Children	.930^	.553	2.535	1.029^	.574	2.798
Employed	-.084	.462	---	-.249	.474	---
Employment Not Mentioned	.508	.521	---	.402	.519	---
Prior Violent Convictions	-.310	.388	---	-.191	.415	---
Prior Felony Convictions	-.275	.172	---	-.296	.182	---
Severity of Offense	.050	.183	---	.071	.191	---
Judge B	-.431	.429	---	-.728	.466	---
Judge C	-1.209*	.572	.298	-1.614**	.622	.199
Judge D	-.984	.803	---	-.895	.882	---
Judge E	.060	.669	---	-.117	.701	---
Attorney Present	.700^	.365	2.014	.837*	.385	2.309
Missed BIP	1.083*	.469	2.954	---	---	---
BIP Not Mentioned	.338	.587	---	---	---	---
Failed UA Test	2.176***	.475	8.811	---	---	---
UA Test Not Mentioned	.564	.574	---	---	---	---
Missed PO Visits	1.112	.711	---	---	---	---
PO Visits Not Mentioned	-.732	.642	---	---	---	---
Other Issue	2.504***	.446	12.231	---	---	---
Other Issue Not Mentioned	1.042*	.488	2.835	---	---	---
Contacted Victim	.908^	.541	2.479	.963^	.555	2.620
BIP Negative Rating	---	---	---	1.941***	.427	6.966
BIP Not Mentioned	---	---	---	-.023	.619	---
UA Test Negative Rating	---	---	---	2.111***	.490	8.256
UA Test Not Mentioned	---	---	---	.260	.600	---
PO Visits Negative Rating	---	---	---	-.800	.749	---
PO Visits Not Mentioned	---	---	---	-1.859***	.464	.155
Other Issue Negative Rating	---	---	---	2.390***	.490	18.728
Other Issue Not Mentioned		---	---	1.150*	.521	3.158
Constant	-5.690*	1.597	---	-3.835*	1.534	---
	Average RVI = .010, Largest FMI = .179, F = 3.06, p<.001,			Average RVI = .010, Largest FMI = .172, F = 2.98, p<.001		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Table 5.
Multiple Imputation Logistic Regression Results Predicting Whether Race Interacts with Parenting and Employment in Predicting Whether a Probationer was Sanctioned to Jail.

Variables	Model 3 (n=248)		
	Coeff.	**S.E.**	**Exp(B)**
Age	-.004	.029	---
Male	2.070*	.988	7.925
Black	-.538	1.104	---
Children	.616	.784	4.769
Employed	.332	1.105	---
Black Employed	-.404	1.254	---
Prior Violent Convictions	-.099	.435	---
Prior Felony Convictions	-.398*	.198	.672
Severity of Offense	.485*	.235	1.624
Judge B	-.777	.550	.349
Judge C	-1.010	.702	.242
Judge D	-1.666	1.015	.051
Judge E	1.105	1.047	---
Attorney Present	.910^	.463	2.484
Missed BIP	.746	.574	---
BIP Not Mentioned	-.487	.818	---
Failed UA Test	1.834**	.553	6.259
UA Test Not Mentioned	-.177	.678	---
Missed PO Visits	.208	.837	---
PO Visits Not Mentioned	-1.265	.774	---
Other Issue	2.687***	.574	14.688
Other Issue Not Mentioned	1.180^	.655	3.254
Contacted Victim	1.300*	.657	3.669
Constant	-7.121**	2.211	---
	Average RVI = .009, Largest FMI = .156, F = 2.37, P<.001		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Missing children category and Employment not mentioned category were omitted in Model 3 in order to examine the interaction of race with employment. Odds ratios are reported only for significant variables.

Table 6.
Multiple Imputation Logistic Regression Results Predicting Whether a Probationer was Sanctioned to Jail with Judge Gender (n=347).

Variables	Model 4			Model 5		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.0135	.020	---	-.013	.021	---
Male	1.351*	.585	3.862	1.001^	.599	2.721
Black	-.217	.460	---	-.540	.494	---
Hispanic	-.222	.313	---	-.351	.331	---
Children	.848	.548	---	.944^	.553	2.570
Employed	.039	.443	---	-.094	.459	---
Employment Not Mentioned	.584	.508	---	.486	.512	---
Prior Violent Convictions	-.460	.386	---	-.262	.416	---
Prior Felony Convictions	-.266	.170	---	-.291	.179	---
Severity of Offense	.043	.182	---	.080	.189	---
Male Judge	.710^	.368	2.034	.956*	.400	2.601
Attorney Present	.734*	.360	2.083	.842*	.380	2.321
Missed BIP	1.141*	.462	3.130	---	---	---
BIP Not Mentioned	.287	.584	---	---	---	---
Failed UA Test	2.098***	.464	8.150	---	---	---
UA Test Not Mentioned	.445	.560	---	---	---	---
Missed PO Visits	1.016	.704	---	---	---	---
PO Visits Not Mentioned	-.766	.638	---	---	---	---
Other Issue	2.486***	.444	12.013	---	---	---
Other Issue Not Mentioned	1.093*	.483	2.983	---	---	---
Contacted Victim	.964^	.536	2.622	.973^	.552	2.656
BIP Negative Rating	---	---	---	1.936***	.422	6.931
BIP Not Mentioned	---	---	---	-.221	.600	---
UA Test Negative Rating	---	---	---	2.028***	.482	7.599
UA Test Not Mentioned	---	---	---	.133	.589	---
PO Visits Negative Rating	---	---	---	.632	.737	---
PO Visits Not Mentioned	---	---	---	-1.174^	.684	.309
Other Issue Negative Rating	---	---	---	2.333***	.483	10.309
Other Issue Not Mentioned	---	---	---	1.176*	.515	3.241
Constant	-6.205***	1.575	---	-5.326	1.615	---
	Average RVI = .012, Largest FMI = .197, F = 3.43, p<.001			Average RVI = .012, Largest FMI = .187, F = 3.38, p<.001		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

Table 7.
Multiple Imputation Negative Binomial Regression Results Predicting the Count of Jail Days Sanctioned (n=83).

Variables	Model 1			Model 2		
	Coeff.	**S.E.**	**Exp(B)**	**Coeff.**	**S.E.**	**Exp(B)**
Age	-.051**	.018	.950	-.050**	.017	.950
Male	.244	.495	---	.868^	.494	2.382
Black	-.349	.292	---	-.190	.286	---
Hispanic	-.626*	.247	.535	-.496*	.233	609
Children	-.612	.381	---	-.734*	.355	.480
Employed	.161	.324	---	.167	.317	---
Employment Not Mentioned	.519	.412	---	.367	.384	---
Prior Violent Convictions	-.469	.296	---	-.506^	.285	.682
Prior Felony Convictions	.150	.149	---	.101	.141	---
Severity of Offense	-.167	.156	---	-.108	.144	---
Judge B	.914**	.321	2.494	1.089**	.315	2.971
Judge C	1.321**	.459	3.747	1.223**	.413	3.397
Judge D	1.602*	.645	4.963	1.878**	.624	6.540
Judge E	.684	.464	---	.731	.444	---
Attorney Present	-.246	.273	---	-.262	.258	---
Missed BIP	.478	.378	---	---	---	---
BIP Not Mentioned	.555	.483	---	---	---	---
Failed UA Test	1.324**	.443	3.758	---	---	---
UA Test Not Mentioned	1.256*	.538	3.511	---	---	---
Missed PO Visits	.257	.460	---	---	---	---
PO Visits Not Mentioned	-.456	.460	---	---	---	---
Other Issue	-.037	.368	---	---	---	---
Other Issue Not Mentioned	-.333	.480	---	---	---	---
Contacted Victim	-.225	.306	---	.034	.306	---
BIP Negative Rating	---	---	---	.300	.279	---
BIP Not Mentioned	---	---	---	1.219*	.484	3.384
UA Test Negative Rating	---	---	---	1.589***	.423	4.899
UA Test Not Mentioned	---	---	---	1.520**	.519	4.572
PO Visits Negative Rating	---	---	---	.255	.437	---
PO Visits Not Mentioned	---	---	---	-.513	.441	---
Other Issue Negative Rating	---	---	---	.174	.379	---
Other Issue Not Mentioned		---	---	-.047	.457	---
Hazard	12.561	17.486	---	-16.107	12.957	---
Constant	2.506	1.374	---	1.408	1.323	---
	Average RVI = .000, Largest FMI = .000, F = 2.65, p<.001,			Average RVI = .000, Largest FMI = .000, F = 2.97, p<.001		

Note: ^p<.10, *p<.05, **p<.01, ***p<.001. Odds ratios are reported only for significant variables.

APPENDIX E

Danielle M. Romain

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Education

August 2017 Doctor of Philosophy in Urban Studies
University of Wisconsin – Milwaukee
Prelim Areas: Courts, Gender & Crime, Space & Social Control
Title: *Examining the processes of social construction on decision-making in domestic violence probation review hearings*
Committee: Dr. Tina Freiburger (chair),
Dr. Anne Bonds, Dr. Aki Roberts, Dr. Tom LeBel, Dr. Steve Brandl

May 2010 Master of Science in Criminal Justice
University of Wisconsin – Milwaukee

May 2008 Bachelor of Arts in Psychology
Minor: Jewish Studies
University of Wisconsin – Milwaukee
Summa cum laude
Senior Thesis: *Personality and parenting styles predicting eating disorders.*
Advisor: Dr. Robert Hessling

Professional Experience

2017-Present Assistant Professor, University of Wisconsin-Milwaukee
2014-Present Senior Lecturer, University of Wisconsin - Milwaukee
2012-2014 Teaching Assistant, University of Wisconsin – Milwaukee
2011-2014 Adjunct Lecturer, University of Wisconsin – Milwaukee
2012 Research Assistant, University of Wisconsin – Milwaukee
2011 Teaching Associate, Arizona State University
2010-2011 Research Assistant, Arizona State University
2008-2010 Teaching Assistant, University of Wisconsin – Milwaukee

Peer-Reviewed Manuscripts

Freiburger, T. L., Romain, D. M., Randoll, B, & Marcum, C. D. (forthcoming). Cheating behaviors among undergraduate college students: Results from a factorial survey. *Journal of Criminal Justice Education*.

Romain, D. M. & Freiburger, T. L. (2015). Chivalry revisited: Gender, race/ethnicity and offense type on domestic violence charge reduction. *Feminist Criminology,* 1-32.

Romain, D. M. & Hassell, K. D. (2014). An exploratory examination of the sources of socialization influencing juvenile perceptions of police. *International Journal of Police Sciences & Management, 16*(1), 36-51.

Romain, D. M. & Freiburger, T. L. (2013). Prosecutorial discretion for domestic violence cases: An examination of the effects of offender race, ethnicity, gender and age. *Criminal Justice Studies, 26*(3), 289-307.

Manuscript Under Review

Freiburger, T. L & Romain, D.M. Pretrial release and sentencing decisions in domestic violence cases: The effects of age, gender and race/ethnicity.

Manuscripts in Progress

Romain, D. M. & Freiburger, T. L. The influence of race, gender, and age on charge reduction.

Romain, D. M. & Richie, M. From innocent and enslaved to incorrigible and diseased: The transformation of prostitution by progressive reformers in Chicago.

Book Chapter

2015 Sexual assault and the evolution of rape. In *Women in the criminal justice system*, T. L Freiburger & C. D. Marcum, (Eds.). Los Angeles: Sage Publications.

Conference Presentations

2016 Romain, D. & Freiburger, T. *The influence of age, gender, and race/ethnicity on charge reductions.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2016.

2016 Romain, D. & Freiburger, T. *The interactive influence of defendant race/ethnicity on charge reduction.* Submitted for presentation at the annual meeting of the Midwestern Criminal Justice Association in September 2016.

2016 Romain, D. & Freiburger, T. *The influence of age, gender, and race/ethnicity on charge reductions.* Submitted for presentation at the annual meeting of the Academy of Criminal Justice Sciences in March 2016.

2015 Romain, D. *Family and responsibility: Observations of domestic violence review hearings.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2015.

2014 Romain, D. *From innocent and enslaved to incorrigible and diseased: The transformation of prostitution by progressive reformers in Chicago.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2014.

2013 Mellom, D., Romain, D. & Freiburger, T. *Sentencing domestic violence offenders: The influence of gender, race and age.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2013.

2013 Romain, D., Freiburger, T. & Marcum, C. *It's not cheating per-se: Undergraduate perceptions of academic misconduct.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2013.

2013 Mellom, D., Richie, M., Romain, D. & Freiburger, T. *Undergraduates' perceptions of academic misconduct.* Submitted for presentation at the annual meeting of the Midwestern Criminal Justice Association in September 2013.

2013 Freiburger, T., Marcum, C. Romain, D. & Bigger, K. *Perceptions and predictors of academic misconduct among undergraduates.* Submitted for presentation at the annual meeting of the Southern Criminal Justice Association in September 2013.

2013 Romain, D. & Freiburger, T. *Chivalry revisited: The effects of gender on charge reduction in domestic violence cases.* Submitted for presentation at the annual meeting of the Academy of Criminal Justice Sciences in March 2013.

2012 Romain, D. & Freiburger, T. *The effects of age, gender and race/ethnicity on pretrial decisions for domestic violence offenders.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2012.

2012 Romain, D. & Freiburger, T. *The effect of age, race, and gender on prosecutors' charging decisions.* Submitted for presentation at the annual meeting of the Academy of Criminal Justice Sciences in March 2012.

2011 Romain, D., Vaughn-Uding, C., Spohn, C. & Tellis, K. *Guarding the gateway to justice: Redefining the role of the prosecutor in sexual assault case processing decisions.* Submitted for presentation at the annual meeting of the American Society of Criminology in November 2011.

2011 Spohn, C., Tellis, K., Romain, D., & Vaughn-Uding, C. *Unfounding sexual assault: False reports by victims and police suspicion of victims.* Submitted for presentation at the annual meeting of the Academy of Criminal Justice Sciences in March 2011.

2009 Hassell, K.D., Archbold, C.A., & Romain, D.M. *Factors influencing juveniles' perceptions of the police.* Submitted for presentation at the annual meeting of the Midwestern Criminal Justice Association in September 2009.

2007 Romain, D.M, & Hessling, R.M. *Personality and parenting styles predicting eating disorders.* Poster submitted for presentation at the annual meeting of the Midwestern Psychological Association in May 2007.

2006 Flora, K.C., Hessling, R.M., Klessig, J., Pinnow, K.A., Romain, D.M., & Vraney, L.M. *Effect of exercise difficulty and presence of others on anxiety in female undergraduates.* Poster submitted for presentation at the annual meeting of the Wisconsin Psychological Association in April 2006.

Research Interests

Courts and Sentencing, Prosecutorial Discretion, Domestic Violence, Sexual Assault, Collective Efficacy, Gender and Racial Disparity

Honors and Awards

2015 Urban Studies Department Travel Award, University of Wisconsin – Milwaukee
2013-2014 Graduate School Travel Award, University of Wisconsin – Milwaukee
2012 Criminal Justice Adjunct Teaching Award, University of Wisconsin – Milwaukee
2012 Graduate School Chancellor's Award, University of Wisconsin – Milwaukee
2010-2011 University Graduate Fellowship, Arizona State University
2010 Graduate Student Award in Criminal Justice, University of Wisconsin – Milwaukee
2009-2010 Graduate School Chancellor's Award, University of Wisconsin – Milwaukee
2009 Robert L. Stonek Memorial Scholarship
2006 Sophomore Honors, University of Wisconsin – Milwaukee
2006 Psi Chi Honor Society
2004-2008 Dean's List, University of Wisconsin – Milwaukee
2004 Dean's List, University of Wisconsin – Green Bay

Research Experience

2016 Research Assistant, University of Wisconsin-Milwaukee

Assisted Dr. Tina Freiburger on data collection for a project examining the impact of a DUI Court in Outagamie, Wisconsin. Responsibilities included data collection and coding for recidivism.

2014-2015 Researcher, City of Racine

Assisted the City Attorney's Office of Racine, WI with a statistical analysis of patterns in renewal of liquor licenses to bars and taverns based on police calls for service, licensing committee actions, and agent demographics. Duties included collecting data from IT systems, data entry and cleaning, and statistical analysis of committee decisions.

2013-2014 Independent Study, University of Wisconsin - Milwaukee

Assisted Dr. Tina Freiburger with a program evaluation of the Students Talking it Over with Police (STOP) program. Duties included contacting schools to schedule pre-tests and post-tests, administering student surveys, data entry and cleaning, randomization of students to groups, and a process evaluation of two schools.

2012 Research Assistant, University of Wisconsin – Milwaukee

Assisted Dr. Kimberly Hassell on various research projects in coordination with the Milwaukee Police Department. Responsibilities included data collection and coding, and preparing literature searches and reviews.

2010-2011 Research Assistant, Arizona State University
Assisted Dr. Cassia Spohn with data entry and qualitative research of sexual assault unfounded cases reported to the Los Angeles Police Department in 2008. Classified cases as to whether they were false reports or not, and developed a typology of motivations for filing false reports. The work resulted in panel presentations at ACJS and ASC.

2007 Research Assistant, University of Wisconsin – Milwaukee
Health Care Study
Assisted Katie E. Mosack, Ph. D. in administering a study measuring health care practices within the LGBT community as well as the level of comfort LGBT individuals have in disclosing their sexual orientation with health care practitioners. The survey was conducted over the course of one weekend at a local festival.

2006-2007 Senior Thesis, University of Wisconsin – Milwaukee
Under the supervision of Robert M. Hessling, Ph.D., I completed a thesis investigating whether parenting styles and personality types interacted in the prediction of eating disorders. A survey was sent out to undergraduates and yielded over 500 participants. The results showed that parenting styles have a direct relationship with eating disorders, while personality factors do not seem to have a clear relationship. This research was presented at the Midwestern Psychological Association conference in May 2007.

2006-2007 Research Assistant, University of Wisconsin - Milwaukee
Social Behavior Lab
Assisted with experiments ran by graduate students. Ran participants on five studies, entered data into SPSS, and analyzed results. Presented one research project at the Wisconsin Psychological Association annual conference in during the Spring 2006 semester. Met during the semester to discuss the progress of research for Robert M. Hessling, Ph.D. 9 hours weekly.

Teaching Experience
2017-present Assistant Professor, University of Wisconsin – Milwaukee
I teach two sections of undergraduate and graduate courses each semester, including graduate statistics. In addition, I am actively involved in research, including program evaluations with community organizations.

2014-present Senior Lecturer, University of Wisconsin - Milwaukee
I teach four sections of undergraduate courses every semester, often with varying courses each semester. I have also developed several courses during this time period: victimology, women and criminal justice, criminological theory, and violence and the criminal justice system. Victimology was a new online course offering, requiring transposing traditional "in-class" activities into the online setting. I have also flipped two face-to-face courses into an online format: women and criminal justice and introduction to research in criminal

justice. Extensive experience teaching in both online and face-to-face formats, with creative discussion formats and assignments.

2012-2014 Teaching Assistant, University of Wisconsin – Milwaukee
I have taught five sections, including four online, of an introductory course in urban studies. This course is a general education requirement for undergraduates. With a mix of education levels and majors, I taught a basic understanding of urban planning, theories of cities, and the major challenges that face cities today. A mix of lecture, documentary films, discussion, and writing assignments were used to provide a variety of learning opportunities in order to fully understand urban issues and think critically about causes and policies aimed at reducing urban problems. Average students enrolled: 20.

2011-2014 Adjunct Lecturer, University of Wisconsin – Milwaukee
I taught six sections of research methods for undergraduate students in criminal justice. There were typically 40 students enrolled each semester. I lectured on basic research principles and designs while incorporating small-group activities and discussions on relevant research articles. My goal for the class was to not only understand the basic concepts of research and how to critique published articles, but a general understanding of how to conduct various research designs. I also taught one section of criminal court process, a lower-level course taken by a variety of college majors. This section had 100 students. My lecture format consisted of the basic concepts and structure of American courts, changes in court process via landmark cases, and theories of court decision-making. Discussion of selected high-profile cases, including video clips, was added in order to help students apply these concepts to actual law-in-practice.

2011 Teaching Associate, Arizona State University
I taught an online summer course for undergraduate research methods available to students in the on-campus and online programs. There were 27 students enrolled in the course. I prepared a syllabus, grading scheme, quizzes, assignments and exams. My goal was to convey a basic understanding of research methods and how to critique published articles.

2008-2010 Teaching Assistant, University of Wisconsin – Milwaukee
Assisted Michael Durfee and Michael Harrington in seven sections of undergraduate classes through proctoring and grading of exams, creation of quizzes and study materials, guest lecturing, and other related activities during the 2008-2009 school year. I was the primary teaching assistant for the criminal justice department during the 2009-2010 school year, during which I assisted with proctoring and grading exams, grading papers and homework assignments for Professors Freiburger and Lovell and Lecturer Michael Durfee. I also assisted Dr. Freiburger with coding media print articles on drunk driving coverage and data entry on sex offender recidivism after Megan's Law implementation in Virginia.

2008 Swedish Tutor, University of Wisconsin – Milwaukee
One student enrolled in Swedish 101 during the Fall 2008 semester was not available for half of the class periods per week. I worked with Lecturer Veronica Lundbäck toward

developing a supplementary curriculum for this student. I taught this student during the course of the semester what he would have learned in the classes he was missing.

Courses Taught
USP 250: Exploring the Urban Environment*
CRJ 110: Introduction to Criminal Justice*
CRJ 150: Introduction to Research in Criminal Justice*
CRJ 275: Criminal Court Process
CRJ 295: Crime Control and Criminal Justice Policy
CRJ 380: Victimology*
CRJ 385: Women and Criminal Justice*
CRJ 420: Violence and the Criminal Justice System
CRJ 662: Methods of Social Welfare Research (also CCJ 302 at Arizona State*)
CRJ 713: Measuring Crime and Analyzing Crime Data (graduate seminar)
*Denotes Online sections as well

External Service
2012-present external ad-hoc reviewer for: *Journal of Criminal Justice Studies*
Feminist Criminology
2017-present external ad-hoc reviewer for: *Current Issues in Personality Psychology*
Crime and Delinquency

University Service
2012-2014 Member of *e.polis* editorial board – a student-led journal for Urban Studies.
2013 Moderator, volunteer at the annual Urban Studies Student Forum.

Related Employment
2009-2010 Volunteer Victim Advocate, Sojourner Family Peace Center
2009 Victim Advocate, Sojourner Family Peace Center
Assisted victims of domestic violence whom had contact with the Milwaukee County District Attorney's Office with developing a safety plan, providing information about criminal cases, court support, and providing referrals for necessities such as shelter, relocating, counseling, and restraining orders.
2009 Intern, Milwaukee County District Attorney's Office
Observed Assistant District Attorneys as well as Victim/Witness Advocates during court cases and initial appearances for victims of domestic violence. Received training on how to approach victims of domestic violence, and began to work with victims toward the end of semester regarding safety planning and referral services.

Professional and Honor Societies
2010-present Academy of Criminal Justice Sciences
2010-present American Society of Criminology
Division on Women & Crime
Division on Corrections & Sentencing
2013-present Midwestern Criminal Justice Association
2005-present Psi Chi, National Honor Society in Psychology