Disparities in Perspectives of Justice Across Adversarial Lines

An Honors thesis for the Department of Sociology

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Introduction

One Friday afternoon, I shadowed a prosecutor, Leslie, as she met with her boss, Michael, about a plea offer she had received. A defense attorney had just called to tell her that his client was willing to admit to performing a contract killing in exchange for a ten-year prison sentence. Leslie told Michael that she was prepared to give a firm counter offer of fifteen years, however, Michael was not comfortable with any offers under seventeen years. When I asked Michael the difference between fifteen and seventeen years, he struggled to articulate a reason. After a pause, he said that a sentence closer to twenty years was better for "peace of mind and maybe public safety." As he sent Leslie away to call the defense attorney and offer fifteen to seventeen years in state prison, I was left wondering how and even whether giving this man a slightly longer imprisonment would serve the community and our physical safety. There was no further calculus, no discussion of proportionality, nor any mention of evidence-based practices. To me, an intern of exactly two days, it seemed that irrational fears trumped evidence-based, or restorative practices. From this day forward, I sought to further explore perceptions of justice in the context of homicide and incarceration.

After observing this brief encounter, I started to wonder if all criminal sentencing determinations were made in such a quick and subjective manner, with no consideration of the facts of the case, rehabilitation, or proportionality. While a few years may not mean much for those of us on the outside, it amounts to further loss of liberty and increased challenges upon re-entry. As our prison population remains the world's highest, it is imperative to investigate the causes of the 500%

increase of prisoners over the past forty years. During this forty-year span, we have experienced a transition from judicial discretion to mandatory minimum sentences and sentencing enhancements for drug-related and violent crimes. Therefore, it is likely the application of these charges and their corresponding sentences have contributed to mass incarceration. For homicide cases especially, which often result in eternal loss of liberty, the stakes are high for all involved parties. The taking of another person's life is considered one of the most heinous crimes, so there is often a strong desire to punish the offenders and restore the social order. Thus, I set out to explore the punishment in the context of homicides in order to observe how punishments are negotiated in practice.

Although national homicide rates have been decreasing steadily, the homicide rate and frequency in the New England metropolitan city under study, the pseudonymous Hawthorne County, are on the rise. Homicide remains the leading cause of death for black males aged 18-40.[1] In 2017, the number of teenage homicide victims doubled to 57 deaths, and thus far the city has averaged about one homicide per week in 2018.[2] Recently, the Hawthorne County police department has hovered around a 10% clearance rate for homicides which is relatively low compared to other cities.[3] The detectives themselves claim that they have identified lead suspects for the vast majority of cases and must wait until

[1] Centers for Disease Control and Prevention. 2015. "National Vital Statistics System: Mortality Data."
[2] [Author's name omitted for confidentiality purposes]. 2017. "Number of "Hawthorne" teen homicides doubles." The "Hawthorne Report."
[3] "Hawthorne" Police Department. 2016. "Homicide Year End Report."

more evidence or witnesses come forward before making arrests.[4] The cases that are solved, however, often lead to life sentences when brought to trial.

Despite the severity of these murder sentences, which are thought to serve as general deterrents, the homicides have continued and even increased. Although rational people know that life imprisonment is the standard method of punishment for murder, offenders proceed regardless. Consequently, it appears that our courts' system of punishment is failing if its purpose is to discipline offenders in order to restore the social order. After reviewing the limited information posted by the Hawthorne County Police Department's Homicide Unit, it appears that homicide defendants who kill disreputable members of the community are more likely to receive plea deals, either due to their criminal status or witnesses' reluctance to speak against them. Regardless, this pattern begs the question: do extralegal factors inform criminal charges and the severity of sentences? Relevant extralegal factors seemed to include the defendant's and victim's age, race, gender, social privilege, vulnerability, and relationship. These extralegal factors evoke a Marxist interpretation of punishment by alluding that the legal system is designed to maintain our class hierarchy by severely punishing disadvantaged offenders and those who disrupt the social order by killing elites. The Marxist framework also seems to explain why disenfranchised people on the margins of society are disproportionately likely to receive prison sentences for their crimes. If our justice system, indeed, functions in this way, it is inherently unjust.

Literature Review

[4] Observation dated July 18, 2017.

Prosecutorial Discretion and Power

Although many socio-legal scholars have investigated prosecutorial discretion and power for the past several decades, few, if any, have studied whether prosecutors truly understand and consider the consequences of their actions. Prosecutors are involved in making significant decisions at every step of the criminal process. Long before a trial is scheduled, prosecutors help decide who is charged, what the charges will be, and whether to offer a plea or proceed to trial. Over the past few decades, legislation such as mandatory minimums and sentence enhancements has altered the job description of prosecutors. Accordingly, scholars such as Michael A. Simons have called prosecutors de facto "punishment theorists" as their decisions can have binding and permanent consequences for their defendants. Thus, it is important to understand both the role of prosecutors and their understanding of their roles and decisions.

Prosecutors, both state and federal, formally charge defendants, and these charges often decide the fate of the defendant, if found guilty. Thus, it appears that prosecutors have extraordinary power, seemingly more so than judges. Although they may not recognize it, prosecutors also have the unique ability to steer defendants towards or away from correctional facilities. They have the ability to recommend jail time, state prison time, restorative practices, or probation to judges, who often rule in their favor. In the context of homicide, prosecutors have the power to issue a life sentence because the charges they levy decide whether the defendant will ever be eligible for release upon conviction. Socio-legal scholars such as Michael A. Simons and Angela Davis explore the

power of prosecutors and the consequences that ensue. Their respective research provides significant insight to my project and understanding of punishment but also leaves stones unturned.

Law professor and former prosecutor Michael A. Simons explored prosecutors' role as "punishment theorists" a term that he coined in his paper "Prosecutors as Punishment Theorists: Seeking Sentencing Justice."[5] He considered this punishment theorist role in the larger context of the abstract concept of justice and notes that there is "inattention… to prosecutors' role in ensuring justice."[6] Here, he suggested that it is prosecutors who have the sole ability to deliver justice, as apposed to judges or defense attorneys. Therefore, Simons focused on the power of prosecutors in the age of mandatory minimums, which refer to sentencing laws that require a predefined and severe prison sentence for certain charges, whereas sentencing enhancements add additional years of prison time to the sentences found in the guidelines.[7] Thus, he argued that the charges levied by the prosecution predetermine the sentence, thereby undermining the discretion of judges. This idea suggests that legal factors or mitigating factors present in the case bear significantly less weight.[8] Therefore, prosecutors effectively determine sentences when they levy the charges that carry mandatory minimums, and the defendant is found guilty. With relatively little supervision or oversight, it is likely that some prosecutors abuse this power

[5] Simons, Michael A. 2009. "Prosecutors as Punishment Theorists: Seeking Sentencing Justice." *George Mason Law Review.* 16(2): p. 303-356.
[6] Ibid.
[7] Ibid.
[8] Ibid.

knowingly or unknowingly. Subsequently, this project seeks to investigate whether and how Hawthorne County prosecutors recognize their immense power.

After tracing the historical changes in the power of prosecutors, Simons urged prosecutors to consider the implications of their vast power as well as their contribution to mass incarceration. According to Simons, prosecutors wielded considerably less power in sentencing and otherwise before 1980. During Ronald Reagan's presidency, his "tough on crime" discourse gained traction and gave way to mandatory minimums, mainly for drug crimes.[9] Soon after, legislators created mandatory minimums for violent crimes such as homicide as well. Although the mandatory minimums supposedly were designed to eliminate sentencing disparities due to judicial discretion, they seem to grant further power to prosecutors and lead to more punitive sentences which have, in turn, expanded the national prison population as more people enter prison and fewer leave. Mass incarceration is imperative to examine because its direct consequences and collateral damages percolate through larger society as a whole.

When considering the meanings and methods of justice, legal scholars have long advocated for a combination of retribution, general deterrence, specific deterrence, incapacitation, and rehabilitation in sentences. Simons also discussed three other principles that supposedly define the criminal justice system, including uniformity, proportionality, and parsimony, which he defined as "not greater than necessary."[10] The prolonged and sometimes indefinite sentences that result from

[9] Simons, Michael A. 2009. "Prosecutors as Punishment Theorists: Seeking Sentencing Justice." *George Mason Law Review.* 16(2): p. 303-356.

[10] Ibid.

harsh mandatory minimums and increased prosecutorial discretion, however, appear far more retributive and severe than anything else. Many prisons are ridden with abysmal conditions and a lack of enriching rehabilitative programs, thereby further harming those who enter. Moreover, the social stigma of prison as well as the lack of preparation for society often impedes employment after release and re-entry, causing some to reoffend. Because prisons seem to serve solely as punitive institutions that do not foster restoration, rehabilitation, and thus deterrence, it appears that prison sentences are truly retributive in nature. Therefore, the increase in unchecked power of prosecutors combined with mandatory minimums and sentencing enhancements seems to have led to a dissolution of the supposed foundation upon which the justice system is predicated.

Consequently, Simons urged state and federal prosecutors to recognize their power and role in the charging and sentencing stages, so they can make better informed decisions and "seek justice."[11] A critical issue that Simons did not discuss is prosecutorial training. Many recent law school graduates initially work as prosecutors in the chaos of district courts to gain litigation experience or to launch careers in politics or public service. Without adequate and comprehensive training, these young prosecutors may not fully grasp the consequences of their actions or understand that there are alternatives to the recommended sentencing guidelines. Therefore, I sought to explore prosecutors' own perceptions of their

[11] Simons, Michael A. 2009. "Prosecutors as Punishment Theorists: Seeking Sentencing Justice." *George Mason Law Review.* 16(2): p. 303-356.

jobs and role in the larger system, as well as the processes they use to assign charges and further their cases.

Moreover, Simons also had quite a broad focus as he considered the general roles of both state and federal prosecutors. This group is quite large and widespread and one that may differ greatly based on factors such as location, managerial style, and expertise. Over time, prosecutors' opinions may become influenced by their elected District Attorney or US Attorney, who have the ability to steer investigations and trials. The local District Attorney, for example, is elected by voters, who approve of their values and platforms, so it is likely that the District Attorney's policies mirror the political landscape of the area. For example, it is possible that a conservative city would elect a conservative District Attorney whose "tough on crime" policies may lead to even more exaggerated punitive consequences. In this situation, the plights of defendants in conservative cities may be fairly different from the plights of defendants in more liberal cities. Therefore, a focus on a single city or two cities with different political landscapes may yield fascinating results. Due to logistical restraints, this study focuses on one New England city, Hawthorne County, a largely liberal city.

Expanding from Simons' discussion of prosecutorial discretion and power, legal scholar and professor Angela Davis also drew from the diverse population of state and federal prosecutors and further analyzed the unchecked and unrestrained nature of their power in her book, *Arbitrary Justice.*[12] Although state and federal prosecutors have long exercised extraordinary and unchecked power leading to

[12] Davis, Angela. 2007. "Arbitrary Justice: the power of the American prosecutor." New York: Oxford University Press.

disparate and unintended outcomes, she contended that public scrutiny has not quite followed. In recent decades, there has been increased attention from both legal scholars and sociologists regarding the unique power of prosecutors and their relative lack of training and supervision. Therefore, Davis alleged that prosecutors undermine justice blindly make decisions that impact our criminal justice system and society at large.

In her critique of prosecutors, Davis explained that prosecutors are "the most powerful officials in the criminal justice system" as they make "sometime life-and-death decisions" that are "totally discretionary and virtually unreviewable."[13] Certainly defense attorneys wield the power to challenge these decisions before a judge, but as their title suggests, defense attorneys are almost always on the defensive. And as previously discussed, increased prosecutorial discretion has limited the power of judges as well, though judges do have opportunities to exercise considerable discretion. Alternatively, police officers possess significant discretion, but unlike prosecutors they can held accountable and even prosecuted for their actions. Davis used anecdotes to demonstrate that prosecutors are never disciplined even in spite of egregious errors, both intentional and unintentional.[14] Again, Davis's work heightened the power of prosecutors and the imperative to investigate it.

Although the historical context that Davis provided is imperative to understanding prosecutorial power, it is also important to consider prosecutors'

[13] Davis, Angela. 2007. "Arbitrary Justice: the power of the American prosecutor." New York: Oxford University Press.
[14] Ibid.

own meanings and understandings of their positions. For example, current prosecutors' narratives regarding their attitudes towards their roles in the criminal justice system may illuminate additional explanations for their decisions. For example, if a prosecutor thinks her job is simply to interpret the law and regurgitate the sentencing guidelines, her decisions may lead to countless prison sentences over time. Whereas if a prosecutor thinks her job is to make communities safer, her decisions may be based upon evidence-based best practices, which usually involve treating the underlying issues that cause people to offend. This difference alone could explain sentencing disparities, over-incarceration, and crime patterns, so it is important to investigate through this project.

Furthermore, prosecutors are tasked by the law and the people to "do justice" -a highly subjective term that is constantly thrown around but seldom defined. In general, prosecutors do not seem to receive training on how exactly to "do justice" in their everyday work. As Davis described, "'doing justice' sometimes involves seeking a conviction and incarceration, but at other times, it might involve dismissing a criminal case or forgoing a prosecution."[15] Thus, the word "justice" can have opposing definitions, so the practice of "doing justice" can lead to different drastically different outcomes for defendants. Since the term "justice" is so subjective and contextually dependent, it is likely that different prosecutors have different personal definitions of justice. It is equally likely that judges, defense attorneys, defendants, and victims also carry different definitions

[15] Davis, Angela. 2007. "Arbitrary Justice: the power of the American prosecutor." New York: Oxford University Press.

of "justice" as well based on their positionality in the criminal justice system. Therefore, I sought to uncover some of these personal definitions of justice and examine how these definitions inform the actions and goals of these players.

Next, Davis considered the various sources of pressure that prosecutors face. After speaking with prosecutors, Davis noted that some victims are particularly zealous and seek revenge against those who have wronged them.[16] Since victims regularly meet with the prosecutors on their case, they can exert influence on sympathetic prosecutors and encourage them to seek more punitive forms of retribution. Davis, then, explained some of the other pressures that trickle downward on prosecutors from their superiors and other government officials who may have an interest in the outcomes of cases.[17] If prosecutors perceive disobedience as a threat to their employment, they may acquiesce and follow orders. These plausible, but hypothetical situations suggest that blame towards overzealous prosecutors may be misguided if other players decide their punitive courses of action. Consequently, I decided to ask prosecutors how they assign charges and decide whether to pursue a trial in order to discern their respective thought processes as well as any outside involvement in the case.

Since these aforementioned pressures are surely common and widespread, I found it interesting to individually interview prosecutors and ask them how they navigate their cases and assign charges. Although the prosecutors may not explicitly state that victims or superiors influence their decisions, prosecutors may indicate that they meet with these groups to discuss potential charges or seek

[16] Ibid.
[17] Ibid.

advice. Because the decision to charge and the actual charges levied carry high consequences especially in homicide cases, it is important to investigate all the potential motivations behind these choices. Thus, Simons' research leaves questions unanswered.

Moreover, Davis considered prosecutorial discretion in the context of victim and defendant characteristics. She alleged that those who victimize "worthy victims" or those who are white, wealthy, or otherwise privileged individuals, face higher consequences than those who victimize members of underprivileged groups.[18] For example, Davis recalled the kidnapping and rape of Elizabeth Smart, then a seemingly angelic, white child from financial means. Following her nine-month abduction and the resulting national news coverage, her captor was given a life sentence. Davis implied that the kidnapper of a child of color would not have received a sentence this harsh, simply because their victim was not as "worthy" or privileged. Thus, Davis asserted that extra-legal factors such as age, race, and class influence criminal sentences, potentially even more so than legal factors, which are the supposed basis of criminal cases.

Furthermore, Davis drew readers' attention to the notion that white and affluent offenders also fair better in the criminal justice system compared to non-white and low income individuals.[19] Faring better in the criminal justice system can amount to dismissed charges or cases, more lenient plea agreements or sentences, and immunity for example. As previously discussed, "doing justice"

[18] Davis, Angela. 2007. "Arbitrary Justice: the power of the American prosecutor." New York: Oxford University Press.
[19] Ibid.

can result in more lenient resolutions and less prison time. Using their prosecutorial discretion, prosecutors must decide which defendants "deserve" lenient sentences and which defendants "deserve" severe punishments. Unsurprisingly, the vast majority of our prosecutors are white and likely exercise in-group and out-group biases, perhaps unknowingly. Even in liberal cities, white and wealthy individuals tend to receive the more lenient resolutions while low-income individuals and people of color tend to receive the most severe punishments the criminal justice system has to offer. These biases, therefore, creates disparities in all stages of the criminal justice system such as the charging, trying, and sentencing of cases and, thus, need to be further examined.

Consequently, Davis's research was significant to my course of study as it exposed the some of the biases that rear its head in charging and sentencing decisions. This information was pertinent to my study because it illuminated a potential source of disparity among criminal defendants. Subsequently, I decided to test sentencing disparities regarding "worthy victims" by creating vignettes that include hypothetical scenarios involving the worthiness or unworthiness of victims and defendants and asking interview participants to assign charges in light of this information.

Defendant Characteristics

Defendant characteristics are another area of concern when considering equality under the law. Different ages, genders, races, socioeconomic statuses and other factors carry different connotations, preconceived notions, and biases that are bound to intersect with charging, convicting, and sentencing decisions.

Because all parties are supposedly equal under the law, these aforementioned extralegal factors are not supposed to inform the legal process. However, prior research suggests otherwise. In the context of homicide trials, which are highly charged environments, the presence of strong emotions coupled with biases has the potential for deleterious consequences particularly for defendants. Homicide cases often inspire emotions ranging from anger, sadness, fear, grief, or even apathy, sometimes based on the facts of the case but perhaps more often based on the ascribed characteristics of defendants and victims. If these traits do, indeed, influence charges, indictments, and outcomes, then the justice system has failed to provide equality, proportionality, and fairness as promised.

Thus far, many socio-legal scholars such as Darrell Steffensmeier and Stephen Demuth have investigated the relationship between defendants' race and their post-conviction sentences.[20] Instead of focusing upon the differences between black and white defendants, they also examined the effects of gender and race-ethnicity dyads. In their 2006 study, "Does Gender Modify the Effects of Race—ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black, and Hispanic Defendants" Steffensmeier and Demuth explained that Hispanic-Americans now represent 13% of the population, making Hispanic-Americans the largest minority group and an increasing demographic among criminal offenders.[21] Changes in demographics can spur bias and bigotry as demonstrated by our current president, so Steffensmeier and Demuth sought to

[20] Steffensmeier, Darrell and Stephen Demuth. 2006. "Does Gender Modify the Effects of Race—ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black, and Hispanic Defendants." *Journal of Quantitative Criminology* 22(3): 241-261.

[21] Ibid.

understand how these biases can affect the criminal process and the plight of defendants. Therefore, the researchers expanded their variable categories by gender, and charge, plea vs trial, and sentence as well in order to identify potential interactions between race, ethnicity, and gender in terms of lenient and severe outcomes.

In this study, Steffensmeier and Demuth used data from the most populous counties in the United States during four years of the 1990's that were recorded by the Bureau of Justice Statistics.[22] They narrowed the data sample so that only white, black, and Hispanic defendants were included and then separated the data by crime, outcome, gender, race, and ethnicity. The researchers also included the average age and sentence lengths of the offenders, also separated by gender, race, and ethnicity. They found that Hispanic women were 67% likely to be incarcerated, and black and white female defendants had comparable but lower incarceration rates. Among male defendants, Hispanic men were 79% likely to be incarcerated, white men were considerably less likely to be incarcerated, and black men fell in between.[23] Thus, race-ethnicity appears to play a significant role in one's plight in the criminal justice system. They also found that men were more likely to be convicted in general. The statistically significant differences found among different gender-race dyads show that extralegal factors can influence sentencing decisions.

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[22] Ibid.

[23] Steffensmeier, Darrell and Stephen Demuth. 2006. "Does Gender Modify the Effects of Race—ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black, and Hispanic Defendants." *Journal of Quantitative Criminology* 22(3): 241-261.

Thus, this research by Steffensmeier and Demuth demonstrated that it is important to consider extralegal factors as well as legal factors when examining sentencing disparities. Subsequently, I decided to include extralegal defendant variables such as age, mental or cognitive health, socioeconomic status, history of disenfranchisement, and prior arrest record. Unlike Steffensmeier and Demuth, I did not include race as an extralegal variable, as this topic would likely require a singular focus.

Since it has now been widely reported that race, gender, and other extralegal factors such as socioeconomic status effect sentencing across the United States, this study contributes to the existing body of research by exploring whether homicide stakeholders incorporate this information into their beliefs and decisions.[24] Because prosecutors, judges, and detectives serve the interests of the public, they must balance disparaging information about the criminal justice system with thoughts of self-efficacy. Consequently, decisions grounded in criminal justice reform or traditional notions of public safety often clash and carry different, life-altering decisions for homicide defendants. Thus, this study of how homicide players' beliefs inform their opinions and decisions in light of criminal justice system exposes may elucidate how those with noble intentions further mass incarceration.

Drawing from Steffensmeier and Demuth, sociological criminologists Jeffery T. Ulmer and Brian Johnson have investigated how gender-race dyads interact with contextual factors of local courts to affect criminal sentences.

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[24] Freeman, Naomi J. 2006. "Socioeconomic Status and Belief in a Just World: Sentencing of Criminal Defendants." *Journal of Applied Psychology* 36(10): 2379-2394.

Although democratic ideals of fairness and equality are said to govern our courthouses, district courts fall under the domain of state sovereignty. Ulmer and Johnson contended that court communities must be studied in the context of fairness, equality, proportionality, and social control, in addition to extralegal factors pertaining to characteristics of defendants and victims.[25] Since countless studies have shown that stereotypes and ideologies are so deeply entrenched in our society that they permeate sentencing decisions and that stereotypes and ideologies are magnified in certain areas of the country, it is likely that stereotypes and ideologies affect criminal sentences in varying degrees by region. One example the authors cited is widespread fear of black and Latino men and, therefore, ideas of increased criminality among these groups.[26] Despite ideas of social progression in the northeast, these notions remain pervasive in counties such as Hawthorne County today.

Using three years worth of individual level sentencing data and county level contextual data from Pennsylvania criminal courts, the authors coded legally relevant and extralegal variables among those convicted of violent, property, and drug offenses from 1997-1999.[27] Although Pennsylvania is more conservative Hawthorne County, the racial demographics are quite similar. Ulmer and Johnson found that black, Hispanic, male, and younger offenders received particularly harsh sentences at trial.[28] They also found that the trials of these groups led to

[25] Ulmer, Jeffery T. and Brian Johnson. 2004. "Sentencing in Context: A Multi-level Analysis." *Criminology* 42(1): 137-177.
[26] Ibid.
[27] Ulmer, Jeffery T. and Brian Johnson. 2004. "Sentencing in Context: A Multi-level Analysis." *Criminology* 42(1): 137-177.
[28] Ibid.

higher severity in terms of likelihood and length of incarceration. In regressions, the researchers also found that the effects of the various variables they used significantly vary across counties. Specifically, they found that the likelihood of a defendant sentenced to prison varies among counties after controlling for relevant legal factors such as the defendant's prior record and the type of case.[29]

In terms of contextual effects, the authors found that judges were more likely to incarcerate defendants in areas where there was more available space in correctional institutions, again after controlling for legal factors.[30] Although many sentencing outcomes were explained by aspects of the individual cases, the authors found "significant sentencing variation" especially of incarceration odds, Hispanics were more likely to receive longer sentences in areas with large Hispanic populations, and blacks were more likely to receive longer sentences in areas with large black populations.[31] This troubling finding was consistent with social control theories that posit that whites in areas with large black and Hispanic populations fear such groups and consequently punish them more severely. This notion may even explain the high incarceration rates in liberal cities with large black or Hispanic populations. Moreover, the researchers found that sentences were more severe in counties with larger caseloads.[32] This finding was also troubling, as it suggested that defendants are more severely punished for exercising their right to trial, as afforded by the U.S. Constitution and Sixth

[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ulmer, Jeffery T. and Brian Johnson. 2004. "Sentencing in Context: A Multi-level Analysis." *Criminology* 42(1): 137-177.

Amendment. This finding also seemed to support the use of plea bargains to provide fair and proportional sentences. Thus, local factors such as caseload pressure, racial and ethnic demographics of jurisdictions may affect and increase criminal sentences.

Thus, this study also built upon literature regarding the effects of courthouse demographics on criminal sentences by concentrating ethnography and interviewing efforts in a single district court. Like Ulmer and Johnson, this project incorporates observations of local racial demographics, juror demographics, and other contextual court factors with observations of sentences and plea deals. This information, then, helps contextualize the beliefs, opinions, and hypothetical decisions of homicide players. My combination of contextual factors and responses from homicide stakeholders also, therefore, further informs the field of sentencing and mass incarceration research through this mixed methods approach.

Victim Characteristics

Another potential source of disparity in the criminal justice system, and more specifically homicide cases, is ascribed characteristics of victims. As discussed, criminal cases are tried and presided over by individuals who often possess biases that may affect the lives of defendants. However, there has been little public scrutiny of these biases pertaining to victim characteristics, which can also lead to injustice, the supposed antithesis of our criminal justice system. Until fairly recently, research focused upon the characteristics of murder defendants, however, it appears that the race, gender, socioeconomic status, age, and

blameworthiness of victims may lead to disparate treatment in the criminal justice system as well.

Accordingly, sociological criminologists Jefferson E. Holcomb, Marian R. Williams & Stephen Demuth investigated the "white female effect" or the idea that the criminal justice system most severely punishes those who victimize white females.[33] Previous studies have shown statistically significant instances of the white female effect even after controlling for legally relevant variables. As females are still perceived as the feebler sex, the researchers cited chivalry and paternalism theories to explain why homicides of women, especially white women, call for greater concerns of public safety and further scrutiny of the defendants.[34] Other victim demographics have also been shown to affect criminal sentences. Aside from gender, race, socioeconomic status, age, and victim conduct also contribute to symbolic power and, therefore, can affect attributions of blameworthiness. Prior literature has also suggested that criminal justice actors often use such stereotypes when making life-altering decisions. Although inter-racial homicides are relatively uncommon, such cases magnify the white female effect. Additionally, Holcomb, Williams, and Demuth used power-conflict theory and stereotypes regarding black men's' conduct to explain why interracial, inter-gender homicides are perceived to violate the social order and warrant harsher sentences.[35]

[33] Holcomb, Jefferson E, Marian R. Williams, and Stephen Demuth. 2004. "White female victims and death penalty disparity research." *Justice Quarterly* 21(4): 877-902.
[34] Ibid.
[35] Ibid.

Thus, the researchers examined gender-racial dyads of homicide defendants and their victims in the context of death penalty decisions. Using 1981-1997 Ohio homicide data including the gender, race, age, and relationships of the victims and defendants, as well as details about the homicidal acts and imposed sentences, the authors provided general trends in the data as well as interactive effects of the gender-race dyads.[36] First, they found that most homicides occurred among men, especially among black men. However, death sentences were significantly more likely to be imposed when victims were white females. Specifically, the likelihood that a defendant received a death sentence was 1.766 times greater when the victim was white and 2.617 times greater when the victim was female after controlling for legally relevant factors.[37] This likelihood also increased when offenders were older than 25, unknown to the victim, or found guilty of killing multiple victims. Moreover, this likelihood significantly decreased when homicide victims were white males, black males, or black females. Thus, this research appeared to support evidence of the white female effect and a hierarchy of victims based upon common stereotypes. Although it is possible that unobserved legally relevant factors also contributed to the researchers' findings, the results still seemed to suggest that criminal sentences are not as fair or proportional as was intended, since they may be based upon a victim hierarchy that assigns different values to different human lives.

[36] Holcomb, Jefferson E, Marian R. Williams, and Stephen Demuth. 2004. "White female victims and death penalty disparity research." *Justice Quarterly* 21(4): 877-902.
[37] Ibid.

Using questions crafted in light of these findings, this projects furthers Holcomb's, Williams's, and Demuth's research by testing whether homicide stakeholders' base charging and sentencing decisions on a hierarchy of victims or victim blameworthiness. Then, the combination of interview responses with ethnographic data confirmsedwhether these players act upon the beliefs they conveyed during interviews. Thus, this study expands upon Holcomb's, Williams's, and Demuth's research by testing their findings in real-time and using data to confirm the presence of absence of such a hierarchy in a different region.

Recent research compares the outcomes of trials based upon victim characteristics such as age, gender, race, and role in the incident in question. Sociological criminologists Eric P. Baumer, Steven F. Messner, and Richard B. Felson explored how murder victims' prior criminal record, behavior during the incident, and demographics affected prosecutorial screening, indictment, post-indictment prosecutorial screening, the decision to plea or go to trial, and the final outcome.[38] In their 2006 study entitled "The Role of Victim Characteristics in the Disposition of Murder Cases," Baumer, Messner and Felson utilized 1,900 murder cases from a probability sample of 33 representative counties and coded defendant and victim characteristics as well as the racial composition of the counties. Baumer, Messner, and Felson found that extralegal variables such as the victims' race, gender, and conduct at the time of the incident determined legal outcomes in murder cases, especially in jury trials.

[38] Baumer, Eric P., Steven F. Messner, and Richard B. Felson. 2000. "The role of victim characteristics in the disposition of murder cases." *Justice Quarterly* 17(2): 281-307.

Consequently, although all lives are supposed to be treated equally under the law, all lives do not actually appear to be equal in practice. People often attribute different values to different human lives based on individual traits or circumstances as well as their own biases. These biases may be magnified in the context of murder cases because murder incites such strong emotions such as fear, anger, sadness, shock, despair, and vengeance. The murders of victims with upstanding, moral character may inflict more fervor for punishing the perpetrator through life sentences and potentially the death penalty in some states.[39] For example, prosecutors, judges, or juries may seek a harsher punishment for a murder defendant when a victim is female because females are perceived to be weak and, therefore, innocent and defenseless. Prosecutors, judges, or juries may also seek a harsher punishment for a murder defendant when a victim is affluent, infantile or elderly or white for the same reason as well. Prosecutors likely consider the reputability of victims when deciding whether to indict or try a case because it is surely more difficult to indict and convict those accused of killing disreputable people. Potential judges and juries may not even consider these acts as murder; they may even characterize the killings as public favors.

However, certain deaths seem to yield apathy or indifference based on who was killed or who executed the killing. Prosecutors, judges, or juries may believe that victims who are male, nonwhite, impoverished, or middle-aged were somehow responsible for their deaths due to stereotypes about crime. If

[39] Baumer, Eric P., Steven F. Messner, and Richard B. Felson. 2000. "The role of victim characteristics in the disposition of murder cases." *Justice Quarterly* 17(2): 281-307.

prosecutors, judges, or juries blame a victim for his death, they may find the defendant less responsible for the murder and recommend more lenient treatment such as lesser charges or sentences. For example, one may feel outraged over the murder of a child and apathetic to the murder of a drug dealer because children are thought to be innocent while those involved in criminal activities are stigmatized and blamed. Thus, murder victims' conduct and prior criminal records may lead prosecutors, judges, or juries to blame the victims in their deaths and, therefore, put less blame on the perpetrators who may receive more lenient sentences.

Even if the actual decision makers, the prosecutors, judges, or juries, do not ascribe to these biases, they may recognize that some members of the general public do hold such biases and, therefore, carry certain expectations. Subsequently, the decision makers may make decisions that alleviate these concerns of the public, and levy consequences that result in and sentencing disparities. This differential treatment of victims and, therefore, defendants likely leads to different outcomes which drastically affect defendants' lives and trajectories. Because the penalties for murder are so high, these seemingly small discrepancies are the difference between indefinite imprisonment and a chance for a better life.

Some allegations about victims may even lead prosecutors to forgo charges or trials entirely. Baumer, Messner, and Felson found that cases in which the victim engaged in criminal activity or provocation of the defendant during the

incident in question are often dropped or less likely to be indicted, prosecuted, or convicted.[40] These effects are further magnified in areas with high proportions of nonwhites. Therefore, victims' conduct during the incident leading up to their murders seems to effect legal outcomes of their killers. As the authors noted, this finding was "consistent with the general claim that killings of disreputable or stigmatized victims tend to be treated more leniently by the criminal justice system."[41] Furthermore, their work emphasized the intricacy of murder cases and a few of the many legal and extralegal factors that precipitate murder charges, trials, and verdicts. Their work also highlighted the widespread and substantial effects of bias and perceived bias in various stages of the legal process.

This project, thus, furthers these researchers' work by incorporating and testing their findings about victim blameworthiness through hypothetical charging decisions. Both observing homicide stakeholders make charging decisions in real-time and asking them to make hypothetical charging decisions about different victim demographics helped elucidate their thought-processes and reasoning behind their decisions. Along with the aforementioned contextual information, this mixed methods approach furthers the field of sentencing research by combining courtroom observations with key insights from the stakeholders themselves.

Repeat Players

[40] Baumer, Eric P., Steven F. Messner, and Richard B. Felson. 2000. "The role of victim characteristics in the disposition of murder cases." *Justice Quarterly* 17(2): 281-307.
[41] Ibid.

Another factor that may impair the equal treatment of criminal defendants is the familiarity among one's defense attorney, prosecutor, and/or judge. Although this concept of "repeat players" has not yet been studied in criminal courts, legal scholar Marc Galanter and subsequent others have extensively examined the phenomenon in civil courts.[42] In his 1974 work entitled "Why the 'Haves' Come Out Ahead" Galanter examined the social landscape of the legal system, namely courts. He closely studied the actors in courts and divided the actors into two categories, one-shotters and repeat players.

As Galanter defined, one-shotters infrequently attend court, while repeat players are constantly involved with a myriad of similar litigation cases.[43] A one-shotter may work as a transactional attorney who drafts legal documents for clients. On the contrary, repeat players can include prosecutors who go to court nearly every workday, defense attorneys with robust litigation practices, and judges who report to a courthouse every workday. Galanter argued that the stakes of an individual case were lower for repeat players because they had so many cases that each one was relatively insignificant in the long run.

Galanter also contended that repeat players have a different and more advantageous experience in the courtroom compared to one-shotters.[44] Due to their frequent court appearances and interactions, repeat players have relationships with fellow repeat players, increased credibility, and have the ability to adjust their strategy in accordance with past successes. In large, busy courts,

[42] Galanter, Marc. 1974. "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9(1): 95-160.
[43] Ibid.
[44] Ibid.

cases between fellow one-shotters or cases between a one-shotter and a repeat player are more likely to occur. However, in smaller courts and areas with small or niche legal communities, it is more likely that repeat players recognize each other and benefit from mutually beneficial relationships. In these situations, repeat players and their clients tend to receive benefits that increase over time, while one-shotters remain excluded. For example, such benefits may include more lenient sentences for defendants. Thus, Galanter's finding that repeat players achieve better outcomes for their clients complicates the notion that all defendants receive fair representation.

Although Galanter did not discuss it, I was interested to know if and how interactions between repeat players lead to better outcomes for clients or defendants. Beneficial and frequent interactions with those on the other side of the adversarial system may lead to increased trust. Deep trust may, in turn, lead to more fair agreements, which could lead to more lenient plea agreements or sentences. Specifically, I sought to examine whether Hawthorne County Courthouse repeat players recognize and utilize this advantage for their cases.

In the context of Hawthorne County Courthouse, there is a small pool of people involved in murder cases. There are several judges who preside over murder trials, approximately ten defense attorneys who regularly take murder cases, as well as nine assistant district attorneys; all of these actors are, therefore, repeat players. Because there are fewer than thirty repeat players who interact with each other weekly if not daily, the New England homicide repeat players likely know each other very well. Furthermore, many of the repeat players also

attended the same law school. For those who attended law school together, these repeat players could have been building relationships and trust for decades, further benefiting their clients or outcomes. Nonetheless, frequent interaction and subsequent trust may lead to speedier resolutions or even more lenient sentences, as the parties may refrain from using delaying tactics or playing hardball so to speak.

Since these repeat players in Hawthorne County Courthouse spend so much time in court for their own cases as well as others, they likely can also provide detailed information about the architecture and nuances of this social and physical space. Consequently, I decided to conduct ethnographic observations in the courthouse as well as interviews with these repeat players. Recurring observations were used to identify relevant phenomena, while interview responses were used to confirm, add to, or reject the previously observed phenomena. After identifying the repeat players, I also recorded differences between the behaviors of repeat players and one-shotters. Then in the interviews, I asked these repeat players for their thoughts regarding potential advantages of repeated court appearances. Using this mixed methods design, I explored whether and how my observations and and their perceptions aligned and diverged.

Later, legal scholars Elizabeth Chamblee Burch and Margaret S. Williams further explored the advantages from which repeat players benefit. They explained that "socially constructed rules and norms impact legal outcomes on a broad scale."[45] If this is also true for New England courts, then it especially

[45] Burch, Elizabeth Chamblee and Margaret S. Williams. 2016. "Repeat Players in Multidistrict Litigation: The Social Network." *Cornell Law Review* 102(6): 1445-1537.

important to observe and speak with repeat players because their presence or absence in homicide cases may have mediated the outcomes I sought to understand. The authors asserted that repeat play leads to norm development which simultaneously privileges repeat players and marginalizes one shotters, creating a cycle.

Drawing from the work of Galanter, Burch and Williams also explained that repeat players "develop expertise" and "cultivate relationships with institutional incumbents like judges and their staff."[46] Not only do expertise and deeper relationships help repeat players, but the accompanying reputation seems to help as well. Though the authors used the example of multi-district litigation, the homicide trial environment draws parallels. Like plaintiffs, homicide defendants can receive highly disparate treatments depending on the combination of repeat players and one shotters in the cases.

As Burch and Williams discussed, there are clear reasons why courts often have repeat players. In the context of homicide, there is a small, finite number of prosecutors in each homicide unit and a relatively small number of defense attorneys capable and willing to represent defendants charged with homicide. Because many homicide defendants in New England are indigent, they need public defenders who are Committee for Public Counsel Services certified, which further narrows the pool of homicide repeat players. This small pool increases the probability that defendants' cases are handled amongst all repeat players. If the

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[46] Burch, Elizabeth Chamblee and Margaret S. Williams. 2016. "Repeat Players in Multidistrict Litigation: The Social Network." *Cornell Law Review* 102(6): 1445-1537.

judge, prosecutor, and public defender are all repeat players, then their prior interactions, expertise, and reputations may lead to conducive conversations that could result in more lenient sentences or pleas. Conversely, if a defendant has a one-shotter prosecutor or attorney, the adversarial structure of the criminal justice system may hinder his treatment and, therefore, justice. For example, if adversaries cannot cooperate and schedule a mutually convenient trial date, then the defendant's right to a speedy trial may not be upheld.

Thus, this project is grounded in and furthers existing research in the socio-legal field. Previous works informed both the focus and methodology of this project, and the insights gleaned shed light on the applicability of the aforementioned findings in Hawthorne County homicide trials.

Methods

To understand the New England criminal court system and assess opinions of justice, I employed a multi-method design with ethnography and interviews. While the ethnography introduced me to the court and its players, the interviews provided the basis for quantitative and qualitative analyses. Both methods yielded masses of data that were invaluable to this project.

Ethnography

Before examining individual perceptions of justice, I decided to attend homicide trials and motion sessions, so I could better understand how the criminal justice system functions. Coupled with my observations at the district attorney's office, I was able to observe each stage of the criminal process beginning with the trip to the crime scene and concluding with the jury verdict. Therefore, I observed

both the procedural steps of this process and how these events later result in the final verdict. Although I visited a few district courts as well, I spent the majority of my time in court at a state-level courthouse in a metropolitan area in the Northeast. For the purposes of this project, the courthouse is named the pseudonymous "Hawthorne County Courthouse." I began collecting field notes while interning for the Hawthorne County District Attorney's Office Homicide Unit during the summer of 2017. I specifically chose the homicide unit because the cases tend to be frequent, contentious, emotionally charged, high profile, and high-stakes. The nexus of homicide and justice also leads to many differing and opposing viewpoints. Furthermore, the cases at the state-level tend to be more representative and commonplace than federal homicide cases. Over the course of my three-month internship as well as subsequent visits, I spent approximately forty hours in Hawthorne County Courthouse homicide proceedings. I specifically chose Hawthorne County Courthouse because it has biweekly homicide sessions as well as frequent homicide trials. I recorded notes by hand in a notebook and later typed them, adding further impressions as well. Consequently, my experiences and subsequent observations acquainted me with Hawthorne County homicide proceedings, the criminal justice system, and the plight of homicide defendants.

Hawthorne County Courthouse serves major cases within the county and handles both civil and criminal litigation. On the criminal side, cases may include drug crimes, rape, and murder. Hawthorne County Courthouse is located in the downtown, business area of the city, often several miles away from the crime

scenes. Hawthorne County Courthouse is surrounded by businesses and other state offices and agencies. The peripheral area and the larger city itself are predominately white and wealthy, as well as many of those who work inside the courthouse. Many of the prospective and chosen jurors are middle-class whites as well. Conversely, the criminal defendants and victims tended to be people of color from more economically depressed areas of the city. This racial disparity was evident immediately upon entering the courthouse. The disparity also suggests that criminal defendants are not tried by a juries of their peers. However, the state claims that the jury selection process is determined by a random number generator. Indeed, the majority of residents in the city is white, but it is still perplexing why the 45% non-white population is so poorly represented.

For each homicide committed in Hawthorne County, the trial process begins when the defendant is arraigned at the local district court. Then, the case officially moves to Hawthorne Superior Court where the defendant is arraigned a second time. Thereafter, all court proceedings are conducted in Hawthorne Superior, usually during the biweekly homicide session, motion sessions, or scheduled court dates. Before a trial begins, the prosecutor, defense attorney, defendant, and judge usually meet approximately six times at the aforementioned sessions. Plea deals are quite uncommon for homicides committed in this county, even when self-defense is alleged. Therefore, the vast majority of Hawthorne County homicide defendants experience this long, arduous plight.

In order to observe a varying array of homicide dealings, data was recorded during homicide motion sessions, plea deals, small trials, and high-

profile televised trials. Each proceeding represents a stage in the homicide trial process and provides more diverse data. The motion sessions are generally comprised of only essential personnel, such as prosecutors, defense attorneys, judges, and families of the defendants and victims. The more intimate nature of these motion sessions allows for more conversations among homicide players before and during the sessions and, therefore, identification of repeat players. Often times, prosecutors and defense attorneys who arrived early sat next to each other and had lively conversations that erupted into laughter. These conversations transpired among repeat players. Other repeat player prosecutors acknowledged the defense attorneys, and then spoke with family members or detectives about their upcoming cases. Alternatively, one-shotter defense attorneys typically sat alone or near their client's family, though silently.

The few observed plea deals shed light on generally private proceedings. The first observed plea deal was a dramatic ordeal that culminated in an accepted plea after several cancellations by the defendant.[47] After the defendant claimed that God told her to reject the deal, three clergymen from her church spoke with her minutes before her trial was set to begin, and she ultimately pled guilty to second degree murder. Five of her deceased fiancé's family members delivered moving victim impact statements before the judge sentenced her to nine to fourteen years in state prison per the agreement. The unusually high volume of statements told the story of the victim's life, as well as the traumatic aftermath that his young son continues to endure. Through her tears, the victim's mother

[47] Observations dated June 7, 2017.

yelled profanities at the defendant as she was led out of the courtroom. Similarly, at the next observed plea deal, the defendant's grandmother made frequent outbursts, yelling at her grandson to reject the deal and go to trial. This defendant eventually pled guilty and apologized for his role in the death of a beloved, elderly store clerk, whose son also offered a tearful statement. The judge in this case also sentenced the defendant to the previously agreed upon sentence of fourteen to eighteen years in state prison followed by five years of probation due to the defendant's long criminal record. The judge also strongly encouraged the defendant to turn his life around and stop offending and warned the defendant that he will be eligible for the armed career criminal sentencing enhancement if he offends in the future. Due to the intimate nature of these plea proceedings, such interactions were commonplace.

Alternatively, the observed high-profile trials provided insight into this multifaceted experience. With a large audience and camera crew, the televised trials were far more theatrical than others. The atmosphere was particularly tense and the theatrics provided a sense of entertainment as well. One such case that dominated the news cycle had an "ideal" victim, a murdered white toddler, as well as rumors of demonic possession and the occult. This trial was especially contentious as pleasantries and mutual respect dissolved among the three repeat players throughout the course of the trial. However, trial preparations had begun three years prior, so it was likely that exhaustion and exasperation were factors.

As a summer intern, I was able to follow cases through the progression and watch the early stages of cases as well as the eventual trials. With the help of my

supervisors, I also learned about the anatomy, social landscape, and mores of the courtroom as well. Each courtroom is comprised of an identical layout: a large judge's bench by the far wall, one table each for the prosecutor, the defense including the defendant, the stenographer, and the probation and parole officers, all behind a gate guarded by court officers. The rest of the room is comprised of benches reserved for advocates, police officers, family, friends, the media, and members of the public. One notable observation is the height and size of the judge's bench. The judge sits several feet above the rest of the courtroom inhabitants at a sizeable desk surrounded by a fleet of legal books, strongly asserting the judge's power, authority, and status.

Moreover, it is expected that those involved in the cases sit towards the front and spectators sit in the back. Other unspoken expectations include business-casual court attire, timely arrival and departures, silence, and full attention towards the cases, aside from compliance with court officer's directions. At times, family members, usually of defendants, erupted in loud, disruptive outbursts, sometimes shouting at the defendant or even the judge resulting in removal from the courtroom. These outbursts often lead to tension and frustration among all involved parties. Occasionally, family members of victims would sob uncontrollably or curse at defendants also resulting in removal but less frequently.

As a general trend, friends and the family of victims appeared to be more familiar with the spoken and unspoken rules of the courtroom compared to those of defendants. As an intern, I was often present during conversations among

prosecutors and victims' friends and family, so I overheard prosecutors and advocates offer such advice. However, many defense attorneys lacked the time or funding to meet with defendants' family members solely to offer courtroom advice. Stark differences in behavior and attire between the two sides has the potential to affect criminal sentences. Often, family members and friends of victims offer victim impact statements that influence sentencing decisions, so noticable cultural capital may lead to higher credibility and empathy. On the contrary, juries and judges may judge defendants for the disruptive behavior of their acquaintances. Although these situations may be unlikely, it is possible that higher levels of cultural capital assist the prosecution over the course of a trial.

Another key consequence of my ethnographic work was familiarity with different homicide players in the Hawthorne court system. As an intern for the Homicide Unit, I worked closely with several victim witness advocates and assistant district attorneys and also communicated with Hawthorne Police Department homicide detectives. However, during court observations I was also exposed to several judges and defense attorneys as well. Since my intent was to examine perceptions of justice in terms of the two adversarial sides, it was imperative that I speak with both members of the prosecution and defense. I also included judges and detectives to investigate how and whether their attitudes align among the two adversarial groups. My familiarity with these individuals gave me access to a population that tends to be apprehensive to speak in a research context. Generally speaking, attorneys, judges, and detectives fear negative press or distortion by media professionals due to the possibility of exploitation later. Thus,

having prior contact and trust became essential when asking these individuals to participate in interviews.

Interviewing

After observing how justice operates in Hawthorne county homicide sessions and trials, I decided to go straight to the source and conduct interviews. I, then, spoke with prosecutors, detectives, defense attorneys, and judges in order to further examine potentially discernable differences in perceptions of justice across adversarial lines. Arguably, the actions of prosecutors, defense attorneys and judges determine how well defendants fair in the criminal justice system. However, I also included judges and police officers to examine where their views align on this Venn-diagram of sorts. Moreover, I used the interviews to confirm or deny trends I observed in court and potentially learn of new trends that I had missed. For every interview, I used nearly the same interview guide which I developed after reading selected work of Laura Beth Nielsen, a socio-legal scholar who done extensive interview work pertaining to justice, particularly concerning sexual assault.

In her 2004 book, *License to Harass*, Nielsen interviews subjects about their opinions and experiences regarding sexual harassment.[48] Her thorough and exhaustive questions call for individual definitions of sexual harassment, specific and general examples of sexual harassment, perceptions of sexual harassment, and vignettes of scenarios that potentially contain elements of sexual harassment. These lines of questioning showed how her subjects conceptualize and understand

[48] Nielsen, Laura Beth. 2004. "License to Harass: Law, Hierarchy, and Offensive Public Speech." Princeton, NJ: Princeton University Press.

the abstract concept of sexual harassment in their own lives and in theory –ideas which may differ. Consequently, these questions seemed to elucidate honest answers despite social desirability biases due to the removed nature of the vignettes. The questions regarding definitions of sexual harassment made for interesting comparisons among different subjects. The widespread and persistent nature of sexual harassment may partially stem from misrecognition of what constitutes as sexual harassment, so her findings may help explain why sexual harassment still persists.

Similarly, different opinions regarding what constitutes homicide and how to punish such acts may also lead to disparities among subjects and in sentences. Because the standard punishment for murder is typically both interminable and binding, the study of the principles of punishment as well as potentially differential treatment is pressing. Nielsen's interview guide was also particularly applicable to my project because sexual harassment and justice are both abstract concepts that may carry different meanings for different people based on positionality. Subsequently, I designed a general interview guide divided into four parts: biographical questions, open-ended opinion questions, scaled opinion questions, and close-ended questions each pertaining to justice in some way.[49]

First, I began with a biographical section that asked for the subjects' educational and employment history. These experiences illuminate their level of familiarity and interest in homicide cases, as well as their position in the adversarial system. Furthermore, each subject's educational history was used to

[49] See Appendix for the Interview Guide.

ascertain whether Hawthorne County Courthouse repeat players began attaining social capital while attending local law schools or whether social capital among repeat homicide players stems from continued contact in court. Additionally, I asked subjects to consider whether their familiarity with fellow homicide repeat players assists them in any way, and if so, how. From my ethnographic data, I previously identified who the homicide repeat players were and with whom they associated, however I also wanted to determine whether the subjects recognized these associations as beneficial as well.

After background questions, I segued into questions pertaining to professional experience. These questions were designed to teach me about each individual's process, as well as their opinions of best practices and worst practices. Subjects were asked whether they had worked on a high-profile case and if so, whether they made any changes to their process. These questions elucidated whether subjects treated their clients or jobs differently based on characteristics of the defendant, victim, or individual circumstance. Then, subjects were asked about cases they remember to this day and what factors made the cases so memorable.

Next, after adapting several of Nielsen's questions, I asked subjects for their individual definitions of justice and a description of their ideal criminal justice system. These questions helped discern the aspects of the criminal justice system that subjects agree with or disagree with and yielded responses that could be compared. The individual responses regarding the ideal criminal justice system also conveyed the varying degrees of reform that subjects seek, so these responses

could be compared in the context of other subjects' responses. Individual definitions of justice were also compared to the legal definition and, therefore, demonstrated deviations from the law and legal training. Later, subjects provided responses regarding best practices in the pursuit of justice, as well as specific and general examples of justice.

Then, subjects were asked a series of open-ended, ideological questions in order to identify their stances on key issues relating to punishment. Subjects were asked for opinions regarding other effective punishments for violent offenders, the success of rehabilitation, qualities that make offenders redeemable and irredeemable, justified instances of homicide, and the retributive nature of homicide sentences. These questions generated key insights and also help explain the subjects' general attitudes towards the criminal justice system. These attitudes were, then, tested using questions following a Likert scale. On a scale of 1 (strongly disagree) to 5 (strongly agree), subjects were asked whether criminal cases tend to be legitimate, criminal cases make society more fair, juries successfully determine the outcomes of cases, judges are fair and impartial, and finally whether there are people for which a plea deal is inappropriate. These questions ask about contextual court questions as previously discussed, as well as general opinions regarding the larger criminal justice system as a whole. Moreover, the use of the Likert scale allows for quantitative analysis and comparisons across occupations and adversarial lines.

Finally, I read a series of vignettes and asked subjects to consider whether the hypothetical defendant ought to be charged with murder as opposed to a lesser

charge, according to their own personal value system. Again drawing from Nielsen's interview guide, the scenarios increased in seriousness, beginning with scenarios pertaining to general intent and ending in scenarios pertaining to specific intent. Although homicide is considered to be malum in se, or inherently wrong, those who carry out homicidal acts may not actually intend to kill. In these situations, there is more room for charging discrepancies because these scenarios are considered to be gray areas of the law. The scenarios read to subjects were intentionally vague and brief to ensure that subjects made their charging decisions in terms of the bigger picture, instead of getting lost in the fine print.

We organized the hypothetical questions into three series. The first series was comprised of classic examples of gray area homicide examples ranging in seriousness as described. For example, the first scenario was about a man who accidentally fired his gun while cleaning it on his porch, whereas the last scenario was about a man who intentionally shot and killed multiple civilians. Because we arranged the questions in terms of seriousness, it was possible to record and compare each subjects' turning point when they decided to begin recommending murder charges. Thus, subjects' willingness to assign murder charges was apparent and able to be compared across occupations and adversarial lines.

The second and third series were each comprised of one general scenario of a man shooting and killing a female convenience store clerk during the process of a robbery. The genders of these characters were purposefully chosen to elicit certain gender stereotypes and interactive effects. The situations in the second series included information about selected offender's characteristics which may or

may not affect the subjects' charging decisions. These factors include the offender's age, mental health, socioeconomic status, prior criminal record, and barriers to legitimate opportunities. As previously discussed, relevant literature suggested that the presence of these factors leads to more punitive charges and sentences. In the past few years, the results of such studies have been widely reported, so it was discernible whether these homicide players take these results into account when making decisions.

The third series of hypothetical questions was also based on the premise of armed robbery and also contained information about selected victim's characteristics which may or may not affect the subjects' charging decisions. These factors include the victim's age, pregnancy status, prior criminal record, felon status, gang association, and possession of a loaded firearm. As previously discussed, there are statistically significant correlations between particularly vulnerable victims and longer prison sentences. Thus, adding information about a young female victim, an old female victim, and a pregnant female victim tests whether the subjects subscribe to these stereotypical charging and sentencing patterns. Furthermore, there are also statistically significant correlations between seemingly blameworthy defendants and longer prison sentences.

Therefore, adding information about prior criminal record, felon status, and gang association tests whether the subjects subscribe to these stereotypical charging and sentencing patterns as well. Moreover, the final scenario in which the victim has a loaded firearm at the time of the shooting tests the subjects' willingness to consider an alternative intent such as self-defense. With this

intentionally vague scenario, the subjects' speed and ease of answering was indicative of whether they made a decision based upon a stereotype or carefully analyzed the facts as given.

These answers were recorded as yes (murder charge) or no (lesser charge). Then, answers of yes were coded as 1, and answers of no were coded as 0. These close-ended questions allowed for comparisons across the sample by occupational and adversarial lines. Furthermore, these questions allowed for a comparison of an individual's stated beliefs and their charging decisions, which may or may not align. The differing of beliefs and charging decisions may explain how those with noble intentions, particularly prosecutors and judges, unknowingly perpetuate mass incarceration.

After these questions were initially drafted, they were piloted in order to ensure they yielded useful data. Then, edits were made and potential subjects were identified and contacted. For the sake of time, it was decided that three homicide prosecutors, three homicide defense attorneys, three homicide detectives, and three judges would be interviewed. Later, a local advocate for criminal justice reform was added to the sample, as he has extensive experience as a prosecutor and defense attorney. Since his most recent position before entering the field of advocacy was a prosecutor, he is listed as a fourth prosecutor. Subsequently, the sample size was 12 (N=12). Although the sample size is too small to yield statistical significance, it is large enough to expose patterns in that data among occupations and among adversarial lines.

As previously discussed, the prior internship exposed me to many homicide prosecutors and homicide detectives. Consequently, I was able to contact the prosecutors directly and also ask them to refer detectives, thus using snowball sampling. Additionally, I found online contact information for several judges and defense attorneys who I identified as repeat players at Hawthorne County Courthouse. Many of the defense attorneys and judges initially contacted did not respond or were consumed by pending trials, so I continued to email others until I found willing participants. Furthermore, prior research suggests that my own positionality as a young, white, female student helped me garner my unique access to these legal professionals.[50] Therefore, the privileges of the aforementioned white female effect seems to mirror those afforded to white females victims. As other researchers have found, I noticed that male participants were both more likely to participate after receiving my request and more likely to thoroughly explain their answers to me. Thus, my own status seems to have resulted in more robust answers, potentially strengthening my results.

In these emails, I asked whether they would be willing to participate in an anonymous and confidential interview in person or over the phone at their convenience. Interviews were, then, scheduled at the subjects' choices of location, which ranged from offices or coffee shops, though most interviews were done by phone. One week prior to the interview, subjects were emailed an informed consent document which explained the project, their rights, and the handling of their identifying information through secure servers and pseudonyms. At the

[50] Nielsen, Laura Beth. 2004. "License to Harass: Law, Hierarchy, and Offensive Public Speech." Princeton, NJ: Princeton University Press.

beginning of the interview, the researcher confirmed that the subject had read and understood the consent document and explained that only the researcher would be in possession of their name and other identifying information. In order to accommodate subjects during their busy work days, the interviews lasted as long as the subjects had time. Consequently, the length of the interviews lasted from thirty to seventy-five minutes, based on time constraints or the detail of the subject's responses. Despite the variations in length, each interview yielded data and anecdotes essential to this project.

At the conclusion of data collection, we uploaded the qualitative and quantitative data electronically for analysis. I typed my ethnographic notes were typed and either used the online online transcription service, TranscribeMe, for interview transcriptions or transcribed them on my own. We, then, coded the interviews for qualitative and quantitative data. We organized the qualitative thematically, and we extracted quantitative data from the interview transcripts and uploaded them into Excel and STATA for further analysis.

Results

Background: Prosecutors

Before discussing my findings of the differences between opposing counsel, I will begin by providing context for prosecutors and for defense attorneys. My account of a New England prosecutor's typical day is based upon my own observations and my account of a defense attorney's typical day is based upon interview responses. These descriptions may help illuminate how their work informs their attitudes and beliefs.

Every Monday, a different Hawthorne County homicide prosecutor is "on-call" and receives a pager that sends alerts whenever a new homicide is reported. Whenever the pager goes off during this week, the prosecutor immediately drives to the crime scene unless she is in court, in which the next available prosecutor drives to the scene. Typically, most homicides occur late at night and especially on weekends, so the on-call prosecutor must be prepared at all hours of the day all week long. Moreover, since there is approximately one homicide per week, the on-call prosecutor is typically assigned to case. Once on scene, the prosecutor meets with the responding police officer, the on-call homicide squad, and the crime scene technicians, who all update the prosecutor with the information available thus far. Depending on the case, the prosecutor may go to the morgue and observe the autopsy of the recently deceased as well. Then, the prosecutor must wait for the detectives to gather sufficient evidence, identify a suspect, and write affidavits before making an arrest. This process can take days, weeks, or even months depending on the strength of the available evidence and witness testimony. In the meantime, the prosecutor assists with the investigation, meets with the detectives, witnesses, and family of the deceased, and files documents in court as needed alongside their regular duties.

During these conversations, the prosecutor will often spend many hours with the family as they grieve and reminisce about their loved one's life, which was cut short due to violence. The prosecutor also often undergoes emotional labor in order to remain strong, composed, and empathetic while hearing about and viewing the physical carnage that results from such violence and also later

when recounting these details to the judge and jury at trial. Because cases run concurrently, these meetings are frequent and emotionally draining and can also result in close bonds between the prosecutor and family. Subsequently, all three prosecutors, Steve, Sarah, and George, can regurgitate highly detailed information cases, victims, and their families from prior decades. Then, when meeting with witnesses, prosecutors must also address the potential threats to witnesses' safety and work with advocates and police officers to provide safe, secure accommodations. These situations are often dire and consequently very stressful, as witnesses and even prosecutors themselves often blame the prosecutor for subjecting the witnesses to a vulnerable and potentially dangerous position. After spending years in the office, prosecutors generally report either feeling drained or invigorated as a de facto champion for homicide victims, families, and witnesses.

After an arrest is eventually made, the prosecutor will indict and arraign the defendant in Hawthorne County Courthouse before a jury decides whether the case should go to trial. During this phase of the investigation, the prosecutor also learns about defendants, who often already have a lengthy arrest record and documented history of violence. Although no one can be truly defined by his worst act, the prosecutor does not hear the positive anecdotes for the defendants like they do for the victims. This unflattering information coupled with the positive accounts of the victim and attachment to the family can lead to a strong, internalized binary of good versus evil and a sense of "getting the bad guy." Thus,

being a champion for the victims may also involve seeking vengeance for the irreparable loss caused by homicide, as Davis also found.[51]

However, prosecutors must also balance their meetings and investigative work with a host of other duties and obligations. Early each morning, Hawthorne County homicide prosecutors arrive at the office where another series of tasks awaits. While sitting at their desks beside fax machines that constantly spew gory crime scene photographs, prosecutors are constantly conferring with the defense, sending documents to the defense for discovery, updating superiors, and filing motions sent to Hawthorne County Courthouse. Although these tasks may appear monotonous and inconsequential, each duty is essential to the legal process and carries high stakes due to the nature of homicide. Because they have so many active cases which can gain traction at any time, it often seems like homicide prosecutors' work is endless.

Moreover, about once a month prosecutors are responsible for preparing trials during which they shoulder the burden of proof, the standard for which is guilty beyond a reasonable doubt. The preparation process is time-consuming, demanding, and imperative for many reasons. First, the prosecutor's remarks must be persuasive enough to captivate and convince the jury to hold the defendant responsible with a guilty verdict. Moreover, the defendant's liberty and the family's closure also rest upon the final verdict. Next, the integrity and strength of the case reflects the government's effectiveness and ability to uphold our laws and values. Since prosecutors de jure represent the state, the retributive punishments

[51] Davis, Angela. 2007. "Arbitrary Justice: the power of the American prosecutor." New York: Oxford University Press.

that follow guilty verdicts publicly reaffirm and reflect societal values. Furthermore, a loss, or a verdict of "not guilty," is thought to damage the prosecutor's and government's trial record, the consequences of which range from difficulty retaining or finding new employment or public scorn. Thus, it appears that prosecutors carry an insurmountable burden of representing victims, families, the constituents of the state, larger society, and our collective moral compass.

Background: Defense Attorneys

Like prosecutors, defense attorneys shoulder heavy burdens as well. Typically, defense attorneys who accept homicide cases either work directly for the Committee for Public Counsel Services (CPCS) or they work in private practice and accept CPCS cases pro-bono. The three defense attorneys with whom I spoke, Paul, Jane, and Jeff, fall under the latter, and they accept varying proportions of paid and pro-bono work. Nonetheless, they each report feeling overworked and under-resourced.

Typically, a CPCS representative calls Paul, Jane, and Jeff after an indigent defendant is arraigned on murder charges in Hawthorne County Courthouse. Then, the defense attorneys review the existing files and charges before meeting with the new client. Often times, the murder clients are held on bail, so Paul, Jane, and Jeff travel to local jails in order to speak with their clients and start to build cases. Occasionally, a murder defendant is released on bail, which may seem helpful for defense attorneys but not always. Some of Jane's indigent murder clients cannot afford to travel to her office or find a ride. Although she tries to accommodate her clients as much as possible, she is

sometimes forced to conduct meetings clandestine public locations such as Hawthorne County Courthouse and even Dunkin Donuts, both of which lack privacy.

Nevertheless, during these meetings they explain the legal process and ask about the incident in question but never ask clients whether they committed the alleged crimes point-blank. This strategy is typical of defense attorneys, as a confession of guilt could compromise the attorney's ability to provide zealous representation and uphold defendants' Sixth Amendment right to "assistance of counsel." Moreover, defense attorneys also use these meetings to learn more about their clients. They often discuss the client's upbringing, and adolescence to gain better insights of the person and potential mitigating factors. These conversations exclusive to defense attorneys also yield a more holistic and empathetic understanding and approach. Consequently, the defense attorneys spoke about their clients and their clients' hardships very passionately, just as prosecutors did regarding families of victims.

Next, the defense attorneys usually file motions against the prosecution in an attempt challenge and strike down the information that prosecutors seek to use in court. After filing, the defense attorneys, then, attend the motions session at Hawthorne County Courthouse or a pre-trial conference where defense attorneys and prosecutors each have the opportunity to deliver oral arguments in support of their respective positions in the presence of the Court. These appointments occur every few months until the trial commences or a plea agreement is made. In the

meantime, the defense attorneys juggle their paid work as they continue to meet with their homicide clients and begin their own investigations.

Resources

Since these attorneys' homicide cases are primarily pro-bono, this means that their homicide clients are indigent and cannot afford legal services. And because the stakes for homicide trials are incredibly high, the attorneys must devote significant resources and time for each homicide case they agree to take. Unlike prosecutors, defense attorneys do not receive a salary, paid time off, government pension, or other benefits for this work. Moreover, they do not share the same access to taxpayer-funded investigators and expert witnesses, both of whom are absolutely essential for each and every murder trial. Jane also shared how difficult it is to essentially haggle with the Court for money during each case, as this practice can feel both demeaning and unfair especially when considering that it is exclusive to defense attorneys. During her discussion about inequitable resources and compensation, Jane also conveyed that only defense attorneys also have to pay rent, pay support staff, purchase equipment and supplies, and find paid work. Paul and Jeff work for private firms which often shoulder a portion of the financial burdens, but Jane works for herself and, therefore, has no such cushion. These logical factors are often stressors that impact defense attorneys' self-perceptions and perceptions of their positionality in the criminal justice system.

Consequently, each defense attorney lamented that they feel that the cards are stacked against them as soon as they accept a new murder case. Paul and

Judge Charles, who worked as a defense attorney before taking the bench, specifically reported that they identify (or identified) as an "underdog" constantly fighting against the system, thus adopting an oppositional position. They specifically cited procedural obstacles such as the discovery process and seemingly biased judges. Criminal defendants and their defense attorneys are entitled to see the evidence mounted against them, however, defense attorneys must file a request for discovery. Jeff described the discovery request process as follows: "I sort of jump up and down until I get something." After defense attorneys file for discovery, begrudging prosecutors are required to send copies of all notes and records aside from names redacted to protect witnesses' identities and safety. Sometimes, prosecutors stall and strategically hand over the documents, which are often several hundred pages, mere days or hours before trial. In these situations, the defense team cannot possibly read and analyze everything, thus sabotaging their defense. During one of Paul's hearings, I heard him angrily request that the judge tell the prosecutor to turnover the discovery as quickly as possible, to which the prosecutor agreed. These logistical hurdles seem to cause Paul and Charles to perceive themselves as the underdog, instead of their clients whose liberty is in jeopardy.

Nevertheless, this underdog self-perception seems to cause them to assume antagonistic stances against those they find themselves up against, prosecutors and even judges. Coincidentally, during my ethnographic work I observed Paul raise his voice towards a judge and threaten to take his case to another judge after she ruled in favor of the prosecution. I also watched a defense

attorney yell at another judge and accuse her of "ruining [his] case" after she consistently ruled in the prosecution's favor during the trial against a man accused of murdering a white toddler, which I described earlier.[52] Not once did I hear a prosecutor speak less than cordially to a judge. This observation suggests that defensive attorneys were more likely to be openly combative and hostile while prosecutors remained agreeable.

Not only is it shockingly disrespectful to yell at someone of such stature in open court, but it also creates animosity towards the defense and ultimately the defendant, who is fighting for his freedom. The men who made these outbursts, both of whom are older and more experienced than the other repeat players in the courtroom, have been trying murder cases in Hawthorne County Courthouse for decades, so they may be especially frustrated or tired of enduring further emotional labor. Nonetheless, their holistic approach to criminal defense crumbles when collegiality stops and positive working relationships with adversaries are compromised. Fortunately for homicide defendants, such outbursts are rare as most courtroom banter between defense attorneys is actually quite friendly.

Relationships between Repeat Players

Before each motion session, homicide session, and trial, prosecutors and defense attorneys arrive early and speak amongst themselves at the benches open to the public. Sometimes, the courtroom benches appeared segregated in that defense attorneys sat on the left, prosecutors sat on the right, and spectators sat in the middle. More commonly, defense attorneys and prosecutors sat next to each

[52] Observation dated June 20, 2017.

other before the proceedings began and constantly smiled and laughed during their conversations.

Prosecutor Steve seemed to have a particularly jovial relationship with defense attorneys regardless of their notoriety and negative reputations in the legal community. When I asked him about his relationships with opposing counsel, he mentioned that one of his fiercest adversaries "he's a personal friend of mine now. He comes to our house for Christmas parties and cookouts. Him and his wife get my daughter and son birthday presents." Not only does this comment speak to the benefits among repeat players, but it also emphasizes that positive relationships and even genuine friendships can develop across the aisle. The other prosecutors and defense attorneys also shared that they had positive relationship with opposing counsel, but they stressed that the purpose of these relationships is solely business.

Regardless, it appears that even contentious relationships can lead to positive working relationships and even friendships. Since each lawyer agreed that these positive working relationships are important when making agreements of any kind, it suggests that deals such as plea deals are more common than they appear. Although I observed only two plea deals, it is very possible that plea deals are more common than they appear. Thus, homicide case outcomes in Hawthorne County may not always be as punitive as those that I saw. If so, homicide sentences in Hawthorne County may be more fair and proportional than I thought.

"Prosecutors and defense attorneys -we all want the same thing. I care about justice. The defense lawyers care about justice. Our goal is supposed to be

justice" Steve, exclaimed while discussing his relationship with opposing counsel. Indeed, prosecutors and defense attorneys shared several beliefs on paper, although their close-ended responses did not always with align with their aforementioned opinions. In general, every prosecutor and defense attorney reported that the criminal justice system should be based on principles of fairness and equality under the law. However, the jury is still out on where the inequities lie.

Theories of Justice

When asked for their personal definition of justice or ideal justice system, every lawyer mentioned fairness in some capacity. Jeff, a private defense attorney who often takes public cases, explained "the nineteen-year-old punk ass gang thug should get exactly the same consideration in the system as the nineteen-year-old Yale student, son of some corporate CEO." Steve was also quick to recognize that "it is a fact that people of color and disproportionate finances... are arrested exponentially more than white folk." In my four months at Hawthorne County Courthouse, I observed only three white homicide defendants during the many trials and motion sessions I watched.

However, Jeff went further to say that "black people, percentage wise do commit more crimes than white people but it's not because they're black, it's because they're poor. In a system that keeps them poor." Each defense attorney echoed this sentiment and gave examples of the many ways that poverty harms criminal defendants before, during, and after their incarceration. William, a criminal justice reform advocate who was previously a prosecutor and public

defender, even cited poverty as a common precursor to trauma which often precipitates violent acts such as homicide. The lack of financial resources among homicide defendants and the Committee for Public Counsel Services also typically lead to inadequate legal counsel, increasing the odds of incarceration.

Because the three defense attorneys, Jeff, Paul, and Jane often take public appointments, the strength of their cases also relies on the presence or lack of funding. Jane recalled instances in which prosecutors objected to her requests for funding to pay investigators and expert witnesses, which are funded by taxpayers when appointed by the prosecution. Even after her clients are released, Jane claimed her clients face extraordinary hardships when attempting to pay for court-ordered probation fees because it is very difficult to obtain employment after the "scarlet letter" of incarceration goes on their records. As discussed, Paul and even Judge Charles, a former defense attorney, indicated that these mounting challenges that indigent clients and their attorneys face have influenced them to perceive their position (and former position) to be that of an underdog. This self-perception is their motivation to persist despite adversity, but it also perpetuates the contentious relationship with their adversaries.

Similarly, the prosecutors zealously advocated for their formal and informal clients as well. Career prosecutor George often discussed protecting the safety and interests of the public, who he directly represents. He posited that incarceration is a strategy used to appease to public because "we want the community the public to know that they can come to the court and let the criminal justice system work." Although some may agree with him, supporting public

blood lust is not outlined in the Constitution. William also recognized the influence of our retributivist culture when he said that we still need to reach the point when "people in the reader's comments [of online articles] aren't like 'yeah fucking fry him!" George also claimed to support the release and re-entry of offenders who no longer pose a threat to society, for both humanitarian and economic reasons. However, George also maintained that retribution helps families heal from the violent death of loved one and prevents vigilante justice. He explained "they've had a family member taken from them through a vicious murder and they see a court system that focuses only on rehabilitation but walking out on the street that will be recipe for disaster because the message will go out to the community that you won't get justice in the courts." Thus, George seemed to indicate that he employs incarceration to promote the authority of the law and government.

Another career prosecutor, Sarah, also expressed that her strong desire to serve the needs of the families although she does not officially represent them. Sarah explained that "justice is when the victim's family feels like they have been represented and the police and DA's have done their best." From this statement, it appears that her foremost concern is the wellbeing of the family, despite her duties to the public. Due to her close proximity to families and witnesses, Sarah believes that criminal justice reforms must include greater protections for the privacy and identities of witnesses and those who must confront defendants in court. Indeed, I overheard several prosecution witnesses proclaim fear for their lives and several family members express fears of re-victimization while

confronting their loved one's killer. However, these considerations do nothing to alleviate mass incarceration or inequities in the criminal justice system.

As previously described, prosecutors always spoke to the family members of victims before or after court, while defense attorneys rarely spoke to the families of defendants. Not only did these interactions seem to prepare the families of victims for the mores and tribulations of court, but the interactions also seemed to strengthen families' personal bonds with the prosecutors. During his discussion of a case from twelve years prior, Steve exclaims "I'm still processing that. That sticks with me… I still got the pictures of the mom and the granddaughter in my desk. I think about all the homicides." These strong connections may contribute to the prosecutors' emotional attachment and affinity towards families of victims, as well as the prosecutors' self-perceptions as heroes. Thus, prosecutors appear to thrive on emotion while zealously advocating for victims and the common good. This enthusiasm may help jurors, in turn, make a stronger connection with prosecutors at trial. This alliance may even lead to guilty verdicts.

On the contrary, the defense attorneys spoke of their clients with professional detachment and personal distance, although Jane and Jeff sometimes appeared more sympathetic. However, they also internalized a lot of the issues of the criminal justice system usually attributed to defendants, which creates a further divide. Perhaps the defense attorneys' reliance upon billable hours constricts their ability to spend personal time with clients and their families. The defense attorneys advocated arguably just as zealously for their clients, suggesting

that objectivity may also be an effective approach for trial. However, the detachment especially when paired with combative personas did not appear particularly successful. During my observations, jurors levied guilty verdicts in the cases where defense attorneys appeared antagonistic. Whether their motives are personal or financial, defense attorneys' detached approach may harm their clients and lead to harsher sentences.

Correspondingly, prosecutors and defense attorneys harbored opinions regarding methods that bring justice. Unsurprisingly, prosecutors expressed a preference for trials suggesting a belief in procedural justice while defense attorneys advocated for more holistic, and restorative justice practices outside the courtroom. As discussed, Sarah believed that families rely upon trials, especially guilty verdicts and sentences, for closure. Moreover, George advocated for the symbolic nature of trials, which serve to reaffirm society's morals. This framework suggests that George pursues retribution for the purpose of general deterrence. Because general deterrence involves issuing severe sentences in order to dissuade future offenders, it appears to violate both fairness and proportionality. Although Hawthorne County is a liberal region, general deterrence is a more conservative approach. I did not ask subjects for ideological or political affiliations, but George does have a framed portrait of Ronald Reagan as well as a prominent American flag on a pole in his office. Regardless of his affiliations, this anecdote suggested that government institutions are less receptive to progressive reform and more attached to the policies of the past.

Moreover, prosecutors' preference for trials was also indicative of a belief in a procedural justice model. Procedural justice is the notion that an outcome is fair if the process used to attain that outcome is fair. In his explanation, Steve recalled "lady justice with the scale and the blindfold" and explained that the scale must be "always equal and I mean equal, meaning that defendants have right and the Commonwealth has a right to put on a fair trial." During the interviews, all of the prosecutors and detectives, both of whom represent the state, agreed that the criminal justice system is working well and has led to a fairer society. For those who are attuned to some of the issues that plague the criminal system, this sentiment initially may seem surprising, especially since Steve previously stated that people of color and low socioeconomic status are disproportionately arrested. However, this belief is consistent with both the procedural justice model and prosecutors' professional obligations.

First, both detectives and prosecutors are involved in the processes that comprise the criminal justice system. As discussed, detectives and prosecutors both arrive at crime scenes and participate in the initial investigation. Then detectives continue to pursue leads and witnesses, as they build their cases in order to get probable cause and write arrest warrants. After arrest, the prosecutor intercepts and decides whether or not to file criminal charges. After the prosecutor decides upon and files the charges, she convenes secret grand jury proceedings where she presents the evidence and anonymous witnesses before a large pool of jurors sworn to secrecy, who decide whether or not to indict the defendant. Upon indictment and then arraignment, prosecutors either proceed with pre-trial

hearings or prepare to make a deal. Because the detectives or prosecutors control each step of this process, it is clear why they indicate that the process is fair. Any statements to the contrary would suggest that they are either incompetent or harbor nefarious intentions. Even for the two significant aspects of trials that detectives and prosecutors cannot control, judges and juries, all of the prosecutors and most of the detectives indicated that these groups are fair and competent. This belief also seems to support the procedural justice model because if two groups instrumental to the criminal justice system are fair and impartial, then the outcomes would appear just as well.

However, prosecutors' and detectives' support of judges and juries may also be explained by professional obligations. Professional obligations, such as those found in the American Bar Association's Criminal Justice Standards for the Prosecutor Function, demand that prosecutors' statements regarding lawyers, judges, juries, and the criminal system are respectful.[53] Therefore, prosecutors may report favorable impressions of criminal cases and all involved players in order to remain "respectful." Because prosecutors have a public position, they may feel especially obligated to uphold this standard. Prosecutors also receive training from the office's press secretary, who trains the prosecutors how to make public statements. The judges and detectives, who also have public positions, largely sided with the prosecutors on this issue as well. Thus, the nature of public office may constrain or influence public statements regarding the criminal justice and its players.

[53] American Bar Association. 2018. "Criminal Justice Standards for the Prosecutor Function."

Furthermore, prosecutors may also have practical reasons behind conveying support for judges and juries. If a prosecutor were to criticize judges and juries who decide the verdict, it would appear as though the prosecutor blames them for their unfavorable outcomes. Moreover, as previously discussed, prosecutors appear before judges many times throughout the week for indictments, arraignments, motion sessions, pre-trial conferences, and trials. Since prosecutors have so much face time with judges who make decisions that can make or break their cases, it appears that it is in their best interest to protect their relationships with judges. Consequently, prosecutors seem to have many possible incentives to support procedural justice as well as other figures instrumental to the criminal justice system. However, there is an inherent tension between Steve's admission of the criminal justice system's inequities and his and his colleagues' glowing support for this very system and all its components.

Alternatively, William, the Hawthorne County prosecutor turned criminal justice reform advocate, and the three current defense attorneys argue against the conventions and inequities of the criminal justice system, as well as the impartiality of judges. Again, the defense attorneys recognized inequities at each stage of the criminal process. When discussing the supposed fairness of the criminal justice system, Paul argued "people get arrested all the time but they shouldn't be arrested. If people can be charged but they shouldn't be charged but that the mere fact that some cop decided to charge somebody with the crime doesn't mean this is legitimate." From this statement, it appears that the procedures of the criminal justice are unfair, so the outcomes must be unfair as

well according to the logic of procedural justice. Thus, Paul mentioned unfair arrests just as Steve did prior, but Paul used this same supposition to draw the opposing conclusion that the criminal justice system is unjust. Jane also wondered whether the "criminal justice system can even be trusted." Based on her experience, she found that each case "depends for example on the parties. It depends on who the the prosecutors are, who the judges are etc…" This sentiment suggested that the conduct of prosecutors and judges varies so much that it affects the outcomes of her cases. Arguably, if prosecutors present a fair case against a defendant who was arrested based upon credible evidence and judges serve as neutral fact-finders, then there should not be a high level of variability among players. However, Jane suggested that this idealistic vision is not, indeed, reality, so the system and its outcomes cannot be fair. Thus, the defense attorneys have many anecdotes that appear to weaken the procedural justice argument and create an ideological divide between the adversaries. Since the two groups conceptualize justice differently, their interests and actions appear to inherently clash.

The Judiciary

Moreover, the defense attorneys expressed different attitudes towards the fairness and impartiality of judges compared to those of prosecutors. As discussed, all the prosecutors agreed when I asked whether judges are fair and impartial. When I asked the defense attorneys this same question, they all remained neutral. However, each defense attorney expressed sharp criticism toward judges later when not explicitly asked, thereby creating a tension between their expressed and internal views. During discussions of inequity, a common

theme among the defense attorneys, they each shared anecdotes regarding biases judges. Paul, the defense attorney who I previously observed yelling at a judge, first intimated that he maintained neutrality not for professional obligations nor diplomacy, but because he believed that "some are [fair] and some aren't." He later said, "if I'm trying a case and the judge is being partial or biased it certainly is apparent to me… If the judge is biased in terms of helping one side of the side, then the jury is going to get a skewed picture which is going to affect the outcome." Like Jane, Paul also posited that judges do not all act as neutral fact-finders, and these disparate actions affect the final verdict and, thus, the defendant's liberty and quality of life. Therefore, Paul's sentiment also served as an accusation that some judges intentionally or unintentionally violate their oath to "administer justice without respect to persons, and… faithfully and impartially discharge and perform all duties incumbent upon [them.]"[54] Such an accusation is significant as it alleges that some judges fail to uphold their most meaningful duty and, therefore, undermine the values of the judicial institution.

Moreover, Jane provided an anecdote that nicely illustrates Paul's allegation. Jane describes\d that judges sometimes make biased positions based upon their own lived experiences. For example, she spoke of judges who make prejudicial rulings against defendants accused of elder abuse because they have an elderly parent and, thus, are overly sympathetic instead of neutral. Similarly, Jane also has had experiences in which judges adopt a particularly harsh position towards defendants charged with harming young girls because they have young

[54] 28 U.S. Code § 453.

daughters. I also observed this phenomenon during the previously described trial of the man found guilty for murdering a white, female toddler when the defense attorney yelled at the judge for always ruling in favor of the prosecution and ruining his case.

Although crimes against people can be difficult to hear, judges are expected to presume innocence until proven guilty and act as a neutral party. If a judge retaliates against such defendants by siding with the prosecutor, issuing unreasonable rulings against the defense, and skewing jury instructions, then neither the trial nor its outcome could ever be fair, again dispelling the notion of procedural justice. Moreover, Jane expressed that she "absolutely 100% believe[d]" that judges are inherently biased on their positionality before taking the bench. She argued that a judge's prior career as a prosecutor or a defense attorney is easily discernible based upon their conduct and their treatment of each party. I, too, noticed judges were also more lenient towards members of their previous profession, especially their former colleagues. Before an indictment in a district court, I heard a prosecutor tell the victim's family that he knew the judge would hold the defendants on bail like he asked because he used to work with the judge when she was a prosecutor.[55] Again, if judges allow biases to impact the outcomes of their trials, then the court system cannot dispense justice, its fundamental obligation.

Finally, Jeff suggested that "there is a degree of racism in the judiciary." Based on the previously discussed prior research as well as Steve's and Jeff's

[55] Observation dated July 25, 2017.

prior sentiments regarding disparate treatment based on on race, it would seem logical that racism is an issue among judges. However, it is quite bold and powerful to accuse judges of being racist. Because of the high stature and authority of judges, pressing issues such as those are usually unspoken. Indeed, Jeff was the only participant to raise his concern about racial biases among judges. Again, it appears that the judicial branch may have problematic, inherent biases that fix the outcomes of homicide trials. This line of thinking is not only oppositional to the prosecutors' sentiments, but it is also alarming and deeply unsettling.

Moreover, there was an interesting contradiction between the defense attorneys' reported sentiments towards judges and their subsequent criticisms. Like prosecutors, defense attorneys are also subject to the American Bar Association's Criminal Justice Standards which ask the attorneys to remain respectful towards other parties involved in the criminal justice system.[56] However, unlike prosecutors, defense attorneys neither hold a public position nor receive public relations training. Therefore, they may be less guarded than prosecutors and more likely to "slip up" during a passionate rant. Defense attorneys may actually have an incentive to air their grievances about inequities because awareness is the first step towards reform. Thus, defense attorneys appeared to have different priorities when speaking about the criminal justice system and its players.

[56] American Bar Association. 2018. "Criminal Justice Standards for the Defense Function."

William, the only lawyer I interviewed who is not currently in practice, went so far as to disagree that judges are fair. After becoming disenfranchised with court system, he left his job as a Hawthorne Country prosecutor to train and hold discussions with prosecutors. William told a story about an old case that he uses as a model for the prosecutors he lectures. In this case, William declined to prosecute a teenager caught selling stolen property, and instead worked with the teenager to return the money and property and then perform community service. Years later, William ran into this individual after he had graduated from college and learned that the man was now a successful young professional. By steering the teenager away from prison and towards a college education, William drastically improved the individual's life prospects and significantly reduced the chances that the boy would re-offend.

Thus, William used this example to demonstrate that circumventing the traditional retributive system and its deleterious consequences improves the prospects of those beginning on criminal paths, which in turn improves recidivism and public safety. He likened trials to a hostile environment in which the defendant sits down and listens as several people "say bad things about him and others judge him." In his simplified description, trials do appear inherently counterproductive as they harp on the negative acts and prime offenders to reoffend either due to self-perception, learned behaviors in prison, or barriers to a law-abiding lifestyle upon release. Similarly, Jeff posited that "the jury system is a relic… I think the way we incarcerate people is stunningly stupid and counterproductive." Therefore, these attorneys seemed to seek relatively

substantial reforms of the criminal justice system. In William's seemingly utopian view, he envisioned a new, restorative system in which each party has a seat at the proverbial table, and the offender has the chance to hear and participate in a conversation about his crime, the aftermath, and the resolution. Although this framework may appear unfeasible in the near future, Paul also offered similar advice, demonstrating the demand for restorative principles.

Despite his background as a traditional, white-shoe defense attorney, Paul shared many solutions for the issues raised by William, Jane, and Jeff. Like William, Paul also stated that he wanted to see a more "informal" process based on "restorative justice principles." In his description, Paul seemed to allude to mediation as a way to resolve criminal cases regardless of the charges. Like Jane, Paul also argued that the resources available to prosecutors and defense attorneys must be more even. He elaborated, "there is an enormous disparity of resources right now. Most offenders in our system are indigent... and many don't have access to investigators and good experts, yet should have the kinds of resources that they need to fairly defense themselves against the district attorney and police departments." Thus, Paul appeared to incorporate Jane's previous sentiments with his own underdog mentality. Moreover, Paul also suggested "eliminating or reducing the racial bias that pervades the system… that's complicated but basically we need more prosecutors, judges, jurors, probation officers, and cops who are minorities… the system needs to look different." Like Jeff's earlier sentiments, Paul also alluded to racial disparities and its consequences for

defendants of color. Although Steve also mentioned racial disparities, Paul offered more discussion and proposals.

Moreover, the interview responses also illuminated ideological differences between the two adversarial groups. As discussed, many interview questions also yielded ideological differences between prosecutors and defense attorneys on issues such as mitigating circumstances, plea deals, mandatory minimums, and the efficacy of rehabilitation. First, the lawyers' different views appeared to stem from their respective positionality and self-perceptions. Prosecutors' hero mentality seemed to lead to a good versus evil dichotomy that shapes their values and beliefs on moral issues inherent to criminal charging and sentencing. However, defense attorneys' underdog mentalities and opposition to the criminal justice system appeared to inform their attitudes that differ from those of prosecutors. Moreover, differential access to information regarding victims and defendants also seemed to cause a deviation between prosecutors' and defense attorneys' beliefs. Thus, different self-perceptions and different experiences produced stark ideological differences.

Theories of Punishment

One clear point of deviation between adversaries was the relevance of mitigating circumstances such as age and mental illness when determining criminal charges. As previously discussed, the choice of criminal charges carries high consequences due to mandatory minimum sentences. Consequently, I chose to ask all interview participants to suggest the criminal charges they found appropriate after I read each vague, hypothetical scenario. Again, the options were

first-degree murder, which automatically carries a life-sentence upon a guilty verdict, or a lesser charge such as second or third degree murder, sentences that yield more latitude and discretion. One such scenario entailed a twelve-year-old child shooting a convenience store cashier in the process of an armed robbery. Interestingly, the responses were completely split among adversaries. Each prosecutor suggested a first degree murder charge, whereas each defense attorney as well as William recommended lesser charges.

During these discussions, prosecutors indicated that they simply match the facts of the case with the legislature's definitions of the potential charges. At face-value, the aforementioned information indicates that one person killed another person which is, indeed, the definition of homicide. However, I intentionally did not explicitly provide the mens rea, or the intent behind the crime, but rather I provided the actus reus, or the action taken to commit the crime. Thus, the individual participants each had to make an inference. Therefore, it appeared that the prosecutors privileged the actus reus over the offender's age, which others may have considered to be a mitigating circumstance.

Moreover, prosecutors also seemed to approach this scenario, as well as others, with a textualist approach, or one that bases legal interpretation on the ordinary meanings of words, without consideration of the resulting consequences of the decision. Because prosecutors officially represent the state and unofficially represent victims, their sole focus is on the act itself. Thus, their goal is to "get justice" for the people and for the victims perhaps at the expense of defendants.

This focus inherently reduces the consideration of seemingly mitigating circumstances such as a young age.

Alternatively, the defense attorneys each indicated that "a twelve-year-old cannot commit murder." They cited various reasons such as immaturity, lack of understanding, and recent research that asserts that those under twenty-one years of age are still undergoing brain development. Consequently, most of the defense attorneys also advocated against first degree murder charges for seventeen-year-old offenders as well, though prosecutors did not. William, who has had extensive experience with youth offenders, said

> "most homicides that I've run into are young people shooting other young people for various reasons some of which are stupid and some of which are more stupid… General or specific deterrents don't make a difference particularly with young people because young people don't have the capacity to understand that life in prison means life in prison."

Here, William asserted that young offenders are immature due to their age and stage of development, and thus should not be treated as adults. Paul also argued that this lack of cognition and understanding of consequences signifies that youth offenders do not share the same amount of culpability as adults. The perceived lack of culpability negates a first-degree murder charge and instead calls for a lesser charge such as second or third degree murder.

Thus, the defense attorneys adopted a more holistic approach that calls attention to the causes of the act in question and consequences of the punishment options. William described, "but these kids who are just like wrapped in that life

and do something really dumb and really tragic, our culture is still like shame and punish them. It's gonna take a long time to do away with that. You see who the president is." Paul, Jane, Jeff, and William all shared close relationships with defendants accused of murder. Therefore, they are inherently more attune to the issues that afflict their clients. Moreover, these attorneys also frequent jails and prisons to meet with their clients, so they also witness and begin to understand the perils of incarceration. Thus, the defense attorneys' empathy and experiences may subsequently influence the framework with which they view the law and punishment.

Similarly, the adversaries were also split on the morality of mandatory minimum sentences. Unsurprisingly, the former and current prosecutors intimated their support of mandatory minimums, as they frequently recommend first-degree murder charges which carry mandatory life sentences. Although I did not have many conversations at length regarding mandatory minimums with the prosecutors, Judge Joseph, a former prosecutor shared his sentiments with me. When discussing homicide sentences, he stated "let me make one thing clear, I do believe in mandatory minimum sentences. I do believe in them for repeat offenders." From his experience as both a prosecutor and a judge, Joseph expressed the frustration of the same individuals appearing in the same courts for the same offenses time and time again. Judge Joseph perceived these repeat offenses as an indication that the offender has neither learned his lesson nor responded to prior punishments, so greater lengths must be taken to deter the offender. Consequently, his prior career as a prosecutor seemed to influence his

judicial decisions, as Jane previously discussed. Therefore, Judge Joseph's propensity to punish repeat offenders due to his own frustrations seemed to result in sentences of increased severity based on his positionality instead of the principles of fairness and proportionality.

Accordingly, the former and current defense attorneys argued against the morality of mandatory minimum sentences. As previously discussed, William and the defense attorneys adopted a holistic approach to criminal cases. Paul expressed that

> "mitigating factors should all be properly taken into account by a judge and the problem of mandatory sentences for murder among other things is that every single defendant convicted of first degree murder gets the same sentence, life in prison, without the possibility of parole. And that to me is the flaw in our system. The system should allow judges to make nuanced determinations about appropriate sentences in all cases including murder cases… This whole idea hamstrings judges and gives prosecutors unfair leverage that they use."

Again, the defense attorneys mentioned the use of mitigating circumstances and the holistic approach to criminal cases. Paul also argued that mandatory minimums take discretionary power away from judges and give them to prosecutors, whose cases benefit from this unequal balance of power. Thus, this statement is quite poignant as it exposes inequities in the criminal justice system and, therefore, further dispels procedural justice. As discussed, Jane and Paul

previously expressed underdog self-perceptions, which may have influenced their opinion that prosecutors have a disproportionate amount of power.

Additionally, Judge Charles, the former defense attorney, shared a negative view of mandatory minimums. He argued that mandatory minimums are "a moral question… and in my view unduly harsh, which deprives the judge of sentencing discretion." Charles's sentiments regarding the severity of mandatory minimums and the loss of judicial discretion closely mirrored those of Paul. Thus, this is another example in which a judge seemed to adopt the position of his former colleagues, as Jane suggested. Although Judge Charles's positionality may be in the best interest of the defendant, his approach may also lack fairness and proportionality if swayed by his former line of work.

Another interesting point of deviation was the issue of rehabilitation and release into society. Theoretically, if one is rehabilitated, or restored to a crime-free lifestyle, then his release should serve no harm to the public or himself. Defense attorneys seemed to accept this premise, though prosecutors and detectives appeared to reject the conclusion. After years of enduring the gory aftermath of homicide, prosecutors and detectives again recalled their perceived good versus evil dichotomy of human nature. Detective Liam summarized "I generally just think that there are some evil people in the world." He, then, conveyed that he feels solace when "evil people" go to prison indefinitely. For Liam, this idea was consistent with the notion that the role of police officers is to "catch the bad guys." Accordingly, this self-perception appeared to inform Liam's attitude towards punishment.

One afternoon at Hawthorne County Courthouse, I shared an elevator with two white middle-aged men wearing polo shirts and jeans.[57] When the homicide session began, I watched the two men from the elevator walk to the table where defendants sit with their attorneys, and I heard as the court clerk read their murder charges dating from the 1990's. After initially being found guilty and spending several years in prison for the rape and murder of a young woman, the two men were released on a technicality. Now years later, the two men are employed and have been making efforts to live crime-free lives. However, they were in court to discuss removal of their GPS ankle bracelets based on their good behavior. The prosecutor agreed that they had not committed subsequent crimes nor attempted to flee, but she objected to the removal of the bracelets. The veteran detective sitting next to me scoffed "yeah that's because he has the GPS bracelet."

Thus, this detective's remark seemed to echo the sentiments of the detectives I interviewed. When I asked Detective Anthony, he stated "I just wouldn't want to be the one to make that decision and have to live with it for the rest of my life when they kill someone else. I just don't want to be the decision maker. Luckily, though I'm just the person that gathers the evidence." These detectives' cynical or overly cautious attitudes were based on upon their many years of negative encounters with homicide defendants, so they surely have reason to have reservations, but their belief system quite literally closes the door on the futures of incarcerated people. Steve agreed as he explained

[57] Observation dated October 27, 2017.

> "I also believe that there's some people that cannot be redeemed or rehabilitated. You have some people that are just cold and heartless… I'm just saying there are people out there who will never be redeemed or rehabilitated in my mind. For first-degree murder, you can for sure be rehabilitated and redeemed, but it does not mean that you should be released from prison. Life in prison means life in prison."

Here, Steve asserted that one cannot be a productive member of society after committing murder. Although he claimed to believe in redemption, he implied that any less than a lifetime of punishment amounts to "letting someone off" too easily. This sentiment also encapsulated the idea that there is a subset of people who can never be healed, so the corrections system has no need to devote resources to these "lost causes."

Alternatively, defense attorneys stressed the notion that everyone deserves to be eligible for a second chance. As William astutely explained,

> "What you're saying as a prosecutor or a cop or a victim's rights group when you say that we as the government should have the ability to send someone away forever without them at least having the opportunity to show that they've repaired whatever it is about them and they're ready to repair the hard. Because again the culture is you're gonna give them a free pass." He later goes on to say "who the fuck are we to be like 'you are completely irredeemable.' We are the only country that does that."

Through this powerful statement, William reconsidered the very notion that the government has the ability to indefinitely condemn and confine people. He, thus,

believed that all homicide offenders do not need to serve a retributive life sentence in order to receive an adequate punishment. Additionally, he reminded us that sentences are also used to send a message to the public and reaffirm our society's morals.

Moreover, Jeff sharsed William's value system and criticism of our current manner of punishment as well. Jeff explained

> "I don't believe in the classic concepts of good and evil. I think retribution is a disgraceful thing. But obviously if you kill someone, you have to be responsible. But let them reintegrate into society and try to make it better. Say ok we're gonna let you out into society, but you're gonna spend the rest of your life cleaning up crap from little, incontinent old ladies. Something you know? There's a better way to do it."

Thus, Jeff again demonstrated his more holistic and restorative approach to punishment, as well. Although his idea of a punishment may be bizarre, his idea to use punishment outside the correctional institute setting is novel. He also echoed William's idea that life-sentences are extremely retributive and not necessarily necessary for all homicide offenders.

Judge Charles also shared Jeff's and William's humanist approach towards criminal offenders and sentences. He stated, "every person I ever represented who was accused of murder took the garbage out for their grandmother and came to their mother's house and helped her clean out the house when she asked. No one is ever only the worst thing they ever did in their life." Thus, like Jeff and William, Charles also rejected the good versus evil paradigm.

He also rejected the principles of our highly retributive system and shared the humanist approach. It is powerful that a judge would explicitly state that people are more than their convictions, since our system condemns them to a lifetime of punishment. Charles later added

> "There are many people who killed who would never kill again. They may not even need rehabilitation… So do I think somebody who has committed murder could be rehabilitated so that they would come out and live a productive life in society? The answer is absolutely yes. But should we permit somebody who kills to come out into society? That's the moral question."

Here, Charles seemed to argue against the logistical need for life sentences as a measure of public safety. However, he challenged the logistical need of punishment with the moral imperative. So while he agreed with William and Jeff that every homicide offender may not pose a threat to society, he asked whether it is moral to let someone live his life when his victim cannot. Although he seemed to condemn retribution, this eye for an eye attitude is inherently retributive.

Ideological Similarities

Despite their myriad of differences, prosecutors and defense attorneys alike shared the position that victims' circumstances or perceived vulnerability should not influence the severity of their murderers' punishments. When asked to assign charges for the vignettes that alluded to less reputable victims, no one strayed from their previous examples. For example, I asked how the participants would assign charges if the homicide victim were a gang member or felon, and

they still responded with first degree murder, as they had earlier to questions about the offender's attributes. Although social desirability may have been a factor, almost every participant cut me off during this line of questioning and stated some variation of "the character of the victim does not change the character of that act." This theme was inspiring but surprising, considering that previously discussed research has shown a strong correlation between victim-offender relationships and murder sentences. Perhaps a less explicit question would negate social desirability, or maybe times are changing.

Furthermore, the different attorneys also shared skepticism of the media industry and its portrayals of criminal cases. Both prosecutors and defense attorneys scorned the media's overrepresentation of "ideal" homicides or those perpetrated against white and wealthy people and the cycle that ensues. As Steve described "sadly, when a rich, white woman gets killed, the media is more interested in her than a minority from the housing projects. And that's awful, but that's the media's decision because they're judging who is gonna consume the media… I think it's a disgrace." Steve's statement was consistent with the previously discussed white female dyad that causes increased outrage and attention. As a prosecutor, Steve noticed which of his cases' victims receive media attention and which do not, as the members of the news media appear inside and outside Hawthorne County Courthouse whenever they please. Jane expressed concern with the presence of the media during her trials when said "I don't think that people are normal when they see press in the courtroom. I think they do things differently, and I don't like that. [The media] does not belong in

the courtroom." If the players change their behavior around cameras, it is likely that they are doing a disservice in some way. Each defendant has the right to a fair trial, so the quality of the case should not be predicated by media presence.

William also observed how prosecutors and the media are entangled in a cyclical relationship. He explained

"even media drives a lot of what prosecutors do everywhere. If the media was up in arms about the fact that the leading cause of death of black males between 18-40 is homicide and that was in the news story all the time, I bet you that the cops and the DAs and maybe the court system would be handling things a lot differently if it were under a microscope. It never is though. There were three murders last week, and they were all children, teenagers. And they were on the news cycle for like ten seconds, if that. Then there was a shooting in the Back Bay and all of a sudden it's like four days of fucking coverage. It's like the media decides who cares about what's happening, but I would be naive to say that there isn't some implicit bias."

As William described, there is a cycle between media attention and government attention. If the media decides that a white woman's death is particularly egregious and worthy of significant coverage, then the government will be under increased pressure to solve the case and make an arrest because the public is watching. As a result, more government resources may go towards these "high-profile" cases and detract resources toward solving the murders of young black men, which are much more frequent and systemic. Thus, William got to the root

of the white female effect and demonstrated how it harms male homicide victims of color.

Moreover, Steve expressed his disdain for false or slanted media coverage. Steve explained "the media can screw up a shitload of things, I read an article about a trial I've done or someone here has done, and I'm like that didn't happen… I've always been concerned about how the media is slanted." Paul similarly stated "I have become highly skeptical of the media's ability to fair." Certainly, the attorneys could be responding to negative press, but during my time at Hawthorne County Courthouse, I also noticed when journalists misreported information about an evident lack of understanding of the law. These misrepresentations implied that the judge had favored the prosecution and attempted to ruin the defense's case, when the judge was simply performing her duty to instruct the jury. As a result, she appeared biased and incompetent in the court of public opinion. Because criminal sentences are used to send a message, it is essential that this message is reported correctly. Thus, the opponents shared views of the media indicates that there many, indeed, be problematic instances of reporting that skew the truth and the larger societal implications.

Conclusion

In sum, based on this mixed methods approach, we found that the attorneys' views were largely consistent with their respective institutional perspectives, although the adversaries share more commonalities than we would have thought. These oppositional attitudes towards the criminal justice system, then, manifested as varying definition of what is just and what is fair for

defendants and victims, respectively. After embarking on this project, I have learned how the very format of the criminal justice process, which immediately separates the adversaries and their respective parties, yields stark ideological differences that inform every step of this process.

Consequently, the adversarial system that pits the two sides against each other seems to deepen this divide and cause irrevocable harm to defendants with no greater benefit for victims or their families. Thus, it appears that the adversarial system of the courts fails to dispense justice, although the trial system is deeply entrenched in the fabric of the larger criminal justice system. Moreover, I also learned that prosecutorial professional obligations and cognitive dissonance are steep obstacles in the face of criminal justice reform. If prosecutors, who represent the system, do not feel able or willing to speak out against the injustices inherent to our current system, reform will never materialize. Thus, it appears that the discourse regarding the criminal justice system must change before reform policies can take place.

Limitations

Although we discerned key insights from the aforementioned sources of data, there are several limitations to the research conducted for this project. First, interview participants' potential social desirability bias or professional obligations regarding public commentary on their profession may have compromised both my qualitative and quantitative data regarding attitudes toward the criminal justice system and its players. In particular, the questions that asked for explicit opinions or rankings seemed to yield more diplomatic answers, which may not have

conveyed participants' true attitudes. Alternatively, the more subtly-worded semi-structured questions that gave way to long-winded responses appeared to catch participant off-guard and generate more honest narratives. Future interview guides would, thus, include more implicitly-worded questions in order to avoid cautious, non-demonstrative responses.

Moreover, the challenges of recruiting attorneys and judges led to a less robust and diverse sample. As a result, the sample is fairly homogenous in terms of their backgrounds and experiences which seem to inform their attitudes. Although we had restrictions regarding time and resources, a larger sample would likely yield more variation regarding experiences and subsequent attitudes. For example, I interviewed the three, middle-aged career prosecutors, Steve, Sarah, and George, because I had forged relationships with them during my prior internship. Alternatively, the inclusion of an older, seasoned prosecutor or a young, idealist prosecutor would likely yield different perspectives. Therefore, my sampling of prior internship connections and subsequent snowball sampling may have led to a more homogenous and less representative group of interview subjects. The addition of ethnographic data may have off-set this limitation, but I also restricted my observations to a single courthouse. Although this single-courthouse sampling method may yield to a less representative sample, it allowed me to verify interview subjects' reported attitudes with their actions in court, which effectively undermines the social desirability bias.

In light of these limitations, future directions for this project include using a similar mixed methods protocol for a larger sample in several different counties

or cities, in order to improve data variation and representativeness. These regions could be selected in terms of disparate political landscape or social capital of attorneys, as there may be in-group differences between attorneys who practice in areas that are conducive to the field of law and those who do not. A multi-jurisdictional approach would also lend itself to comparisons that may illuminate whether the aforementioned observations are specific to Hawthorne County or widespread. Moreover, the sample could also be expanded to include practitioners who work in other areas of the criminal justice system, such as drug crimes and sexual assault in order to foster variability.

Final Thoughts

Ultimately, the significance of this project lies in its ability to confirm previous literature, expose firm ideological differences between adversaries as well as inconsistencies between reported attitudes and held attitudes, and raise questions about the fairness of the judicial system. As previous researchers have suggested, prosecutors and defense attorneys are inevitably influenced by their respective positionalities. Thus, not only are the adversaries separated by an aisle, but they are also separated by stark ideological differences that correspond to oppositional courses of action. In terms of homicide trials, these ideological differences often surface in decisions to pursue trials or pleas. As discussed, plea deals often lead to less severe sentences, which are in defendants' best interests. Because there does not seem to be a single, comprehensive definition of justice, it is impossible to definitively decide whether a sentence is just. However, we can still determine whether sentences are proportional, and several interview

participants allege that criminal sentences are often more severe than proportional. Thus, it appears that there is no procedural justice, though prosecutors indicate otherwise.

Nonetheless, criminal justice reform is also in the best interests of criminal defendants and also larger society. As discussed, prosecutors and defense attorneys, at least superficially, cannot agree upon the effectiveness of our criminal justice system and the need for reforms. Although the prosecutors' responses may have been restricted by professional obligations, this same issue would also arise during public discourse about reform. Thus, there are logistical obstacles even before legislative obstacles, which further lengthen the reform process.

Moreover, the defense attorneys' criticism of judges who are racist or make rulings based on pre-conceived notions shaped by their former careers suggest a widespread miscarriage of justice. Such judges abuse the power of the judicial system every time they make rulings based on bias instead of merit. The criminal justice system can never be considered fair or just when if judges use their largely unchecked power to severely punish defendants for extralegal factors such as race, gender, and socioeconomic status. Since judges are human beings and subject to implicit biases, William's and Paul's recommendations for restorative justice circles may be more necessary than utopian. Nevertheless, this problematic portrayal of Hawthorne county judges illuminates a need for judicial trainings and reform as well as a comprehensive overhaul of the criminal justice

system to include restorative principles, in order to protect both defendants and the public.

Overall, the results of the project suggest that different positionalities and the subsequent, disparate theories of justice, as well as various forms of bias, yield problematic consequences that perpetuate structural violence and mass incarceration. The criticisms that the adversaries shared further assert that the adversarial trial system is a failing relic that no longer serves the needs of the public. However, our results also indicate that reform efforts will be painfully slow unless prosecutors and defense attorneys both step into the aisle and create a coalition for structural changes toward restorative practices. Although this idea may currently seem utopian at best, future studies may garner the momentum needed to spark this drastic change.

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United States Code. Title 28: Section 453.

Appendix

Interview Questions

Biography:

Did you know that you wanted to be a _____ in law school?

Did you want to go into _____?

Where did you attend school?

What positions have you held since graduating law school?

How long have you been in this position?

Do you have a relationship with the attorneys from the other side? If so, do these friendships tend to friendly or unfriendly? How have the relationships formed? Can you give me an example?

Can you describe some of the ways that these positive relationships help you with your plea deals or court proceedings?

Experience Questions:

When you are assigned to a case, how do you go about (charging/preparing)?

For prosecutors: What is your process? Do you look to the guidelines in the legislature? Use your experience? Do what feels right?

Could you give me a specific example (without naming names) of the correct way someone has gone about preparing a new case?

Could you give you me a specific example (without naming names) of the wrong way someone has gone about preparing a new case?

Have you had high-profile cases? What do you do in that circumstance?

Without naming names, is there a case that still sticks with you? Either you were really proud to be an attorney on that case or the unfavorable result stuck with you?

Could you describe the ideal criminal justice system in your opinion?

How do you personally define justice?

Have there been situations when you felt prison time was not appropriate for a particular defendant? If yes, can you describe the general situation?

After trying cases for many years, are there any other methods besides prison time that you feel would be effective for those convicted of murder or other violent felonies?

Based on your experiences, do you think convicted killers can rehabilitate or redeem themselves? If yes, do you think they can safely exist in society?

What qualities make a convicted killer redeemable or irredeemable?

For prosecutors → when you recommend a life sentence for a murder defendant, do you recommend a life sentence because you believe that this punishment is proportionate to the crime, because it may deter others, because it prevents the killer from taking more lives, because it reassures the public, or because it is in the sentencing guidelines?

Can you think of a circumstance in which you feel homicide is justified? If so, can you explain this circumstance?

Do you think today's sentences are too retributive?

The next set of questions ask about your general attitudes towards criminal cases. Read the statement, then decide if you strongly agree, agree, neutral, disagree, or strongly disagree.

1. Every criminal case before a judge has some legitimacy.

2. The criminal justice system is working well.

3. Criminal cases have made a fairer society.

4. Juries do a good job determining the outcomes of cases.

5. Judges are fair and impartial when hearing criminal cases.

6. There are people for which a plea deal is inappropriate.

Vignettes

Now, I will be reading a series of vignettes… After each scenario, think about whether the person should be charged with murder.

Scenario 1

1. A person cleaning his gun on his porch accidentally shoots someone
2. A person doing target practice in his backyard accidentally shoots someone
3. A person threatening his neighbor accidentally fires gun and strikes the neighbor.
4. A person purposely goes out with the intention of finding and shooting a particular individual and accidentally kills someone else.
5. A person purposely goes out with the intention of finding and shooting a particular individual and kills him.
6. A person goes on a killing spree and intentionally kills multiple people.

Scenario 2

A person goes into a convenience store and kills the store cashier during an attempted robbery.

6. The shooter was 12.
7. The shooter was 17.
8. The shooter was 70.
9. The shooter had a neurological or psychiatric diagnosis.
10. The shooter claimed it was an accident, and the gun just went off.
11. The shooter needed the money to support his struggling family.
12. The shooter has no prior criminal record.
13. The shooter has struggled to find legitimate employment opportunities.
14. The shooter comes from an underprivileged background characterized by a lack of positive role models, institutional support, and legitimate opportunities.

A person goes into a convenience store and kills the store cashier during an attempted robbery, but now I would like to talk about the cashier.

Scenario 3

15. The victim was 17.
16. The victim was 75.
17. The victim was pregnant.
18. The victim had a prior criminal record.
19. The victim allegedly was associated with a violent gang.
20. The victim was a convicted felon.

21. The victim also had a gun.

Follow up questions:

Questions 1-16 If no, should the shooter be charged with a lesser crime? Why?
Questions 17-20 If no, why?

Table 1: Breakdown of Participants

Profession	Number of Participants
Prosecutors	3
Defense	3
Detectives	3
Judges	2
Other	1

Table 2: Mean Number of Years of Experience Among Interview Subjects by Occupation

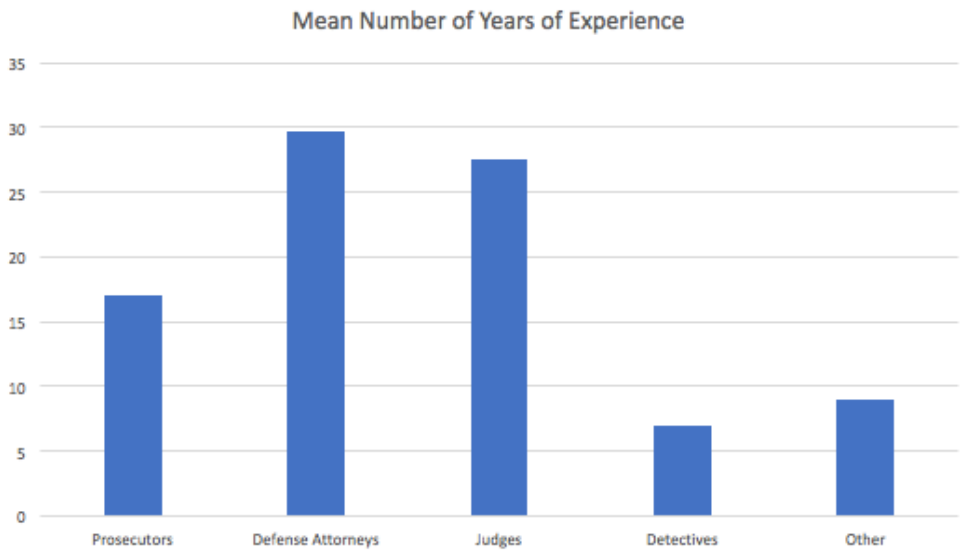

Table 3: Percentage of Interview Subjects Who Believe That Age is a Mitigating Circumstance for Youth Homicide Offenders

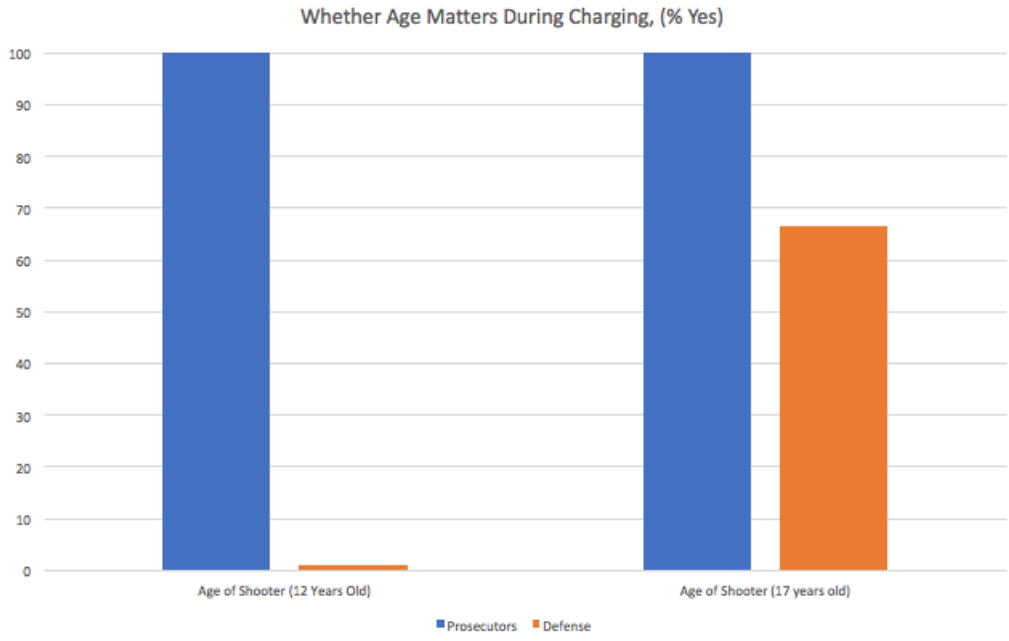

Table 4: Percentage of Interview Subjects Who Believe That Mental Illness is a Mitigating Circumstance for Homicide Offenders