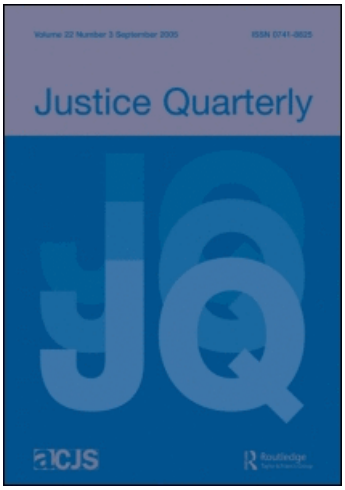

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Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts

Lauren O'Neill Shermer and Brian D. Johnson

The role of the prosecutor in criminal punishments remains a fervent topic of criminal justice discourse, yet it has received limited empirical attention, particularly for U.S. Attorneys in federal district courts. The present study examines charging and sentencing outcomes in federal courts by combining charging data from the Administrative Office of the U.S. Courts with sentencing data from the U.S. Sentencing Commission. The merger of these data sources overcomes limitations of each and provides for an investigation of the causes and consequences of federal prosecutorial charging decisions. Our investigation focuses on the subtle but important influences that extralegal offender characteristics exert in this process. Results indicate that some extralegal characteristics are intricately tied to the likelihood of charge reductions. Moreover, these effects sometimes interact to produce compound disadvantages for some groups of offenders. Our analyses are guided by contemporary theoretical perspectives on courtroom decision-making.

Keywords prosecutorial discretion; charging; sentencing

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Public concerns over crime and punishment remain a stalwart of contemporary policy debates in American society, with much scholarly research focusing on issues of social justice in punishment. In particular, a substantial and growing research literature addresses disparities in criminal sentencing. While this line of inquiry provides many important insights into courtroom decision-making processes, it taps into only the final stage of the punishment process. A number of earlier decision-making points occur that have profound consequences for final criminal dispositions (Piehl & Bushway, 2007). The initial decision to prosecute, determination of preliminary charges, charge reductions, and plea negotiations all precede final sentencing determinations and hold the potential to exert powerful influences on criminal punishments. Importantly, these early case processing decisions are not controlled by the sentencing judge, but instead fall under the auspices of one of the most powerful and least-researched members of the federal courtroom workgroup—the U.S. Attorney.

Despite the essential role of the prosecutor in the criminal sanctioning process, research on their decision-making behavior remains remarkably limited. Prosecutorial discretion arguably represents the "black box" of contemporary research on courts and sentencing. As Spohn, Gruhl, and Welch (1987, p. 175) observed, "social scientists … interested in the issue of racial and sexual discrimination" have empirically "paid relatively little attention to the decision to prosecute." More generally, Holmes, Daudistel, and Farrell (1987, p. 233) lamented that "despite an extensive literature on differential justice … relatively few studies have examined whether inequities occur in legal decisions that precede sentencing." Piehl and Bushway (2007) reiterated these concerns, arguing that "charge bargaining is a potentially important form of discretion in criminal sentencing that is obscured in many studies of sentencing outcomes."

The lack of abundant research on prosecutorial decision-making is unfortunate for several reasons. First, prosecutors have the full discretionary power to dismiss criminal charges outright, to reduce initial charges to lesser offenses, and to negotiate sentencing discounts through the process of plea bargaining. Their potential influence over criminal punishments in society is therefore substantial. Second, modern sentencing reforms, such as sentencing guidelines, may increase the prosecutor's influence over criminal sentencing dispositions. Although the scant research on the topic provides limited empirical evidence (Miethe, 1987; Wooldredge & Griffin, 2005), generally, scholars agree that attempts to curtail judicial discretion are likely to concomitantly increase prosecutorial discretion (Nagel & Schulhofer, 1992; Tonry, 1996). The need to examine prosecutorial decision-making has therefore never been greater (Nagel & Schulhofer, 1992). Third, the study of social inequities in criminal sentencing remains incomplete without consideration of prior prosecutorial decision-making. The prosecutor plays a critical but understudied role in the determination of criminal sentences. As Hagan (1974) long ago recognized, an important limitation of research on criminal punishment is the failure to systematically link prosecutorial decisions to sentencing analyses in empirical research. To better understand disparities in sentencing, then, it is necessary to examine

prior decision-making processes that contribute to observed differences in final punishment outcomes. While recent sentencing reforms have substantially constrained judicial discretion, prosecutorial discretion remains largely unchecked, which may risk the perpetuation of the types of disparities sentencing reforms were intended to reduce. As Wilmot and Spohn (2004, p. 325) argue, "Because the sentencing guidelines severely constrain the discretion of the judge, charging and plea-bargaining decisions—which determine the charge of conviction—assume a pivotal role in the process."

The limited empirical attention devoted to prosecutorial discretion is largely the result of data limitations. Whereas data on judicial sentencing decisions are now readily available, records on prosecutorial charging behavior remain elusive. Large-scale, systematic studies of judicial sentencing outcomes therefore abound (Spohn, 2000; Zatz, 2000) while research on prosecutorial charging behavior remains relatively rare. As one scholar noted, with regard to prosecutorial charging behavior "we actually know *less* today than we did in the 1970s and 1980s" (Forst, 1999, p. 525, emphasis in original).[1] Moreover, much of the existing work that does focus on prosecutorial behavior is dated, restricted to small samples, and focused on limited offense types in specific jurisdictions, usually in state courts (e.g., Albonetti, 1992; Kingsnorth, Lopez, & Wentworth, 1998; Spohn et al., 1987). In particular, little is known about the role U.S. Attorneys play in the determination of federal criminal punishments. As Miller and Eisenstein (2005, p. 239) recently opined, "Contemporary studies of prosecutorial decision-making at the state level are infrequent, and even fewer studies examine the discretionary decisions of federal prosecutors."

The present study therefore attempts to further our understanding of prosecutorial decision-making in federal courts by combining data from the Administrative Office of the U.S. Courts (AOUSC) with data from the U.S. Sentencing Commission (USSC). While the AOUSC data contain crucial information on prosecutorial charging behaviors, such as number of counts and initial and final charge dispositions, they lack information on offender characteristics and final sentencing outcomes. By linking these records to the USSC data, however, requisite offender and sentencing information can be joined with prosecutorial decision-making variables in a way that allows for a large-scale, systematic investigation of prosecutorial charging and plea-bargaining practices in U.S. Federal District Courts.

The present work examines two interrelated research questions. First, we examine the influence extralegal offender characteristics exert in the charge reduction process that occurs prior to sentencing. Second, we examine the influence that charge reductions themselves exert on final sentence outcomes in federal courts. We further specify these two overarching research questions

1. This assertion is based on the fact that detailed information on prosecutorial charging patterns was once systematically collected by the Bureau of Justice through its Prosecutor's Management Information System (PROMIS). These data were discontinued in 1992 and no comparable data exist today.

in a series of more specific, theoretically driven hypotheses, but first we provide an overview of prosecutorial discretion in the federal justice system.

The Federal Research Context

The federal criminal justice system is in many ways unique. Relative to state systems, it covers a much broader geographical area, with 94 districts nested within 11 circuits that encompass the entire USA and several foreign territories. Federal caseloads typically involve large numbers of drug offenses, as well as relatively large caseloads of fraud, immigration and weapons offenses. Criminal sentencing in federal courts is governed by the federal sentencing guidelines, which are also unique in several ways. Relative to state guidelines systems, they are unusually complex, rigid and mechanical with 43 separate offense levels that have relatively narrow ranges (see Appendix A) and myriad aggravating, mitigating and offense-specific sentencing adjustments (Stith & Cabranes, 1998; Tonry, 1996). For instance, offenders can receive a two- or three-level discount for "acceptance of responsibility," which is typically applied when offenders plead guilty.

Federal punishments are also unusual in that they are based on a system of "real offense" sentencing in which federal judges consider the relevant conduct of the offender at sentencing in addition to the final charges of conviction (Tonry, 1996, pp. 42–43). Somewhat controversially, information on uncharged crimes, dismissed counts, acquitted behaviors, and related coconspirator conduct is legally relevant at sentencing under the federal guidelines (Lear, 1993). Judges are therefore free to enhance sentences for offender conduct based on a lesser standard of proof—by a "preponderance of the evidence"—rather than the factual guilt standard of "beyond a reasonable doubt."[2] Importantly, real offense sentencing was implemented to prevent the prosecutor's charging decision from becoming the *de facto* sentencing decision. The architects of the federal guidelines recognized that restrictions on judges would likely shift sentencing discretion to the prosecutor. By allowing the judge to consider relevant offender conduct in addition to the charge of conviction, they hoped to limit the power of federal prosecutors over the final sentencing decision. Still, as some critics maintain, "largely ignored by the Guidelines is the discretion exercised outside of the judicial branch" (Farabee, 1998, p. 573).

Under the real offense sentencing system, sentence bargaining became largely irrelevant because the sentencing guidelines determined the presumptive

2. Although the Constitutionality of the federal guidelines was originally upheld in *United States v. Mistretta* (1989), the Court recently ruled in *United States v. Booker/Fanfan* (2005) that in order to be constitutional, the federal guidelines must be advisory rather than compulsory. The high court held that it was against the 6th Amendment right to a jury trial to sentence offenders for crimes not proven beyond a reasonable doubt in a court of law. The full impact of this transformation has yet to be observed (see USSC, 2006), but the data utilized in the current study predates the *Booker/Fanfan* decision.

sentence length. Charge bargaining under the guidelines, however, remained an important mechanism for prosecutors to influence final sentence outcomes. By altering final charges, offenders could be moved within the formal structure of the federal guidelines. Final sentences, however, would still be subject to judicial evaluation of relevant conduct. Pre-indictment fact negotiations that controlled the information available to the sentencing judge also emerged as an important negotiating tool—offense stipulations and fact bargaining became a new mechanism for influencing sentence severity (Nagel & Schulhofer, 1992). Although federal judges were endowed with the power to weigh offender-specific behavior that fell outside the purview of the final charge of conviction, then, federal prosecutors retained considerable control over charging and plea-negotiation processes, and in ways that remained consequential for final punishment determinations (Nagel & Schulhofer, 1992). Next, we draw upon literature on prosecutorial charging in both state and federal courts to provide a research context for the current analysis.

Prior Research on Prosecutorial Decision-Making

Few criminal justice pundits would disagree that the prosecutor is one of the most, if not the most, influential and powerful persons in the criminal justice system. Prosecutorial power stems, at least in part, from their involvement in multiple decisions at different stages of case processing as well as the general lack of established prosecutorial review procedures (Feeley, 1992; Free, 2002; Griffin, 2001; Kingsnorth, MacIntosh, & Sutherland, 2002; Mather, 1979; Misner, 1996). Prosecutors decide when a criminal charge will be filed, the level at which a suspect will be charged, whether or not a plea bargain will be proffered and whether or not existing charges will be discontinued (Albonetti, 1987; Free, 2002). They arguably exercise "the greatest discretion in the formally organized criminal justice network" (Reiss, 1974, quoted in Forst, 1999, p. 518). Prosecutorial discretion remains largely unchecked. It falls outside the purview of both public scrutiny and judicial review. As Richard Frase (2000, p. 440) has argued, "Prosecutors in American jurisdictions wield enormous 'sentencing' power because they have virtually unreviewable discretion to select the initial charges and decide which charges to drop as part of plea bargaining." This raises the proverbial specter of unequal treatment under the law—unfettered prosecutorial discretion may result in similarly situated offenders receiving different charges that translate into differential punishments

Prior research has investigated prosecutorial assessments of case convictability (e.g., Albonetti, 1986, 1987; Frohmann, 1997; Mather, 1979; Nagel & Hagan, 1983; Spohn & Holleran, 2001) as well as prosecutorial decisions to file initial charges (e.g., Albonetti, 1987; Frazier & Haney, 1996; Spohn & Holleran, 2001), and to offer charge reductions (e.g., Albonetti, 1992; Bishop & Frazier, 1984; Holmes et al., 1987). Taken as a whole, this literature indicates that prosecutorial discretion results in the rejection of a substantial proportion of initial

arrests, with prosecutors more likely to pursue cases involving more serious crimes (e.g., Mather, 1979), with stronger evidence (e.g., Albonetti, 1987), and more culpable defendants (e.g., Spohn & Holleran, 2001). At least some studies also indicate that extralegal offender and victim characteristics, such as race or gender, further influence prosecutorial decision-making (e.g., LaFree, 1980; Paternoster, 1984; Spohn & Spears, 1996; Spohn et al., 1987; but see Kingsnorth et al., 1998).

Although qualitative research suggests that prosecutorial discretion "contribute[s] to the reproduction of social inequality in the criminal justice system" (Frohmann, 1997, pp. 552–553), empirical examinations of state-level outcomes offer only mixed support. For example, early research by Bernstein, Kick, Leung, and Schulz (1977) examined charge reductions associated with guilty pleas for a small sample of robbery offenses in a single metropolitan city in New York State. Their results showed no gender differences and provided mixed evidence of racial disparity. Being black had no effect among offenders pleading guilty at their initial appearance, but minorities who pled guilty at a later stage received less significant charge reductions. LaFree's (1980) early study of 881 sexual assaults in a large, Midwestern city suggested, among other things, that black men who assaulted white women received more serious charges, were more likely to have cases filed as felonies, and were more likely to receive lengthy sentences, particularly in state penitentiaries. More recent research examining sexual assault cases further highlights the importance of extralegal victim characteristics (Spohn & Spears, 1996), particularly for acquaintance assaults (Spohn & Holleran, 2001), although additional factors like victim cooperation also matter (Spohn, Beichner, & Davis-Frenzel, 2001). Spohn et al. (1987), using data on over 33,000 cases from LA County, found that Hispanic and black males were more likely to be fully prosecuted than other race/gender groups, whereas Farnworth and Teske (1995) reported that females with no prior record were especially likely to receive charge reductions in a sample of 9,966 thefts and 18,176 assaults in California. They noted that this was particularly the case for white females charged with assault.

Contrary to this evidence of unwarranted disparity in prosecutorial decisions, a number of studies find no effect of offender characteristics in the charging process. Albonetti's (1992) study of 400 burglary and robbery cases in Jacksonville, FL, revealed no evidence of racial or gender differences in the decision to reduce initial charges. Similarly, Kingsnorth et al. (1998) investigated the role of racial/ethnic composition in prosecution and sentencing using a sample of 365 sexual assaults in Sacramento County, CA. Their research did not find any significant effect for the racial dyad at any decision point in case processing. Albonetti and Hepburn's (1996) examination of diversions in felony drug cases in an Arizona County found that male offenders were less likely to be diverted, but they uncovered no direct effects for offender race.

To further complicate the evidence, a few studies report beneficial charge reductions in favor of minority offenders. Holmes et al. (1987) examined a sample of burglary and robbery offenses terminating in guilty pleas in Delaware

County, PA, and Pima County, AZ. Contrary to expectations, being black in Delaware County increased the likelihood of a charge reduction, while Mexican-origin defendants in Pima County received more favorable dispositions. In concord, Spohn et al.'s (1987) study of 321 sexual assaults in a Michigan County surprisingly reported that black-on-white sexual assaults were actually more likely to be dismissed by prosecutors than white-on-black assaults. Finally, Wooldredge and Thistlewaite's (2004) study of 2,948 male arrests for misdemeanor intimate assaults in Cincinnati, OH, reported African-American offenders were less likely to be charged and fully prosecuted relative to similar white offenders.

Collectively, prior research on prosecutorial decision-making in state courts provides mixed and inconsistent evidence of social disparities in punishment. In part, these sundry findings reflect the inherent diversity of the samples and jurisdictions examined. Although this research provides a number of important insights into the importance of the prosecutor in criminal courts, much of it is dated, has been constrained to small sample sizes, limited to particular offenses (e.g., burglary, robbery, or sexual assault), or conducted in specific locales, often a single city or county court. Small sample sizes result in low statistical power to detect relationships and the focus on specific crimes and locales reduces generalizability and risks localized, idiosyncratic research findings.

Moreover, this body of literature does not shed light on prosecutorial decision-making in the federal criminal justice system. This is important because of the many ways in which the federal system is unique. In recent years, federal courts have processed more criminal cases than any single state system, they typically deal with more serious crimes and have more severe punishments—especially for firearm and drug offenses—and they provide considerable discretion to prosecutors because the federal sentencing guidelines place strict constraints on judicial sentencing discretion (Stith & Cabranes, 1998). Little is known about the extent to which unfettered prosecutorial discretion in federal courts jeopardizes the goals of certainty, uniformity, and disparity reduction proffered by the USSC. Federal prosecutors' charging and plea decisions are likely to exert profound influence over final sentencing outcomes. These decisions can affect the calculation of appropriate guidelines ranges, invoke or circumvent sentencing enhancements, and influence the information available to the judge in considering the relevant conduct of convicted offenders.

Although some important research exists on U.S. Attorneys in the pre-guidelines era (e.g., Eisenstein, 1978; Frase, 1980), and a select few studies have recently investigated the discretion of federal prosecutors through the use of substantial assistance departures (Hartley, Maddan, & Spohn, 2007; Johnson, Ulmer, & Kramer, 2008), we are aware of only one recent empirical study that actually examines prosecutorial charging behavior under the federal sentencing guidelines. Using a random sample of 5% of offenders convicted in 1995, Wilmot and Spohn (2004) examined the influence of initial charges for 360 convicted drug offenders who pled guilty, were convicted of a single count, and were sentenced to prison. They focused on the effect that reductions in the number

of charges at indictment exerted on final sentencing decisions. Their results indicated that offenders charged with multiple counts at indictment received about six months of additional prison time in addition to smaller discounts for downward departures from the sentencing guidelines. The authors offer these findings as evidence of the importance of real-offense sentencing in the federal justice system. Because judges consider all "relevant conduct" of the offender at sentencing, charged offenses not resulting in conviction can increase punishments and mitigate discounts associated with guidelines departures.

Wilmot and Spohn's (2004) work highlights the important role of prosecutorial decision-making in the final determination of federal punishments. Given their limited focus on number of charges in a small sample of drug offenders, along with the broader lack of empirical work on prosecutorial decision-making in federal courts, additional research in this area is of paramount importance. The present study contributes to extant research on criminal punishments by providing a systematic investigation of potential social inequities tied to prosecutorial decision-making in U.S. District Courts. Using a large, representative sample of federal offenders, it analyzes variations in the likelihood of receiving federal charging reductions across racial, ethnic and gender groups. It then examines the consequences of these decisions for final punishment outcomes in federal court. The present investigation draws heavily from contemporary theoretical perspectives on courtroom decision-making to provide a unified framework for examining the charging behavior of U.S. Attorneys in federal courts. After outlining our theoretical expectations, we proceed to our statistical analyses.

Theoretical Perspectives on Prosecutorial Decision-Making

The repercussions of prosecutorial discretion echo through criminal courts at sentencing, yet little criminal court theorizing focuses on the prosecutor.[3] According to organizational perspectives on courtroom decision-making, prosecutors and other court actors are forced to make decisions under time and information constraints that preclude knowledge of alternative courses of action and future outcomes (Albonetti, 1986, 1987). This uncertainty leads them to search for satisfactory rather than optimal solutions in their decision-making. Among other things, standard operating procedures, clear divisions of labor, and professional training and socialization serve to manage uncertainty (March & Simon, 1958). The collective desire to reduce uncertainty encourages cooperation among workgroup members, enhancing group cohesion and reaffirming collective goals, which are routinized over time in decision-making

3. As one anonymous reviewer pointed out, much of the theorizing on prosecutorial decision-making is quite dated. It is therefore possible that recent changes in reform policy, professionalization and other political movements have altered the decision-making motivations of prosecutors. Detailed theoretical investigations into contemporary influences on prosecutorial decision-making therefore represents an important and necessary topic for future research.

routines that characterize typical, or "normal," crimes (Sudnow, 1965).[4] For instance, courtroom workgroups share a near universal aversion for trial cases, because "more than anything else, trials produce uncertainty" (Eisenstein & Jacob, 1977, p. 27). More recent theorizing further suggests that the guilty plea process involves a recursive decision-making process between the prosecution and defense counsel, which includes recurrent patterns of assessing the initial plea offer, negotiating the terms of the plea bargain, and settling on a final outcome (Emmelman, 1996). The plea-bargaining process may therefore involve multiple negotiation sessions before a final plea is settled upon (see also Feeley, 1992).

According to Eisenstein, Flemming, and Nardulli (1988), prosecutorial plea-bargaining processes are embedded in local legal culture, incorporating shared value orientations, implicit behavioral expectations, and normative case processing strategies of the courtroom workgroup. Court actors adopt group values and organizational goals that shape the ways courts operate and the outcomes they produce. These group values revolve around four goals that include doing justice, disposing of caseloads, maintaining group cohesion, and reducing uncertainty (Eisenstein & Jacob, 1977). Some goals are internal to the workgroup, such as group cohesion and uncertainty avoidance, while others reflect external pressures from sponsoring organizations, the media or the general public. Perceptions of justice and effective case disposition goals resonate in the public eye and reflect core concerns over fair and equal treatment as well as organizational efficiency in the justice system. While members of the workgroup share the same broad goals, individual definitions of each can vary in important ways. For instance, judges' focus on efficient case disposition may stem from a desire to avoid overcrowded dockets, while for prosecutors high disposition rates can enhance their legal reputations. For public defenders, rapid case disposal may be necessary given typically high case volume, while for privately retained counsel, it may be required to ensure adequate financial compensation (Eisenstein & Jacob, 1977). Definitions of justice are especially ambiguous among courtroom workgroups. Judges may define this in terms of impartiality on the bench, whereas prosecutors are likely to associate it with high conviction rates reflective of community protection concerns. According to this perspective, then, the basic goals of the courtroom workgroup are said to be uniform, but their relative emphasis and interpretation varies across courtroom actors.

Prosecutors, like other organizational actors, are faced with uncertainty that may lead them to develop decision-making schema that incorporate past practices and reflect the subtle influences of social and cultural stereotypes in society. These stereotypes emerge through an attribution process that links

4. In his classic treatment of the topic, Feeley (1992, p. 187) argues that plea bargaining is better analogized as a modern day supermarket than as the Middle Eastern bazaar it is sometimes compared to; prices (i.e., sentences) are not haggled over anew in each transaction but are rather set over time through the processes of precedent and past associations in repeated encounters between prosecutors and defense counsel.

prosecutorial concerns with community safety to individual characteristics like race, ethnicity, age, and gender. According to this perspective, prosecutors are likely to develop "perceptual shorthands" (Hawkins, 1981, p. 280) that tie attributions of dangerousness to the ascriptive characteristics of offenders and their victims. Over time, social inequities may become routinized in decision-making schema predicated on the assumption that past practices produced acceptable results. Moreover, the likelihood of social inequality in prosecutorial decision-making is enhanced by the lack of formal accountability structures. As Forst (1999) argued, the incentives of prosecutors and the accountability systems that guide their behavior leave

> substantial opportunity for disparity and inefficiency in the exercise of discretion … information about the decisions made by prosecutors has not been made sufficiently accessible to allow anyone to know whether prosecutors tend to make decisions about individual cases that correspond closely or consistently to any particular standard of justice or efficiency.(p. 523)

In addition to community safety concerns, prosecutors are also influenced by additional offender and case characteristics. As Spohn et al. (2001) suggest, these considerations can be usefully summarized through a modification of the focal concerns theoretical perspective on judicial decision-making. Steffensmeier, Ulmer, and Kramer (1998) suggest judicial decisions are guided by consideration of three primary concerns: the blameworthiness of the offender, the dangerousness of the offender as it relates to community protection, and the practical constraints and consequences of sentencing decisions. The focal concerns of prosecutorial decision-making are analogous though their relative interpretations and emphases differ from judges. Blameworthiness and community protection are paramount goals of the prosecutor, but they are strongly moderated by practical considerations such as concerns over individual case convictability and long-term political goals (see Feeley, 1992). Case efficiency concerns also play a strong role in determining prosecutorial outcomes. Like judges, prosecutors consider the seriousness of the crime, victim injury, and offender culpability, but they do so with an overarching consideration of the political and practical consequences of their behavior. In particular, case convictability takes on special importance. Because prosecutorial success is largely measured in terms of favorable conviction rates (Eisenstein et al., 1988), they are prone to seek out and pursue cases with high probabilities of conviction and to engage in plea negotiations designed to result in guilty plea dispositions (Albonetti, 1987). Prior research suggests that prosecutorial assessments of convictability are based primarily on the severity of the offense, the strength of the evidence and the culpability of the defendant, although other factors such as offender and victim characteristics also matter (Spohn et al., 2001, p. 207). This represents a practical consideration unique to the prosecutor. Although both judges and prosecutors "are concerned about maintaining relationships with other members of the courtroom workgroup, prosecutors' concerns about the practical consequences of charging decisions focus on the

likelihood of conviction rather than the social costs of punishment" (Spohn et al., 2001, p. 208).

Prosecutors are further influenced by social justice considerations regarding fair and equitable case dispositions and by concerns with the portrayal of their decisions in the media. Unlike judges who may view their position as a final occupational destination, U.S. Attorneys often have political aspirations beyond their current post (Eisenstein, 1978). As Albonetti (1987, p. 295) argues, "Prosecutorial success, which is defined in terms of achieving a favorable ratio of convictions to acquittals, is crucial to a prosecutor's prestige, upward mobility within the office, and entrance into the political arena." The focal concerns of prosecutors extend beyond typical consideration of dangerousness and blameworthiness to include considerations of case convictability and political consequences of individual charging decisions.

Additional focal concerns of the prosecutor stem from their particular role in courtroom workgroups. Like other courtroom actors, prosecutors are embedded in courtroom workgroups that define the parameters of acceptable and expected behaviors and shape the collective values and goals of the courtroom workgroup (Eisenstein & Jacob, 1977). Over time, shared perspectives develop that counteract group conflicts inherent in the formal role orientations of workgroup members. While the prosecutor's workgroup is typically defined as the courtroom triad, which includes the prosecutor, judge and defense counsel (Eisenstein & Jacob, 1977), other criminal justice actors play intricate roles in shaping prosecutorial decision-making. In the federal system, for instance, probation officers play a key role in the punishment process. They conduct an independent pre-sentence investigation and they perform essential guidelines calculations. Although federal probation officers are independent investigators under the judicial branch, they may work closely with federal prosecutors throughout the pretrial process. Workgroup cooperation also often exists with federal law enforcement personnel; prosecutors need viable cases to pursue and federal agencies need to establish legitimacy through the issuance of formal charges. Concern over workgroup cohesion and efficient case disposition, then, represent an additional consideration that guides individual decisions of U.S. Attorneys.

Taken together, then, the above perspectives highlight the fact that prosecutorial decision-making is guided by a set of focal concerns that include offender dangerousness and culpability as well as practical considerations focusing on case convictability, political consequences, social justice, and organizational efficiency concerns. Importantly, though, the relative evaluation of these concerns is colored by an attribution process that links past behavior and social stereotypes to future outcomes. Given time and information constraints, prosecutors are likely to employ decision-making shortcuts throughout case processing that tie offender characteristics, like age, race, and gender, to assessments of blameworthiness, community protection and practical case considerations. There may, for instance, be less political risk in reducing initial charges for older, white or female offenders relative to young, minority, or male offenders.

As a result, these offender characteristics may become intimately tied to the prosecutorial case processing decisions. Moreover, joint constellations of certain offender characteristics may result in compounded disadvantages for some defendants. As with final sentencing dispositions, young, male, minorities may be particularly unlikely to receive favorable charging treatment from U.S. Attorneys. We therefore expect the following:

- *Hypothesis 1: Younger offenders will be less likely to receive charge reductions from U.S. Attorneys*
- *Hypothesis 2: Minority offenders will be less likely to receive charge reductions from U.S. Attorneys*
- *Hypothesis 3: Male offenders will be less likely to receive charge reductions from U.S. Attorneys*
- *Hypothesis 4: Young, minority, male offenders will be the least likely to receive charge reductions from U.S. Attorneys relative to other age, race, and gender combinations*

Prior research also suggests that punishment/charging processes may vary by type of offense (e.g., Albonetti, 1997; Mustard, 2001; Steffensmeier & Demuth, 2000; Wright & Engen, 2006). In particular, the effects of charge reductions should be particularly pronounced for crime categories for which prosecutors and other workgroup members deem the federal guidelines to be too severe. Federal sentences for drug crimes, in particular, have been criticized for their draconian nature and punishments for violent and weapons offenses are especially severe in the federal system (Stith & Cabranes, 1998).[5] Moreover, some research suggests inequalities in punishment will be most pronounced for these crimes (e.g., Steffensmeier & Demuth, 2000). This may reflect a process of racial typing that is offense-specific. In the wake of the war on drugs, for instance, minority defendants may be perceived as particularly dangerous in the context of drug crimes (Tonry, 1995). Moreover, weapons offenses and crimes of violence are also likely to invoke racialized fears and enhanced attributions of dangerousness, particularly when they involve young, male and minority offenders. We therefore investigate the extent to which charging disparities vary across offense categories, with the expectation that extralegal disparities will be most pronounced for drug, violent and weapons offenses.

- *Hypothesis 5: Young, male, and minority offenders will be particularly less likely to receive charge reductions for drug, violent and weapons offenses*

5. Qualitative research from a related project conducted by colleagues with the second author offers strong support for this contention. For example, one Philadelphia Assistant U.S. Attorney explained, "… the drug guidelines are high … Like crack guidelines … I mean, my God, they are through the roof …" so in those cases offering "a break does not conflict with your views of what's justice."

In addition, the charging behaviors of U.S. Attorneys are also likely to influence subsequent sentencing outcomes in federal courts. Like prosecutors, judges are likely to employ attributions that "link race, gender, and outcomes from earlier processing stages to the likelihood of future criminal activity" (Albonetti, 1991, p. 250). Prosecutorial charging decisions can have real consequences on final sentence dispositions through their effect on where an offender is placed under the sentencing guidelines (Wright & Engen, 2006). Charge reductions should translate into shorter presumptive sentence lengths and shorter terms of actual incarceration because they often lower final offense severity calculations. Offenders who benefit from negotiated pleas involving reduced charges will typically be situated in less severe sentencing ranges. Once accounting for the placement of offenders within the sentencing guidelines (by controlling for the presumptive sentence recommendation), however, receipt of a charge reduction should exert little effect on judicial sentencing decisions. This is because any "relevant conduct" sentencing adjustments will be reflected in and captured by the final sentence presumption. These adjustments can include a variety of specific offense characteristics and offense and offender adjustments, including victim characteristics (e.g., a "vulnerable" victim), the offender's role in the offense (e.g., being an organizer or leader), obstruction of justice enhancements and "acceptance of responsibility" discounts. The final sentence presumption, or the "applicable guidelines range," reflects both the base offense level and any subsequent sentencing adjustments for relevant conduct. After accounting for these factors, then, receipt of a charge reduction should exert relatively little if any influence on final sentencing outcomes. The charge reduction should move the offender within the sentencing guidelines matrix, but should have little effect on final sentence after accounting for their placement.[6] The specific hypotheses we examine are therefore as follows:

- *Hypothesis 6*: *Receipt of a charge reduction will result in a significantly lower final sentence recommendation under the federal sentencing guidelines*
- *Hypothesis 7*: *Receipt of a charge reduction will result in a significantly shorter actual sentence, before controlling for the guidelines recommendation*
- *Hypothesis 8*: *After controlling for the guidelines recommendation, charge reductions will have little or no effect on final sentence lengths in federal courts*

6. One possible exception to this assertion is the judicial use of upward and downward departures under the federal sentencing guidelines. To the extent that judges utilize relevant conduct factors in their justifications for departing from presumptive guidelines ranges, these factors may affect sentencing dispositions through that process.

Data and Methods

Data for the present study come from the Federal Justice Statistics Program (FJSP) for fiscal year 2001. The FJSP collects and collates data from multiple federal agencies, including the AOUSC and USSC. The FJSP creates a unique identification number that allows federal offenders to be tracked across stages of the federal justice system. The current research links federal data from the AOUSC and the USSC data to create a unique dataset following offenders from initial prosecution through final sentence disposition. The USSC data contain rich detail on offender characteristics, case processing details, and legal predictors of final sentencing severity. They are arguably one of the richest data sources available for studying criminal sentencing (Steffensmeier & Demuth, 2000). The AOUSC data contain seldom available information on prosecutors' charging behaviors, including information on initial and final charge severity. To our knowledge, these data have not been utilized in previous research because they lack essential information on offender characteristics like race, gender and education. By combining the two datasets, though, this limitation is overcome and analyses of prosecutorial charging decisions can be incorporated into the study of social inequities in federal punishments.

The linked dataset provides information on all federal defendants prosecuted whose cases terminated in fiscal year 2001.[7] These data were restricted to cases with requisite information on charging and sentencing decisions. It was necessary to limit the analysis to cases resulting in conviction so that sentencing data (and therefore offender information) could be analyzed. The consequence of this is that we are unable to examine prosecutorial discretion surrounding cases dismissals. Instead, we focus on charge reductions in convicted cases. The data were further restricted to exclude cases convicted at trial because these cases entail a fundamentally different sentencing process in which the prosecutor exercises less discretion (Johnson, 2003). Federal death penalty cases were also excluded because they follow a unique case processing regiment, which includes close oversight and final approval by the U.S. Attorney General (U.S. Department of Justice, 2000, 9.10.100). In addition, the data were restricted to types of cases covered by both data sources. For instance, cases that terminate as class B or class C misdemeanors are reported in the AOUSC data but are not recorded in the USSC database. The AOUSC reports case information for each indictment whereas the USSC reports information for each sentencing event. Some offenders may be indicted multiple times but sentenced only once, resulting in that individual appearing in the AOUSC data numerous times but only once in the USSC data. We therefore restrict the analysis to sentencing events. Finally, some cases

7. Although the Administrative Office of the U.S. Courts is collected by the calendar year, when it is combined with the U.S. Sentencing Commission in the Federal Justice Statistics Program, it is adjusted to reflect cases prosecuted during the fiscal year. These adjusted data are then combined with the federal sentencing data (Adams & Motivans, 2003).

recorded by the AOUSC are never turned over to the USSC and therefore do not appear in these data (Adams & Motivans, 2003). We restrict our analyses to cases sentenced within the 90 U.S. federal districts, excluding foreign territories, and to cases involving white, black or Hispanic offenders because other racial/ethnic groups accounted for only about 3% of the sample. After restricting the sample in these ways, complete information was available for 45,678 sentencing events.[8]

Dependent Variables

Sentencing and charging decisions under the federal guidelines are complex. The initial charges against a defendant correspond to a baseline offense level that determines the recommended guidelines range. By altering the initial charges, the prosecutor can influence the presumptive guidelines sentence, although a number of other sentencing adjustments can also be applied. Because several types of plea negotiations can occur, such as offense stipulations and fact bargaining, which are not recorded in any systematic fashion, it is difficult to capture all important aspects of the federal charging process. However, one important element of federal charge negotiations that can be reliably measured involves charge reductions that result in lower statutory maxima. Because final charges determine the statutory maximum penalties allowable under law, they represent an important bargaining tool for federal prosecutors. The statutory maximum trumps the sentencing guidelines and establishes an absolute ceiling for the most severe punishment possible. Although this type of charge reduction represents a single plea-negotiation mechanism, it is a potentially important one because it effectively reduces the maximum punishment available to the judge at sentencing. Our research therefore examines this specific type of charge reduction, for a variety of different offenses within the federal criminal justice system.

Charge reduction is defined as a reduction in the statutory maximum between the filing offense and the terminating offense of conviction. Cases in which the statutory maximum was reduced through a charge reduction are coded 1. This offers a conservative measure of plea bargaining in the federal system, but it captures a type of bargaining that is particularly consequential for final punishment dispositions. To account for differences between concurrent and consecutive sentences, maximum sentences of each convicted charge were summed for the latter cases. In cases involving concurrent sentences, the statutory maximum for the most serious charges was used. Although consecutive

8. In total, n = 8,291 cases were removed because they were dismissed and contained no comparable sentencing data, n = 4,356 cases were removed because they were convicted at trial, and n = 3,364 cases were removed because they were death penalty eligible. Although additional cases were removed for the various reporting differences discussed above, supplemental analyses revealed that there were no substantive differences in offender characteristics for the restricted sample and the larger sample of all federal USSC cases sentenced in fiscal year 2001.

sentences are rare in the federal system (4% in the current data) (USSC—U.S. Sentencing Guidelines §5G.2, 2004), they must be accounted for in this way to address situations where prosecutors increase or decrease the number of charges against a defendant to alter the final sentence.

In addition to analyses of federal charge reductions, the current research also investigates the consequences of prosecutorial charging behavior on final punishment dispositions. Specifically, we evaluate the impact that charge reductions exert on sentence lengths in federal court. Because the presumptive sentence provides an essential benchmark for determining finals sentencing outcomes, we begin by analyzing the effect of charge reductions on presumptive sentence recommendations. This provides a measure of the extent to which charge reductions move offenders within the confines of the federal sentencing guidelines grid. We then examine the influence of charge reductions on actual sentence lengths, before and after controlling for the presumptive sentence recommendation. The former allows us to investigate the overall effect of charge reduction on average sentence lengths, prior to controlling for the sentencing guidelines cell, whereas the latter provides a test of the potential effect of a charge reduction on sentencing after controlling for movement within the guidelines. Consistent with prior work, we measure sentence lengths as the natural log of the number of months of incarceration the offender was sentenced to serve in federal prison.[9] We log the dependent variable because the distribution of sentence lengths in federal court is highly skewed and because it provides for the useful interpretation of regression coefficients as proportional changes in sentence length. This is useful because each additional month of incarceration is likely to mean less for longer sentences (see e.g., Bushway & Piehl, 2001; Kurlychek & Johnson, 2004). We also follow previous research in focusing on the length of incarceration because the vast majority of federal offenders are sentenced to some term of incarceration (Kautt, 2002). Logistic regression techniques are utilized for analyses of charge reductions and OLS regression are employed for analyses of sentence length.[10]

9. We conduct our analyses of sentence length on the full sample of all convicted offenders using what Bushway, Johnson, and Slocum (2007) refer to as the censored two-stage model (CTSM), with probation sentences coded as zero months of incarceration. This approach is useful in the current context because we are interested in the unconditional estimates for the effect of charge reduction on sentence length for all offenders in the sample. Although analyses of sentence length are sometimes restricted only to imprisoned offenders, doing so provides conditional estimates that would fail to capture the effects of charge reduction for non-incarceration sentences. As a check on our model specification, we reran all of our analyses using both the conditional sample of imprisoned offenders and using a Heckman two-stage selection model that provided estimates of both the probability of incarceration and the length of incarceration adjusted for selection bias. The pattern of results for these alternative specifications was substantively similar across models, although as we discuss in our findings, the unconditional estimate was of slightly greater magnitude.

10. We first examined bivariate correlations to ensure that there was no problematic collinearity among our independent predictors. In the interest of space, we do not report or discuss these correlations but those results are available upon request.

Independent Variables

The independent variables include a variety of legally relevant considerations, criminal case-processing details, and individual offender characteristics. The defendant's criminal history is taken from the USSC data and is measured on a scale ranging from 1 to 6. Offense severity is measured in two ways. First, for analyses of charge reductions, offense severity codes are utilized from the AOUSC data to capture the most serious filing offense, which ranges from 0 to 11 (see Appendix B for an explanation of this variable). It was necessary to use the AOUSC measure of offense severity to capture the seriousness of the initial charges filed. For analyses of sentence length, offense severity is captured by the presumptive sentence under the USSC sentencing guidelines. The presumptive sentence measures the natural log of the minimum number of months of imprisonment recommended by the sentencing guidelines, after specific offense adjustments are incorporated. Offense categories are additionally controlled using Bureau of Justice Statistics (BJS) dummy variables for fraud, property, drug, public order, weapons, and immigration offenses, with violent crime as the reference.

Several measures of case processing characteristics are also incorporated into the analyses. Pretrial detainment is captured with a dummy variable that identifies offenders incarcerated prior to sentencing. Offenders who receive sentencing discounts for acceptance of responsibility are also captured with a dummy variable, as are offenders who are sole defendants in their case. In analyses of charge reductions, a continuous variable representing the total number of filing charges is included as well. In analyses of sentence length, additional dummy variables are incorporated for whether there were multiple counts of conviction (as opposed to a single count) and for whether or not a guidelines departure was received (measured as upward, downward, and substantial assistance departure versus no departure). Ideally, type of attorney would have also been controlled, but the prevalence of missing data on that variable (40%) prevented its inclusion.[11] One additional limitation of the current data is that they lack information on the quality of the evidence and on inter-organizational relationships among different court actors. Prior research suggests that evidentiary strength is a key predictor of charging decisions (e.g., Albonetti, 1987; Feeley, 1992; Mather, 1979), and prior theorizing suggests the quality and duration of the prosecutor's relationships with other court actors may influence charging practices, but unfortunately no measures of case quality or inter-actor relations are collected or made available in either the AOUSC or the USSC data. We discuss these limitations in additional detail in our discussion of findings.

Because prior research suggests criminal case processing varies importantly across courtroom contexts (Johnson, 2005; Ulmer & Johnson, 2004), we

11. To investigate the role of type of attorney, all analyses were rerun with dummy variables for type of attorney included (public defender, court-appointed, and private attorney), along with a dummy variable for cases missing information on type of attorney, but inclusion of this additional control did not affect our substantive conclusions.

include a series of fixed effects dummy variables to control for differences among federal district courts. These fixed effects remove any unmeasured, stable characteristics of federal district courts and they also remove any intraclass correlation associated with the nesting of cases within districts. Therefore, multilevel modeling procedures are not necessary (Helms & Jacobs, 2002). We also report results using robust standard errors to account for any potential, additional violations of our model assumptions, although comparison of models without robust errors produced no substantively meaningful differences.

The primary independent variables of interest include a variety of individual offender characteristics. Age is measured as a continuous variable at the time of sentencing. Gender is captured with a dummy variable for male offenders, and race/ethnicity is operationalized with two dummy variables for black and Hispanic offenders using white offenders as the reference category. Additional offender characteristics include whether the offender was a U.S. citizen, whether they were married or cohabiting at the time of the offense, and their level of education, measured by three dummy variables for high school graduate, some college education, and college graduate, with less than a high school diploma the reference category. Collectively, the final combined dataset provides a unique and detailed resource for investigating the correlates and consequences of prosecutorial charge reductions in U.S. Federal District Courts.

Findings

Table 1 presents the descriptive statistics examining charge reductions and punishment outcomes in U.S. federal courts. About 12% of all federal prosecutions involve charge reductions that lower the statutory maximum penalty. Because this measure captures only the most significant reductions, it offers a conservative estimate of charge bargaining in federal court. Once convicted, federal offenders in our sample received average prison terms of about 43 (2.2 logged) months.[12] The vast majority of federal offenders are males and the mean age is 34 years old. Blacks and Hispanics are overrepresented relative to the general population, and more than 40% of offenders have less than a high school education. As one might suspect, federal caseloads differ from typical state court caseloads, with unusually high proportions of cases convicted for drug, fraud and immigration offenses. Almost two-thirds of federal offenders are detained prior to trial and all but 6% who plead guilty received a guidelines reduction for acceptance of responsibility.

12. The average sentence length in the current sample is somewhat shorter than might be expected in part because we exclude death eligible cases and cases convicted at trial, which tend to receive very long sentences.

Table 1 Descriptive statistics for merged AOUSC and USSC data, FY2001

	Mean	SD
Dependent variables		
Charge reduction	.12	.32
Sentence length	43.02	56.14
Ln sentence length	2.88	1.62
Independent variables		
Legal factors		
BJS offense severity	7.33	3.09
Ln presumptive sentence	3.22	1.47
Criminal history	2.40	1.70
Departures		
Upward departure	.00	.07
Downward departure	.16	.36
Substantial assistance	.17	.38
Offense types		
Violent	.03	.18
Fraud	.19	.39
Property	.04	.20
Drug	.40	.49
Public order	.07	.25
Weapon	.09	.29
Immigration	.17	.38
Case processing factors		
Pretrial detainment	.62	.48
Acceptance of responsibility	.94	.23
Sole defendant	.70	.46
Number of filing charges	1.83	1.14
Multiple counts of conviction	.16	.37
Offender characteristics		
Age	33.95	10.67
Female	.14	.35
Male	.86	.35
White	.33	.47
Black	.27	.44
Hispanic	.40	.49
U.S. citizen	.74	.44
Married/cohabitating	.44	.50
Less than high school	.45	.50
High school graduate	.31	.46
Some college education	.16	.36
College graduate	.07	.26

Charge Reductions in Federal Court

Table 2 presents the results of our analysis of charge reductions in federal courts. The first model reports the direct effects of our independent predictors. In line with theoretical expectations, male offenders are about .68 times as likely as female offenders to receive a charge reduction. This may reflect gendered attributions associating male offenders with increased dangerousness and risks of recidivism, although alternative explanations for this effect are elaborated in the discussion of the paper. Contrary to our expectations, we find no direct evidence of age- or race-graded differences in the likelihood of federal charge reductions. Young offenders, black and Hispanic offenders are not any less likely to have their statutory maximum penalties reduced as part of their plea negotiation.[13] The second model reports the additional impact of joint age, race and gender constellations.[14] Again few differences emerge along racial and ethnic lines. Compared to older white males, young white females and young and old Hispanic females are significantly more likely to receive charge reductions, but these effects are driven by gender rather than by race/ethnicity. Contrary to expectations, no significant disadvantage emerged for young male minority offenders; those effects were consistently small in magnitude and statistically insignificant.

Examination of the other control variables also warrants brief discussion. Property crimes were more than twice as likely as violent crimes to receive charge reductions, whereas immigration offenses were clearly the least likely to earn these types of plea discounts.[15] On average, more serious crimes are associated with greater probability of charge reductions, in part perhaps because maximum penalties begin much higher for these crimes. Criminal history, however, exerted no significant influence on charge reduction. This unexpected result is consistent with at least some prior research that finds the effect of prior offending is limited to the final sentencing decision (Holmes et al., 1987). In line with what one might expect, pretrial detainment reduces the odds of

13. Supplemental models with a measure of age-squared included were also examined to test for possible curvilinearity in this effect (Steffensmeier, Kramer, & Ulmer, 1995) but the age-squared term failed to reach statistical significance and the results did not differ from those reported.

14. To simplify these models, we replace our continuous measure of age with a dummy variable for young versus old offenders, with offenders under the age of 30 defined as young. Consistent with much prior research (e.g., Steffensmeier et al., 1998), we report the joint main effects of age, race, and gender groups rather than three-way statistical interactions. Joint main effects combine dummy variable categories to examine differences among select groups, whereas three-way interaction models include all cross-product and main effects. Our decision to examine joint main effects stemmed, in part, from a desire to compare age/race/gender groups to one another, and was also driven by methodological concerns associated with problematic collinearity introduced through the inclusion of numerous cross-product terms.

15. The immigration, ethnicity and U.S. citizenship findings require brief elaboration. Contrary to what one might expect, U.S. citizens are less likely to receive charge reductions that lower statutory maxima. Because ethnicity, citizenship and immigration offenses are closely tied together (they are correlated between .51 and .64), we investigated alternative model specifications with immigration offenses removed. These analyses produced substantively similar findings to those reported, so we report results including all three measures.

Table 2 Logistic regressions examining charge reductions in federal courts, FY2001

	Main effects model			Interaction model		
Variable	*b*	SE	Odds	*b*	SE	Odds
Age	.00	.00		-	-	
Male	−.39 ***	.06	.68	-	-	
Black	.01	.09		-	-	
Hispanic	.05	.08		-	-	
Young white male	-	-		−.12	.09	
Young white female	-	-		.49 ***	.12	1.63
Young black male	-	-		−.09	.10	
Young black female	-	-		.31	.17	
Young Hispanic male	-	-		.02	.10	
Young Hispanic female	-	-		.64 ***	.10	1.89
Old white female	-	-		.17	.09	
Old black male	-	-		−.01	.08	
Old black female	-	-		.29	.18	
Old Hispanic male	-	-		−.09	.10	
Old Hispanic female	-	-		.37 ***	.08	1.45
U.S. citizen	−.47 ***	.13	.63	−.47***	.13	.62
Fraud	.33 *	.14	1.39	.35 *	.14	1.42
Property	.90 ***	.15	2.46	.92 ***	.16	2.51
Drug	−.25	.17		−.24	.17	
Public order	.20	.18		.21	.18	
Weapon	.51 **	.15	1.67	.52 **	.15	1.68
Immigration	−1.20 **	.40	.30	−1.17 **	.40	.31
Offense severity	.22 ***	.03	1.25	.22 ***	.03	1.25
Criminal history	.00	.02		.00	.02	
Detained	−.18 *	.08	.84	−.18 **	.08	.84
Accepts responsibility	.16 *	.08	1.17	.16 **	.08	1.17
Sole defendant	.17	.16		.17	.16	
Number of filing charges	.53 ***	.03	1.70	.53 ***	.03	1.70
Married or cohabitating	.01	.03		.03	.03	
High school graduate	−.02	.05		−.01	.05	
Some college	−.06	.06		−.06	.06	
College graduate	−.02	.09		−.01	.09	
Constant	−22.33 ***	.33		−22.55 ***	.30	
N		39,688			39,762	
Pseudo R^2		17%			17%	

*$p \leq .05$; **$p \leq .01$; ***$p \leq .001$.
Note: Odds ratios only reported for statistically significant coefficients.

charge reduction by .84 whereas accepting responsibility for one's crime increases the odds by 17%. Other offender characteristics, like family circumstances and education, exerted no significant influence on the likelihood of charge reductions in federal court. Interestingly, the model suggests that U.S.

citizens are less likely than their illegal counterparts to receive charge reductions. This may reflect the fact that illegal aliens are often deported when prosecuted in federal court. If prosecutors anticipate deportation for non-U.S. citizens, it may diminish prosecutorial interest in a long punishment and concomitantly increases the desire to move the case along via a negotiated plea involving a charge reduction.[16] Overall, we find evidence that federal charge reductions are significantly influenced by the gender of the offender but not by their age, race, ethnicity, or educational and family background. This provides some formative evidence against widespread concerns that the transfer of discretion from judges to prosecutors in federal court has resulted in widespread, systemic disparities, at least along racial and ethnic lines in aggregate analyses.

The above results, however, cannot rule out the possibility that important charge reduction disparities exist for at least some categories of crime. Prior research, for instance, suggests that racial inequalities in federal punishments are greatest for drug crimes (Steffensmeier & Demuth, 2000) and theoretical arguments further indicate that charging disparities may be especially pronounced for violent and firearms offenses. To investigate whether or not charge reductions result in offense-specific punishment disparities, then, we re-estimate models of charge reduction that are disaggregated by offense type. Table 3 presents the results of these analyses.

Although important legal predictors, like severity of the offense and number of filing charges, exert consistent influences across offense categories, several offender characteristics demonstrate offense-specific effects. Most notably, the aggregate gender finding in Table 2 appears to be largely driven by violent and drug offenses. For violent crimes, male offenders are about one-third (odds ratio = .34) as likely to receive a charge discount—for drug crimes they are about half as likely (odds ratio = .51). Additional offender characteristics also vary by offense type. Age exerted a small positive effect only for immigration cases, and race and ethnicity emerged as strong predictors primarily for weapons offenses, where black and Hispanic offenders were about .70 times as likely to have their initial charges reduced. Although age appears to have little systematic effect on charging decisions, then, racialized assessments of offender dangerousness and culpability appear to be offense graded, carrying particular salience for charging decisions in weapons cases.

Somewhat surprisingly, though, Hispanic offenders were about 20% more likely to receive charge reductions for drug offenses. This finding is in stark contrast to research that suggests Hispanics are punished most harshly for drug crimes. One possible explanation for this finding is that initial charges for Hispanic drug offenses are especially severe, resulting in greater odds of

16. The authors thank an anonymous reviewer for this potential explanation for the unexpected U.S. citizenship finding. The same reviewer pointed out that charge reductions for non-citizens may be selectively used to avoid deportation that would otherwise be triggered by a longer sentence, thereby providing greater incentive for non-citizens to cooperate in the negotiated guilty plea process.

Table 3 Logistic regressions examining charge reduction interactions in federal courts across offense types, FY2001

	Drug		Violent		Weapon		Property		Fraud		Public order		Immigration	
Variable	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE
Age	0.00	0.00	0.01	0.01	0.01	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.02 *	0.01
Male	−0.67 ***	0.07	−1.09 **	0.40	−0.20	0.32	0.46	0.25	−0.04	0.12	−0.08	0.25	0.04	0.53
Black	0.13	0.15	0.38	0.24	−0.35 **	0.13	−0.37	0.40	0.11	0.16	0.16	0.30	0.95	0.73
Hispanic	0.20 *	0.08	0.44	0.49	−0.38 *	0.19	−0.73	0.46	−0.30	0.26	0.19	0.42	0.66	0.69
U.S. citizen	−0.40 **	0.12	−0.29	0.78	−0.02	0.46	−0.28	0.59	−1.12 ***	0.25	−0.25	0.30	−0.04	0.38
Fraud	-		-		-		-		-		-		-	
Property	-		-		-		-		-		-		-	
Drug	-		-		-		-		-		-		-	
Public order	-		-		-		-		-		-		-	
Weapon	-		-		-		-		-		-		-	
Immigration	-		-		-		-		-		-		-	
Offense severity	0.03	0.04	0.17 *	0.07	0.33 **	0.04	0.51 ***	0.10	0.42 ***	0.05	0.42 ***	0.05	2.85 ***	0.55
Criminal history	−0.02	0.03	−0.04	0.07	0.07 *	0.03	−0.02	0.07	0.10 **	0.03	−0.01	0.10	0.35 ***	0.07
Detained	−0.16	0.10	−1.59 ***	0.30	−0.13	0.15	−0.50	0.27	−0.31 *	0.13	−0.17	0.22	0.22	0.32
Accepts responsibility	0.07	0.13	0.55	0.41	0.51 *	0.21	0.53	0.49	0.17	0.18	0.26	0.35	−0.49	0.53
Sole Defendant	0.34	0.21	0.15	0.40	−0.27	0.14	−0.80 *	0.32	0.00	0.13	−0.54	0.29	0.45	0.59
Number of filing charges	0.45 ***	0.04	0.87 ***	0.10	0.58 ***	0.06	0.64 ***	0.11	0.67 ***	0.05	0.67 ***	0.09	0.60 **	0.23

Table 3 *(Continued.)*

	Drug		Violent		Weapon		Property		Fraud		Public order		Immigration	
Variable	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE	*b*	SE
Married or cohabitating	–0.02	0.05	0.30	0.25	–0.02	0.12	0.02	0.17	0.10	0.11	0.11	0.23	0.17	0.18
High school graduate	–0.03	0.06	–0.01	0.33	0.08	0.13	0.21	0.24	–0.07	0.12	–0.25	0.28	–0.21	0.37
Some college	–0.08	0.07	–0.01	0.36	–0.14	0.21	–0.09	0.30	–0.16	0.13	–0.14	0.31	–0.69	0.61
College graduate	–0.05	0.15	0.62	0.50	–0.08	0.35	0.05	0.38	–0.36 *	0.16	0.16	0.30	–0.13	0.77
Constant	–20.77 ***	0.44	–21.28 ***	1.45	–24.02 ***	0.66	–23.63 ***	1.30	–24.19 ***	0.75	–23.90 ***	0.10	–37.94 ***	3.54
N	17,192		1,450		3,832		1,637		7,615		2,553		5,409	
Pseudo R^2	14%		35%		26%		35%		22%		31%		42%	

*$p \leq .05$; **$p \leq .01$; ***$p \leq .001$.
Note: Results based on statistical models including the same variables in Table 2.

subsequent charging reductions, but this ad hoc interpretation is speculative and would require additional research to substantiate it. Finally, it is interesting to note that the only statistically significant influence for education is a decreased probability of charge reductions for college graduates convicted of fraud offenses. In this offense context, a college education may actually be viewed as an aggravating rather than mitigating factor, which interestingly, is consistent with prior research on federal white-collar offending that suggested higher class status can translate into greater assessments of culpability in these cases (Weisburd, Wheeler, & Waring, 1991; Wheeler, Mann, & Sarat, 1988).[17]

Sentence Lengths in Federal Court

The final models examine the consequence of charge reductions for final sentence dispositions. The theoretical expectation is that receipt of a charge reduction should translate into a shorter presumptive guidelines recommendation, which will subsequently result in shorter sentence lengths on average. Charge reductions are likely to move offenders from more serious cells in the guidelines matrix to less serious cells (see Appendix A). When evaluating actual sentences, then, before controlling for the guidelines cell in which and offender is placed, charge reductions should exert significant negative effects. Introducing a control for the presumptive sentence (i.e., which guidelines cell an offender falls into), however, should largely negate this effect.

Table 4 presents the regression analyses investigating these expectations. The first model evaluates the effect of a charge reduction on the logged measure of the presumptive sentence. These results indicate that a charge reduction is associated with recommended sentence lengths that are about 23% shorter for otherwise equivalent offenders. The second model in Table 4 reports the analysis of actual sentence lengths before controlling for the final guidelines cell via the presumptive sentence. These results indicate that charge reductions reduce actual sentences by a slightly smaller margin, shortening sentence lengths by 19% relative to sentences without charge reductions.[18] On average, an offender who would otherwise receive a five-year sentence, then, would instead receive just over four years of incarceration when given a charge reduction. As one would expect, though, inclusion of the presumptive guidelines cell in the last model eliminates the effect of charge reduction. This suggests that

17. We also examined offense-specific models for our interaction analyses, but because some cell sizes get quite small when examining age/race/gender groupings by offense type, we do not report or discuss those additional results herein. Still, it is worth noting that the unexpected finding for Hispanics convicted of drug crimes was wholly accounted for by the greater odds of Hispanic females (of all ages) receiving charge reductions rather than Hispanic males, and that young black males were particularly less likely to receive charge reductions for weapons offenses.

18. We also conducted supplemental analyses disaggregating the effect of charge reduction across offense types. These offense-specific results (available by request) indicated that charge reductions had particularly strong effects for drug and immigration crimes, where they reduced federal sentences by approximately 45%.

Table 4 OLS regressions examining Ln sentence lengths in federal courts, FY2001

	Presumptive sentence		Ln sentence w/ out presumptive		Ln sentence with presumptive	
Variable	*b*	SE	*b*	SE	*b*	SE
Charge reduction	−.23 ***	.04	−.19 ***	.05	.00	.02
Age	.01 ***	.00	.00 ***	.00	.00 **	.00
Male	.27 ***	.02	.47 ***	.03	.23 ***	.02
Black	.10 ***	.02	.16 ***	.03	.07 ***	.02
Hispanic	.07 *	.02	.10***	.03	.04 *	.02
Ln presumptive	-	-	-	-	.88 ***	.01
U.S. citizen	.12 **	.04	−.01	.03	−.11 ***	.02
Fraud	−1.22 ***	.05	−1.31 ***	.05	−.24 ***	.03
Property	−1.43 ***	.07	−1.54 ***	.07	−.28 ***	.03
Drug	.37 ***	.05	.31 ***	.05	−.02	.02
Public order	−.97 ***	.05	−1.12 ***	.06	−.27 ***	.03
Weapon	−.09 *	.04	−.19 ***	.04	−.11 **	.02
Immigration	−.45 ***	.08	−.50 ***	.08	−.10 ***	.03
Criminal history	.23 ***	.01	.26 ***	.01	.06 ***	.00
Detained	.43 ***	.04	.80 ***	.04	.42 ***	.03
Accepts responsibility	−.39 ***	.03	−.47 ***	.03	−.13 ***	.02
Sole defendant	−.18 ***	.03	−.18 ***	.04	−.02	.02
Multiple counts of conviction	.51 ***	.02	.56 ***	.02	.11 ***	.02
Upward departure	.13	.07	.64 ***	.08	.53 ***	.05
Downward departure	.46 ***	.03	−.26 ***	.05	−.66 ***	.04
Substantial assistance	.57 ***	.03	−.33 ***	.05	−.83 ***	.04
Married or cohabitating	.05 ***	.01	.03 *	.01	−.01	.01
High school graduate	.01	.01	−.02 *	.01	−.03 **	.01
Some college	.06 **	.02	.00	.02	−.05 ***	.01
College graduate	.10 **	.03	.00	.03	−.08 ***	.02
Constant	2.54 ***	.06	2.27 ***	.08	.04	.05
N	39,663		39,220		39,214	
R^2	55%		54%		79%	

*$p \leq .05$; **$p \leq .01$; ***$p \leq .001$.

early charge reductions have little impact on sentence lengths after accounting for their effect on presumptive sentence lengths. We find no evidence that judges use early charging decisions as punishment cues in their final sentence determinations.

Consistent with prior analyses of federal sentencing (Abonetti, 1997; Johnson et al., 2008; Steffensmeier & Demuth, 2000), though, these results indicate that young offenders, male offenders, and black and Hispanic offenders all receive significantly longer prison terms, with the shortest sentences meted out for property and public order offenses. Importantly, offender disparities remain in the final model after controlling for both the presumptive sentence and for

prior charging decisions. Collectively, these models support the idea that charge reductions exert important influences on final sentence lengths; however, this impact operates indirectly through the presumptive sentence recommendation in the guidelines.

Discussion

Social commentators and criminal justice pundits have often criticized the inordinate and unchecked discretion of U.S. District Attorneys. The charging and negotiating power of federal prosecutors is largely unreviewable, which as Wright and Miller (2003) suggest, raises important issues of social and political legitimacy for the justice system. They argue that the lack of transparency surrounding the charging process is particularly problematic because disputed facts are not presented in any public forum, and charging reductions are not subject to systematic public review. Because the initial charges are meant to "reflect the government's reasoned judgment about what the defendant has done, and what social labels and consequences should attach" (Wright & Miller, 2003, p. 1411), any reduction of these charges through nonpublic negotiations raises doubts about fairness and equity in the justice system.

Our findings indicate that numerous factors affect the charging behavior or U.S. Attorneys. Charge reductions are more likely to occur in cases involving more serious crimes and more filing charges, and in cases involving acceptance of responsibility and pretrial release. Serious crimes and multiple charges are likely to provide greater occasion for significant charge reductions, whereas acceptance of responsibility and pretrial release are likely to signify offender remorse and lowered levels of community risk or culpability. There was no evidence that marital status or education was significantly related to charge reduction, and prior criminal history had no significant effect either. This null effect for prior record was somewhat surprising, but is not inconsistent with prior work that has found this influence to be nonlinear (e.g., Bernstein et al., 1977), only marginally significant (e.g., Albonetti, 1992) or limited to sentencing outcomes rather than charging decisions (e.g., Holmes et al., 1987)—our findings are consistent with Holmes et al. (1987) in that the influence of prior criminality was limited to sentencing rather than charging decisions in federal courts.

Of particular interest in the present study is the possibility of offender disparities associated with prosecutorial charge reductions. If prosecutors systematically rely on offender characteristics like age, race and gender when deciding charge reductions, then unwarranted differences in justice are likely to characterize the federal punishment process. The present results offer relatively little support for this overarching contention. With regard to offender age, there was no evidence that younger offenders were less likely to receive charge reductions, at least not in any way that lowered statutory maxima. Similarly, the race and ethnicity of the offender exerted no direct influences on

federal charge reductions—black and Hispanic offenders were no less likely to have their charges reduced than whites. We therefore find no evidence for Hypotheses 1 and 2. Compelling support emerged for Hypothesis 3, though, in that males were significantly less likely than females to have their initial charges reduced. Gendered attributions also appeared to dominate the collective impact of age, race and gender offender constellations, so contrary to Hypothesis 4, we found no evidence that young minority males were particularly disadvantaged in overall charging decisions. These gender effects are consistent with the theoretical interpretation that prosecutors engage in a social attribution process that links males to increased dangerousness and heightened risks of recidivism. However, it is important to note that these effects may also reflect important gender differences in offending and victimization patterns not adequately captured by our measure of offense severity. Female crime tends to be less severe in its consequences (e.g., less serious victim injury) and female offenders are more likely to have unique histories of victimization as well as special family circumstances that may serve to mitigate their culpability (Chesney-Lind, 1997; Daly, 1994; Steffensmeier & Allan, 1996). Unfortunately, we lack detailed data on additional measures necessary to investigate these alternative explanations. Future research is therefore needed to better explain the underlying causes of the gender gap in prosecution, particularly for violent and drug crimes where these differences are most pronounced.[19]

Moreover, the influence of offender characteristics at times varies across offense type. In partial support of Hypothesis 5, male offenders were especially unlikely to be given charge reductions for drug and violent crimes and black and Hispanic offenders were disadvantaged in charging decisions for weapons offenses. Although systematic charging disparities do not appear to characterize the entire federal justice system, then, important differences do emerge for certain offenders convicted of certain offenses. This may suggest that prosecutorial reliance on stereotypical patterned responses is particularly likely when both offender and offense categorizations feed into common attributions of dangerousness and culpability.

In addition to examining the likelihood of charge reduction, we also investigated its influence on final sentence lengths in federal courts. As suggested by Hypotheses 6 and 7, because final charges influence the placement of offenders within the sentencing guidelines, charge reductions should be associated with both shorter presumptive and actual sentence lengths. We found convincing support for these expectations. Net of other factors, receiving a charge reduction on average reduced recommended sentences by 23% and actual sentences by 19%. Once the presumptive sentence was accounted for, however, initial charge reductions exerted no additional influence on judicial sentencing decisions (Hypothesis 7). Overall, these results indicate that charge reductions significantly reduce the length of incarceration for federal offenders because

19. We thank an anonymous reviewer for identifying these very important alternative explanations for our gender effect.

they shift their relative placement within the federal sentencing guidelines, but compared to offenders within the same guidelines cells, charge reductions are not associated with differential punishment. Interestingly, the conclusion that charge reductions affect sentencing but are unaffected by offender race is consistent with previous work examining prosecutorial influences in punishment (Hagan, 1974). Such a finding is also consonant with the limited research examining the hydraulic displacement of discretion to prosecutors, which typically finds no evidence of increased disparity in prosecutorial decision-making in the post-guidelines era (Miethe, 1987; Wooldredge & Griffin, 2005).

While these results are encouraging in that they suggest a general lack of systematic racial or ethnic bias in the charge reduction decisions of federal prosecutors, they require a number of important caveats. First, this study only examines reduction in charges. It is therefore unable to capture potentially important differences in initial charge severity, or in other prosecutorial decisions of consequence such as the imposition (or avoidance) of mandatory minimums (Ulmer, Kurlychek, & Kramer, 2007) or the use of substantial assistance departures (Hartley et al., 2007). Second, our measure of charge reduction provides a conservative estimate of prosecutorial charge bargaining in federal courts. Data constraints required that we restrict our analyses to charging decisions that resulted in the lowering of statutory maximum penalties. While this type of charge reduction is of great consequence in that it lowers the ceiling for federal punishments, it fails to capture more subtle types of prosecutorial bargaining that may also affect final punishment dispositions. Charge reductions that do not alter statutory maxima are unobserved in our analysis as are other types of plea negotiation such as fact bargaining and guidelines stipulations. As Tonry (1996, p. 78) observed, in the federal system, "prosecutorial discretion is all but immune from judicial review and many tools for fine-tuning sentences besides charge bargaining are available". To better understand the role of the prosecutor in the federal punishment process, then, additional mechanisms for "fine-tuning" federal punishments must be incorporated into future work. Ideally, measures of actual time served would also be incorporated in addition to nominal sentence lengths. Finally, data constraints precluded examination of some potentially important omitted variables. These included measures of evidentiary strength[20] as well as inter-organizational relationships among the different court actors, both of which are likely related to federal charging decisions. They also include additional offender and victim characteristics, such as detailed measures of victim injury, socioeconomic and family status, and prior histories of victimization and substance abuse. Unfortunately, these measures are not collected by either the AOUSC or USSC, so the addition of such measures would assist invaluably in future investigations of federal charging decisions. Future research is therefore needed that attempts to collect these measures in order to replicate and extend the current findings.

20. In the case of evidentiary strength, this limitation is more consequential for our analyses of charge reductions than for sentencing outcomes, where it is likely to be a less important factor.

Future work should also begin to investigate contextual variation in prosecutorial decisions making. Empirical inconsistencies in the findings of previous work on charging outcomes may well reflect regional variations and localized norms in charging processes. Given its geographical breadth, the federal system is particularly subject to variations in charging and punishment. As Stith and Cabranes (1998, p. 7) argued, it is likely that "there is considerable variation in Guidelines application among different federal districts, different judges and different prosecutors." Research on federal punishments, and federal prosecutors especially, should begin to investigate this regional variation. It may be that there are important disparities in prosecutorial charging behavior that are context-specific and difficult to capture in large aggregate analyses (Nagel & Schulhofer, 1992). Charge decisions may also have important influences over the determination of guideline departures. They may offer an alternative mechanism for adjusting punishment outcomes to desirable workgroup normative standards. This is particularly likely to be the case for substantial assistance departures because their invocation is controlled solely by the prosecutor (Hartley et al., 2007). If prosecutorial charge reductions and substantial assistance motions represent alternative mechanisms for circumventing undesirable guidelines outcomes, then one would expect their use to be inversely associated. Future research should investigate this possibility as well as the potential application of charging increases, such as superseding indictments, that may be applied to encourage reticent offenders to plead guilty rather than go to trial.

Conclusion

Concern over prosecutorial discretion is not a new phenomenon. Nearly 70 years ago, Supreme Court Justice Robert H. Jackson declared that "the prosecutor has more control over life, liberty, and reputation than any other person in America," and a quarter century later, Albert Reiss observed that prosecutors continue to exercise "the greatest discretion in the formally organized criminal justice network" (Forst, 1999, p. 518). Today, these assertions if anything have grown in forcefulness. In an era of structured sentencing systems that are dominated by guilty pleas, the power and discretion of the prosecutor is tremendous. As Farabee (1998, p. 577) suggests, this is especially the case for the federal system because "to the extent that the guideline parameters diminish the power of the judge, they correspondingly enhance the power of the prosecutor". Stith and Cabranes (1998, p. 105) therefore rightly point out that "in examining sources of sentencing disparity, it is important to look not only at decisions of judges, but also at the decision of prosecutors." In line with this observation, the current research attempts to advance our knowledge of prosecutorial decision-making and sentencing in federal courts by analyzing charging reductions in a large sample of federal offenders across a variety of offense types.

Our results suggest several notable conclusions. First, despite public concern, widespread prejudices do not seem to dominate prosecutorial decision-making at the federal level. An important exception emerged, however, for the impact of gender, where females were especially likely to receive charge reductions relative to males. Although overregulation is no panacea for discretionary decision-making in the justice system, some scholars have suggested that the development of prosecutorial screening and case-processing guidelines may produce greater consistency in the justice system (e.g., Forst, 1999). One advantage to such a guidelines system would be to move the largely invisible discretion of the prosecutor into the limelight of public scrutiny, much like sentencing guidelines did for judicial decision-making. Under current practices, the prosecutor remains insulated and virtually unaccountable to the public for their discretionary decision-making. The development of any system of accountability, through charging guidelines or other alternative mechanisms, represents a promising step in the development of systematic information on what remains the largely hidden process of prosecutorial decision-making power in the justice system.

Second, our findings suggest some important differences in federal case processing across offense types. This comports with recent arguments for disaggregating analyses of federal caseloads (Albonetti, 2003) and suggests that offender disparities may operate in offense-specific ways. In particular, black and Hispanic offenders convicted of weapons charges were especially unlikely to receive charge reductions from U.S. Attorneys. Although systematic racism clearly does not characterize overall patterns of charging decisions in U.S. Courts, then, more subtle forms of bias may exist for specific offender/offense combinations that are tied to heightened perceptions of community risk and racialized fear of crime. Although such an interpretation aligns itself well with the "focal concerns" perspective of prosecutorial charging presented herein, it is important to note the dire paucity of research empirically testing these core assertions; that is, court actors are routinely assumed to use decision-making shortcuts that incorporate societal stereotypes, but virtually no research measures or explicitly tests these assumptions (but see Bridges & Steen, 1998). Future work on both judges and prosecutors is therefore needed that further refines and explicitly tests the theoretical linkages between offender characteristics and observed disparities in case processing.

Finally, our analyses also suggest that prosecutorial charging discretion plays an important role in the determination of final punishment outcomes in U.S. District Courts. Although not surprising, this conclusion confirms a little-tested but often discussed empirical research question. The influence of U.S. Attorneys appears to act primarily through the determination of where an offender falls within the federal sentencing guidelines, which provides the key benchmark for judges at sentencing. Future research should therefore continue to investigate the dynamic influence of the prosecutor and other courtroom actors in the sentencing process. Investigations of this type will be especially fruitful in light

of recent Supreme Court decisions that have made the federal sentencing guidelines advisory rather than presumptive (United States *v.* Booker/Fanfan, 2005) and the findings in the current analyses highlighting the significant impact of extralegal offender characteristics on final sentencing outcomes even after controlling for the presumptive sentence. These collective findings, then, serve to highlight the need for prosecutorial discretion to be further examined in the public eye and for future research to strive to better incorporate the dynamic interaction of different members of the courtroom workgroup in the punishment process of U.S. Courts.

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Appendix A. Federal Sentencing Guidelines

SENTENCING TABLE
(in months of imprisonment)

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

Appendix B. Offense Severity Score

The Administrative Office of the U.S. Courts (AOUSC) dataset has a variable representing an offense severity score for the most serious filing offense in each case. The first digit of this score represents the statutory maximum sentence for the offense (Federal Justice Statistics Resource Center). The authors altered the original variable slightly in order to have a score that ranged from 0 to 11. The original code is shown below along with the final scoring used in the analyses to represent offense severity.

AOUSC	Offense severity variable
A = no sentence	0
B = through six months	1
C = greater than six months through one year	2
0 = greater than one year through two years	3
1 = greater than two years through three years	4
2 = greater than three years through five years	5
3 = greater than five years through 10 years	6
4 = greater than 10 years through 15 years	7
5 = greater than 15 years through 20 years	8
6 = greater than 20 years through 25 years	9
7 = greater than 25 years but less than life	10
8 = life	11
9 = death	Death penalty cases omitted