

**SENTENCING HOMICIDE OFFENDERS IN THE NETHERLANDS:
OFFENDER, VICTIM AND SITUATIONAL INFLUENCES IN CRIMINAL PUNISHMENT**

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ABSTRACT

Empirical investigations of criminal sentencing represent a vast research enterprise in criminology. However, this research has been restricted almost exclusively to U.S. contexts, and it often suffers from key data limitations. As such, examination of more detailed international sentencing data provides an important opportunity to assess the generalizability of contemporary research and theorizing on criminal punishment in the U.S. The current study utilizes unique data on the sentencing of homicide offenders in The Netherlands to investigate the influence of offender, victim and situational influences in punishment. Drawing on unique strengths of the data, we examine little-researched questions about the influence of prosecutorial sentencing recommendations, victim-offender relationships, and extralegal disparities in sentencing. Results indicate that offender, victim and situational offense characteristics all exert important independent effects at sentencing and that prosecutorial recommendations exert powerful influences over judicial sentences. The paper concludes with a discussion of future directions for comparative sentencing research across international contexts.

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ABSTRACT

Empirical investigations of criminal sentencing represent a vast research enterprise in criminology. However, this research has been restricted almost exclusively to U.S. contexts, and it often suffers from key data limitations. As such, examination of more detailed international sentencing data provides an important opportunity to assess the generalizability of contemporary research and theorizing on criminal punishment in the U.S. The current study utilizes unique data on the sentencing of homicide offenders in The Netherlands to investigate the influence of offender, victim and situational influences in punishment. Drawing on unique strengths of the data, we examine little-researched questions about the influence of prosecutorial sentencing recommendations, victim-offender relationships, and extralegal disparities in sentencing. Results indicate that offender, victim and situational offense characteristics all exert important independent effects at sentencing and that prosecutorial recommendations exert powerful influences over judicial sentences. The paper concludes with a discussion of future directions for comparative sentencing research across international contexts.

Empirical investigations of criminal sentencing represent a vast research enterprise in the United States. As Blumstein et al. (1983: 1) stated, “The sentencing decision is the symbolic keystone of the criminal justice system.” It is no surprise, that for decades now, criminologists and legal scholars have worked to better understand key influences in sentencing, often focusing on the prevalence and causes of unwarranted racial, ethnic and gender disparity in punishment (Spohn, 2000; Zatz, 2000). Much of this work focuses on the ability of recent sentencing innovations, like sentencing guidelines, to reduce and manage extralegal punishment disparities (e.g. Albonetti, 1997; Kramer and Steffensmeier, 1993; Miethe and Moore, 1985; Wooldredge and Griffin, 2005). Collectively, this research suggests that offender characteristics continue to influence punitive decision making outcomes, though these effects are consistently smaller than legal considerations like the severity of the offense (Mitchell, 2005; Spohn and Beichner, 2000).

Despite the substantial contributions of prior research on criminal sentencing, recent scholarship emphasizes a number of key limitations that continue to characterize the majority of sentencing research in the U.S. (Wooldredge, 1998; Thomson and Zingraff, 1981; Mears, 1998). Primary among them are an inadequate attention to the role played by other court actors besides the sentencing judge (Johnson, 2003; Bushway and Piehl, 2007), a failure to go beyond publicly-available sentencing commission data (Wellford, 2007), a lack of detailed statistical controls and interactions that capture the full gamut of relevant influences at sentencing (Wooldredge, 1998), and the common practice of combining data on distinct crime types which typically includes a variety of minor offenses (Auerhahn, 2007). Many of these limitations stem from an over-reliance on state or federal sentencing commission data in the U.S. that often omit important information on criminal case processing (for exceptions see Ostrum et al. 2004; Wooldredge and Griffin, 2005; Paternoster et al, 2003).

A first limitation is that research on criminal punishment does not adequately capture the influence of additional court actors in the sentencing process. The role of the prosecutor, in particular, has been identified as a crucial and under-investigated influence in sentencing. With few exceptions, though, research on prosecutorial influence is limited to specific case processing decisions that occur prior to

sentencing (e.g. Albonetti, 1986; 1987; Spohn and Holleran, 2000; but see Hagan, 1974). Very little is known about the important influence that prosecutorial recommendations exert over final sentencing outcomes. Although these recommendations are common, they are not systematically recorded in publicly available sentencing data. Thus, one element of prosecutorial influence that has largely gone uninvestigated is the concordance between prosecutorial recommendations and judicial sentences.

A second and related limitation of most extant sentencing research is that it relies on data that incompletely describes the sentencing process (Mears, 1998). As Wellford (2007: 399) recently suggested, "...problems derive from the fact that much of contemporary research on sentencing is limited by the data that sentencing commissions collect and make available to researchers." Importantly, offender/victim relationships represent a key element of the punishment process that typically goes uncaptured (Thomson and Zingraff, 1981: 871-872). As Spohn (2000: 469) suggested in her review of race and sentencing, "criminal punishment is contingent on the race of the victim as well as the race of the offender." Paramount among other omitted variables are measures of situational offense characteristics. These factors are likely to be particularly important because they can signify different degrees of culpability and blameworthiness for criminal behavior. Criminal details, such as offense location and modus operandi of the crime, are routinely omitted variables that are likely to affect punishment decisions. Contemporary scholarship is therefore needed that better incorporates situational and environmental influences beyond routine information available in publicly available sentencing commission datasets.

A third limitation is that the vast majority of prior research on criminal sentencing pools data across crime types, typically including a variety of different felony offenses. The advantage of such an approach is that it results in larger and more generalizable samples; the disadvantage is a lack of specificity and a potential for aggregate results to be driven by specific crimes or to mask important inter-offense variations in punishment (McCarthy and Lindquist, 1984). Evidence of this type of "aggregation bias" is not uncommon in the sentencing literature (e.g. Albonetti, 2003). Important qualitative differences are likely to exist between different crimes that are equivalent in offense seriousness. Because

homicides are rare events, their effects are likely to be “washed out” in aggregated analyses that include other more common offense types. Research that has focused more narrowly on specific offense types has typically been restricted to samples of white collar crimes (e.g. Hagan et al. 1980; Schazenbach and Yeager, 2006), drug crimes (e.g. Steffensmeier and Demuth, 2000; Hartley et al. 2007; Albonetti, 1997), or more rarely to specific crime categories like sexual or intimate partner assaults (Kingsnorth et al. 1998; Kingsnorth et al. 2001; Wooldredge and Thistlewaite, 2004). Relatively few extant studies focus on the punishment of “the ‘ultimate’ crime, homicide” despite suggestions that “The paucity of research on sentencing disparity specific to homicide represents a significant gap in the existing literature” (Auerhahn, 2007: 278-279; Franklin and Fearn, 2008).

Yet there are a number of persuasive reasons to focus on punishments of homicide offenders. First, homicide is the most atrocious of crimes. As such its punishment is likely to serve broad moral and symbolic functions in society. In addition to addressing individual concerns over retribution, deterrence and reformation, the treatment of homicide serves as a global barometer of national sentencing policy. Second, there is a long standing tradition in criminological research focusing on the correlates of homicide offending (e.g. Wolfgang, 1958), and recent scholarship has argued persuasively for its analog in criminal justice (Auerhahn, 2007). Currently, though, “little is known about patterned disparities in the sentencing of defendants convicted of ... homicide” (Auerhahn, 2007: 278). Because homicide is such a serious offense, court actor discretion is likely to be more restricted in these cases, providing a stringent test of extralegal disparities in sentencing. Finally, criminal homicide is particularly amenable to cross-national comparative research. Unlike other offense types that are likely to vary in definitional specificity, homicide is precisely measured and uniformly defined making it an ideal crime category for cross-national sentencing research.

In an attempt to address these common limitations of U.S. sentencing research, the current study analyzes unique data on the criminal sentencing of indicted homicide offenders over a twelve year period in The Netherlands (1993-2004). In doing so, it draws on the unusual strengths of the data to advance contemporary research and theorizing on criminal punishment in several ways. First, it clarifies the

understudied role of different court actors in the punishment process by explicitly examining determinants of prosecutorial sentencing recommendations and their subsequent influence on final sentencing dispositions. Second, it investigates a broader array of offender, victim and situational characteristics compared to traditional sentencing studies. Third, it focuses on the sentencing of a specific offense type – criminal homicide. Homicide is the severest of crimes, it is a good barometer of violent crime in a country and it is the most precisely measured and uniformly identifiable offense category for cross-national research (LaFree, 1999; Fox and Zawitz, 2007). Finally, the current work advances extant research and theorizing on criminal sentencing by extending its ken to an unstudied international context: The Netherlands. Such an approach offers unique opportunities to assess the broad generality of courtroom research and theorizing that to date has been largely confined to the U.S. As Ulmer recently suggested, “Perhaps the most glaring gap in the [sentencing] literature is that almost all of the research on sentencing disparity is limited to the contemporary North American – particularly U.S. – context” (Ulmer 2005: 1501).

CRIMINAL JUSTICE IN THE U.S. AND THE NETHERLANDS

Although there are myriad similarities between the Dutch and other European criminal justice systems, there are also a number of important differences with the U.S. (see Hoyng and Schlingmann, 1992; Nijboer, 2006; Tak, 2001). Although The Netherlands has traditionally been known for the comparative leniency of its justice system, recent years have witnessed a steep increase in the use of incarceration (Tak, 2001; Boone and Moerings, 2007). Whereas the U.S. justice system is composed of various different local, state and federal jurisdictions, a single national system governs criminal punishment in The Netherlands, with exclusive jurisdiction over its nineteen district courts. Criminal cases in the U.S. are routinely disposed of through negotiated plea bargains (Johnson, 2003), whereas in The Netherlands this type of plea-bargaining does not exist. As in America, Dutch public prosecutors decide whether or not to take a case to court (i.e. whether to indict and for what charges), but they do not provide charging or sentencing concessions in exchange for guilty pleas. Although Dutch prosecutors can dismiss cases in the public interest, or settle them outside of court through alternative dispositions, once

they summon an offender to court the case is decided by a Dutch magistrate. In the case of homicide, prosecutors rarely dismiss charges, but they do decide whether to charge an offender with murder or manslaughter, where the former is defined as killing with premeditation and intent and the latter requires only intent.

The Dutch prosecutor plays an important role in the sentencing phase of homicide trials, but unlike the American system, this role is very public and explicit. One criticism of research on courtroom decision-making in the U.S. is the general inability to capture the subtle role of other court participants besides the judge in the sentencing process. American prosecutors often engage in subtle negotiations behind closed doors that may not be part of the formal sentencing record. In some courts, for instance, sentencing negotiations occur where prosecutors explicitly bargain over the appropriate sentence with the judge and defense, and often the prosecutor makes a formal sentencing recommendation to the judge (Padgett, 1985; Eisenstein et al. 1988). Unlike the Dutch system, however, this formal sentencing recommendation is seldom captured as part of the dispositive process. Rather, only final sentencing outcomes are recorded and then they are typically analyzed as judicial sentencing decisions. One analytical advantage of the Dutch system is that the prosecutor's sentencing recommendation becomes part of the formal sentencing record.

Criminal sentencing in the U.S. and Netherlands is preceded by similar processes that produce what the Dutch refer to as a *dossier*, or what Americans might call a case file. In The Netherlands, the prosecutor compiles the dossier, which includes all written reports from the pretrial investigation process. This document includes all incriminating and exculpatory evidence as well as written reports from the court and the defense, and Dutch judges rely heavily on the dossier at sentencing. The American process of cross-examining witnesses, however, does not exist in The Netherlands. The judicial tribunal decides what questions to ask of witnesses (although the defense counsel is also permitted to request questions). Overall, though, the role of witnesses at trial is much less important in Dutch criminal procedure because witness testimonies are already contained in a suspect's dossier, which is provided to all parties. Judges, prosecutors and defense counsel are therefore intimately familiar with a case before it comes to trial, so

homicide cases in The Netherlands can often be tried in a few days, and sometimes in a matter of hours, whereas they are likely to take several weeks in the U.S. In all criminal cases the prosecutor recommends a punishment, after which the three judges have a two week period to announce the final sentence, which like most U.S. jurisdictions, is appealable by both the prosecutor and the defense.

Although there is variation across jurisdictions, U.S. judges often run in partisan elections for fixed terms on the bench. In The Netherlands, though, judges are appointed for life terms.¹ Moreover, unlike the U.S., the Dutch justice system does not utilize juries for either the determination of guilt or sentencing, in homicide or any other cases. Rather, less serious cases are adjudicated by a single magistrate and more serious cases – including homicide – are heard by a “full-bench division” consisting of a panel of three judges.² The three judges are required to come to a consensus regarding both the guilt of the offender and the proper sentence. As in the U.S., juvenile offenders can be punished in adult court under specific circumstances, although less than five percent of Dutch homicide cases involve juvenile offenders.

The predominant sentencing options in the U.S. and Netherlands are similar, but there are also some important differences. In both countries, prison sentences are the norm for convicted homicide offenders, and life imprisonment without parole can be applied in both countries. In The Netherlands, though, there is no death penalty and non-life sentences are limited to 20 years for murder and 15 years for manslaughter.³ In the U.S., 37 states and the federal system have the death penalty for homicide and there is no cap on the term of incarceration for convicted offenders. In the Dutch system, the criminal code only contains a sentencing maximum. The minimum term when a prison sentence is imposed is one day. There are no sentencing guidelines and no mandatory minimum sentences in The Netherlands.

¹ Dutch judges are first nominated by a Selection Committee consisting of judge, ministry official, lawyers, academics and business representatives before being formally appointed to the bench by Royal decree.

² In the U.S. some federal districts experimented with “sentencing councils” in the 1960’s that resembled the Dutch system. They were comprised of loosely organized panels of 3 judges who would review the pre-sentence report and make a sentencing recommendation, although the final sentence decision remained with the presiding judge. These councils were enacted to reduce inter-judge disparity in sentencing but their popularity stagnated in the face of time, resource and autonomy concerns (Frankel, 1972: 69-74).

³ In 2006 the maximum length of a prison sentence for murder in The Netherlands was raised from 20 to 30 years, but the current analyses utilize data that predates this legislative change.

judges therefore enjoy broad discretionary power in both the type and severity of criminal punishment. The prosecutorial recommendation is in no way legally binding for the judge, although it is likely to offer a useful anchoring point in judicial sentencing deliberations, and judges are asked to offer reasons for sentences that deviate starkly from it. In many ways, the modern Dutch sentencing system resembles indeterminate sentencing regimes that dominated American sentencing in the 1960s and 1970s before sentencing guidelines and other recent innovations were implemented. Whereas truth-in-sentencing (TIS) laws in the U.S. often require offenders to serve at least 85% of their nominal sentence, Dutch offenders are typically released after serving two-thirds of their term. A 20 year sentence therefore means an offender will serve a little over 13 years in The Netherlands compared to 18 years in American jurisdictions that have enacted TIS laws.

One unique aspect of homicide sentencing in The Netherlands is a treatment option available to Dutch judges for offenders deemed to not be accountable for their actions because of their mental state of mind at the time of the offense. For these offenders a treatment-based sentencing option abbreviated as TBS is available.⁴ TBS is a mandatory treatment order in a special penal institute for the mentally ill. Currently about 1,700 offenders are detained under the TBS-treatment option in The Netherlands (NACI, 2007). If an offender is deemed partially accountable for their crime, the TBS treatment may be imposed in conjunction with a prison term. After serving their time in prison the inmate is then transferred to a mental institution, where they are periodically evaluated to determine if and when they are no longer considered a danger to themselves or to society. The stay in TBS-treatment facilities is indeterminate and some offenders may spend the rest of their lives in these special facilities.

Overall, the justice systems in the U.S. and Netherlands are in many ways similar – both have the same court personnel consisting of judges, prosecutors and defense counsel, both consider homicide the severest of crimes, both countries provide similar due process rights, and both utilize prison as the

⁴ TBS is an abbreviation for the Dutch word “terbeschikkingstelling” which translates to the phrase “at the disposal (of the government)” and identifies cases involving detention under a hospital “entrustment order” in The Netherlands. This option is reserved for offenders deemed partially or completely irresponsible for their actions (for a complete discussion of the TBS sentencing option see the special issue on TBS in *Judicial Explorations* (1993) Volume 19, number 3; Tak 2001).

dominant sentencing option for serious violent offenders. However, a number of key differences also define the two justice systems. Plea bargaining dominates the American system but does not exist in The Netherlands, and juries are a key component of homicide trials in the U.S. but they are not used in The Netherlands. Instead the Dutch system relies on a panel of three judges to determine guilt and sentence. The American system is more adversarial, relying on cross-examination of witnesses, but the core sentencing role of public prosecutors is less formalized, less explicit, and more difficult to study. Together, these similarities and differences offer an important opportunity to further evaluate the common social forces that drive criminal punishments across international borders, and they provide a unique opportunity to assess contemporary court theorizing in a broader international research context.

RESEARCH ON HOMICIDE SENTENCING

Existing research on the sentencing of homicide offenders in the United States overwhelmingly focuses on the application of the death penalty. This is understandable given the severity, finality and controversy surrounding death sentences in the U.S. Much of this literature demonstrates the importance of offender, victim and geographical disparities in the application of the death penalty (Baldus et al. 1983; Baldus et al. 1990; Radelet 1981; Paternoster 1984; Paternoster et al. 2003; Williams et al. 2007). However, death penalty sentences are extremely rare – very few homicide offenders are sentenced to death and only a small percentage of them are eventually executed (e.g. Paternoster et al 2003). Death eligible homicides are the exception rather than the rule, and death sentences are extremely rare. Research on the death penalty in the U.S. also has limited applicability for understanding homicide sentencing in any broader international context because virtually all Western democratic states, including The Netherlands, have abolished capital punishment.

Empirical research examining punishments for a broader, more representative swath of homicide cases is rarer. Some studies have focused on particular types, such as infanticide (Dean, 2004) or intimate partner homicide (Easteal 1993; Barnard et al. 1982), and most research relies on small localized samples, typically from a single city (Auerhahn, 2007; Williams and Rodeheaver, 1991; Lake 2002). Very few

studies investigate more representative and diverse samples of homicide cases, and often the focus is on earlier case processing decisions.

For instance, a series of papers by Ronald Farrell and Lynn Swigert analyzed conviction severity for a sample of 444 homicide cases prosecuted in a Northeastern jurisdiction between 1955 and 1973. Their analyses revealed that sex and occupational prestige of both offenders and victims influenced the seriousness of final conviction charges; moreover, these social characteristics interacted to disadvantage specific offender/victim dyads. Males and lower status offenders who targeted female and high status victims were convicted of the most serious charges (Swigert and Farrell, 1977; Farrell and Swigert, 1978; Farrell and Swigert, 1986). Some evidence was also found for the influence of prior criminal record, bail status and jury trial conviction in these studies, although few significant racial differences emerged.

More recently, Baumer et al. (2000) revisited the role of victim characteristics in homicide, using a broader sample of murder cases drawn from thirty-three U.S. counties. They examined several prosecutorial outcomes and ultimately concluded that “killings of disreputable or stigmatized victims tend to be treated more leniently by the justice system” (Baumer et al. 2000: 304). Their findings are consistent with a broader literature that generally finds defendants receive less severe sanctions for victimizing low status, non-white and male victims (e.g. Myers 1979; LaFree 1980; Spohn and Spears, 1996). Although these studies provide evidence of the importance of offender and victim characteristics in criminal case processing, they do not investigate their effects for the sentencing outcomes of convicted homicide offenders.

Three recent studies specifically examined this issue. The first, by Curry et al (2004), estimated the effects of offender and victim characteristics on incarceration and sentence length decisions for a sample of violent crimes, including homicides, in seven urban Texas counties. They found evidence that the longest sentences were meted out for male offenders who attacked female victims, but found little evidence for the importance of racial dyads in sentencing. Although this study included homicides, though, it did not separate them out from other more common violent crimes including robberies and

aggravated assaults. These results therefore speak more generally to the punishment of violent offenses rather than homicide specifically.

The second and third studies focused explicitly on homicide sentencing. Auerhahn (2007) examined a sample of 524 male homicide offenders convicted of third degree murder and manslaughter in Philadelphia, Pennsylvania, between 1995 and 2000. Integrating data from several primary court sources, she was able to include a broad array of offender, victim and situational offense characteristics. She found that severity of the current charge was the most important predictor of sentence length for homicide offenders, with offender, victim and situational factors exerting small and insignificant direct effects. However, constellations of extralegal factors, including age, race and pretrial detainment, did significantly influence incarceration terms, lending some support for the importance of specific “criminal stereotypes” in homicide sentencing. Despite the significant contribution of this work, it was limited to only male offenders and it had no control for prior criminal offending – one of the strongest, most consistent predictors of sentencing decisions. Most recently, using the same data as Baumer et al. (2000) Franklin and Fearn (2008) examined the role of gender dyads in homicide sentencing. Although they were able to explain less than 15% of the variance in sentence lengths, their findings did indicate that male offenders who target female victims received the longest sentence terms, although racial dyads were of little import. Collectively, then, prior work emphasizes the importance of examining sentences for homicide offenders, but as Auerhahn (2007: 302) persuasively argued, “More specific analyses are needed to sort out what role, if any, homicide circumstance plays in sentencing.” The present study draws on several contemporary theoretical perspectives to investigate the importance of a broad range of offender, victim, and situational factors in the sentencing of convicted homicide offenders in The Netherlands.

THEORETICAL PERSPECTIVES ON HOMICIDE SENTENCING

Prior scholarship on criminal sentencing of all types of crime – including homicide – identifies a number of consistent themes regarding disparity in punishment. First, legal factors, such as the severity of the current offense and the prior criminal history of the offender consistently produce the strongest effects on sentencing outcomes (see Zatz, 2000 for a comprehensive review). Second, young, male, minority

offenders are typically punished with greatest severity, although the effects of individual offender characteristics are often indirect and interactive, operating in concert with other court factors (e.g. Zatz 1987; Hagan 1975; Chiricos and Bales, 1991; Steffensmeier et al. 1998; Spohn and Holleran, 2000). For instance, the relatively few studies that examine victim characteristics in sentencing suggest that the offender-victim dyad exerts important influence over final sentencing outcomes (e.g. Curry et al. 2004). These are important empirical findings. But how can differences in sentencing theoretically be explained?

Although theoretical advances in sentencing research have developed slowly (Hagan, 1989), a number of contemporary theoretical frameworks offer useful guidance for understanding punishment processes in criminal courts. Structural attribution, organizational efficiency, courtroom community and focal concerns perspectives all offer unique insights into how court actors make punishment decisions. Although much of this development has been based on the American court system, in theory, similar principles should apply across research contexts. Examining the international applicability of these different theoretical perspectives offers an important opportunity to more thoroughly assess contemporary theorizing on courts and sentencing.

Theoretical Perspectives

From a structural attribution perspective, prosecutors and judges are organizational actors whose decision making is constrained by limited time and information (Albonetti, 1991). Because court actors seldom have complete information, they are forced to rely on a decision making schema that draws upon past experiences, normative courtroom mores, and societal stereotypes to form attributions of offender risk and criminality. Social attributions represent decision making shortcuts that reduce cognitive uncertainty and help maximize organizational efficiency. Early theoretical work on the attribution of homicide offenders suggested that court actors responded to specific cultural stereotypes of criminality (e.g. “the normal primitive”), which integrated racial and class conceptions into attributions about the predisposition of violence (Swigert and Farrell, 1977). Certain classes of homicide offenders and offenses were more likely to be defined as primitive and amoral, evoking greater outrage and increased sanctions. From this perspective, then, offender and victim characteristics that are associated with attributions of

increased dangerousness or greater likelihood of future criminality should increase punishment for otherwise comparable offenders.

These structural attributions, however, do not take place in a social vacuum. Rather, they occur as part of a group dynamic that involves not only the sentencing judge, but other members of the courtroom workgroup. Courtroom community theory, therefore, argues that criminal case processing decisions are the result of a collective decision making process among the courtroom elite (Eisenstein and Jacob, 1977). The most important members are arguably the judge and public prosecutor, with the defense counsel playing a less central but still important role in the process. According to courtroom community theory, the final sentencing outcome is not just the product of individual judicial discretion, but rather of social interactions among the courtroom elite, influenced by the normative courtroom sentencing environment, organizational considerations, and additional community level influences on punishment. Group dynamics such as the stability and familiarity of the court workgroup, as well as external influences such as the role of the local media, sponsoring agencies, and environmental surroundings, factor into the process of defining appropriate punishments. From this perspective, sentencing decisions not only reflect individual case characteristics but also characteristics of the court workgroup and the normative sentencing environment that develops around it over time. One overarching goal of the courtroom workgroup is to maintain positive working relationships, which may affect individual punishment decisions differently across court communities.

From an organizational efficiency perspective, criminal courts can be understood as organizations specializing in the effective disposition of criminal offenders. Paramount among the organizational goals of the criminal court is effective case management and efficient case disposition (Dixon, 1995). Over time, courtroom workgroups develop localized norms regarding “normal crimes” (Sudnow, 1965), which include appropriate punishments for commonly-encountered constellations of offender, victim and offense characteristics, what are sometimes referred to as “going rates” (Nardulli et al. 1988). From this perspective, efficient case disposition represents the most important goal of the court – a goal that is

shared by the various members of the courtroom workgroup and helps to shape individual punishment outcomes.

Many of these key theoretical arguments can be integrated under the broad rubric of the focal concerns perspective (Steffensmeier et al. 1998). Like structural attribution theory, focal concerns argues that courtroom decision-making is a product of attributional decision-making processes that result from time and information constraints in an organizational setting. Rather than restricting courtroom attributions to assessments of future criminality, though, the focal concerns perspective argues that there are three key domains that judges consider at sentencing: 1) blameworthiness and culpability, 2) dangerousness/community protection, and 3) individual/organizational practical constraints surrounding the sentencing decision. Attributions of blameworthiness typically reflect the offender's role in the crime, their criminal intent, and the overall severity and heinousness of the offense. Attributions of dangerousness incorporate the offender's prior record of offending along with various offense, offender and victim characteristics tied to assessments of future risk. Given organizational decision making constraints, courtroom actor assessments of offender culpability, dangerousness and future criminality are likely to be influenced by stereotypes tied to offender characteristics as well, which may contribute to inequities in sentencing among offenders of different social strata. Finally, practical constraints surrounding individual offenders and courtroom social environments are also theorized to influence punishments. Sentencing decisions are not just the product of individual social attributions, but also of organizational sentencing constraints. The offender's "ability to do time" and the availability of criminal justice resources, for instance, may also influence individual punishments. From a focal concerns perspective, then, sentencing outcomes are the product of individual attribution processes that are shaped by organizational and environmental contexts of the court. Drawing upon the broad insights of these related perspectives, this research enumerates several specific theoretical expectations.

Theoretical Expectations

The unusual level of detail available in the patch homicide data, along with the unique aspects of the patch justice system, allows us to test various theoretical predictions regarding courtroom decision

making. We begin by attempting to replicate a number of common findings on criminal punishment outcomes in the U.S. Perhaps the most robust finding in studies of sentencing disparity is that the severity of the offense is among the strongest and most consistent predictors of sentencing severity (Kleck, 1981; Spohn, 2000; Zatz, 2000). In the case of homicide offenders, premeditation is especially likely to evoke attributions of increased dangerousness. Offenders convicted of murder should therefore be punished more severely than those convicted for manslaughter. Offenders convicted for multiple offenses will also likely be sentenced to longer prison sentences. On the other hand, offenders deemed to be at least partially accountable for their actions because of their mental state of mind at the time of the offense, should be regarded as less culpable for their acts. Because their sentence can include a mandatory treatment order in a special penal institution for the mentally ill, their prison sentences are likely to be shorter. In line with prior research and theorizing, then, we predict the following:

H1: Offenders convicted for murder instead of manslaughter, for multiple crimes, for homicides with multiple victims and for offenses not involving mandatory treatment (TBS) will be punished most severely.

In addition to indicators of the severity of the case, characteristics of the prior criminal record of the offender are the strongest and most consistent predictors of sentencing severity. Offenders with long and violent prior records are likely to be viewed as greater risks for recidivism, as are those offenders with previous stays of incarceration. Prior incarcerations are likely to single a greater community risk to the prosecutor and sentencing judge. We therefore expect that:

H2: Offenders with longer and more violent prior criminal records and those with prior periods of incarceration will be punished most severely.

Much contemporary theory also emphasizes the importance of extralegal disparities in punishment. From focal concerns and attribution perspectives, age, race and gender are likely to be tied to judicial attributions of dangerousness and future risk. Young offenders are likely to be stereotyped as a greater risk for future offending. Similarly, some scholarship suggests minority offenders are typed as “social dynamite” (Spitzer, 1975), or criminally disposed, whereas female offenders may be treated

“chivalrously” because they are viewed as less of a risk for future offending or violence (Anderson, 1976). One might expect age, gender and punishment to be related in similar ways in the U.S. and Netherlands, given similar age-graded and gendered offending patterns (Gartner, 1990; LaFree, 1999; Nieuwebeerta and Leistra, 2007). Furthermore, important differences in nationality do characterize homicide offenders in The Netherlands. Substantial numbers of foreign-born and second generation non-European immigrants are routinely convicted in the Dutch justice system.⁵ Similar negative attribution processes as in the U.S. may therefore accompany the punishment of foreign offenders. Moreover, recent theoretical and empirical work suggests that extralegal disparities in punishment are often cumulative and interactive, resulting from criminal conceptions that simultaneously incorporate several offender characteristics (Auerhahn, 2007; Steffensmeier et al. 1998; Spohn and Holleran, 2000). Typically, this work suggests the greatest disadvantages accrue for young, male, minority offenders. We therefore test the following expectations:

H3: Young, male and non-European foreign offenders will be punished more severely than older, female, and Dutch offenders, with increased punishments for offenders who are young, male and non-European foreigners.

Although less extant research examines them, victim characteristics may also be tied to attributions of dangerousness and culpability. Very young and very old victims may be seen as most vulnerable, producing stronger attributions of blame and resulting in greater punishments. Similarly, offenses committed against female and Dutch victims may be viewed as most egregious, resulting in more severe sanctions for these offenses. Some research on death penalty cases in the United States, for instance, finds that homicides committed against minorities are less likely to result in death sentences (Radelet, 1981; Baldus et al. 1990; Baumer et al. 2000; Paternoster et al. 2003). One possible theoretical

⁵ We focus here on nationality rather than race/ethnicity because The Netherlands is relatively homogenous with regard to race – it lacks the same racial diversity and history of violence and subjugation as the U.S. (Fredrickson, 2002) – but it is characterized by important variation in national origin. In 2006, for instance, only 52% of Dutch inmates were born in The Netherlands, and this estimate includes second generation immigrants. Almost half of Dutch offenders are of foreign nationality, with the largest groups coming from Suriname (8.7%), The Netherlands Antilles (6.9%) and Morocco (6.2%) (see www.dji.nl).

explanation for this pattern of findings is that court actors engage in a process of “victim discounting” where crimes committed against males and minorities are deemed less worthy of punishment (e.g. Kleck, 1981). We therefore expect the following:

H4: Offenses involving young, old, female and Dutch victims will be punished more severely than those involving middle-aged, male and foreign victims.

In addition to the direct effects of offender and victim characteristics, it is also likely that these factors will interact to affect punishment decisions. Male offenders who attack female victims, for instance, may be judged especially dangerous, whereas offenses committed by foreigners against Dutch victims may arouse special feelings of enmity. Studies of the death penalty in the U.S. find some support for these expectations. For example, Radelet and Pierce (1985) show that blacks accused of killing whites are particularly likely to have their initial police reports “upgraded” by the prosecutor, resulting in an increased likelihood of the death penalty relative to other offender/victim dyads. A similar logic may apply for victim gender, with particularly harsh punishments for males who target female victims (Williams et al. 2007; Franklin and Fearn, 2008). We therefore investigate offender/victim interactions based on the following prediction:

H5: Offender/victim race and gender will interact to produce the most severe punishments for males who victimize females and foreigners who victimize Dutch.

A number of additional offense and incident factors are also likely to be important in sentencing. Official data are often criticized for the lack of situational crime factors. As Auerhahn (2007: 282) lamented, “There is very little existing literature regarding the effects of situational characteristics of the homicide event on sentencing outcomes.” Important details regarding the modus operandi, type of weapon, and location of the event may be particularly apt to influence judicial attributions of blameworthiness and culpability. Given the theoretical salience of these oft-omitted case details, we expect their inclusion to significantly increase predictive accuracy in models of judicial sentencing behavior. Specifically, details of the offense that signal increased community risk should increase punishment whereas factors that indicate lower levels of blame should mitigate punishment. Incident

characteristics that are likely to be associated with greater punishment might include the use of more lethal weapons (e.g. firearms), crimes committed in more public rather than private places, and crimes committed outside the private realm of the immediate family. Based on these observations we predict the following:

H6: Offenders who use lethal weapons, commit their crimes in public places, and target non-family members will be punished most severely.

The above predictions derive from theoretical perspectives on the attribution of deservedness in punishment. Punishment outcomes, however, result from a dynamic process involving multiple court actors. Courtroom community perspectives suggest that judicial sentencing decisions are likely to be influenced by interactions with additional court actors such as the prosecutor. An essential goal of the sentencing judge is to maintain good working relationships in order to better facilitate the efficient disposition of criminal cases. As such, the sentencing recommendation of the prosecutor is likely to be weighed heavily by the judge at sentencing. Judges are aware of the tremendous power exercised by prosecutors so although they retain ultimate sentencing discretion, their decision-making is not entirely independent – they are likely to rely substantially on the prosecutor’s recommendation for punishment. However, it is also likely that judicial sentences will at least partially mitigate the recommended punishments of prosecutors. Prosecutors are likely to pursue more severe punishments and may even factor “judicial discounting” into their sentencing recommendations. Although very little empirical work investigates these issues, we expect the following:

H7: Prosecutorial sentencing recommendations will be positively related to but more severe than actual judicial sentences.

DATA AND METHOD

In order to test the preceding theoretical expectations, the current study utilizes unique data on the sentencing of Dutch homicide offenders. These data are based on a larger research project (see Nieuwebeerta and Leistra, 2007) and include all homicide events, both murder and manslaughter, committed over a recent twelve year period (1993-2004). To construct this “Dutch Homicide Database”

many sources of information in The Netherlands were used. Homicide events were initially identified using The Netherlands National News Agency (ANP) and annual summaries from Elsevier magazine. Both sources contained detailed information about the characteristics of the homicides, including suspect and victim information. Once these data were collected, the Dutch police were asked to provide any additional information on the suspects, victims, and circumstances of these homicides. In addition, criminal records for all suspects were collected through the Central Judicial Documentation Department (CJD) of the Dutch Ministry of Justice. This also allowed each case to be tracked through subsequent stages of prosecution and sentencing, using the computer registry of the Public Prosecutor's Office ("OM-ata"). Together, this final dataset provides a unique resource that brings together information about the offender, the victim, the crime and its subsequent prosecution and sentencing for homicide offenders punished over a twelve year period in The Netherlands.

We utilize three slightly different samples of homicide cases. In total, 2,917 homicides occurred from 1993 to 2004. Among them, 346 were never solved by the police, and an additional 130 were solved but the suspect either committed suicide or was prosecuted abroad. An additional 133 homicide cases have unknown dispositions. This reduced the initial sample to 2,308 homicides involving a total of 2,951 suspects (because some cases involved multiple suspects). A total of 313 suspects had their cases waived by the prosecutor, for example because of lack of evidence, reducing the sample to 2,638 suspects who were indicted on charges of homicide. It is for this sample, then, that information on criminal dispositions is available. Of these 2,638 suspects prosecutors recommended variable prison terms of incarceration for 1,651 suspects with data available for all but 38 cases.⁶ Thus 1,613 suspects serve as the final sample size for analyses of prosecutorial sentencing recommendations.

⁶ Other types of prosecutorial recommendations included life imprisonment (n=34), TBS-only treatment (n=63), sentences to youth facilities rather than adult prison (n=29), and sentence recommendations that include dismissals or acquittals (n=110) and unknown sentence types (n=751).

Judicial sentencing data was available for a slightly larger number of homicide cases. Among the initial sample, 1,932 offenders were ultimately sentenced to a variable term of incarceration by the judge,⁷ with 1,911 having a known, reported sentence length. Thus, 1,911 serves as the final sample size for Dutch homicide offenders sentenced to prison. Because some of the cases resulting in prison sentences did not include a prosecutorial recommendation of prison, the sample of cases involving both prosecutor recommendations and judicial sentences to prison is reduced to 1,328. Therefore analyses involving both prosecutorial sentencing recommendations and judicial sentences utilize this final sample size.

Dependent Variables

The primary dependent variable of interest in our analysis is the number of years of imprisonment convicted homicide offenders are sentenced to serve by Dutch magistrates. Because there is no statutory minimum in The Netherlands, imprisonment terms can range from as little as one day up to 15 years for manslaughter and up to 20 years for murder.⁸ For analyses of sentencing recommendations, sentence length is measured as the number of years requested by the prosecutor. We focus on the length of imprisonment because the vast majority of sentences for murder and manslaughter include some term of incarceration. Notably, this is consistent with recent research examining sentencing outcomes for homicide offenders in the United States (Auerhahn, 2007; Franklin and Fearn, 2008).

⁷ 240 additional offenders were sentenced to life imprisonment (n=25), to TBS-only treatment (n=97), to a youth facility rather than adult prison (n=46), to an unknown sentence type (n=32) or they were exempted from further legal proceedings (n=40). Analyses of sentence length often include a correction term to account for potential selection bias (Heckman, 1979; Berk, 1983). We do not include this additional regressor because very few convicted homicide offenders do not receive some term of imprisonment. This results in a low degree of censoring that makes sample selection bias at this stage unlikely and prior work suggests under these circumstances the correction term is likely to make estimates worse rather than better (Stolzenberg and Relles, 1990; 1997; Bushway et al. 2007). However, it is important to recognize that important selection effects may be occurring at prior stages of case processing (arrest, initial charging decisions etc) that cannot be captured in analyses of sentence length alone – this is a common limitation characteristic of the vast majority of research that examines sentencing outcomes.

⁸ The upper limits on incarceration result in sentence lengths that are relatively normally distributed. This means that unlike recent analyses conducted in the U.S. (e.g. Auerhahn, 2007; Ulmer and Johnson, 2004; Franklin and Fearn, 2008), it was not necessary to logarithmically transform the dependent variable. For comparison purposes, we also examined alternative specifications with a logged measure of sentence length, but the results were substantially the same so we report the original metric of years of imprisonment.

Independent Variables

The Dutch Homicide Database contains several categories of relevant predictor variables, including case, offender, victim, and incident characteristics. Relevant case factors include measures of offense severity and case processing characteristics. The severity of the homicide is captured with a dichotomous measure of whether an offender was convicted of murder (requiring premeditation and intent) or manslaughter (requiring only intent), with murder coded 1. Homicide cases involving multiple charges are captured with multiple crimes coded 1 and single offenses coded 0. Additional details of the case include whether there were multiple offenders and whether there were multiple victims. Each is captured with a dummy variable coded 1 for cases involving more than one offender or more than one victim.⁹ The last case factor measures whether or not a sentence includes a term of mandatory treatment (TBS) in addition to a prison term, with TBS coded 1.

The criminal history of the offender is incorporated using several measures collected from the Dutch Ministry of Justice.¹⁰ Prior criminal convictions are captured with a three-category ordinal variable distinguishing offenders with no criminal history from those with minor versus major criminal records. The approximate mean of the distribution is used to distinguish minor from major criminal histories, with 1 to 9 coded as minor and 10 or more coded as major. A similar strategy is used to capture prior records involving violence. Offenders are coded as having no prior record of violence, or having minor or major records of violence. Minor records capture offenders with 1 to 3 violent crimes in their past and major criminal records include offenders with 4 or more prior violent offenses. Prior bouts of incarceration are also captured with a measure of the total years spent in prison prior to the current homicide charge, divided by the number of years at risk for imprisonment beginning at age 12. This therefore represents

⁹ Additional models were also examined including measures of the number of criminal charges and the number of offenders and victims as ordinal variables (e.g. one victim, two victims, three or more victims). The decision was made to collapse these measures in the interest of parsimony after preliminary examination indicated that the substantive results remained unchanged.

¹⁰ Data on criminal history had to be independently collected from the Dutch Ministry of Justice. We succeeded in doing so for 84% of all cases. In order to address the fact that we have missing data on this variable, we include a dummy variable for missing criminal history data in all statistical models. This provides unbiased coefficients for our other variables of interest and is useful to prevent the unnecessary listwise deletion of these cases.

the proportion of one's life previously spent imprisoned. It serves as an additional measure of serious prior offending behavior. The inclusion of various measures of prior record represents a notable advance over recent research on homicide sentencing in the U.S. (Auerhahn, 2007).

In addition to the case and criminal history measures, several offender characteristics are also incorporated. The age of the offender is captured with an ordinal variable consisting of four categories (12-17; 18-30; 31-50; over 50). The use of an ordinal measure allows for nonlinearity in the age effect (Steffensmeier et al. 1995) and simplifies subsequent interactions. Gender is measured with a dummy variable with females coded 0 and males coded 1. Nationality is captured with three dummy variables separating White, European and non-European offenders. To investigate the joint impact of offender constellations three-way interactions are also examined, comprised of age, gender and nationality, with young, male, foreigners (combining European and non-European offenders) the primary theoretical grouping of interest.

A number of victim characteristics are also examined, which mirror several of the offender variables. The age of the victim is included with the same categorical measure as the offender. Gender is dichotomized male and female, and nationality separates foreign victims (European and non-European) from White victims. The few cases involving multiple victims from different age or nationality categories were combined into an "unknown" age or nationality controls in order to prevent these hybrid cases from affecting the estimates for single victim age and nationality groups. Several interaction terms were also created to examine the intersection of offender and victim characteristics. These included two-way interactions for offender/victim gender and offender/victim nationality, with male-on-male and White-on-White homicides serving as the two reference categories.

Situational characteristics of the criminal incident are also examined. These include information on when, where and how the homicide was committed. The locus operandi, or the location of the event, is coded using several categories distinguishing homicides committed in homes from those committed in bars/clubs, outdoors, along a roadside, or in other/unknown locations. Similarly, the modus operandi includes the type of weapon and method, such as a shooting, stabbing, strangling or other form of killing,

whereas the type of homicide identifies specific kinds of murder or manslaughter, including parricide, infanticide, intimate partner homicides, and killings that occur in conjunction with sexual crimes, robberies or other criminal activities. The reference categories for these incident characteristics are intimate partner homicides, occurring in the home and committed with a firearm.

Finally, fixed effects for both year and district court are also included in the model to control for potentially important fluctuations in punishment across time and place. Although the fixed effects approach precludes examination of district level predictors in sentencing, it is useful in accounting for unobserved heterogeneity in sentencing outcomes across courts and over time. These effects are omitted from tables in the interest of space, but complete results are available from the authors.

Taken together, then, the Utah Homicide Database provides a wealth of information across a broad range of theoretically important predictors of criminal sentencing. The following analyses examine the relative import of these various measures for determining the sentencing terms initially recommended by Utah prosecutors and eventually meted out by Utah judges. All analyses utilize Ordinary Least Squares (OLS) regression with robust standard errors.

RESULTS

Descriptive Analyses

Table 1 provides descriptive statistics for our three samples of homicide cases. Comparison across samples suggests they are generally similar in terms of their overall case composition. On average, Utah prosecutors recommend about 8½ to 9 years of incarceration for homicide offenders but Utah judges sentence them between 7 and 7½ years. Prosecutors are also less likely to include TBS treatment as part of an offender's sentence compared to judges. Among all homicide indictments, about 70% were charged with murder rather than manslaughter, but only about 50% were actually sentenced for murder. These numbers provides some preliminary evidence that prosecutorial sentence recommendations are relatively more severe than the actual sentences meted out by Utah judges. Figure 1 further illustrates this point. Prosecutorial sentence recommendations are notably more severe than actual judicial

sentences. Judges sentence more offenders to relatively short prison terms than asked for by prosecutors, and prosecutors request relatively longer prison terms than judges mete out on average.

Table 1 also demonstrates that nearly half of all homicides involved multiple offense charges or multiple suspects, but only 6% involved multiple victims. Not surprisingly, the vast majority of offenders had prior convictions registered with the Dutch Ministry of Justice, but less than half had prior convictions for crimes of violence. More than 90% of offenders were male, most of which were between the ages of 18 and 30. About half of all offenders were of Dutch nationality, with a large proportion (about 40%) also coming from non-European countries. Victim characteristics are in many ways similar. Over 70% of victims were male, but the most prevalent age category was 31-50. About half of all victims were of Dutch origin with a sizeable proportion again coming from non-European countries. Jointly considered, offender sex dyads are remarkably similar to the U.S. (cf. Franklin and Fearn, 2008); about two-thirds of homicides involved a male perpetrator and victim, whereas a quarter involved a male on female homicide. In terms of nationality, the most common dyad involved Dutch offenders and victims, which accounted for 37% of all homicides.

Nearly half of Dutch homicides occurred within private residences and about one-third occurred on or near a roadway. Nearly equal proportions of homicides were the result of a firearm or stabbing incident and about one-quarter of them resulted from an argument outside of the family or criminal sphere. Intimate partner homicides and homicides within the criminal sphere both comprised about 20% of the samples, with homicides occurring in the act of a robbery accounting for just over 10% of all incidents. In the interest of space we do not report year and district level statistics, but there was little variation in incidents across years although some notable contextual variation was present – not surprisingly, the largest districts involved the most homicides, with Amsterdam, Rotterdam, and The Hague accounting for more than 40% of all murder and manslaughters in The Netherlands.

Multivariate Analyses -- Main Effects

Table 2 reports our findings from multivariate statistical models examining the impact of various offense, offender, and incident characteristics on the sentencing of homicide cases in The Netherlands.¹¹ The first model estimates the effects of case, offender, victim and incident characteristics on prosecutorial sentencing recommendations. The second model examines these effects for actual prison sentences imposed by Dutch judges and the third model investigates the predictive power of prosecutorial sentencing recommendations in influencing judicial sentencing decisions. The outcome of interest for all analyses is length of prison sentence in years (recommended or imposed).

Overall, the factors that influenced prosecutorial sentence recommendations and judicial sentences were substantially similar. As expected, several case characteristics had strong effects on homicide sentences. Prosecutors recommend sentences that are 1.6 years longer for murder compared to manslaughter and judicial sentences align closely with these recommendations, imposing sentences that are about 1.7 years longer. Sentencing recommendations that include some term of TBS treatment are more than 2 years shorter, and judges impose sentences that are just under 2 years shorter when combined with TBS. Both prosecutors and judges are more severe with offenders who commit multiple crimes or target multiple victims, but these effects are slightly stronger for recommended compared to actual sentences. Homicides involving multiple suspects were not treated differently from those with a single perpetrator.

(Insert Table 2 about here)

Somewhat surprisingly, prior convictions have little influence on sentencing recommendations or final punishments. Supplemental investigation demonstrated this was not a product of our coding strategy as continuous measures of prior offending also produced null findings. Our measure of prior incarceration, however, proved to be a strong predictor of punishment. The difference in punishment for two offenders, one who was never incarcerated and one who spent all his life incarcerated, would be nearly 5 years for

¹¹ In the interest of space and presentability, Table 2 does not report coefficients for the blocks of dummy variables capturing year and district level fixed effects or for dummy variables for missing/unknown data (e.g. unknown victim origin). Complete results including these additional estimates are available from the authors.

the prosecutor and nearly 6 years for the sentencing judge. We discuss possible explanations for this pattern of criminal history findings further in the discussion of the paper.

Several offender characteristics further influenced the punishment behavior of Dutch prosecutors and judges, providing empirical support for theoretical propositions rooted in focal concerns and social attribution perspectives. Prosecutorial recommendations were more than 2 years shorter for female offenders, which translated into a difference of 1.73 years in actual sentence lengths. In line with prior research (Steffensmeier et al. 1995), we find mild evidence that very young and very old offenders are granted moderate punishment leniency. Relative to 18-30 year old offenders, juveniles were sentenced on average to almost 2 years less incarceration, and offenders over the age of 50 received prosecutorial recommendations that were more than a year shorter in length, although the latter effect fell just short of statistical significance at sentencing. There was also substantial evidence that Dutch offenders were treated with sentencing leniency relative to non-European offenders. Prosecutors recommended sentences that were more than a year longer when the suspect was non-European, and judicial sentences for these foreign offenders were just less than a year longer on average. We did not find any evidence that the unique combination of being a young, male, foreign offender produced an additional compound disadvantage in sentencing, but taken as a whole, these results offer strong support for the overarching expectation that age, gender and nationality significantly affect the punishment of homicide offenders in The Netherlands.

A similar pattern of findings emerged regarding victim characteristics. Homicides involving female victims were presumably judged to be more egregious, resulting in sentencing recommendations that were 1.2 years longer than for male victims. This translated into sentences that were just less than a year longer on average. Killing very young or old victims also increased punishment. Targeting victims under the age of 12 resulted in especially severe dispositions, increasing prosecutorial sentence recommendations by 3.27 years and resulting in judicial sentences that were almost 2 years longer. Victim nationality also influenced sentence lengths. Homicides involving European victims were associated with both recommended and actual sentences that were just over a year shorter than for Dutch

victims, with similar but less pronounced effects for non-European victims. Overall, these results indicate that both prosecutors and judges are substantially influenced by both the characteristics of offenders and victims when punishing homicide cases.

Several details of the homicide incident itself also significantly influenced the punishment behavior of prosecutors and judges. Regarding the locus operandi, homicides committed in private residences were punished with relative leniency compared to some public forums. In particular, homicides committed on or near roads were associated with about half a year of additional incarceration for both prosecutors and judges, whereas homicides committed in other outdoor public venues, such as parks, woods or near water, received nearly a full year of additional incarceration. The modus operandi also influenced punishments, particularly for prosecutorial sentence recommendations. As expected, homicides committed with a firearm received the most severe dispositions, although not all modus operandi contrasts reached statistical significance. Homicides resulting from a knifing or stabbing received sentence recommendations that were about a year shorter than those involving firearms, which translated into sentences that were .78 years shorter. Similarly, homicides committed with physical violence not involving a weapon received recommended sentences that were 2.66 years shorter and sentences that were .86 years shorter. Significant variation characterized both prosecutors and judges in their treatment of different types of homicide as well. Compared to intimate partner homicides, parent and child killings received significantly less punishment and homicides involving robbery or sexual crime resulted in significantly greater punishments. Parricide and infanticide averaged nearly 3 years less incarceration whereas robbery and sex crimes earned recommendations and sentences that were 2.6 years and 1.6 years longer respectively. Clearly, then, the type of homicide and the way in which it was committed represent important courtroom considerations in the punishment process. These results largely align with theoretical expectations that those homicides that are committed in private, without lethal weapons, and involving acquaintances rather than strangers tend to be viewed as less egregious and less deserving of severe punishment.

The last model in Table 2 specifically examines the relationship between prosecutorial sentencing recommendations and the actual sentencing behavior of Dutch judges. For every additional year of incarceration recommended by the prosecutor, the judge sentences the offender to an additional .69 years, or the equivalent of 8.3 additional months. Clearly this finding reflects the fact that prosecutors and judges are influenced by similar sentencing criteria, as evidenced by the first two models in Table 2. When the recommended sentence is included in the model, few of the other sentencing factors remain statistically significant, suggesting that the sentence recommendation partially mediates the other punishment considerations for the judge at sentencing. However, the prosecutorial recommendation does not fully determine the sentencing outcome. As one might expect, judges typically sentence offenders to less punishment than that requested by the prosecutor.

Multivariate Analyses -- Interaction Effects

Several theoretical predictions also involved interactions between offender and victim characteristics. Table 3 reports the results of additional models using the same set of predictors as Table 2, but with interaction terms added to the model. In line with expectations, offender and victim gender interact to produce additional sentencing severity for male offenders who target female victims. For both recommended and actual sentences, this gender combination results in about 1 additional year of incarceration beyond the independent main effects of offender and victim gender. A parallel advantage accrues for females who victimize males – they receive recommended sentences that are 2.41 years shorter resulting in actual sentences that are 1.58 years less than for homicides involving two males. These results support the contention of prior research that offender and victim characteristics interact to produce compound advantages and disadvantages for some offender/victim sex dyads (e.g. Curry et al. 2004; Franklin and Fearn, 2008).

Similar findings obtain for interactions examining offender and victim nationality. Both Europeans and non-Europeans who target Dutch victims are punished more severely than similar Dutch offenders; they receive sentences that are from 1.04 to 2.34 years longer. Somewhat surprisingly, though, European offenders who committed homicide against European victims received more lenient punishment

as well. Once again, prosecutorial recommendations demonstrate strong association with judicial sentences, partially mediating the effects of offender/victim dyads in sentencing. Net of prosecutorial recommendations, though, judges continue to punish male/female and non-European/ White dyads with increased severity. Interestingly, non-European offenders who target European victims also receive harsher punishment net of prosecutorial recommendations. Taken as a whole, these results provide compelling evidence that offender/victim relationships significantly affect sentencing severity, with punishment outcomes that are most lenient for females who kill males and harshest for foreign offenders who kill White victims.

(Insert Table 3 about here)

Explained Variance

The final analysis examines the explanatory power of different sets of predictors to better assess their unique contribution to explained variation in the length of prosecutorial recommendations and judicial sentences. Eight separate regressions were run for both prosecutors and judges, with blocks of explanatory variables entered stepwise. The first model includes only the control measures for year and district court, with subsequent models adding indicators of legal case characteristics, criminal history, offender characteristics, victim characteristics, and offender-victim interactions. The final model then adds the prosecutorial sentencing recommendations as an additional predictor of judicial sentence lengths. These results are summarized in Figure 2.

(Insert Figure 2 about here)

Year and district dummies account for only about 5% of the variation in sentence lengths. This is consistent with recent work on contextual effects in sentencing that finds similar amounts of jurisdictional variation in U.S. punishments (e.g. Ulmer and Johnson, 2004; Kautt, 2002; Johnson, 2006). The legal case characteristics explain an additional 13% of the variance for prosecutorial recommendations and 14% for judicial sentences. Our criminal history measures further increased predictive accuracy, but only by a modest 2 percentage points.

In addition to the legal determinants of punishment, offender and victim characteristics explained an additional 5% to 6% of the variation in sentencing. This hints at the importance of including a broad range of victim and offender characteristics in the study of criminal sentencing, and it also raises the issue of unwarranted disparities in punishment. Importantly, incident characteristics also explained a sizeable portion of the variance in criminal sentencing in The Netherlands; their addition improved explained variance in the model by an additional 5% to 6%. This suggests that analyses of sentencing may be underspecified if they fail to capture important details of the criminal incident, such as its modus and locus operandi. Finally, inclusion of the prosecutor's sentence recommendation clearly dominated the final model, increasing its explained variance by 37%. This provides empirical support for widespread assumptions about the important role prosecutors play in the sentencing process. Although our results indicate that judges do not always follow prosecutorial recommendations, these recommendations are by far the strongest predictors of final sentencing outcomes in Dutch courts.

DISCUSSION

In his summary of contemporary knowledge on criminal sentencing, Ulmer recently concluded that "More cross-national and comparative research would greatly broaden knowledge of sentencing and sentencing disparity...especially in the global society of the 21st Century" (Ulmer 2005: 1501). The current study answers the call for international research on criminal sanctions by examining the sentencing of homicide offenders in The Netherlands over a twelve year period. Drawing on unique strengths of the data, we examine little-researched questions about the influence of prosecutorial sentencing recommendations, victim-offender relationships, and situational offense characteristics. Our results provide qualified support for a variety of hypotheses rooted in contemporary theorizing from criminal courts in America. Table 4 summarizes empirical support for these theoretical predictions.

(Insert Table 4 about here)

Not surprisingly, murder was punished more severely than manslaughter, and homicides involving multiple offenses and multiple victims received longer prison sentences. Sentences involving mandatory treatment (TBS) were associated with shorter prison terms. Overall, this offers strong support

for Hypothesis 1 that legal case characteristics exert substantial influences in sentencing. Notably these legal factors accounted for the greatest share of the variation in sentence lengths, which is consistent with prior work in the U.S. that argues that legal case characteristics are the primary determinants of sentencing in American courts (Kleck, 1981; Zatz, 2000; Spohn, 2000).

Hypothesis 2, however, received only partial support. Our measures of prior convictions and prior violent convictions were not related to either prosecutor or judge sentencing determinations, but our measure of prior incarceration was strongly and significantly related to punishment decisions. This may partially stem from the fact that homicides are serious and unusual crimes and prior criminal histories predominantly consist of low level, nonviolent crimes; however, our measure of prior violence also failed to predict sentencing outcomes. This suggests that prior incarcerations are simply a stronger and more salient consideration for court actors in the sentencing process. Notably, this conclusion is consistent with prior work in the U.S. which concludes prior record measures that incorporate previous incarcerations are better predictors than measures based on prior arrests or prior convictions (Spohn and Welch, 1987). Moreover, this work demonstrates that this is particularly the case for analyses of sentence lengths. The current findings reproduce this result in the context of the Dutch criminal justice system.

Although a spate of studies examines extralegal disparities in the U.S., very limited research has attempted to investigate these effects in other national contexts. Rooted in focal concerns and attribution perspectives, we expected similar age, nationality and gender disparities to characterize the sentencing of Dutch homicide offenders. Our results provide considerable support for this expectation as suggested in Hypothesis 3. Female offenders were sentenced to significantly shorter terms of incarceration, whereas non-European foreigners received significantly longer sentences. Very young and very old offenders also received partial leniency at sentencing. These results suggest that a similar attribution process characterizes sentencing in The Netherlands as in the U.S., with ascriptive status characteristics linked to court actor perceptions of culpability and dangerousness at sentencing. However, unlike in the U.S. (e.g. Steffensmeier et al. 1998; Spohn and Holleran, 2000), we found no evidence that these offender characteristics interacted to produce compound disadvantages for young, male, foreign offenders. In part

this might reflect that fact that prior work has often examined the joint main effects of offender characteristics, rather than their statistical interaction.¹² This is an important distinction for future studies to investigate further across national research contexts.

The results for victim characteristics described in Hypothesis 4 largely mirror the findings for offender characteristics. Homicides involving female and white victims typically receive longer prison sentences and offenses involving very young or old victims are also punished more severely. These results highlight the importance of including victim characteristic in analyses of sentencing outcomes and they corroborate recent research that argues victim characteristics are important predictors in homicide sentencing (Auerhahn, 2007; Franklin and Fearn, 2008; Williams et al. 2007). Moreover, our results indicate that victim characteristics also interact with offender characteristics in important ways. As predicted by Hypothesis 5, criminal sentences were particularly severe for homicides involving male offenders and female victims, and for those involving foreign offenders who victimized white citizens. These findings highlight the importance of examining offender/victim dyads in sentencing, and they highlight the fact that attributions of culpability and dangerousness are gendered and racialized for offenders and victims in combination. This may reflect a dual attribution process involving offender stereotyping and victim discounting that combines to produce pronounced differences in punishment among specific offender/victim combinations. Future research, both quantitative and qualitative, is needed to better uncover the specific theoretical mechanisms underlying the interactive influences of offender and victim characteristics in criminal punishment in society.

Hypothesis 6 suggested that additional characteristics of the criminal incident itself should further influence prosecutorial and judicial sentence determinations. Support was found for this expectation, with crime incident characteristics increasing predictive accuracy for prosecutors and judges by 5% and 6%. Specifically, more severe sentences were expected for crimes committed with a lethal weapon. This

¹² Steffensmeier et al. (1998), for instance, examine the joint impact of age, race and gender by including separate variables for white males 18-29, black males 30-49, white males 30-49, etc. This type of analysis provides a combined coefficient for the joint impact of age, race and gender, rather than isolating the unique interactive effect of these variables above and beyond their main effects as is done in the current analysis.

expectation was partially supported and proved to be more nuanced than expected. More important than the use of a weapon was the type of weapon employed, with crimes involving firearms being singled out for harsher penalties than crimes involving other weapons like knives. As hypothesized, crimes committed in public space also often received longer sentences, although these effects were modest in size. Homicides committed in private households received shorter sentences than those committed in places like parks, roads, or wooded areas. Similarly, non-family homicides generally received the stiffest penalties, with infanticide and parricide receiving the shortest sentences and homicides involving robbery or sexual crimes receiving the longest terms. Although not all contrasts are statistically significant, the overall pattern of findings seems to support the general conclusion that incident characteristics that convey increased attributions of societal threat and dangerousness result in longer prison terms. The unique lethality of firearms may serve as a sentencing cue that an offender is particularly dangerous, whereas public victimizations, especially those committed in the act of another criminal event, invoke greater fear of victimization and greater public outrage. This suggests that these types of offense characteristics may result in increased attributions of culpability and greater responses for community protection which translate into more severe sentences.

Our final prediction in Hypothesis 7 suggested there would be an important association between prosecutorial sentencing recommendations and the determination of final judicial sentences. First it is important to note that our individual analyses of prosecutor and judge outcomes are most noteworthy for their similarities rather than their differences. Prosecutors appear to rely on very similar sentencing criteria in their determination of sentencing recommendations. Second, it is important to recognize that these results do not simply reflect a process of “rubber stamping” the sentencing outcomes of prior plea negotiations. This is because in The Netherlands, all homicide cases are decided at trial – plea bargaining as practiced in the U.S. does not exist. Therefore these results suggest that prosecutors weigh similar substantive concerns as judges and that they have a reasonable idea of what is an appropriate sentence, at least in the case of homicide offenses. When prosecutorial recommendations are included in the model of sentencing outcomes, they clearly dominate the explained variation. While the prosecutor’s

recommended sentence is a powerful predictor of the judge's final sentence, though, the two are not equivalent. In line with our expectations, prosecutorial sentencing recommendations are positively related to but more severe than the actual sentences meted out by Dutch judges at sentencing. This may reflect a stronger desire for severity of punishment among prosecutors or it may also indicate a process of "sentence discounting" in which prosecutors anticipate a judicial sentence reduction from their initial recommendation. Qualitative research on both prosecutors and judges is sorely needed to better sort out the complex and dynamic processes that underlie courtroom workgroup interactions vis-à-vis courtroom decision making.

Overall, the findings from this study are largely consistent with prior research on criminal sentencing in the U.S. and other contexts. As in the U.S., criminal sentencing in The Netherlands is primarily a function of legal case characteristics, but significant amounts of unexplained variation in sentence lengths are also attributable to "extralegal" factors such as offender, victim, and situational crime characteristics. Of course where one draws the line between warranted and unwarranted differences in punishment remains an unresolved issue, but what is of particular interest in the present findings is that they provide some empirical support for the generalizability of prior research on criminal sentencing in the U.S. to a broader international context. Well-established findings, such as leniency toward female offenders, appear to transcend international borders. Perhaps even more surprising is the fact that nationality effects in The Netherlands are consistent with prior research on race effects in the U.S. – foreigners are typically punished more severely than Dutch citizens. This suggests that the stereotypical attribution processes often described as emblematic of American courtrooms may represent a more universal organizational decision making process characteristic of criminal courts generally. Future research is needed that continues to replicate the current results in additional countries for additional crime types in order to better establish the broad generalizability of contemporary theory and research on criminal punishment in society. The current study offers an example for future research endeavors.

CONCLUSION

In his recent Presidential Address to the American Society of Criminology, Gary LaFree (2007: 14) opined: “Stating that you are in favor of more comparative cross-national research in criminology is a bit like saying that you are opposed to premeditated murder – hardly anyone will disagree with you.”

Despite widespread support for cross-national investigations of crime and justice, remarkably little contemporary research investigates criminal sentencing across national borders. This is unfortunate because investigating sentencing outcomes in international context can substantially advance contemporary research and theorizing on courtroom decision making processes and outcomes. The current work moves in this direction by analyzing the criminal punishment of homicide offenders in The Netherlands. It draws on several theoretical perspectives to investigate the broad applicability of contemporary courtroom theorizing, and it addresses a number of common empirical shortcomings that are characteristic of extant research on criminal sentencing. In doing so, it contributes to a long-standing research tradition examining the relative importance of offender, offense, victim and situational crime characteristics in the complex interactional processes that define criminal punishment in society.

Despite its contributions, the current work also has limitations that serve to highlight important directions for future research. Although the current data are in many ways superior to publicly available information on criminal sentences in U.S. contexts (Welford, 2007), they remain limited to the immediate sentencing decision, lacking information on earlier criminal justice processes as well as later case outcomes like appellate court decisions. Ideally, these data would contain even greater detail on offender and victim characteristics, such as histories of drug and alcohol abuse, socioeconomic statuses, and measures of victim provocation in addition to measures of prosecutor, judge and courtroom community characteristics. It is therefore important for researchers to continue to work to compile more detailed data on additional factors relevant at sentencing to more completely describe the various operative influences in the complex punishment process. It is particularly important to improve the level of detail available on sentencing in the U.S., given the impressive legacy of prior research in that context. One avenue for future development is the pursuit of additional crime-specific analyses. Some factors that are relevant at

sentencing are clearly important for certain crimes but not others (e.g. weapon use for violent crime, dollar loss for property crime, drug amounts for drug crime). Aggregate analyses while informative often preclude this level of specificity. Future work should also continue to pay special attention to the role of additional court actors besides the sentencing judge. As the current results indicate, the prosecutor plays an important role in the punishment process in The Netherlands. Relatively few studies explicitly incorporate this influence in the study of criminal sentencing despite general acknowledgement of its importance.

It is also important for future research to better tackle the substantial challenge of conducting international comparative analyses that simultaneously investigate punishment processes across national contexts. These types of comparative analyses can be complex and difficult to accomplish (Frase, 2001), but in the increasingly global world of penal policy, the payoff of such comparative analysis will be well worth the effort. This is particularly the case when one considers the full diversity of international courts. Although Western nations typically share the same core elements of the punishment process, with similar courtroom workgroups, sentencing purposes, and court procedures (Tonry and Frase, 2001), key legal structures often differ in subtle but important ways. For instance, although mandatory minimums and sentencing guidelines are beginning to be adopted by some countries, their use remains limited outside the U.S. Future work is therefore needed that begins to capitalize on both the similarities and differences of courtroom environments across diverse national contexts. Such endeavors are likely to provide unique opportunities to not only assess the broad generality of contemporary theory and research, but also to investigate natural experiments that occur among sentencing policies in different countries. As the world of criminal justice policy increasingly becomes a global enterprise, such comparative research efforts offer immense opportunities to better evaluate current policies and improve future sentencing innovations – for as Michael Tonry (2001:3) has persuasively argued, it is important to never forget that “We can learn things about crime and punishment by looking across national boundaries.”

REFERENCES

- Albonetti, Celesta A. (1986). Criminality, prosecutorial screening, and uncertainty: Toward a theory of discretionary decision making in felony case processings. *Criminology*, 24(4), 623 – 644.
- Albonetti, Celesta A. (1987). Prosecutorial discretion: The Effects of Uncertainty. *Law & Society Review*, 21(2), 291 – 314.
- Albonetti, Celesta A. (1991). An Integration of Theories to Explain Judicial Discretion. *Social Problems*, 38(2), 247 – 266.
- Albonetti, Celesta A. (1997). Sentencing under Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991 – 1992. *Law & Society Review*, 31(4), 601-634.
- Albonetti, Celesta A. (2003). Model misspecification: Why aggregation of offenses in federal sentencing equation is problematic. *Criminology*, 41(4), 1449 – 1456.
- Anderson, Etta A. (1976). The “Chivalrous” Treatment of the Female Offender in the Arms of the Criminal Justice System: A Review of the Literature. *Social Problems*, 23(3), 350 – 357.
- Auerhahn, K. (2007). Just another crime? Examining disparity in homicide sentencing. *Sociological Quarterly*, 48(2), 277-313.
- Baldus, David C., Pulaski, Charles, & Woodworth, George. (1983). Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience. *The Journal of Criminal Law & Criminology*, 74(3), 661 – 753.
- Baldus, David C., Woodworth, George, & Pulaski, Charles A. (1990). *Equal Justice and the Death Penalty*. Lebanon, NH: University Press of New England.
- Barnard, G.W., Vera, H., Vera, M.I., & Newman, G. (1982). Til death do us part: a study of spouse murder. *Bulletin of the American Academy of Psychiatry and the Law*, 10(4), 271 – 280.
- Baumer, Eric P., Messner, Steven F., & Felson, Richard B. (2000). The role of victim characteristics in the disposition of murder cases. *Justice Quarterly*, 17(2), 281 – 307.
- Berk, Richard A. (1983). An Introduction to Sample Selection Bias in Sociological Data. *American Sociological Review*, 48(3), 386 – 398.
- Blumstein, Alfred, Cohen, Jaqueline, Martin, Susan E., & Tonry, Michael H. (1983). *Research on Sentencing: The Search for Reform*, vol. II. Washington, DC: National Academy Press.
- Boone, Miranda and Moerings, Martin (2007) Growing prison rates. In: Boone, Miranda and Moerings, Martin (eds.). *Dutch Prisons*. Boom Juridische uitgevers, The Hague. 51-77.
- Bushway, Shawn D., & Piehl, Anne M. (2007). Social science research and the legal threat to presumptive sentencing guidelines. *Criminology & Public Policy*, 6(3), 461 – 482.

- Bushway, Shawn ., Johnson, Brian ., & Slocum, Lee Ann. (2007). Is the Magic Still There? The Use of Heckman Two-Step Correction for Selection Bias in Criminology. *Journal of Quantitative Criminology*, 23, 151 – 178.
- Chiricos, Theodore G., & Bales, William . (1991). Unemployment and punishment: An empirical assessment. *Criminology*, 29(4), 701 – 724.
- Curry, Theodore R., Lee, Gang, & Rodriquez, S. Fernando. (2004). Does Victim Gender Increase Sentence Severity? Further Explorations of Gender Dynamics and Sentencing Outcomes. *Crime & Delinquency*, 50(3), 319 – 343.
- Dean, P. J. (2004). Child homicide and infanticide in New Zealand. *International Journal of Law and Psychiatry*, 27(4), 339-348.
- Dixon, Jo (1995). The Organizational Context of Criminal Sentencing. *The American Journal of Sociology*, 100(5), 1157 – 1198.
- Easteal Patricia. (1993). Sentencing those who kill their sexual intimates: An Australian study. *International Journal of the Sociology of Law*, 21(3), 189-218.
- Eisenstein, James, & Jacob, H. (1977). *Felony Justice: An Organizational Analysis of Felony Courts*. Boston: Little Brown and Company.
- Eisenstein, James, Flemming, Roy B., & Nardulli, Peter (1988). *The Contours of Justice: Communities and their Courts*. Lanham, MD: University Press of America.
- Farrell, Ronald A., & Swigert, Victoria Lynn. (1978). Legal Disposition of Inter-Group and Intra-Group Homicides. *Sociological Quarterly*, 19(4), 565 – 576.
- Farrell, Ronald A., & Swigert, Victoria Lynn. (1986). Adjudication in Homicide: An Interpretive Analysis of the Effects of Defendant and Victim Social Characteristics. *Journal of Research in Crime and Delinquency*, 23(4), 349 – 369.
- Fox, James Allen and Marianne W. Zawitz. (2007). *Homicide Trends in the United States*. U.S. Department of Justice. Bureau of Justice Statistics.
- Frankel, Marvin E. (1972). *Criminal Sentences: Law Without Order*. New York: Hill and Wang.
- Franklin, Courtney and Noelle Fearn. (2008), Gender, race, and formal court decision-making outcomes: Chivalry/paternalism, conflict theory or gender conflict?, *Journal of Criminal Justice*, 36 (3), 279-290.
- Gartner, R. (1990). The victims of homicide: a temporal and cross-national comparison. *American Sociological Review*, 55(1), 92 – 106.
- Hagan, John. (1974). Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint. *Law & Society Review*, 8(3), 357 – 384.
- Hagan, John. (1989). Why is There So Little Criminal Justice Theory? Neglected Macro- and Micro-Level Links Between Organization and Power. *Journal of Research in Crime and Delinquency*, 26(2), 116 – 135.

- Hagan, John. (1975). The Social and Legal Construction of Criminal Justice: A Study of the Pre-Sentencing Process. *Social Problems*, 22(5), 620 – 637.
- Hagan, J., Nagel, I.H., & Albonetti, Celesta (1980). Differential Sentencing of White-Collar Offenders in Ten Federal District Courts. *American Sociological Review*, 45(5), 802 – 820.
- Hartley, Richard J., Maddan, S. and Spohn, C.C. (2007). Prosecutorial Discretion: An Examination of Substantial Assistance Departures in Federal Crack-Cocaine and Powder-Cocaine Cases. *Justice Quarterly*, 24(3), 382 – 407.
- Hoyng, W., and Schlingmann, F. (1992), "The Netherlands", in: Sheridan, M. and Cameron, J. (eds.), *EC Legal Systems: An Introductory Guide*. London: Butterworth and Co., Ltd., pp. 1-42.
- Johnson, Brian J. (2003). Racial and ethnic disparities in sentencing departures across modes of conviction. *Criminology*, 41(2), 449 – 490.
- Johnson, Brian J. (2006). The multilevel context of criminal sentencing: Integrating judge- and county-level influences. *Criminology*, 44(2), 259 – 298.
- Kautt, Paula M. (2002). Location, location, location: Interdistrict and intercircuit variation in sentencing outcomes for federal drug-trafficking offenses. *Justice Quarterly*, 19(4), 633 – 671.
- Kingsnorth, R., Lopez, J., Wentworth, J., & Cummings, J. (1998). Adult sexual assault: The role of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice*, 26(5), 359 – 371.
- Kingsnorth, R., MacIntosh, R., Berdahl, T., Blades, C., & Rossi, S. (2001). Domestic Violence: The Role of Interracial/Ethnic Gaps in Criminal Court Processing. *Journal of Contemporary Criminal Justice*, 17(2), 123 – 141.
- Kleck, G. (1981). Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty. *American Sociological Review*, 46(6), 783 – 805.
- Kramer, J. and J. Steffensmeier. (1993). Race and Imprisonment Decisions. *Sociological Quarterly* 34 (2): 357-376
- LaFree, Gary J. (1980). The effect of sexual stratification by race on official reactions to rape. *American Sociological Review*, 45(5), 842 – 854.
- LaFree, Gary.D. (1999). Homicide: Cross-National Perspectives. In *Studying and Preventing Homicide: Issues and Challenges*, ed. M. Wayne Smith and Margaret A. Zahn. Thousand Oaks, CA: Sage, 115 – 139.
- LaFree, G. (2007). Expanding criminology's domain: The American Society of Criminology 2006 Presidential Address. *Criminology*, 45(1), 1-31.
- Lake, S. T. (2002). Homicide: Gender disparity in sentencing in the Richmond felony court (dissertation, University of Virginia, UMI 3062128).

- McCarthy, Belinda R., & Lindquist, Charles A. (1984). Factors influencing sentences for violent offenses: An exploratory comparison of crime-specific and undifferentiated research strategies. *Criminal Justice Review*, 9(2), 37 – 46.
- Mears, Daniel P. (1998). The Sociology of Sentencing Outcomes: Reconceptualization of Decisionmaking Processes and Outcomes. *Law & Society Review*, 32(3), 667 – 724.
- Miethe, Terance J., & Moore, Charles A. (1985). Socioeconomic disparities under determinate sentencing systems: A comparison of preguideline and postguideline practices in Minnesota. *Criminology*, 23(2), 337 – 363.
- Mitchell, Ojmarrh (2005). A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies. *Journal of Quantitative Criminology*, 21(4), 439 – 466.
- Myers, Martha A. (1979). Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants. *Sociological Quarterly*, 20(4), 529 – 540.
- NACI (2007). Annual report of the National Agency of Correctional Institutions (2007), The Hague: Koninklijke de Swart. Available at <http://www.dji.nl/hipe/uploads/070802115736/Jaarbericht%202006%20ENGELS.pdf>
- Nardulli, Peter F., Eisenstein, James, & Flemming, Roy B. (1988). *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Champaign, IL: University of Illinois Press.
- Nieuwbeerta, P., & Leistra G. (2007). *Opdelijk geweld. Moord en doodslag in Nederland*. Amsterdam: Uitgeverij Balans
- Nijboer, J.F. (2006), “The Criminal Justice System”, in: Chorus, J. M. J., Gerver, P. H. M., and Hondius, E. H. (eds.) *Introduction to Dutch Law*. Alphen aan den Rijn: Kluwer Law International, pp. 399-444.
- Ostrom, Charles, W., Brian J. Ostrom and Matthew Kleiman. (2004). *Judges and Discrimination: Assessing the Theory and Practice of Criminal Sentencing*. National Institute of Justice. Final Report (Grant 98-CE-VX-0008).
- Padgett, John F. (1985). The Emergent Organization of Plea Bargaining. *The American Journal of Sociology*, 90(4), 753 – 800.
- Paternoster, Raymond (1984). Prosecutorial discretion in requesting the death penalty: A case of victim-based racial discrimination. *The American Journal of Sociology*, 18(2), 437 – 478.
- Paternoster, Raymond, Robert Brame et al. (2003). *An Empirical Analysis of Maryland’s Death Sentencing System with Respect to the Influence of Race and Legal Jurisdiction*. Final Report to the Maryland Legislature.
- Radelet, Michael L., & Pierce, Glenn L. (1985). Race and Prosecutorial Discretion in Homicide Cases. *Law & Society Review*, 19(4), 687 – 622.
- Radelet, Michael L. (1981). Racial Characteristics and the Imposition of the Death Penalty. *American Sociological Review*, 46(6), 918 – 927.

- Schanzenbach, Max, & Yaeger, Michael L. (2006). Prison time, fines, and federal white-collar criminals: The anatomy of a racial disparity. *Journal of Criminal Law & Criminology*, 96(2), 757 – 793.
- Spitzer, Steven (1975). Toward a Marxian theory of deviance. *Social Problems*, 22(5), 638 – 651.
- Spohn, Cassia C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. *Policies, Processes, and Decisions of the Criminal Justice System*, 3, 427 – 501.
- Spohn, Cassia and Susan Welch. (1987). The Effect of Prior Record in Sentencing Research: An Examination of the Assumption that any Measure is Adequate. *Justice Quarterly* 4(2): 287-302.
- Spohn, Cassia C., & Beichner, Dawn (2000). Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment. *Criminal Justice Policy Review*, 11(2), 149 – 184.
- Spohn, Cassia C. & Holleran, David (2000). The imprisonment penalty paid by young, unemployed black and Hispanic male offenders. *Criminology*, 38(1), 281 – 306.
- Spohn, Cassia C., & Spears, Jeffrey (1996). The Effect of Offender and Victim Characteristics on Sexual Assault Case Processing Decisions. *Justice Quarterly*, 13(4), 649 – 680.
- Steffensmeier, Jarrell, & Demuth, Stephen (2000). Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly? *American Sociological Review*, 65(5), 705 – 729.
- Steffensmeier, Jarrell, Kramer, John, & Ulmer, Jeffery. (1995). Age Differences in Sentencing. *Justice Quarterly*, 12(3), 583 – 602.
- Steffensmeier, Jarrell., Ulmer, Jeffrey T., & Kramer, John (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, 36(4), 763 – 798.
- Stolzenberg, R. M. & Relles, J. A. (1990). Theory Testing in A World of Constrained Research Design - the Significance of Heckman Censored Sampling Bias Correction for Nonexperimental Research. *Sociological Methods & Research*, 18(4), 395-415.
- Stolzenberg, R. M. & Relles, J. A. (1997). Tools for intuition about sample selection bias and its correction. *American Sociological Review*, 62(3), 494-507.
- Sudnow, David (1965). Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office. *Social Problems*, 12(3), 255 – 276.
- Swigert, V.L., & Farrell, R.A. (1977). Normal Homicides and the Law. *American Sociological Review*, 42(1), 16 – 32.
- Thomson, Randall J., & Zingraff, Matthew T. (1981). Detecting Sentencing Disparity: Some Problems and Evidence. *The American Journal of Sociology*, 86(4), 869 – 880.

Tonry, Michael. (2001). Punishment Policies and Patterns in Western Countries. In Tonry and Frase (eds). Sentencing and Sanctions in Western Countries. New York: Oxford University Press.

Tonry, Michael, & Frase, Richard S. (2001). Sentencing and Sanctions in Western Countries. New York: Oxford University Press.

Ulmer, Jeffrey T. (2005). Sentences and Sentencing: Disparities. In Encyclopedia of Criminology, (Volume 3). Florence, KY: Routledge.

Ulmer, Jeffrey T., & Johnson, Brian . (2004). Sentencing in context: A multilevel approach. Criminology, 42(1), 137 – 178.

Wellford, Charles F. (2007). Sentencing research for sentencing reform. Criminology & Public Policy, 6(3), 399 – 402.

Williams, J.L., & Rodeheaver, .G. (1991). Processing of Criminal Homicide Cases in a Large Southern City. Sociology and Social Research, 75(2), 80 – 88.

Williams, Marian R., Emuth, Stephen, & Holcomb, Jefferson E. (2007). Understanding the influence of victim gender in death penalty cases: The importance of victim race, sex-related victimization, and jury decision making. Criminology, 45(4), 865 – 891.

Wolfgang, Marvin E. (1958). Patterns in Criminal Homicide. Montclair, NJ: Patterson Smith.

Wooldredge, John, & Griffin, Timothy (2005). Displaced discretion under Ohio sentencing guidelines. Journal of Criminal Justice, 33(4), 301 – 316.

Wooldredge, John, & Thistlethwaite, Amy (2004). Bilevel disparities in court dispositions for intimate assault. Criminology, 42(2). 417 – 456.

Wooldredge, John (1998). Analytical Rigor in Studies of Disparities in Criminal case Processing. Journal of Quantitative Criminology, 14(2), 155 – 179

Zatz, Marjorie. (1987). The Changing Forms of Racial/Ethnic Biases in Sentencing. Journal of Research in Crime and Delinquency, 24(1), 69 – 92.

Zatz, Marjorie (2000). The convergence of race, ethnicity, gender and class on court decisionmaking: looking toward the 21st century. Policies, Processes, and Decisions of the Criminal Justice System 3, 503–552.

Figure 1: Distribution of Prosecutorial Recommendations and Judicial Sentences

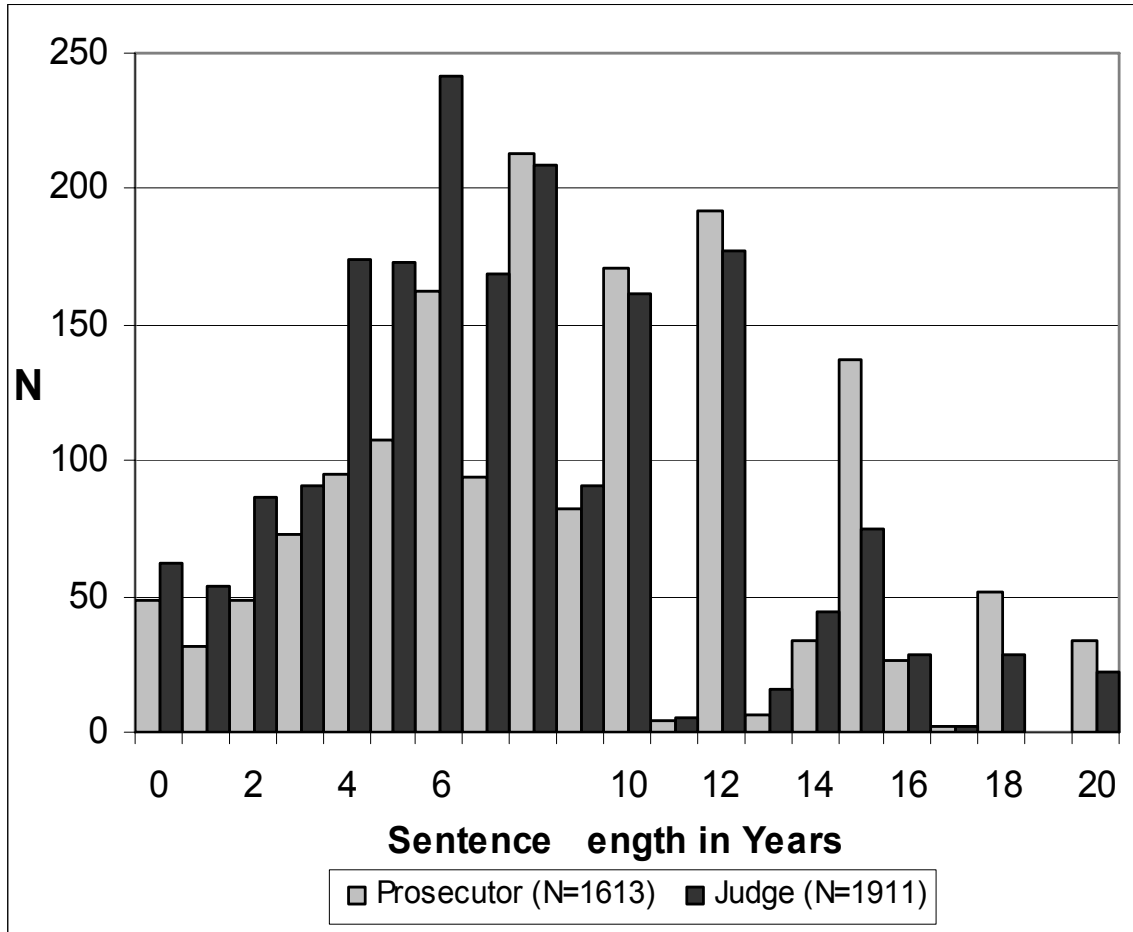


Figure 2: Explained Variance Across Sentencing Models in Dutch Homicide Data

		Prosecutor		Judge	
		R ²	+ R ²	R ²	+ R ²
Model A	Base (istrict and Year)	0.05	-	0.05	-
Model B	Model A + case characteristics	0.18	0.13	0.19	0.14
Model C	Model B + criminal history	0.20	0.02	0.21	0.02
Model D	Model C + offenders characteristics	0.24	0.04	0.24	0.03
Model E	Model D + victim characteristics	0.26	0.02	0.26	0.02
Model F	Model E + incident characteristics	0.32	0.06	0.31	0.05
Model G	Model F + offender/victim interactions	0.33	0.01	0.32	0.01
Model H	Model G + prosecutors recommendation	-	-	0.69	0.37

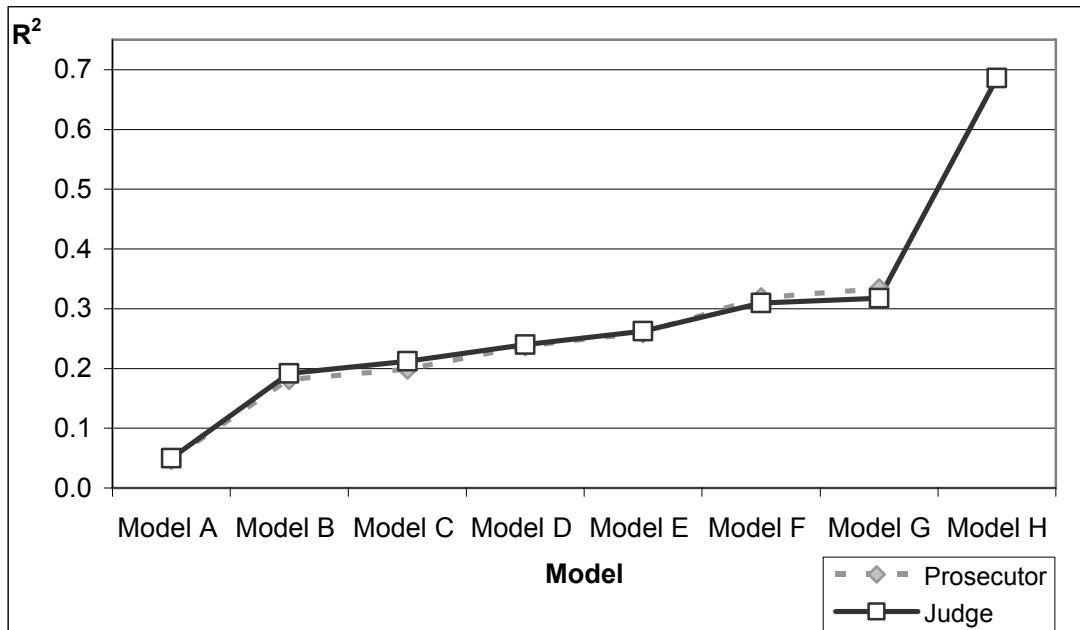


Table 1: Descriptive Statistics for Dutch Homicide Data, 1993-2004

	Prosecutor Sample (n=1,613)		Judge Sample (n=1,911)		Judge/Pros Sample (n=1,328)	
	Mean	S. .	Mean	S. .	Mean	S. .
Dependent Variables						
Prosecutorial Recommendation	8.76	4.57	9.17	4.41	9.17	4.41
Judicial Sentence	6.99	4.15	7.56	4.19	7.42	4.06
Independent Variables						
<i>Case Characteristics</i>						
Multiple Crimes Charged	.47	.50	.49	.50	.48	.50
Indicted for Murder	.69	.46	.74	.44	.73	.44
TBS Recommendation	.14	.35	.11	.31	.16	.36
Sentenced for Murder	.46	.50	.55	.50	.54	.50
TBS Sentence	.17	.38	.21	.40	.20	.40
Multiple Suspects	.47	.50	.42	.49	.44	.50
Multiple Victims	.06	.24	.06	.23	.06	.23
<i>Offender's Criminal History</i>						
No Criminal History	.23	.42	.22	.42	.23	.42
Minor Criminal History	.36	.48	.36	.48	.35	.48
Major Criminal History	.27	.45	.27	.45	.28	.45
No Violent Criminal History	.56	.50	.55	.50	.56	.50
Minor Violent Criminal History	.21	.41	.23	.42	.22	.42
Major Violent Criminal History	.08	.28	.08	.28	.08	.28
Criminal History Missing/Unknown	.14	.35	.14	.35	.14	.34
Mean Years in Prison	.03	.07	.03	.07	.03	.07
<i>Offender Characteristics</i>						
Male Offender	.91	.29	.92	.27	.92	.27
Female Offender	.09	.29	.08	.27	.08	.27
Offender Age 12-17	.02	.15	.02	.12	.01	.12
Offender Age 18-30	.55	.50	.54	.50	.55	.50
Offender Age 31-50	.38	.48	.39	.49	.38	.49
Offender Age >50	.05	.22	.05	.21	.05	.23
White Offender	.52	.50	.52	.50	.51	.50
European Offender	.07	.25	.06	.25	.07	.25
Non-european Offender	.41	.49	.42	.49	.42	.49
Male, Young and Foreign Offender	.27	.44	.27	.44	.27	.44
<i>Victim Characteristics</i>						
Male Victim	.73	.45	.71	.45	.72	.45
Female Victim	.25	.43	.26	.44	.26	.44
Unknown/Multiple Victim Gender	.03	.16	.03	.16	.03	.16
Victim Age 0-11	.03	.16	.02	.15	.02	.14
Victim Age 12-17	.02	.14	.02	.14	.02	.13
Victim Age 17-30	.35	.48	.34	.47	.35	.48
Victim Age 31-50	.42	.49	.43	.50	.43	.50
Victim Age >50	.15	.36	.14	.35	.14	.35
Unknown/Multiple Victim Age	.04	.20	.04	.20	.04	.20
White Victim	.47	.50	.47	.50	.47	.50
European Victim	.06	.24	.06	.24	.06	.24
Non-European Victim	.27	.45	.26	.44	.28	.45
Unknown/Multiple Victim Nationality	.19	.39	.21	.40	.19	.39

Table 1: Descriptive Statistics for Dutch Homicide Data, 1993-2004 (Continued)

	Prosecutor Sample (n=1,613)		Judge Sample (n=1,911)		Judge/Pros Sample (n=1,328)	
	Mean	S. .	Mean	S. .	Mean	S. .
<i>Offender/Victim Characteristics</i>						
Male, Male	.66	.47	.65	.48	.66	.47
Male, Female	.22	.42	.24	.43	.24	.43
Male, Both	.02	.15	.02	.14	.02	.15
Female, Male	.07	.25	.06	.23	.06	.24
Female, Female	.02	.15	.02	.14	.02	.13
Female, Both	.00	.07	.01	.07	.01	.07
utch, utch	.35	.48	.35	.48	.35	.48
utch, European	.02	.15	.03	.16	.02	.15
utch, Non-European	.06	.24	.06	.23	.06	.24
utch, Unknown/Multiple	.09	.28	.09	.28	.08	.27
European, utch	.03	.16	.02	.15	.02	.16
European, European	.02	.16	.02	.15	.03	.16
European, Non-European	.01	.10	.01	.09	.01	.09
European, Unknown/Multiple	.01	.09	.01	.10	.01	.09
Non-European, utch	.10	.30	.10	.30	.10	.30
Non-European, European	.01	.12	.01	.11	.01	.12
Non-European, Non-European	.20	.40	.20	.40	.21	.41
Non-European, Unknown/Multiple	.10	.30	.11	.31	.10	.30
<i>Incident Characteristics</i>						
<i>Location</i>						
House	.48	.50	.48	.50	.48	.50
Road	.34	.47	.32	.47	.34	.47
Park, Woods, or Water	.06	.24	.06	.24	.06	.24
Bars, Clubs, Diners Etc.	.09	.29	.09	.29	.09	.28
Other Location	.04	.19	.04	.20	.03	.18
<i>Modus Operandi</i>						
Firearm	.36	.48	.38	.48	.38	.49
Stabbing	.32	.47	.35	.48	.34	.47
Blunt Object	.09	.29	.08	.27	.09	.28
Physical Violence	.07	.26	.05	.22	.05	.21
Strangulation/Suffocation	.10	.30	.10	.30	.10	.30
Other Method (Poison, Drowning, Etc)	.06	.23	.04	.21	.05	.21
<i>Type of Homicide</i>						
Infanticide	.02	.14	.02	.14	.02	.12
Paricide	.01	.11	.02	.13	.01	.12
Intimate Homicide	.19	.40	.22	.41	.21	.41
Family Homicide	.07	.25	.06	.24	.06	.24
Arguments (Non-Family)	.24	.43	.25	.43	.23	.42
Robbery	.13	.33	.11	.31	.12	.32
Sexual Crimes	.02	.15	.02	.15	.02	.15
Criminal Sphere	.19	.39	.17	.38	.19	.39
Other/Unknown Homicide	.13	.34	.12	.33	.13	.34

Table 2: OLS Regressions for Dutch Prosecutorial Recommendations and Judicial Sentence Lengths

	Prosecutor Model (N=1,613)		Judge Model (N=1,911)		Judge/Pros. Model (N=1,328)	
	B	S.E.	B	S.E.	B	S.E.
Constant	6.73 ***	.84	6.21 ***	.69	.09	.57
<i>Case Characteristics</i>						
Prosecutorial Recommendation	--	--	--	--	.69 ***	.02
Multiple Offenses	.87 ***	.22	.74 ***	.19	-.12	.15
Murder	1.62 ***	.23	1.74 ***	.18	.60 ***	.15
TBS Treatment	-2.27 ***	.31	-1.96 ***	.23	-.42 *	.19
Multiple Suspects	.14	.23	.07	.20	-.12	.16
Multiple Victims	3.26 ***	.79	2.88 ***	.66	.08	.58
<i>Offender's Criminal History</i>						
Minor Criminal History	-.54	.29	.10	.24	.25	.19
Major Criminal History	-.06	.38	-.15	.32	.25	.26
Minor Violent Criminal History	-.16	.29	.12	.24	-.18	.19
Major Violent Criminal History	-.05	.45	.45	.38	.01	.31
Mean Years in Prison	4.90 **	1.73	5.86 ***	1.48	1.75	1.14
<i>Offender Characteristics</i>						
Female Offender	-2.19 ***	.38	-1.73 ***	.34	-.39	.27
Offender Age 12-17	-1.04	.67	-1.89 **	.69	-1.05	.57
Offender Age 31-50	-.19	.28	.06	.24	.09	.19
Offender Age >50	-1.39 **	.50	-.80	.44	-.46	.34
European Offender	.52	.48	.74	.40	.27	.32
Non-European Offender	1.47 ***	.32	.92 ***	.27	.32	.22
Young Male Foreigner	-.68	.38	-.06	.32	.15	.26
<i>Victim Characteristics</i>						
Female Victim	1.20 ***	.30	.96 ***	.25	.51 *	.20
Victim Age < 12	3.27 ***	.99	1.93 *	.83	-.27	.65
Victim Age 12-17	-.20	.74	.25	.60	-.62	.54
Victim Age 31-50	.66 **	.24	.43 *	.20	.30	.16
Victim Age > 50	.71 *	.35	.63 *	.30	.18	.24
European Victim	-1.09 *	.45	-1.12 **	.38	-.04	.31
Non-European Victim	-.47	.29	-.78 **	.24	-.07	.19
<i>Incident Characteristics</i>						
Road	.53 *	.24	.47 *	.21	.32	.16
Park, Woods or Water	.88	.46	.94 *	.38	.23	.31
Bars, Clubs, inners etc.	.31	.39	.21	.33	.28	.26
Other Location	.14	.55	.54	.43	.07	.39
Stabbing	-1.03 ***	.27	-.78 ***	.22	-.25	.18
Blunt Object	-.97 *	.39	-.64	.34	-.24	.27
Physical violence	-2.66 ***	.45	-.86 *	.43	.16	.36
Strangulation/Suffocation	-.51	.41	-.44	.34	-.07	.27
Other or unknown modus	-.29	.49	-.47	.45	-.64	.36
Child killing by parent	-2.57 *	1.08	-2.75 **	.90	-.09	.72
Parent killing by child	-1.41	.93	-2.81 ***	.68	-1.18	.60
Other Family Sphere	.07	.47	-.73	.40	-.04	.32
Argument	-.04	.37	-.36	.29	-.09	.24
Criminal Sphere	.76	.41	.61	.34	-.11	.27
Robbery	2.60 ***	.44	1.63 ***	.38	.38	.30
Sexual Crime	2.61 ***	.70	1.67 **	.59	.27	.48
R ²	.320		.309		.682	

Table 3: Offender/Victim Interactions for Dutch Prosecutor Recommendations and Judicial Sentence Lengths

	Prosecutor Model (N=1,613)		Judge Model (N=1,911)		Judge/Pros. Model (N=1,328)	
	B	S.E.	B	S.E.	B	S.E.
Gender (Offender, Victim)						
Male, Male (reference)	-	-	-	-	-	-
Male, Female	1.06 **	.32	1.04 ***	.27	.59 **	.22
Female, Male	-2.41 ***	.44	-1.58 ***	.39	-.20	.31
Female, Female	-.45	.73	-.73	.67	-.05	.55
Nationality (Offender, Victim)						
utch, utch (reference)	-	-	-	-	-	-
utch, European	.62	.67	-.29	.53	-.14	.45
utch, Non-European	.51	.44	-.36	.38	.20	.30
European, utch	2.56 ***	.66	2.34 ***	.57	.70	.45
European, European	-1.60 *	.69	-1.51 *	.61	-.14	.47
European, Non-European	-.25	1.03	-.61	.97	.03	.77
Non-European, utch	1.77 ***	.42	1.04 **	.35	.57 *	.28
Non-European, European	.06	.84	.55	.79	1.40 *	.60
Non-European, Non-European	.89 *	.37	.14	.31	.24	.25
R ²	.334		.317		.686	

Note: Table 3 reports the interaction terms from models run with the same variables reported in Table 2. Cross-product terms for interactions involving mixed gender victims and unknown nationalities not reported.

Table 4: Support for Hypotheses Regarding Punishment of Dutch Homicide Offenders

Hypothesis	Prediction	Support
1	Homicides involving murder, multiple crimes, multiple victims, and no TBS will be punished more severely.	+
2	Offenders with more serious prior records will be punished more severely.	+ / -
3	Young, male and foreign offenders will be punished more severely. These characteristics will interact to increase severity.	+ / -
4	Offenses involving young, old, female and Dutch victims will be punished more severely.	+
5	Males who victimize females and foreigners who victimize Dutch will be punished more severely.	+
6	Homicides involving lethal weapons, public places, and non-family members will be punished more severely.	+ / -
7	Prosecutorial recommendations will be positively related to but more severe than judicial sentences.	+

Key: + Hypothesis Supported - Hypothesis Not Supported +/- Hypothesis Partially Supported