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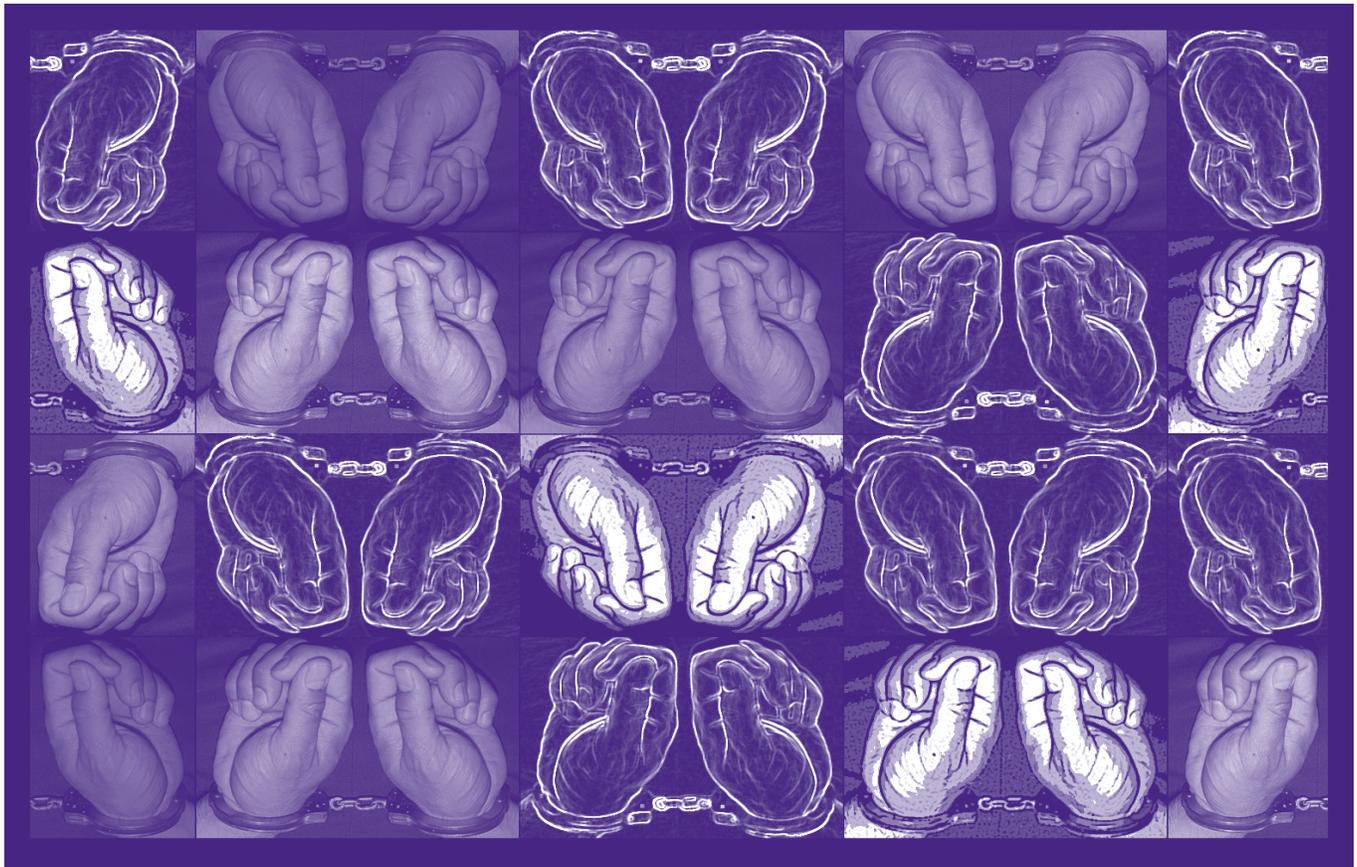
A Prosecutor's Guide for Advancing Racial Equity

NOVEMBER 2014

FROM THE PRESIDENT

Do prosecutors' decisions play a role in the strikingly disparate outcomes for blacks and Latinos in criminal cases evident throughout the United States? If so, what are the connections between the exercise of prosecutorial discretion and the overrepresentation of these groups in the criminal justice system? How can prosecutors reduce unwarranted overrepresentation?

These questions are vital for prosecutors to tackle at a time of intense national focus on the need for the criminal justice system to deliver equal justice. But now as always, they are extremely challenging to address.

Even if the political will exists, prosecutors generally find it daunting to gain a nuanced understanding of how the work they do may adversely affect the fairness they seek to achieve. And although prosecutors collect massive amounts of data in the course of case processing, they often lack the time or the expertise to analyze it. Complex political and cultural pressures within the criminal justice system and the larger society make many prosecutors' offices shy away from examining their work as it relates to delivering equal justice for all.

When the Vera Institute of Justice launched the Prosecution and Racial Justice Program (PRJ) in 2005, the aim was to help prosecutors take on these difficult but fundamental questions. Partnering with prosecutors seeking a clear picture of how their offices' structures and practices may have contributed to unequal outcomes, PRJ sent researchers into the offices to see what story the administrative data told. By studying the information collected during case processing, the researchers were able to identify procedures and steps that could shift the office practice and culture in ways that privileged and advanced the goal of equal justice.

Knowledge may be power. But prosecutors also need the courage to act on what they learn by changing the aspects of their work that contribute to inequity. And they should take these insights into the public arena, where sharing what they've learned and explaining what they are doing to change their approach can begin to reinvigorate the community's faith in our justice system.

Nicholas Turner
President and Director
Vera Institute of Justice

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Foreword

My work with the Vera Institute of Justice was already cut out for me when I became District Attorney of Milwaukee County in 2007. I inherited a partnership with Vera's Prosecution and Racial Justice Program (PRJ) designed to examine prosecutorial decision making in order to learn whether the Milwaukee County District Attorney's Office's practices contributed to racial disparities in case outcomes.

Most prosecutors may find it difficult, even risky, to do this kind of stocktaking. But you can't change what you can't measure. I was committed to improving the way our office worked, and I recognized that PRJ's research into the use of our discretionary power at crucial decision points in case processing was an invaluable tool for achieving my goals.

Since then, my office has continued to partner with PRJ to dig into our data; we've learned a tremendous amount about how we can function more effectively. Using these insights, we've crafted new approaches to our office structure and culture. This guide, which contains highlights of PRJ's work with our office, will help other prosecutors who want to understand how their practices affect the quality of justice in their communities and move toward better results.

I've taken the message about PRJ's evidence-based work into the community I serve, around the country to my fellow prosecutors, and to our national lawmakers on Capitol Hill. In many of these conversations, I have stressed that prosecutors' mandate is to make people confront reality. They need to take the same clear-eyed approach to the problem of disparate racial outcomes in the cases that come into their hands. Only by confronting the realities of their decisions and practices can prosecutors begin to rethink how to achieve equitable outcomes for all people involved in the criminal justice system.

John T. Chisholm

John T. Chisholm
District Attorney
Milwaukee County, Wisconsin

Introduction

If you are a prosecutor, you have undoubtedly observed that members of certain minority groups—notably blacks and Latinos—are involved in the U.S. criminal justice system in disproportionately large numbers compared to their presence in the general population. This phenomenon, known as disproportionate minority representation, has captured the attention of journalists, scholars, justice advocates, and members of the criminal justice community, among many others.

While factors contributing to racial and ethnic disparities in criminal justice outcomes are varied and complex, the actions prosecutors take can play a role. Prosecutors have significant discretionary power in the course of determining how to handle the cases of people arrested for criminal offenses. The act of exercising discretion may result in unintended consequences harmful to members of certain racial groups. Despite efforts to be fair and equitable, prosecutors may unintentionally contribute to the overrepresentation of minorities in the nation's courtrooms, prisons, and jails.

As public servants, prosecutors may see the negative impact of this phenomenon in the communities they serve, where they may encounter widespread distrust and skepticism about the equal delivery of justice. For all these reasons, prosecutors can benefit from understanding the connections between their practices and the system's outcomes in the area of racial equity.

Until now, prosecutors have lacked ready access to analytical tools that would help them to see the overall impacts of their decisions. A fuzzy picture of the pattern of practices in their offices can hamper targeted corrective action.

When it launched in 2005, the Prosecution and Racial Justice Program (PRJ) at the Vera Institute of Justice began an unprecedented effort to fill this gap by working in partnership with prosecutors' offices to study their use of power and discretion. From the start, PRJ's goal has been to help the partnering prosecutors' offices reduce unwarranted racial disparity in the criminal justice system by showing them the cumulative impact on case outcomes of their policies, procedures, and daily practices. These voluntary partnerships have relied on the prosecutors' interest in demystifying the role of race and ethnicity in their case results.

PRJ's experience has shown that giving prosecutors a coherent, evidence-based picture of their offices' performance in the area of racial fairness is the essential first step toward achieving more equitable results. To accomplish this, PRJ researchers analyzed data provided by their partners to learn whether prosecutorial decisions led to racially neutral or disparate consequences. They used statistical methods that reveal whether, all things—such as a defendant's prior record or seriousness of the charged offense—being equal, race is affecting case outcomes.

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This guide is for those of you interested in joining the ranks of prosecutors seeking innovative solutions to the vexing problem of racial disparity in the criminal justice system.

PRJ staff worked with their prosecutor counterparts to create reliable data-collection systems and fill gaps in the types of information being collected. They also proposed management protocols designed to allow the prosecutor's office in question to find and address unwarranted racial disparity going forward. PRJ's partners have found that changing an office's culture to one that values, systematically captures, and analyzes case data can improve organizational management, as well as enhance racial equity and the office's perceived legitimacy.

PRJ's model, which involves placing researchers on site in prosecutors' offices, has produced fruitful partnerships. But Vera has recognized that it is unsustainable for a single organization to replicate this work, jurisdiction by jurisdiction, on a national scale. A new approach must evolve that equips prosecutors to launch the types of racial-impact studies PRJ has overseen.

This guide is for those of you interested in joining the ranks of prosecutors seeking innovative solutions to the vexing problem of racial disparity in the criminal justice system. It spells out what is involved in using the partnership and research model that PRJ developed. If you decide you are ready and willing to undertake this work, you will be expanding a growing body of knowledge and ensuring the sustainability of a prosecutorial movement for greater transparency, fairness, and accountability.

Using the Guide: How Research Helps Prosecutors

Research and evidence-based analysis are at the heart of the process explained in this guide. Data collected and analyzed in partnership with a research team can teach prosecutors many things. Through rigorous research, prosecutors gain the knowledge they need to:

> ➤ identify institutional factors that may lead to disparate racial outcomes;

> ➤ assess how prosecutors are applying their discretion;

> ➤ implement corrective courses of action if needed; and

> ➤ serve as leaders for racial equity in their jurisdictions.

While each office has its own management structure and style, everyone in a prosecutor's office involved in this effort can benefit from using the guide. It serves as a checklist for chief prosecutors evaluating whether their offices are prepared to move forward with this kind of research. If they decide to undertake the process, it can lead those charged with implementing the work through the steps involved in finding research partners, gathering the data they will need to analyze, and building an organizational culture that values

using data to achieve more equitable racial outcomes in prosecution.

This guide is rooted in the partnership and research model that PRJ developed in collaboration with a number of prosecutors' offices throughout the United States. It is a field-informed guide, based on PRJ's efforts in a variety of jurisdictions, with offices of varying sizes and structures. It includes examples from PRJ's partnerships and links to relevant research and reports. It is designed as a stand-alone resource, but offices that want more guidance may consult Vera staff.

Research Readiness: A Checklist

Most prosecutors' offices have never worked with outside researchers or tried to conduct a research study. The items contained in this section will help you decide whether you are ready and willing to do the work.

See Appendix A for a glossary of research terms.

ASSESSING YOUR OFFICE'S CAPACITY

Before starting, chief prosecutors should candidly assess their desire and ability to devote time and other resources to this endeavor.

Consider:

> commitment to project goals,

> data-management capabilities,

> caseloads,

> office stability and priorities,

> funding the research,

> political will and cultural change, and

> access to potential research partners.

Each of these areas is discussed below.

Commitment to Project Goals. The obvious first priority is a sincere belief in the value of the work. If you are willing to ask difficult, probing questions and use data to help you reach accurate conclusions about whether race and ethnicity are factors influencing the outcomes of cases prosecuted by your office, this guide will help you. On the other hand, there is little to gain from partnering with a research team if even dramatic findings would fail to provoke institutional change within your office. Only you can answer these questions.

Data-Management Capabilities. Prosecutors' offices vary in their abilities to manage data. Some have well-developed electronic case-management systems, while others have no electronic systems at all. To do this work, you will need an electronic system, and building one from scratch is a major un-

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POLITICAL WILL AND CULTURAL CHANGE

The success of research into an office's work to determine if discretionary decision making and practices contribute to unwarranted racial bias in case outcomes is not dependent on finding nothing wrong. Rather, it rests on whether a chief prosecutor has the political will to launch the examination and to see the process through to fruition regardless of the findings. It is important to note that success here does not necessarily mean an assessment that an office is bias-free. Rather, it is more likely that most offices will discover that, no matter how much individual prosecutors seek to be fair and just in their work, some racially disparate outcomes will exist in their offices in the aggregate. Therefore, success means having the will to address what they find and to enact safeguards at the institutional level to ensure that policies and procedures governing an entire office further the goal of racial equity.

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dertaking. Therefore, before going further, pause to consider your data-management capabilities. Do you have an electronic case-management system? Is it reliable? How much data does it capture, and of what types? Is your staff routinely using the system? For information on how to maximize your office system's capacity to capture data that reflects discretionary decisions and management practices, see Appendix B, page 22.

Caseloads. Regardless of your office's size, data-collection and analysis can help to enhance its fairness, professionalism, and accountability. However, for researchers to reach statistically significant findings—those not simply due to chance—the caseload will have to be of a sufficient size. If your office's caseloads are small, this may be a challenge. Therefore, smaller jurisdictions should consult with their research partners about caseload size. To compensate for small caseloads, researchers may formulate research plans that envision analyzing data spanning longer periods. However, this strategy may hold challenges: reaching back too far for data could produce findings that are stale and irrelevant to current office practices. If, on the other hand, your office is large and your caseloads heavy, your jurisdiction's research team will be likely to reap the benefit of a rich dataset. In this instance, it may be easier to produce statistically significant findings based on data that is proximate in time and relevant to existing office practices.

Office Stability and Priorities. Does a sufficiently stable environment exist in your office to support a protracted commitment to research and potential subsequent activities? The research will likely take 12 to 18 months. Afterward, you will need time to explore the findings' meaning for your office and whether and what remedial actions are necessary. For instance, in response to findings, an office may wish to develop new policies and practices, restructure old ones, or train staff. There could be reasons why an office may decide to defer these activities until a later date. For example, if a district attorney's term of office is to end shortly after enlisting the support of a research partner, it may be best to wait until new leadership of the office, and a commitment to the work, are in place. Likewise, other major initiatives within your office may take precedence. You should therefore take inventory of your office's obligations in deciding whether the time is right.

Funding the Research. In a tight economic climate characterized by shrinking budgets for criminal justice services, funding innovative initiatives takes creativity and resourcefulness. If your office affiliates with a research organization or local university, you may be better positioned to seek funding through foundation or government grants. Additional sources of funding and in-kind support may be available through local community foundations. For example, when Vera partnered with Nebraska's Lancaster County Attorney's Office, the

Does a sufficiently stable environment exist in your office to support a protracted commitment to research and potential subsequent activities? The research will likely take 12 to 18 months.

Lincoln Community Foundation was generous in providing aid such as community contacts, advice, meeting space, assistance with publicity, and other important, non-monetary support. You may also make use of your office's unrestricted funds, including its asset-forfeiture account.

Access to Potential Research Partners. It is important to note, at the outset, that research is unfamiliar territory for most prosecutors, and most attorneys, in general. This guide will provide a framework to assist prosecutors in finding and working with researcher partners. If you are interested in implementing the methodology contained here, before going further, we recommend that you start thinking about what resources exist in your jurisdiction—such as schools, research institutes, or nonprofit organizations. For the sake of cost and convenience, you will be wise to look for a potential research partner located nearby.

Engaging a Research Partner and Hiring Staff

The research partner you choose is critical. That organization or entity will direct the research and will assist your office in gathering and analyzing data that will produce findings that can inform office practices for years to come. In vetting an organization, consider its:

> prior track record working with government or criminal justice agencies;

> ability to assist in securing funding, particularly from sources requiring rigorous research, such as the National Institute of Justice;

> capacity to dedicate experienced researchers and others to staff the project; and

> reputation for neutrality and nonpartisan approach.

One valuable tool in assessing a potential partner organization is its self-description, which you can find on its website or request from it. Such a description will help you assess the organization's core competencies in determining whether they are capable of performing the rigorous research required for this type of endeavor and whether they have experience partnering with government agencies.

CORE COMPETENCIES OF A RESEARCH TEAM

The ideal research team should have prior experience working with criminal justice data. Among the members of the team, there should be individuals who are able to:

> *Analyze* large administrative datasets using multivariate statistical techniques (this may include dealing with patterns of missing data across combinations of variables, and merging datasets using combinations of variables that uniquely identify persons and cases;

> *Conduct* in-depth semi-structured interviews of high level criminal justice practitioners, including prosecutors;

> *Draft reports* with well-reasoned narratives and visual aids (e.g., graphs); and

> *Present findings* to, and engage in research and policy discussions with, a broad range of audiences, including researchers, practitioners, and the general public.

Setting Expectations for the Research

After selecting a research partner, and before the research begins, it will be important for you and your partner to agree on clear-cut expectations for the research process. A signed memorandum of understanding (MOU) will help you accomplish this. MOUs are important because they play a key role in articulating project goals, expectations, and restrictions on the work. Below are some of the areas we suggest you cover with your MOU:

> roles and responsibilities of parties,
> ownership and use of data,
> dissemination of findings,
> preparation and publication of reports,
> staffing,
> funding,
> communication protocols,
> confidentiality protocols,
> project timeline, and
> memorializing the process for your office's institutional record.

Before you and your research partner begin working together, discuss and clarify everything in the MOU. A sample MOU is in Appendix C, page 38.

PRIVACY AND CONFIDENTIALITY IN RESEARCH

The data that you decide to make the focus of your research is subject to confidentiality protocols that merit careful attention. You may be required to adhere to a combination of federal regulations, state laws and regulations, your own office's policies concerning access to data, and requirements imposed by any other agencies or organizations that supply data for the project. Research that is funded by the federal government and involves the acquisition of private, individual-level data has to follow the common federal rule for the protection of human subjects. These guidelines are spelled out in Title 45, Part 46, of the Code of Federal Regulations (45 CFR 46). Among other things, 45 CFR 46 requires that a properly constituted Institutional Review Board (IRB) review proposals for human subjects research, although the IRB can waive the review requirement under certain circumstances.

The IRB may require that subjects give informed consent or that data be collected without identifying subjects. Informed consent is usually not required when pre-existing data are obtained from administrative data systems, as long as the proposed use of the data poses no threat to the subjects. For closed cases, an IRB would typically not require defendants' informed consent (so that nothing that is done in reviewing and analyzing the data could affect the outcome of a case). On the other hand, if a study proposed by you and your research

partners will involve surveys, interviews, or focus group discussions with prosecutors, an IRB would likely require informed consent from the participants—and certainly would require informed consent for interviews with defendants or victims. Refer to 45 CFR 46 for further details about the federal requirements for protection of human subjects.

Some states require adherence to the federal guidelines or impose similar requirements for all human subjects research, regardless of funding source. In addition, your own office and other agencies or organizations supplying data to the project will likely impose additional conditions on who can access the data, how the data may be used, and how long the data may be retained, and may require that person and case identifiers be deleted as soon as they are no longer needed to link information from different sources.

Your research partner should have experience in navigating the requirements surrounding human subjects research, should be able to advise you concerning acceptable ways of satisfying those requirements, and should have access to a qualified IRB.

LAYING THE FOUNDATIONS AND BUILDING PARTNERSHIPS

Beyond those factors covered in your MOU, you and your research partner need to set ground rules for project management, logistics, relationships, and basic legal education of researchers. Clear expectations in these areas will help you lay a foundation of trust and understanding throughout the research process.

Building a relationship with your research partner requires everyone in your office to be on board with the research effort and its goals. While it makes sense to designate one primary point of contact between your office and the research team, various staff members will and should interact with the researchers. For example, line prosecutors and bureau chiefs may periodically assist and guide researchers in understanding how your office handles cases and makes decisions. Other staff members, such as managers, analysts, and IT personnel may help acclimate researchers to the office, for example, by setting up their work station and transferring data to their network. You may also need to call on people from your records department to help researchers locate physical documents such as case files.

An active and ongoing exchange will support the parties' collaborative attitudes and help create an atmosphere of mutual trust and respect. It is important to keep everyone engaged with the research by holding sessions where the researchers can explain how they will analyze data and use research findings, field questions, and possibly offer hypotheses about findings. In turn, legal staff can use these meetings as opportunities to teach the researchers how your office's data systems store information at various discretion points.

Researchers can benefit from understanding the specific idiosyncrasies of your office and jurisdiction. For example, you should schedule meetings with researchers about a variety of issues such as the types of data that could be useful for analysis, the case-processing continuum in your jurisdiction, legal

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documents used to record case information, and specific processes by which data are collected and entered into your database.

While you'll need to make time for researchers and your staff to interact in all these ways, it is also important to minimize the intrusion on your staff. Setting up regular meeting times will reduce disruptions of your staff's main duties while allowing researchers to get timely answers to their questions.

If your staff includes data analysts, it may be a good idea to put the research workstation nearby, so that they can confer. You may also want to give the researchers a temporary office ID card to facilitate their coming and going.

Last, but of great importance, keep a written narrative of the process from beginning to end. The record of how you decided to undertake the work, planned for the process with your research partners, and used the knowledge gained to inform your organizational culture is invaluable. It can help future occupants of your office to understand the importance of what you've accomplished and to keep decisions affecting racial outcomes front of mind.

For a description of Vera's partnership-building efforts in Manhattan, please see Appendix D, page 41.

DATA COLLECTION AND ANALYSIS

The main source of research data is likely to be the administrative dataset stored in your office's case-management system. You and your researchers will need to decide on the period under study. You'll also need to agree upon which types of cases you'll be focusing on. For example, a jurisdiction may wish to examine all misdemeanors, violations, and infractions, and certain felonies such as drug offenses, weapons offenses, domestic violence, burglary, and robbery between 2010 and 2013. Researchers may select cases using the most serious screening charge—the top charge, as determined by a reviewing prosecutor at the case-screening stage.

To the extent possible, data entered to the office's case-management system should be recorded using standardized codes rather than ad-hoc terminology or narratives. Standardized coding promotes consistency of interpretation, facilitates summarizing information for internal management purposes, and makes it easier for researchers to conduct quantitative analyses that relate case characteristics to case outcomes. For example, a quantitative analysis of how strength of the evidence, race and gender of the defendant, race and gender of the victim, crime type, and defendant prior record influence the probability of accepting a case at initial screening can only be meaningful if everyone entering data to the system is using the same categories to code the information.

To supplement administrative data, researchers may wish to collect quantitative data specific to the purposes of a given research project, such as a survey of prosecutors' opinions or analyses of prosecutors' decisions for a standardized set of hypothetical cases.

To learn about case processing flow in a jurisdiction, as well as methods for recording information electronically and in paper case files, researchers will

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probably also want to collect and analyze qualitative information. For example, they may review case notes, interview prosecutors with varied levels of experience, conduct focus group sessions, or review written policies and procedures. Qualitative analysis complements and allows for a deeper understanding of quantitative data by giving it context. It also provides information about factors important to prosecutors that researchers might otherwise not think to measure, or would be more cumbersome to measure quantitatively, such as office norms, consistency of approach between teams and among prosecutors within a team, or the effects of internal and external context on priorities. Interviews and focus groups, in particular, can serve as an opportunity for the research partner to talk with prosecutors about the study, including research questions, data collection, analysis plans, and possible implications for the office's policy and practice.

Strategies to overcome potential challenges and maximize strengths in data collection and analysis. You and your researchers should agree on and memorialize in writing which case categories and discretion points they will study. This decision will depend largely on availability of data and priorities of your jurisdiction. You should communicate and agree about these matters early in the project.

In any given jurisdiction, researchers come up against a variety of challenges. Obstacles that frequently arise include missing data (for example, victim data) and difficulty determining the strength of any given case and the weight of the evidence, which may require discussions between researchers and prosecutors about factors indicating strong versus weak evidence in particular categories of cases. Furthermore, because datasets may not contain information about important factors, including plea bargaining, evidence, or defendants' socio-economic characteristics, researchers may wish to collect additional information from randomly selected paper files. In this event, they may find information in case summary narratives, typically written by screening prosecutors, describing circumstances leading to arrest, evidence gathered, or specific details surrounding court appearances.

Despite such challenges, some data in your jurisdiction are likely to be rich and plentiful. For example, a number of PRJ's partner jurisdictions had robust data on drug offenses.

WHAT TO DO WITH THE DATA

It bears repeating that the success of this work rests largely in what it produces, in terms of action within a given prosecutor's office to implement measures promoting greater fairness. In this regard, it is important for prosecutors to consider, throughout the research period, how the data will eventually be used to inform policy and practice. The chief prosecutor should set aside time for regular briefings by the research team. While there can be resistance to believing findings of unwarranted racial disparity, regular briefings can help pave the way for acceptance and eventual corrective action.

It bears repeating that the success of this work rests largely in what it produces, in terms of action within a given prosecutor's office to implement measures promoting greater fairness.

Highlights: PRJ's Partnerships

The following examples of PRJ's partnerships with prosecutors' offices highlight what each jurisdiction was seeking to learn, the researchers' assessment of the issues at hand, the findings, and the next steps in several offices across the United States. As these examples illustrate, every office must approach research and any transformative process differently

MECKLENBURG COUNTY, NORTH CAROLINA

Mecklenburg County, North Carolina, has a population of 990,977, making it the most populous county in the state. The county seat is Charlotte, the state's largest city.

At its launch in 2005, PRJ entered into a partnership with then-District Attorney Peter Gilchrist. The primary goal at the outset was to help DA Gilchrist's office build the capacity to develop its own internal processes that would identify racial disparities in the exercise of prosecutorial discretion. To reach that goal, PRJ and the Mecklenburg County prosecutor's office worked together to construct an electronic data-management system, where there had been none. This was an ambitious effort: it was no small feat to convert the office's record-keeping process from a paper-based to a computer-based system.

Together, PRJ and DA Gilchrist's office set out to:

> design a data analysis tool that would track prosecutorial decision-making outcomes and identify patterns of disparity at key discretionary points;

> integrate this tool into the office's management process; and

> develop and implement policies and strategies focusing on racial fairness.

Guided by where data was most plentiful and available, PRJ's work with DA Gilchrist's office focused on drug cases, which comprised a large percentage of offenses prosecuted by that office.

Like many mid-sized jurisdictions, the Mecklenburg County DA's office kept its data in paper files—a system that prevented efficient retrieval and analysis of large quantities of case-related information. PRJ worked with the office to upgrade the management of drug-case data by building an electronic system, known as MeckStat. This tool allowed drug prosecutors to electronically track case outcomes at critical discretion points.

Mecklenburg reports its complaint characteristics and outcomes by race and ethnicity. That racial and ethnic information, in turn, is based on the arresting police officers' perception of the defendant. While this is not necessarily an accurate way of identifying defendants' race and ethnicity, for the purpose of ultimately understanding racial disparity, perceived classifications may be as important as actual ones. In analyzing the data by race, PRJ researchers included white Hispanics in the "white" category and black Hispanics as "black."

For analyses by ethnicity, PRJ researchers compared non-Hispanic whites with Hispanic defendants (including Hispanic blacks and Hispanic whites).

PRJ found that black complaint defendants referred to the DA's office were more likely to have more arrest charges and more serious arrest charges than whites. Compared to whites, a higher percentage of blacks were charged with eight of the most serious drug offenses prior to the DA's office exercising any discretion.

PRJ also found that nearly equal percentages of black and white defendants had their complaint accepted at intake; however, blacks were more likely to have their top arrest charge rejected. When controlling for the effect of a defendant's gender and age, average seriousness of all arrest charges, and the number of arrest charges, blacks were less likely to have their complaint accepted at papering. Furthermore, blacks were more likely than whites to be offered, in a plea letter, an active punishment (prison or jail sentence) as opposed to an intermediate/ community punishment (usually a type of probation). The difference persisted after controlling for the effect of nine variables including the seriousness of the charges, prior record level, and habitual felon eligibility. Finally, blacks were more likely to have their complaints disposed in Administrative Court while whites were more likely to have their complaints disposed in District Court.

Regarding ethnicity, PRJ found that while a high percentage of Hispanics were convicted of the most serious drug charge (trafficking), many of these people had low-level prior convictions. In general, Hispanics had more serious arrest charges compared to non-Hispanic whites. Hispanics were also less likely to have their complaint accepted at papering, even when controlling for the effect of a defendant's gender and age, the average seriousness of all arrest charges, and the number of arrest charges. A higher percentage of Hispanics received active punishment offers, while a higher percentage of non-Hispanic whites received intermediate/ community punishment offers. Finally, Hispanics were more likely to have their cases disposed in Administrative Court while non-Hispanic whites were more likely to have their cases disposed in District Court.

Based upon PRJ's findings, DA Gilchrist made changes in his office's structure and policy.[1] He appointed new supervisory staff and required assistant district attorneys to screen cases more carefully. PRJ's initial statistical findings led DA Gilchrist to implement a more rigorous initial screening process for drug cases, resulting in a greater than 10 percent decrease in prosecutions and a corresponding decrease in dismissals later in the process.[2] Because the new procedures allowed prosecutors to identify weak cases at the beginning of the process, the office was able to direct resources to more meritorious cases.

In Mecklenburg County, the automation of files and later analysis modernized the processing of drug cases and provided data needed to implement changes in policy.

1   For a more detailed discussion of PRJ's work with the Mecklenburg County DA's office, see Angela J. Davis, "In Search of Racial Justice: The Role of the Prosecutor," *NYU Journal of Legislation and Public Policy*, 16, n. 4 (2013): 838-839.

2   For more information about this process, see Wayne McKenzie, Don Stemen, Derek Coursen, and Elizabeth Farid, *Using Data to Advance Fairness in Prosecution* (New York: Vera Institute of Justice, 2009), www.vera.org/pubs/prosecution-and-racial- justice-using-data-advance-fairness-criminal-prosecution.

Finally, PRJ developed a comprehensive disparity assessment report, presenting case-outcome statistics organized by race (and ethnicity, when possible), for two discretionary decision points: initial screening and plea offers. The analyses addressed drug-related cases entered into the system over a three-year period.

Going into the community, DA Gilchrist described his office's work with PRJ and what it revealed, explaining the changes he made as a result. The community responded favorably to the process and the follow-up after DA Gilchrist's retirement at the end of 2010.

PRJ's work in North Carolina shows the value of data collection and analysis in understanding prosecutorial discretion and promoting racial justice. With the automation of the office's files and later analysis, PRJ was able to modernize the processing of drug cases and provide the office data it needed to implement meaningful changes in policy.

MILWAUKEE COUNTY, WISCONSIN

Milwaukee County, Wisconsin, is home to the state's largest city, the county seat of Milwaukee. With a population of approximately 955,200, it is the most populous county in Wisconsin and the 45th most populous in the United States. PRJ's work in Milwaukee County began in 2006 under the leadership of District Attorney E. Michael McCann. With DA McCann's retirement after 37 years in office, John T. Chisholm was elected district attorney and took office in 2007. District Attorney Chisholm has since been an active partner with PRJ and other initiatives involving fairness, efficiency, and data-driven management.[3]

In partnering with the Milwaukee County District Attorney's Office (MCDA), PRJ sought to help the office to:

> build its technology capacity;

> analyze key discretion points;

> conduct outreach to prosecutors and community stakeholders about the work; and

> disseminate the research findings to the broader public.

PRJ's partnership in Milwaukee County became a springboard for outreach to other prosecutors' offices interested in collaborating with or replicating the project.

To achieve the first objective of building MCDA's technology capacity, PRJ developed a list of recommendations on how to improve the office's existing electronic case-management system, known as Prosecutor Technology for Case Tracking (PROTECT), and ensure its efficient use by MCDA prosecutors. To better understand the effects of the office's decision making, PRJ researchers analyzed prosecutorial discretion points by reviewing the initial screening decision for nine of the most common offenses MCDA handled and the plea offers for a sample of cases for four offenses: possession of drug paraphernalia, prostitution, resisting or obstructing an officer, and domestic violence.

PRJ researchers found that in six of the nine categories of offenses examined, the cases against blacks were declined at a slightly higher percentage than

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3   For a more detailed discussion of PRJ's work with MCDA, see Davis, 2013, pp. 839-844.

those against whites. The results were reversed, however, in the area of public order and drug offenses. Further examination of the data revealed:

> for possession of drug paraphernalia, prosecutors declined to prosecute 41 percent of whites arrested, compared to 27 percent of blacks;

> for prostitution, black female defendants were more likely to be charged than white defendants but the odds of receiving deferred prosecution were 10 percent higher for black defendants;

> for resisting or obstructing an officer, most of the defendants charged were black (77 percent), male (79 percent), and in custody (80 percent of blacks and 66 percent of whites); and

> for domestic violence, the odds of charging in cases involving black victims were 16 percent lower than in cases involving white victims, and in cases involving black defendants and white victims, the odds were 34 percent higher that charges would be brought than in cases with a white defendant and white victim.

Beyond building a greater organizational understanding of MCDA's decision making and enhancing the office's data-management system, PRJ's partnership in Milwaukee County led to a number of significant policy changes within MCDA, including new charging instructions and trainings for prosecutors. DA Chisholm, with PRJ researchers, also participated in community meetings where he discussed his office's work with PRJ, the research findings, and the new policies and practices he put into place in response to them.

The partnership with MCDA also became a springboard for outreach to other prosecutors' offices interested in collaborating with or replicating the project. With the help of DA Chisholm, PRJ successfully enlisted and obtained support from other district attorneys, including Cyrus R. Vance, Jr., District Attorney of New York County; George Gascón, District Attorney of San Francisco; and Joe Kelly, County Attorney of Nebraska's Lancaster County. DA Chisholm has also advocated for racial impact research with federal prosecutors. Finally, with DA Chisholm's approval, the research findings from Milwaukee County have been disseminated widely through articles and at national conferences and professional meetings.

NEW YORK COUNTY, NEW YORK

Starting in January 2012, Vera partnered with Manhattan District Attorney Vance on an National Institute of Justice-funded study examining racial and ethnic disparities in criminal case outcomes in Manhattan. The two-year study, which analyzed more than 200,000 cases, focused on the role of prosecutors during several points of a criminal case—case acceptance for prosecution, dismissals, pretrial detention, plea bargaining, and sentencing recommendations—and whether prosecutorial discretion contributes to racially and ethnically disparate outcomes. While the best predictors of case outcomes were factors that directly pertained to legal aspects of a case—including the seri-

While the best predictors of case outcomes were factors that directly pertained to legal aspects of a case, the research in Manhattan County also found that race remained a factor in case outcomes.

ousness of the charge, the defendant's prior record, and the offense type—the research also found that race remained a factor in case outcomes.

The partnership allowed Vera to place two to three researchers, depending on the phase of the project, at The New York County District Attorney's Office (DANY) for 20 months to work closely with DANY staff and analyze felony and misdemeanor cases disposed in 2010 and 2011. The study began in January 2012. It aimed to explore the influence of defendants' race and ethnicity on case acceptance for prosecution; detention status; plea offers to a lesser charge and custodial punishment offers; case dismissals; sentencing; and charge dynamics while considering a host of other factors influencing prosecutorial decision making (e.g., prior record or charge seriousness). The project involved:

> evaluating and analyzing existing administrative data;

> conducting prosecutorial semi-structured interviews to better understand case processing and data limitations;

> collecting additional data from a sample of 2,409 case files;

> hosting meetings to discuss research findings and their policy implications; and

> disseminating findings through reports, peer-reviewed publications, and conference presentations.

The study found that DANY prosecutes nearly all cases brought by the police, with no noticeable racial or ethnic differences at case screening. For subsequent decisions, disparities varied by discretionary point and offense category. For all offenses combined, compared to similarly situated white defendants, black and Latino defendants were more likely to be detained at arraignment (remanded or have bail set, but not met), to receive a custodial sentence offer as a result of the plea bargaining process, and to be incarcerated, but they were also more likely to have their cases dismissed. In terms of offense categories, compared to similarly situated white defendants:

> Blacks and Latinos charged with misdemeanor drug offenses were more likely to have their cases dismissed.

> Blacks and Latinos charged with misdemeanor person offenses or misdemeanor drug offenses were more likely to be detained at arraignment.

> Blacks and Latinos charged with drug offenses were more likely to receive more punitive plea offers and custodial sentences.

> Asian defendants had the most favorable outcomes across all discretionary points, as they were less likely to be detained, receive custodial offers, and be incarcerated. Asian defendants received particularly favorable outcomes for misdemeanor property offenses (such as larceny and criminal trespass).

Vera and DANY jointly announced the findings of the study in July 2014, and DA Vance said that his office is "committed to implementing preventative strategies to reduce any unintended racial and ethnic disparities that exist." Even before the publication of the study's results, DA Vance had undertaken various steps to reducing disparities, including the appointment of a Chief Diversity Officer and a Diversity Committee to develop creative approaches to enhancing workforce diversity and ensuring that DANY maintains a culture of diversity. The office has also committed to requiring all assistant district attorneys to attend implicit bias training.

For detailed information on the partnership with DANY and research findings, see New York County resources in Appendix D, page 41.

Appendix A

GLOSSARY OF RESEARCH TERMS

Data file—A collection of related items of information that is composed of separate elements but can be manipulated as a unit by a computer.

Data set—A single data file or a collection of related data files brought together to serve a common purpose.

Hierarchical model—A type of **regression model** for data that are nested in levels (hierarchies), sometimes also called a multilevel model. For example, a study of the factors that influence prosecutors' decisions might examine plea offers by first choosing teams, then prosecutors, then cases handled by each prosecutor, then defendants in each case. In this example, defendants can be viewed as nested within a case, cases as nested within a prosecutor, and prosecutors as nested within a team. Hierarchical models take nesting into account in estimating the influence of higher-level characteristics on lower level outcomes. In this example, that might include estimating the influence of prosecutor characteristics on plea offers.

Hierarchical linear model—A hierarchical regression model in which the relationships between explanatory variables and the outcome at the lowest level in the hierarchy are assumed to be linear. An example would be variables scaled so that a given increase or decrease in the seriousness of prior criminal record is associated with the same change in sentence length at all levels of the seriousness scale.

Hierarchical nonlinear model—A regression model in which the relationships between explanatory variables and the outcomes at the lowest level in the hierarchy are assumed to be nonlinear. This is the case for the situation in which the outcome is expressed as a probability, such as the probability a defendant will be convicted.

Multivariate analysis—Any statistical technique used to analyze associations among more than two variables—often an outcome variable and two or more explanatory variables. Usually contrasted with *univariate analysis*—involving only a single variable—and *bivariate analysis*—involving relationships between pairs of variables.

Quantitative data—Numerical and statistical information. Researchers use it for a range of purposes including doing simple counts and calculating percentages as well as more complex procedures such as **multivariate analysis.**

Qualitative data—Narrative information from interviews, open-ended questionnaires, focus group discussions, review of documents, and researcher notes on direct observations. It complements and allows for a deeper understanding of quantitative data by giving it context, provides insight into issues and processes that would be difficult to measure quantitatively given the existing state of knowledge, often suggests questions for future research, and can provide the basis for development of quantitative measures.

Regression model—Refers to a wide array of analytic techniques and approaches. Generally, it is an analysis of the relationship between an outcome of interest, such as accepting a case for prosecution, and a set of variables related to the outcome, such as strength of the evidence and prior criminal record, and a term that represents the influence of random variables not in the model.

SAS—A statistical software package used by researchers for a broad variety of basic and advanced statistical analyses.

STATA—A statistical software package used by researchers because it includes facilities for conducting a variety of basic and advanced statistical analyses.

SPSS (Statistical Package for the Social Sciences)—A Windows-based statistical software package used by researchers and other data analysts to handle large data files with user-friendly facilities for data entry, data editing, file manipulation, tables and graphs, and the most commonly used basic and advanced statistical analyses.

R—A web-based structure for sharing statistical software in the public domain. An increasingly popular source of advanced statistical software, particularly specialized software that is not included in popular commercial software packages or is otherwise only available at high cost.

Statistical power analysis—An analysis used to estimate the likelihood of detecting an effect of a given magnitude in a sample of a certain size, when the effect is actually present in the population from which the sample is drawn; or to determine what sample size would be necessary to have a specified likelihood of detecting an effect of a given magnitude, when the effect is actually present in the population from which the sample is drawn.

Structured query language (SQL)—A standardized way to communicate with a database.

Unique identifier—A numeric or alphanumeric string that is associated with a single entity within a given system.

Variable—A characteristic, number, or quantity that changes over time, or takes different values in different situations.

Appendix B

RECOMMENDED CONTENTS OF A PROSECUTOR'S CASE-TRACKING SYSTEM

This appendix provides examples of the kinds of standardized data elements a computerized tracking system should include to support racial disparity research, as well as case tracking for internal administrative purposes. It does not address all of the information a local case-management system might require for other purposes. For example, it does not include things like personnel information, workload tracking, scheduling of court appearances, provisions for storage of scanned documents, or information required for automated production of required legal documents.

DATA COLLECTION AND MANAGEMENT

Based on PRJ's experience, we offer the following recommendations for maximizing the capacity of your office's system to capture data that reflects discretionary decisions and management practices. These suggestions are not exhaustive–your research partner may suggest others. They do, however, capture basic information about the important stages in the life of a criminal prosecution—information that is essential to determining how cases proceed through an office and whether bias is playing an unintended role in how they are handled. Among the benefits of working with a research team is that you can collaborate on producing case-management systems tailored to your office's needs.

> **Record the outcome of each important decision.** In order to identify sources of disparity and determine what changes in policies or procedures could promote fairer outcomes, it is necessary to examine decisions at each step in the processing of a case. The important decision points in your office may differ from those in other jurisdictions because of differences in criminal procedure law or local policies and may even be different for different units or crime types within your office. Typically, important decisions include bail and pretrial detention recommendations, whether to accept or reject a case for prosecution, whether to divert a case to an alterna-

tive process, what charges to file initially, whether to dismiss or amend some or all of the filed charges, what plea offer(s) to present to the defendant (which may or may not include sentence recommendations), the use of sentence enhancers, and, in the case of felonies, what charges, if any, to present to a grand jury.

Whatever the precise process in your office, your system should record the outcome of each decision that determines the course of a case, together with information about the characteristics or circumstances that support the decision. Additionally, in order to examine any discretionary decision, your system must be able to identify and distinguish those case outcomes over which prosecutors had or lacked discretion. Therefore, for each discretionary decision, it is important to capture which defendants would have been eligible to receive certain outcomes under the law (or according to internal office policies) as well as the actual outcomes received. For example, if your system currently records whether a case received deferred prosecution or diversion, in order to accurately evaluate these discretionary decisions, your system should also include variables to flag all cases eligible to receive such outcomes.

The following section explains some of the major types of data you should capture. The second part of Appendix B offers suggestions for specific data elements to be recorded for each type.

> **Record the disposition of each charge at each stage that involves a charging decision**. For example, for initial case screening, arrest charges and/or charges brought to the prosecutor for consideration should be recorded, and the system should record which of those charges are accepted for prosecution, which ones are rejected, and reasons for rejection. Charging decisions may not occur in a simple sequence—decisions about potential dismissal of the entire case, charges requiring guilty pleas in plea offers, and charges to present to a grand jury may all occur in parallel, and both dismissals and plea offers can take place at vari-

ous stages—but information should be recorded in a way that makes it possible to determine what charges were under consideration and what charges were carried forward in each process.

> **Record the presence and quality of evidence.** The strength of evidence is one of the most important considerations in deciding whether to accept a case for prosecution and, if so, what charges to file and what plea offers to present to defendants. Few prosecutors' case-management systems record information about evidence in a standardized format. More typically, information about case evidence is incorporated as scans of narrative documents, such as police reports and discovery documents, or is only available from paper case files. However, prior analyses by Vera researchers found that information about the mere presence of evidence coded from police reports in paper case files and prosecutors' ratings of strength of evidence were strong predictors of case outcomes, especially for the initial screening and charging decisions. If information about the presence and dispositive value of evidence can be incorporated in a standardized format in your office's case-management system, that would greatly facilitate quantitative analyses designed to better understand how the influence of evidence interacts with the potential influence of race.

> **Record defendant prior record and probation status.** It is useful to record several relevant measures of defendants' prior record, including the number of prior citations, arrests, criminal cases, convictions, and prior sentences to probation, jail, or prison. Distinguish between prior felonies and misdemeanors. Keep track of different categories of priors (for example, drug, robbery, burglary, domestic violence, weapons, etc.) Also, record defendants' probation or parole status at the time of offense. The most efficient and most flexible way to record this type of information in an automated system—rather than manually reviewing histories to tally the number of events of each type—is to list each prior arrest separately together with information such as arrest charges, dispositions, conviction charges, sentences, and associated dates. Then the events can be tallied by computer in whatever way suits a particular purpose.

> **Record pretrial custody status.** Prior research has shown that pretrial detention affects virtually every subsequent decision, and the influence of detention, per se, is in addition to the fact that some of the same factors influence both the detention decision and subsequent charging and sentencing decisions. Your office's system should record defendants' custody status at the time of initial screening as well as defendants' custody status post-arraignment and at subsequent stages.

> **Record defendant and victim demographic and socioeconomic characteristics.** Many offices do not systematically record information that would assist researchers in understanding the extent to which economic factors may contribute to disparities in case outcomes. To the extent possible, your system should capture defendant and victim demographic and socioeconomic characteristics. Appendix B lists a number of demographic and socioeconomic characteristics of defendants and victims that you should consider recording.

> **Record plea offers**. Information about plea offers is hard to capture and analyze in a meaningful way because offers are subject to change throughout case processing; often those changes occur within the dynamic environment of verbal negotiations. If your office does not currently capture data about plea offers, you may wish to include variables in your case-management system such as those suggested in the tables in the second part of Appendix B. These include charge offer, punishment offer, specific conditions, general conditions, and miscellaneous other items.

> **Record case status at the initial screening stage and separately at each later stage.** Don't overwrite case status: deleting old information as newer information is entered into an electronic case-management system increases the potential for obscuring important information about the chronology of process decisions or changes. For example, if a defendant is released on bail at arraignment but remanded to detention following indictment, the custody status at each point should be retained. Similarly, if charge is amended after initial filing, both the original charge and the amended charge should be retained. Recording case status at each discretionary stage in the case-processing continuum yields invaluable information for researchers and for the organizational record.

> **Make data fields mutually exclusive.** All data-field entry options should be mutually exclusive to ensure accurate interpretation of the information captured. For example, race and ethnicity should either be coded as separate attributes, or, if they are combined, they should be defined such that only one category applies to a given person (for example, Hispanic, non-Hispanic white, or non-Hispanic black—not simply Hispanic, white, or black). Similarly, if crime type of top charge is entered, the crime types should be defined in a way that a specific crime could not correctly be classified in more than one category.

> **Develop standard office data-entry protocols and training.** Because any system is only as good as those who use it, you should standardize your office's data-entry protocols and train your staff in their thorough and consistent use.

GENERAL CONSIDERATIONS FOR YOUR RESEARCH TEAM

Units of Count. The information needed in a good case tracking system may pertain to the case as a whole (for example, docket number, screening decision), one or more defendants (such as race), an unpredictable number of victims and witnesses (for example, relationship to the defendant), an unpredictable number of charges (for example, charge code and statutory classification), an unpredictable number of items of evidence (for example, defendant's statement, lab report, stolen property), and an unpredictable number of events in the defendant's criminal history (such as prior convictions, prior sentences). These are often called "units of count," and they govern how data elements are organized into "record types" or "tables" in a computerized database.

Many jurisdictions find it convenient to adopt defendant-within-case (D-C) as the basic unit of count for case tracking, and to assign a unique tracking number (court number or docket number) to each D-C. Information with other natural units of count must then be linked to D-C records or summarized to the D-C level for the purpose of tracking "the case." For example, a system may summarize prior record by recording or displaying counts of prior events (such as number of prior felony convictions, number of prior sentences to probation, etc.), or the system may record and display a complete list of prior record events along with details of each event (including such details as arrest date, top charge, and disposition).

Data Entry vs. Reports. It is most efficient and flexible to enter information in its natural unit of count. One of the advantages of a computerized system is that summarizing information to the case level can be automated, and information can be summarized differently for different purposes. For example, if a complete list of prior record events is entered with appropriate details, the system can count prior events in as many different ways as needed (such as the number of prior arrests for each specific crime type of interest or number of different crime types in a defendant's history). It usually is not necessary for data to be summarized manually prior to data entry to match the types of summary information desired for the screen displays or printed reports used to monitor or analyze case processing.

Avoiding Duplication of Data Entry. It is important that an automated case-management system be designed to reduce workload, not increase it. To the extent possible, a particular item of information should only be entered once, and the system should be designed to copy that information automatically if it needs to be recorded in other places or included on paper documents. For example, rather than requiring that charges be entered at each stage (arrest, initial filing, plea offer, indictment, conviction), some systems provide an easy way to carry charges forward for as long as they remain active, requiring additional data entry only when charges are added or amended. Some systems also are able to capture information automatically from other systems— this could include, for example, capturing prosecutor characteristics from a personnel system, capturing arrest charge details and information about physical evidence from a law enforcement system, capturing information about pretrial detention from a jail-management system, or capturing information about prior record from an automated criminal-history system.

Sample Tables. The tables and illustrative data elements presented on the following pages are constructed under the assumption that the core unit of count for case tracking is defendant-within-case. However, items of information are specified and assumed to be recorded in their natural units of count, and the tables are organized in a way intended to minimize duplication of information across components. The tables are separated into two groups: a group that relates to important case characteristics, and a group that relates to the outcomes of important case processing decisions.

This is not the only useful way to organize a case-tracking system. While it cites a fairly comprehensive set of information domains and data elements that are highly desirable for supporting case tracking, your office may not be able to incorporate all of the suggested information. Local needs and existing local resources may suggest other designs that provide similar capabilities in a way that is more practical for your office.

Notice that some of the items within a table may be repeated for an unpredictable number of instances (for each of several witnesses, for example). While this can be cumbersome to implement on paper forms, it usually is relatively easy to implement in a computerized system.

CHARACTERISTICS OF THE CASE

Table 1: IDENTIFIERS AND SELECTED SUMMARY INFORMATION[1]	
Unique ID for a defendant-case (D-C) combination (e.g, a court tracking number)[2]	
Unique case ID for a set of related D-Cs prosecuted together	
Defendant-case identifier(s) for other D-Cs in the case *Repeat for each D-C*	
Unique person ID for the defendant	
Date the D-C was presented ("brought") for initial screening	
Case closing date	
Source of referral (e.g, police, magistrate, grand jury, citizen complaint)	DROP-DOWN MENU
Referring police department, if applicable	DROP-DOWN MENU
Codefendant(s) unique person ID and D-C tracking number *Repeat for each codefendant*	
Crime code for top charge presented (specific crime as specified in statute)[3]	
Crime type for top charge presented	DROP-DOWN MENU
Statutory classification of top charge presented	DROP-DOWN MENU
Police incident report ID number(s) *Repeat for each incident*	
Pre-existing complaint number(s), if applicable[4] *Repeat for each complaint*	
Defense counsel name	
Type of defense counsel	PUBLIC DEFENDER/COURT APPOINTED/PRIVATE

NOTES:

1. These are examples; your office may want to include additional summary information in a summary table, even if it is duplicated in other tables. If so, it should be copied from other tables, not entered again for summary purposes.

2. This table would include one record for each defendant-case combination. Each record would include the data elements listed above.

3. More detailed charging information is specified in Table 6: Charging History.

4. For example, from magistrates' review or grand jury investigations.

Table 2a: DEFENDANT CHARACTERISTICS[1]

Unique person identifier	
Unique case identifier	
Unique defendant-case identifier	
Defendant name	
Defendant date of birth	
Defendant race	DROP-DOWN MENU
Defendant ethnicity	DROP-DOWN MENU
Defendant gender	DROP-DOWN MENU
Defendant's educational level	DROP-DOWN MENU
Defendant's employment status	DROP-DOWN MENU
Defendant's source(s) of income	DROP-DOWN MENU
Defendant income level	DROP-DOWN MENU
Defendant's home address: street address	
city	
state	
zip code	

NOTES:
1. Table 2a would include one record for each defendant, with identifiers linking the defendant information to case or defendant-case records.

Table 2b: VICTIM CHARACTERISTICS[1]

Unique case identifier	
Unique defendant-case identifier	
Victim_1: Unique victim number within case	
Name	
Date of birth	
Race	DROP-DOWN MENU
Ethnicity	DROP-DOWN MENU
Gender	DROP-DOWN MENU
Victim's relationship to defendant	DROP-DOWN MENU
Would be willing to testify at trial?[2]	YES /NO /UNKNOWN

Repeat the above for each victim in the case

NOTES:
1. Table 2b would include one record for each victim, with identifiers linking the victim information to case or defendant-case records.

2. If practical, it would be good to record the history of the victim's continued willingness to testify at trial as of each decision point—for example, at the time of initial screening, initial plea offer, final plea offer, grand jury presentation (if applicable), and trial (if applicable).

Table 2c: WITNESS CHARACTERISTICS[1, 2]

Unique case identifier	
Witness_1: Unique witness number within case	
Name	
Date of birth	
Race	DROP-DOWN MENU
Ethnicity	DROP-DOWN MENU
Gender	DROP-DOWN MENU
Witness's relationship to defendant	DROP-DOWN MENU
Would be willing to testify at trial?[3]	YES /NO /UNKNOWN

Repeat the above for each witness in the case

NOTES:

1. For this purpose, "witness" includes both persons who witnessed the crime and other persons who provide information relating to the facts of the case. "Expert witnesses" are addressed separately in Table 2d.

2. Table 2c would include one record for each witness, with an identifier linking the victim information to case records.

3. If practical, it would be good to record the history of the witness's continued willingness to testify at trial as of each decision point—for example, at the time of initial screening, initial plea offer, final plea offer, grand jury presentation (if applicable), and trial (if applicable).

Table 2d: EXPERT WITNESSES[1]

Unique case identifier	
Expert witness_1: Name	
Subject matter expertise of expert witness	DROP-DOWN MENU
Description of subject matter expertise	FREE FIELD ENTRY

Repeat the above for each expert witness in the case

NOTES:

1. Table 2d would include one record for each expert witness in the case, with an identifier linking the witness information to case records.

In the past, the availability and quality of evidence has rarely been captured and recorded in standardized formats in prosecutors' case-management systems. Though there is little prior experience to guide its design, developing this capability for your system would represent a significant advance in the ability to understand when and how evidence interacts with other factors, both for racial disparity research and for internal administrative purposes.

Table 3: EVIDENCE[1]	
Record type	ITEM RECORD OR SUMMARY RECORD
Unique case identifier	
Unique defendant-case identifier	
Item-level records	
Item_1: Item number, unique within defendant-case (D-C)	
Source of evidence[2]	DROP-DOWN MENU
Type of evidence[3]	DROP-DOWN MENU
Repeat above for each item of evidence	
Summary records[4]	
Evidence supports elements of alleged crime_1?	ALL ELEMENTS /SOME /NONE)
Evidence supports defendant responsibility for crime_1?	YES /NO /QUESTIONABLE
Repeat preceding items for each alleged crime in the D-C	
Evidence is sufficient for conviction of at least one alleged crime?	YES /NO /QUESTIONABLE

NOTES:

1. Table 3 could include one record for each individual item of evidence, plus a summary record, linked to defendant-case by a unique D-C identifier. Alternatively, there could be separate tables for item-level records and summary records.

2. Sources of evidence could include police incident reports, lab reports, physical evidence collected by police, statements resulting from prosecutors' interviews of witnesses, evidence cited in discovery documents, etc. The willingness of victims and witnesses to testify at trial is covered in Tables 2b and 2c, above. The categories you would record would depend on laws, practices, and availability of information in your jurisdiction.

3. The drop-down menu of potential types of evidence could be quite long, though the number of different items of evidence available in a given case may be much smaller. In some prior research, Vera has coded the presence of evidence from paper case records in categories such as the following: guns and ammo, other weapons, stolen property, burglars' tools, cash, motor vehicles, DNA, fingerprints, bodily fluids, drugs and drug paraphernalia, financial records, phone records, other relevant official records, correspondence, notes and calendars, computer files, medical records, victims' statements, video and audio recordings, photos, confessions and other defendant statements, clothing (other than stolen property), damaged property, forged or counterfeit instruments, lab reports, search warrants, and eyewitness identification of perpetrators. In one of the jurisdictions partnering with Vera, much of this information is recorded in the police incident report, which soon will be shared electronically with other criminal justice agencies.

4. Summary records could be restricted to status at initial filing or duplicated for final status as well.

Table 4: DEFENDANT CRIMINAL HISTORY[1]

Unique person identifier	
Unique case identifier	
Unique defendant-case identifier	
Event_1: Event type	PRIOR CASE INITIATED BY ARREST OR PRIOR TERM SERVED
Arrest date (for cases initiated by arrest)	
Top arrest charge (for cases initiated by arrest)	
Statutory classification of top arrest charge	DROP-DOWN MENU
Indicators for types of underlying arrest charges[2] (an indicator field for each type of interest)	
Conviction date (for cases initiated by arrest)	
Top conviction charge (for cases initiated by arrest)	
Statutory classification of top conviction charge	
Indicators for types of underlying conviction charges (an indicator field for each type of interest)	
Sentence date (for cases initiated by arrest)	
Most serious sentence type	DROP-DOWN MENU
Sentence length for most serious sentence type	STANDARDIZED FORMATS
Type of prior term served (e.g., probation, jail, prison, post-release supervision)	
Date of admission	
Date of discharge	
On probation at the time of the current offense?	YES/NO
On post-release supervision at the time of the current offense?	YES/NO

Repeat the above for each event in the defendant's history[3]

NOTES:

1. Table 4 would include a record for each event in the defendant's criminal history, where "events" would include arrests and the resulting dispositions and sentences and prior terms of probation, jail, or prison. Alleged violations of probation or parole can be incorporated in the "arrest charge" fields. Either the information pertaining to events initiated by arrest or the information pertaining to time served in custody (but not both) would be recorded in a given event record.

2. In reviewing prior record, attorneys and researchers may need to be aware of the existence of underlying charges that could affect charging options (violent offense, drug offense, crime against children, weapons offense, etc.). If it's sufficient for your purposes, using such indicators can be more concise that listing all charges for each prior event.

3. Recording relevant details for each event makes it unnecessary to count types of events manually (prior misdemeanors, prior felonies, prior convictions for specific crime types of interest, etc.); you can generate such counts by computer.

Table 5: **SPECIAL CIRCUMSTANCES**[1]	
Unique person identifier	
Unique case identifier	
Unique defendant-case identifier	
Mitigating circumstances	DROP-DOWN MENU
Provide fields for up to some fixed number of mitigating circumstances	
Aggravating circumstances	DROP-DOWN MENU
Provide fields for up to some fixed number of aggravating circumstances	
Sentence enhancers	FROM DROP-DOWN MENU OF ENHANCERS DEFINED IN STATUTE
Provide fields for up to some fixed number of enhancers	
Defendant successfully participating in relevant treatment program?	YES / NO
Defendant has strong support from family and/or community?	YES / NO
Proposed disposition of the case will not increase the likelihood of recidivism?	YES / NO
(etc., as relevant to your office)	

NOTES:

1. Tentatively, Table 5 could include a single record for each defendant-case, with a fixed number of coded fields in the record for entering mitigating circumstances, aggravating circumstances, and sentence enhancers, plus provision for flagging other salient circumstances. Special circumstances that guide decisions in your office will depend on state law and office policies, and may be different than the special circumstances that guide decisions in other jurisdictions. The items listed in Table 5 merely illustrate some possibilities.

DECISION HISTORY

The key decisions in your office or the order in which they occur may be somewhat different than are assumed in the tables that follow. Nevertheless, you should have the capability to track similar information across whatever are the key decision points in your office.

Table 6: CHARGING HISTORY[1]	
Unique case identifier (included in each of the records outlined below)	
Unique defendant-case identifier (included in each of the records outlined below)	
Arrest-charge records	
Arrest date	
Arrest charge_1: crime code (e.g., statute number)	
crime description	STANDARDIZED LABELS
crime type[2]	DROP-DOWN MENU
statutory classification[2]	DROP-DOWN MENU
special crime type designation[2, 3]	DROP-DOWN MENU
Repeat arrest charge record for each arrest charge	
Initial-filing-charge records	
Filed charge_1: crime code (e.g., statute number)	
crime description	STANDARDIZED LABELS
crime type[2]	DROP-DOWN MENU
statutory classification[2]	DROP-DOWN MENU
special crime type designation[2, 3]	DROP-DOWN MENU
Repeat filed charge record for each charge filed at initial filing	
Rejected-charge records[4]	
Rejected charge_1: crime code (e.g., statute number)	
Primary reason for rejection	DROP-DOWN MENU
Secondary reason for rejection	DROP-DOWN MENU
Repeat rejected charge record for each charge rejected at initial filing	
Initial-plea-offer-charge records[5]	
Initial plea offer charge_1: crime code (e.g., statute number)	
Defendant must plead guilty?	YES /NO /WILL DROP CHARGE
Reason for dropping charge, if applicable	DROP-DOWN MENU
Repeat initial plea offer charge record for each charge addressed in the initial plea offer	
Final-plea-offer-charge records (if different from initial offer)[6]	
Final plea offer charge_1: crime code (e.g., statute number)	
Defendant must plead guilty?	YES /NO /WILL DROP CHARGE
Reason for dropping charge, if applicable	DROP-DOWN MENU
Repeat final plea offer charge record for each charge addressed in the final plea offer	

Grand-jury-presentation records[7]

Grand jury presentation charge_1: crime code (e.g., statute number)	
grand jury decision	INDICTED / NO TRUE BILL

Repeat grand jury presentation charge record for each charge presented to the grand jury

Dismissed-charge records

Dismissed charge_1: crime code (e.g., statute number)	
stage at which charge was dismissed[8]	DROP-DOWN MENU
primary reason for dismissal	DROP-DOWN MENU
secondary reason for dismissal	DROP-DOWN MENU
voluntary dismissal?	YES, PROSECUTOR'S MOTION / NO, IMPOSED BY JUDGE

Repeat dismissed charge record for each charge dismissed after initial filing

Conviction-charge records

Conviction charge_1: crime code (e.g., statute number)	
sentence type	DROP-DOWN MENU
sentence details[9]	STANDARDIZED FORMATS

Repeat record for each conviction charge

NOTES:
1. Table 6 includes a record for each charge retained or added/amended at each key decision point. The charge listed as charge_1 at each decision point should be the top charge active at that point.
2. In a computerized case-tracking system, crime description, crime type, statutory classification, and special crime type designations can usually be filled in automatically by the system, once the specific crime code is entered. Therefore, to reduce the length of Table 6, only the crime code is listed explicitly for the charge records at the later decision points.
3. Special crime type designations will depend on state law and your office policies. Examples of types warranting special attention in your office might include violent offense, drug offense, weapons offense, household burglary, DUI, domestic violence, etc.
4. Rejected charges are charges that were presented to the prosecutor for possible filing (arrest charges, for example), but which the prosecutor chose not to file.
5. Initial plea offer charge records include a record for each charge addressed in the initial plea offer, regardless of whether a guilty plea is required or the prosecutor is offering to drop the charge.
6. Depending on state laws and your office policies, plea offers may change at any time between initial filing and final case disposition. However, your office may find it sufficient to record only the initial plea offer or only the initial offer and the final offer.
7. There should be a record for each charge presented to the grand jury.
8. Charges may be dismissed anytime between initial filing and final case disposition. Depending on state law and your office's procedures, coded categories for the stage at which a charge was dismissed might include periods or decision points such as dismissed at felony hearings, dismissed pursuant to a plea agreement, dismissed during grand jury preparation, dismissed pursuant to a modified plea offer following indictment, dismissed at trial, etc.
9. The formats for sentence details will differ depending on sentence type.

Table 7: PRETRIAL DETENTION

Unique case identifier	
Unique defendant-case identifier	
Arrest date	
Arraignment date	
Defendant detained pre-arraignment?	YES / NO
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU
Post-arraignment custody status recommended by prosecutor	ROR / BOND / BAIL / REMAND
Post-arraignment custody status ordered	ROR / BOND / BAIL / REMAND
Bail/Bond amount recommended by prosecutor	
Bail/Bond amount ordered	
Did defendant pay bail/bond?	YES / NO
Date of initial release on bail/bond	
Did prosecutor recommend pretrial supervision?	YES / NO
Was pretrial supervision ordered?	YES / NO
Pretrial release conditions	DROP-DOWN MENU
Repeat field for each condition imposed	
If initially released, was defendant subsequently remanded?	YES / NO
Date of subsequent remand	
Case processing stage of subsequent remand	DROP-DOWN MENU
Reason for subsequent remand	DROP-DOWN MENU

Table 8: CASE-LEVEL SCREENING DETAILS

Unique case identifier	
Unique defendant-case identifier	
Screening date	
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU
Case accepted for prosecution?	YES / NO
If rejected, primary reason	DROP-DOWN MENU
If rejected, secondary reason	DROP-DOWN MENU

Table 9a: CASE-LEVEL PLEA OFFER DETAILS – initial offer

Unique case identifier (included in each of the records outlined below)	
Unique defendant-case identifier (included in each of the records outlined below)	
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU
Date of plea offer letter	
Plea offer accepted by defendant?	YES / NO

Plea Offer Type Record

Charge offer?	YES / NO
Sentence offer?	YES / NO
Deferred prosecution agreement?	YES / NO
Offer to dismiss penalty enhancer?	YES / NO
Penalty enhancer to be dismissed	APPLICABLE STATUTE NUMBER

Repeat field for each enhancer to be dismissed

Charge-level Sentence Offer Record

Maximum term of incarceration for guilty plea on charge_1	MONTHS
Incarceration to be served in jail or prison?	
Maximum probation supervision term for guilty plea on charge_1	MONTHS
Maximum period of post-release supervision for guilty plea on charge_1	MONTHS
Maximum fine amount for guilty plea on charge_1	

Repeat charge-level sentence offer record for each charge requiring guilty plea

Aggregate-level Sentence Offer Record

Number of charges requiring guilty plea	
Sentences for plea offer charges to be served concurrently or consecutively?	
Concurrent or consecutive to any other sentence being served?	
Maximum aggregate term of incarceration	MONTHS
Incarceration to be served in jail or prison?	
Maximum aggregate period of probation supervision	MONTHS
Maximum aggregate period of post-release supervision	MONTHS
Maximum aggregate fine amount	

General Conditions Record[1]

Expiration condition	DROP-DOWN MENU
Expiration date	
Additional charges or penalty enhancer if no agreement?	YES / NO
State reserves right to renegotiate agreement if condition(s) violated?	YES / NO
State reserves right to void agreement if condition(s) violated?	YES / NO

Not committing any new criminal offenses	YES / NO
Defendant must resolve open criminal cases	YES / NO
No criminal record not previously disclosed	YES / NO
Acceptance of responsibility at plea and sentencing	YES / NO
Appearing at all court proceedings	YES / NO
Abiding by conditions of bail	YES / NO
Not possessing or using illegal controlled substances	YES / NO
Defendant's breach of plea agreement cannot be used as basis to withdraw plea	YES / NO

Specific Conditions Record[1]

Revocation of driving privileges for specified violations	YES / NO
No contact with co-defendants	YES / NO
Restitution	YES / NO
Amount of restitution	
Crime victim impact statement(s) allowed	YES / NO
No contact with victim(s)	YES / NO
Alcohol and other drug abuse assessment and treatment	YES / NO
Full-time work/school	YES / NO
Absolute sobriety	YES / NO
Random urine testing	YES / NO
Community service	YES / NO
Contribution to a crime prevention organization	YES / NO
Amount of contribution	

NOTES:

1. Conditions that can be imposed in the plea agreement depend on state law and your office's policies and procedures. The conditions listed in this table are illustrations.

Table 9b: CASE-LEVEL PLEA OFFER DETAILS – Final offer if different from initial offer

Unique case identifier (included in each of the records outlined below)	
Unique defendant-case identifier (included in each of the records outlined below)	
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU

Repeat elements of Table 9a

Table 10: GRAND JURY

Unique case identifier	
Unique defendant-case identifier	
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU
Date of grand jury presentation	
Number of charges presented[1]	
Number of charges indicted[1]	
Crime type of top indictment charge[1]	DROP-DOWN MENU
Statutory classification of top indictment charge[1]	DROP-DOWN MENU

NOTES:

1. In most computerized systems, top indictment charge information could be calculated automatically from the information in Table 6: Charging History.

Table 11: CASE-LEVEL DISPOSITION DETAILS

Unique case identifier	
Unique defendant-case identifier	
Responsible prosecution unit/team at final disposition	DROP-DOWN MENU
Responsible prosecuting attorney at final disposition	DROP-DOWN MENU
Case diverted?	YES / NO
Type of diversion	DROP-DOWN MENU
Date case diverted	
Stage at which case diverted	DROP-DOWN MENU
Entire case dismissed?	YES / NO
Voluntary dismissal?	YES, UPON PROSECUTOR'S MOTION / NO, IMPOSED BY THE COURT
Date case dismissed	
Stage at which case dismissed	DROP-DOWN MENU
Primary reason for case dismissal	DROP-DOWN MENU
Secondary reason for case dismissal	DROP-DOWN MENU
Conviction for any charge?	YES / NO
Method of conviction	PLEA OR TRIAL
Conviction date	
Number of conviction charges	
Crime type of top conviction charge[1]	DROP-DOWN MENU
Statutory classification of top conviction charge[1]	DROP-DOWN MENU

NOTES:

1. In most computerized systems, top conviction charge information could be calculated automatically from the information in Table 6: Charging History.

Table 12: CASE-LEVEL SENTENCING DETAILS

Unique case identifier	
Unique defendant-case identifier	
Responsible prosecution unit/team	DROP-DOWN MENU
Responsible prosecuting attorney	DROP-DOWN MENU
Sentences for conviction charges to be served concurrently or consecutively?	
Sentence type	DROP-DOWN MENU
Sentence details[1]	STANDARDIZED FORMATS
Repeat sentence type and sentence detail fields for each sentence type imposed[2]	
Aggregate term of incarceration[3]	MONTHS
Incarceration to be served in prison or jail?	
Incarceration to be served intermittently (e.g., weekends)?	YES / NO
Aggregate period of probation supervision[3]	MONTHS
Aggregate period of post-release supervision[3]	MONTHS
Aggregate fine amount[3]	

NOTES:

1. The formats for sentence details will differ depending on sentence type.

2. For example, a defendant may be sentenced to jail, probation, and a fine, each of which would be recorded separately in Table 12.

3. The sentences associated with individual charges are addressed in Table 6: Charging History.

MEMORANDUM OF UNDERSTANDING BETWEEN THE VERA INSTITUTE OF JUSTICE, INC. AND THE [*JURISDICTION*] ATTORNEY'S OFFICE

This memorandum documents the understanding between the Vera Institute of Justice, Inc. ("Vera") and [*JURISDICTION*], on behalf of the [*JURISDICTION*] Attorney's Office.

Vera is proposing to designate [number, description of staff] to the [*JURISDICTION*] Attorney's Office for a period of _____ in order to identify racial or ethnic disparities in case outcomes, to work with the [*JURISDICTION*] Attorney's Office to discern and review what factors and/or specific practices, if any, may influence such outcomes, and to develop protocols, management processes, and other strategies that will aid prosecutors in reducing or eliminating unwarranted racial and ethnic disparities in case outcomes.

Through this collaborative process, Vera's Prosecution and Racial Justice Program ("PRJ") will help the [*JURISDICTION*] Attorney's Office to establish internal, data-driven management of discretionary decisions. The [*JURISDICTION*] Attorney's Office, in turn, will provide Vera with practitioner-based knowledge of the various key factors and considerations that influence decision-making, in order to contribute to a more accurate interpretation of the data findings. By participating in this project, the [*JURISDICTION*] Attorney's Office can serve as a model for comparatively sized state and local prosecutors' offices of how to deploy and manage discretion in an equitable manner.

In consideration of the mutual understanding and goals of the parties to this Memorandum of Understanding, the parties agree to the following:

I. VERA

1.   Collecting and analyzing data. [*Describe here: the data analysis activities to be undertaken, the purpose of each activity, and the source materials required.*]

2.   Drafting a _____ on its findings. [*Describe here: publications or other materials to be produced, noting format, level of particularity, and their audiences. Include provisions for the DA's office to review and comment on the materials, specifying the time frame in which materials must be provided and returned.*]

3.   Disseminating the _____. [*Designate responsibility for dissemination of the publication(s), and state the major undertakings that will include: conferences, online publication, etc.*]

4.   Funding. [*Designate responsibility for securing funding to support the work and make clear that performance of this agreement is contingent on that funding.*]

II. THE [*JURISDICTION*] ATTORNEY'S OFFICE

1.   Providing Vera researchers access to all data necessary for the analyses of discretion reports. [*State clearly what categories of data are needed—be they electronic databases,*

physical files, or institutional/operational knowledge held by staff—and why, and secure the DA's commitment to providing them.]

2.   Providing in-house office space and administrative support for [*describe staff allocation*] from Vera for the study period. [*State clearly what the project staff need to operate in the DA's office. This will vary site by site but will always include secure locations where confidential information can be stored; it may include computers and other office supplies. If staff will be based out of the DA's office, clarify their employment relationship.*]

3.   Availability of staff of the [*Jurisdiction*] Attorney's Office to Vera. [*Describe the commitment of DA staff to the project—what numbers of which levels of prosecutors should be on the study team, what other staff (including data specialists) are required, what kind of input is required from all, and who will serve as the primary contact.*]

4.   Participating in Vera's report-drafting process. [*Complimentary to §I (2), state the obligation and opportunity for the DA's office to participate in the project and to comment on drafts.*]

5.   Working with Vera to disseminate the technical report and policy brief. [*State DA's office commitment to assist in dissemination and its right to further distribute as it sees fit.*]

III. MUTUAL AGREEMENTS

1.   Collaborating on the partnership report. [*State commitment to collaborating on report and what report will describe (such as the partnership effort, obstacles experienced, and solutions put into practice).*]

2.   Holding regular, joint meetings. [*State commitment to holding regular meetings and to review updates, discuss methodology, identify data limitations and ways to address them, and interpret and contextualize findings.*]

3.   Assignment. [*State whether either party may assign its rights; if so, under what circumstances, and if not, the consequence of assignment without permission.*]

4.   Amendment. [*State the circumstances under which the memorandum may be amended (e.g., the amount of notice required, when it must be in writing.)*]

5.   Term. [*State when the agreement goes into effect and the date or event (e.g., expiration of funding grant) after which it will terminate.*]

6.   Mutual Indemnification. [*Provide for mutual indemnification for claims arising from the other's negligent or willful acts.*]

IV. CONFIDENTIALITY

1.   Storing Data, Stripping Data, and Access to Identifiable Information. [*Describe means by which any identifiable data will be secured, how access to it will be controlled, and how identifiers will be stripped from data (and at what point).*]

2. Vera Staff Access to Data. [*Limit access to all study data, identifiable or otherwise, to staff working on the study.*]

3. Prohibition on Disclosing Identifiable Data. [*State commitment not to disclose identifiable data, noting that reports and publications will present only anonymized, aggregated data findings.*]

4. Certification of Vera staff. [*State the human subjects protection training undertaken by staff who will work on the project and commit to submitting the protocol for review by and Institutional Review Board.*]

THE FOREGOING IS UNDERSTOOD, ACCEPTED, AND AGREED TO BY VERA AND THE [*Jurisdiction*] ATTORNEY'S OFFICE.

[*Jurisdiction*] ATTORNEY'S OFFICE:

_____
Print Name:

_____
Title:

_____
Signature:

_____
Date:

VERA INSTITUTE OF JUSTICE, INC.:

_____
Print Name:

_____
Title:

_____
Signature:

_____
Date:

Appendix D

RESOURCES ON PRJ'S WORK AND ISSUES RELATED TO PROSECUTORIAL DISCRETION

Vera's published written work about research into prosecutorial discretion:

Frederick, Bruce, and Don Stemen. *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making - Summary Report*. New York: Vera Institute of Justice, 2012, www.vera.org/sites/default/files/resources/downloads/anatomy-of-discretion-summary-report.pdf.

McKenzie, Wayne, Don Stemen, Derek Coursen, and Elizabeth Farid. *Using Data to Advance Fairness in Prosecution*. New York: Vera Institute of Justice, 2009, www.vera.org/pubs/prosecution-and-racial-justice-using-data-advance-fairness-criminal-prosecution.

Video interviews discussing prosecutorial discretion:

Jim Parsons on *Race and Prosecution in Manhattan*, www.vera.org/pubs/special/race-and-prosecution-manhattan.

Michael Jacobson and Don Stemen discuss the *Anatomy of Discretion* study, www.vera.org/anatomy-discretion-podcast-1-4-interview-don-stemen.

Don Stemen and Anne J. Swern, First Assistant District Attorney for Kings County, NY, discuss prosecutorial discretion and racial equity, www.vera.org/anatomy-discretion-podcast-2-4-interview-anne-j-swern.

Don Stemen and Judge Theodore A. McKee, chief judge of the U.S. Court of Appeals for the Third Circuit, discuss fairness in criminal justice outcomes, www.vera.org/anatomy-discretion-podcast-3-4-interview-judge-theodore-mckee.

Bruce Frederick and Anthony C. Thompson, professor of clinical law at New York University, discuss the balance between strength of evidence and other considerations, www.vera.org/anatomy-discretion-podcast-4-4-interview-anthony-c-thompson.

Illustrations of PRJ's research and partnership model:

Race and Prosecution in Manhattan: Research Summary, www.vera.org/sites/default/files/resources/downloads/race-and-prosecution-manhattan-summary.pdf.

Race and Prosecution in Manhattan: Technical Report, www.vera.org/sites/default/files/resources/downloads/race-and-prosecution-manhattan-technical.pdf.

Race and Prosecution in Manhattan: Partnership Report,
www.vera.org/sites/default/files/resources/downloads/race-and-prosecution-
manhattan-partnership.pdf.

**For background on the debate about racial disparity in the criminal
justice system:**

Davis, Angela J. "In Search of Racial Justice: The Role of the Prosecutor,"
Journal of Legislation and Public Policy, 16, no. 4 (2013) p. 821,
 www.nyujlpp.org/wp-content/uploads/2014/01/Davis-In-Search-of-Racial-
Justice-16nyujlpp821.pdf.

Davis, Angela J. *Arbitrary Justice: The Power of the American Prosecutor.*
New York: Oxford University Press, 2009,   works.bepress.com/angela_
davis/1.

Harris, David A., "Profiling Unmasked: From Criminal Profiling to Racial
Profiling," in *Blind Goddess: A Reader on Race and Justice*, edited by
Alexander Papachristou and Patricia J. Williams, New York: New Press, 2011.

Levinson, Justin D., and Robert J. Smith, eds. *Implicit Racial Bias Across the
Law.* New York: Cambridge University Press, 2012.

Various authors, "Racial Disparities," *The Champion,* October 2012,
Washington DC: National Association of Criminal Defense Lawyers,
www.nacdl.org/Champion.aspx?id=29517&terms=tymas

**For examples of local press coverage to illustrate community interest in
work on racial justice and prosecution:**

"Lancaster County attorney to look at racial disparity in legal system," by
Lori Pilger, March 25, 2014, JournalStar.com, Lincoln, Nebraska, journalstar.
com/news/local/911/lancaster-county-attorney-to-look-at-racial-disparity-in-
legal/article_11e13144-9113-5e32-b444-e51b840743dc.html.

"San Francisco DA's office launches study to prevent racial, ethnic bias in
prosecutions," Inquirer.net, May 3, 2014.,
newsinfo.inquirer.net/599256/san-francisco-das-office-launches-study-to-
prevent-racial-ethnic-bias-in-prosecutions.

"How Race Skews Prosecutions," editorial, *The New York Times*, July 14,
2014, www.nytimes.com/2014/07/14/opinion/how-race-skews-prosecutions.
html?partner=rssnyt&emc=rss.

Acknowledgments

The Vera Institute of Justice combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

For more information, contact Daniel F. Wilhelm, vice president and chief program officer, Vera Institute of Justice at dwilhelm@vera.org.

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