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THE MISSING LINK: EXAMINING PROSECUTORIAL DECISION-MAKING ACROSS FEDERAL DISTRICT COURTS[1]

NATIONAL INSTITUTE OF JUSTICE (NIJ)

FINAL TECHNICAL REPORT

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GLOSSARY

AOUSC—The Administrative Office of the U.S. Courts. The AOUSC is the administrative support office for the U.S. federal courts. It provides court clerks, pretrial services, court reporters, and public defenders.

AUSA—Assistant U.S. Attorneys. AUSAs assist the U.S. Attorneys as federal prosecutors in the 93 federal districts.

Charge Declination—this term refers to the decision by the prosecutor to not prosecute under the arresting charge.

Charge Reduction—this term refers to the decision by the prosecutor to charge the defendant under a lesser charge than the original arresting charge.

USMS—United States Marshals Service. The USMS is the enforcement arm of the U.S. federal courts.

USSC—U.S. Sentencing Commission. The USSC is an independent agency charge with establishing sentencing guidelines for federal courts. The also collect data on federal sentencing issues.

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ABSTRACT

U.S. Attorneys are arguably the most powerful and least studied actor in the federal criminal court workgroup. They have immense discretion to decide which cases to prosecute and what charging concession to offer in the course of plea bargaining, yet a paucity of empirical research exists on these consequential decisions. Recent scholarship on criminal sentencing suggests sentencing decisions vary significantly across court contexts, but virtually no prior work investigates jurisdictional variations in prosecutorial decision-making outcomes.

The current study uses unique data from the Bureau of Justice Statistics on federal criminal case processing to study these issues. It links information across multiple federal agencies in order to track individual offenders across the various stages of the federal justice system. Specifically, it combines arrest information from the U.S. Marshall's Service with charging information from the Executive and Administrative Offices of the U.S. Attorney and with sentencing information from the U.S. Sentencing Commission. Linking data from these multiple sources provides a unique opportunity to study elusive prosecutorial decision-making outcomes in the federal justice system. These individual data, then, are subsequently augmented with additional information on federal courts to examine contextual variations in charging decisions across federal jurisdictions.

Findings from this research suggest several important conclusions. First, there is little systematic evidence of age, race and gender disparities in U.S. Attorney decisions regarding which cases are accepted and which are declined for prosecution. The most common reason for case declinations reported by U.S. Attorneys was weak or insufficient evidence. Second, there is some evidence of disparities in charge reductions, but they operate in opposite directions for gender and race. Male defendants were less likely than female defendants to receive charge

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reductions but black and Hispanic defendants were slightly more likely than white defendants to receive them. Young, male, minority defendants, however, were both less likely to have their cases declined and less likely to receive charge reductions. Fourth, both case declinations and charging reductions demonstrate significant variation across federal district court environments. Larger districts were slightly more likely to decline prosecutions and reduce charges, but overall, few of the district-level characteristics that were examined proved to be strongly related to jurisdictional variations in prosecutorial decision-making outcomes.

In terms of policy recommendations, this research suggests that there is a strong need for improved data collection efforts on federal prosecution. The dearth of research on prosecutors reflects a lack of quality data on their decisions-making processes and outcomes and on the social contexts in which these decisions are made. Increased transparency, accountability, fairness and equality in federal punishment will ultimately require improved information on the essential role played by U.S. Attorneys in the multiple decision-making points that comprise criminal case processing in the federal criminal justice system.

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EXECUTIVE SUMMARY

Criminal prosecutors occupy a preeminent role in the American criminal justice system. They exercise enormous discretion in deciding which cases to prosecute, what charges to bring, and whether or not concessions are offered during plea negotiations. On the one hand, prosecutors have enormous discretion to decide which cases to prosecute and what charges to bring; on the other hand, there is very little external oversight of their behavior. Compared to other court actors and other stages of criminal case processing, relatively little is known about prosecutors' charging decisions. This is particularly true in the federal criminal justice system, where U.S. Attorneys wield immense prosecutorial discretion but a dearth of research has been conducted. Unlike judicial decision-making, which has been the primary target of recent sentencing reforms, few policy innovations have been enacted that attempt to constrain or regulate prosecutorial decision making. Although legal scholars widely acknowledge the capacious power of the prosecutor, to date little empirical work has been conducted examining fairness and equity in their decision-making outcomes. For this reason some commentators have noted that "we actually know *less* today than we did in the 1970s and 1980s" about prosecutorial discretion and its consequences for the American criminal justice system (Forst, 1999: 525 emphasis in original).

The primary reason for the lack of research on federal prosecutors is the absence of high-quality, publicly-available data on their decision making processes and outcomes. Researchers investigating prosecutorial decision-making have had to rely on small, independently-collected datasets, which have typically focused on one or two crime types often from a single jurisdiction. Virtually no data has been collected or analyzed on federal prosecutors since systematic efforts

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to collate information from case management systems were discontinued in the early 1980s.[2] In general, prosecutors tend to be reluctant to cooperate with researchers because they see little to gain and much to lose by exposing themselves to empirical scrutiny. This research is also time and resource intensive and often difficult to conduct. The result is that studies of prosecutorial discretion remain extremely rare, and virtually no studies examine the consequences of charging decision in the federal justice system. As Miller and Eisenstein (2005: 239) opined, "Contemporary studies of prosecutorial decision making are infrequent, and even fewer studies examine the discretionary decision making of federal prosecutors."

The current research examines federal charging decisions in U.S. District Courts using unique data that links administrative records from several sources, including the U.S. Marshall's Service, the Executive and Administrative Office of the U.S. Courts, and the U.S. Sentencing Commission. It addresses the general lack of research on prosecutorial decision making in the federal justice system by assessing the consequences of prosecutorial discretion for issues of fairness, equality and consistency in federal charging and punishment decisions. By linking these different sources of data together, important limitations inherent in each can be overcome. These administrative data are then subsequently augmented with information on district court contextual environments, providing for the first large-scale and systematic investigation of inter-district variations in federal prosecution.

Findings from this research suggest there is little systematic evidence of age, race and gender disparities in U.S. Attorney decisions regarding which cases are accepted and which are declined for prosecution, but there is some evidence of disparities in charge reductions, with male defendants being less likely than female defendants to receive charge reductions and black

[2] For example, detailed information on prosecutorial charging patterns was once systematically collected by the Bureau of Justice through its Prosecutor's Management Information System (PROMIS). These data were discontinued in 1992 and no comparable data exist today.

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and Hispanic defendants being more likely than whites to receive them. The likelihood of both case declinations and charge reductions vary significantly across federal districts, but few of the measures of context examined are able to explain these variations. Future research is needed that improves upon the data available to study federal prosecution and future policy initiatives need to more explicitly incorporate the fundamental role that prosecutors play in the multiple stages of federal criminal case processing.

Prior Research on Prosecution

According to Albert Reiss, prosecutors exercise "the greatest discretion in the formally organized criminal justice network" (Reiss, 1974, quoted in Forst, 1999, p. 518), and there are good reasons to believe that the power of the prosecutor has been significantly enhanced in the modern era (McDonald, 1979). Prosecutors today control a broad range of discretionary powers that go beyond traditional charging decisions, such as the application of mandatory minimum penalties, and their relative importance has grown in the wake of recent sentencing reforms, such as sentencing guidelines that target and curtail the discretion of judges. Some scholars refer to this process as the "hydraulic displacement thesis" (Miethe, 1987), in which decision-making power has been steadily shifted from judges and other court actors to prosecutors in recent decades. Importantly, the growing power of the prosecutor has been coupled with a general lack of periodic review, systematic data collection, and formal legal oversight, so little is known about its potential effects for issues of fairness, equality and consistency in criminal case processing. In particular, little is known about the effect of prosecutorial discretion on racial, ethnic and gender disparities, especially in the federal criminal justice system.

U.S. Attorneys control a broad range of consequential decisions and are subject to relatively little formal regulation. Two key decisions they control include whether or not to

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accept or decline a case for prosecution and whether or not to reduce initial charges as part of the plea bargaining process. Prior research on these decisions has been conducted almost exclusively in state rather than federal courts.

A substantial proportion of all arrests are declined for prosecution and charge reductions are a common feature of cases settled through guilty pleas (Forst, 1999). Prior research focuses primarily on disparities in charging decisions that occur for defendants who appear to have committed similar offenses. A number of prior studies find that the gender or race of the defendant is related to charging decisions (e.g. LaFree, 1980; Spohn and Spears, 1996; Spohn et al. 1987), though this literature when taken as a whole is characterized by mixed and inconsistent findings. In general, the most serious cases with the strongest evidence tend to be most likely to be prosecuted and there is also some evidence for the importance of victim characteristics in the prosecution of personal crimes, though this research has been limited primarily to domestic violence, sexual assaults, or homicide cases (e.g. Kingsnorth and McIntosh, 2007; Paternoster and Brame, 2008; Spohn et al. 2001). Select studies have examined the consequences of charging decisions for final sentencing outcomes and find consistent evidence that charge reductions are associated with significantly reduced punishments. For example, Wright and Engen (2007) reported strong effects of charge reductions on final sentencing outcomes in North Carolina and concluded that "the impact of charging decisions on average sentences is greater than the impact of judicial decisions made at the time of sentencing" (Wright and Engen, 2007: 1939).

Compared to the literature on state court prosecutors, even less research examines the federal courts. Early qualitative investigations of charging suggest federal prosecutors frequently exercise their discretion to circumvent federal sentencing guidelines and that these practices vary

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by jurisdiction (Nagel and Schulhofer, 1992). The limited empirical work on federal prosecutors focuses primarily on sentencing decisions controlled by prosecutors, such as guidelines departures for providing substantial assistance to a U.S. Attorney in the prosecution of another federal case (e.g. Hartley et al. 2007; Johnson et al. 2008; Spohn and Fornango, 2009). This work finds significant gender and race disparities in the application of departures, but it does not examine other important filing and charging decisions that precede sentencing. Only one recent study examined federal charging decisions. Using similar data as this study, Shermer and Johnson (2010) found that males were substantially less likely to receive charge reductions and that charge reductions significantly reduced sentence lengths for convicted defendants in federal court.

Although a growing number of studies emphasize the importance of jurisdictional variations in punishment, research has not investigated this issue in the context of prosecutorial charging decisions. Some research suggests that the federal guidelines are interpreted and used differently across jurisdictions (Ulmer, 2005; Johnson et al. 2008; Spohn and Fornango, 2009) but this focus is limited to sentencing decisions. A number of studies suggest that there may be important jurisdictional variations in plea bargaining, but no research examines the issue empirically. For instance, Smith (1986: 967) argued that "plea bargaining and sentence discounts vary substantially across different jurisdictions, and we need to know more about the factors which may contribute to this inter-jurisdictional variation." The current study explicitly investigates this issue in the federal justice system. It contributes to prior work by testing seldom-examined proposition regarding the filing and charging practices of U.S. Attorneys and the extent to which they vary across federal district court contexts.

The Current Study

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The focus of this work is on the federal courts. The lack of prior work in this important social arena is unfortunate for several reasons. The federal criminal justice system is unique in its scope, caseload and broader societal influence. Federal caseloads involve large numbers of drug and immigration offenses as well as relatively high volumes of fraud and firearms offenses, and it metes out punishments that are typically more severe than in state courts. Examination of punitive processes and outcomes in federal courts also carry great significance for the influence of contemporary trends in criminal justice policy at the state and local levels.

Researchers, practitioners and public policy advocates have long noted that one of the most important limitations of existing research on criminal case processing is the inability to track offenders across multiple decision-making points (Klepper et al. 1983). For instance, Hagan (1974: 379) argued that "what is required is longitudinal data" of decision-making outcome for defendants "in transit through the criminal justice system." By combining data on federal arrests, prosecutions, and sentences, the current project provides a unique opportunity to track individual offenders across stages of the federal justice system.

The current study begins with the cohort of federal arrests from 2003-2005. The use of multiple years is advantageous for ensuring large enough sample sizes across districts. Analysis of case declinations and early case filing decisions is accomplished by linking the arrested defendants to charging data from the Executive Office of US Court (EOUSC) data from 2000-2009. These data contain criminal matters received and terminated, including matters that are dismissed by U.S. Attorneys and those that are filed in magistrate and district court. Because these data lack offender information they must be linked to the United States Marshall's Service (USMS) data in order to examine the effects of offender characteristics on these early case processing decisions. Analysis of subsequent charge negotiations for cases filed in US District

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Courts is accomplished by linking the cohort of prosecuted offenders from the Administrative Office of the US Courts (AOUSC) data from 2003-2006 to the USSC sentencing data for 2000-2009. Once again, by linking the AOUSC data to the USSC data it is possible to examine the effects of defendant characteristics on charge negotiation processes in federal court.

In total 368,506 federal arrests were booked by the US Marshalls Office from 2003-2005. Of these, 284,869 cases were successfully linked to the EOUSC data for a match rate of 78.4%. This is the final sample used in the analysis of case declinations. Some key differences exist between the matched and unmatched cases. Immigration offenses and non-U.S. citizens were less likely to be matched, which may reflect the fact that immigration crimes are sometimes handled in unique, expeditious ways; for instance, illegal aliens may be summarily deported rather than fully processed through the federal court system. Public order crimes and crimes from the district of Washington DC were also less likely to be matched. The former reflects the prevalence of traffic offenses and the latter the presence of DC Superior Court cases in the federal data. After removing the District of Columbia and traffic offenses, the match rate between the USMS and EOUSC increases to more than 80%.

Turning to the charge reduction data, 346,043 cases were prosecuted in the federal justice system between 2003 and 2006. Of these, 86,440 cases or roughly 25% could not be matched to the United States Sentencing Commission data. 40% of the unmatched cases were the result of cases that did not result in a conviction, which are not recorded in the USSC data. 30% of the unmatched cases were less serious offenses handled by district magistrates. As with the prior analysis, public-order crimes are overrepresented in the unmatched cases because they include traffic offenses which seldom make their way to federal court. After adjusting for these known reasons, the match rate between the AOUSC and USSC data for non-traffic offenses convicted

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by district judges is approximately 88%. In total, 259,603 AOUSC prosecutions terminating in 2003-2006 were successfully matched to USSC sentencing data. This is the final sample used in the analysis of charge reductions.

Findings – Case Declinations

Descriptive findings indicated that about 7% of all federal cases resulted in declinations, 17% were concluded by magistrates, and the rest – about three-quarters – were filed in federal district court. The mean age of defendants was 33 years, only 14% of defendants were female and nearly three-quarters were white. Because ethnicity is not coded separately in the USMS data, Hispanic defendants cannot be separately identified in these analyses. Just over half of all defendants were US citizens. Together, drug crimes and immigration offenses accounted for more than half of the federal criminal caseload. The most commonly reported reason for case declination was weak, insufficient or inadmissible evidence, which was identified in 17.5% of declined cases.

Results from the multivariate analyses indicated that offender age had a small positive effect on case declination, with younger offenders more likely to have their cases accepted for prosecution. Somewhat surprisingly, male offenders were more likely to have their cases declined for prosecution than female offenders. 7.8% of male suspects had their cases declined compared to only 5.4% of female suspects. Relative to white defendants, black suspects were also slightly more likely to have their cases declined. However, it is important to note that Hispanic defendants cannot be separated from white and black suspects in these analyses. U.S. citizens were also more likely to have their cases declined relative to non-citizens. Cases that reflect national prosecution priorities, as recorded by U.S. Attorneys in the EOUSC data, were significantly more likely to result in prosecution. Immigration offenses were the most likely

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offense type to be accepted for prosecution, although drug offenses also had a high probability of prosecution. Finally, declinations were highest among cases arrested by US Marshalls and the Bureau of Alcohol, Tobacco and Firearms, and they were lowest for federal agencies that target immigration crime, such as Border Patrol and Immigration and Customs Enforcement.

Findings – Charge Reductions

Federal charge reductions are measured by identifying the filing charge with the greatest statutory severity and comparing it to the terminating charge with the greatest statutory severity. Measured in this way, charge reductions occurred in 12% of federal cases. This is likely an underestimate of actual charge negotiations because it only captures reductions that are reduce the statutory severity of the crime. The mean number of charges filed was 1.9 and the mean number of charges terminated was 2.0, which suggests that federal prosecutors slightly increase the number of charges against defendants from filing to termination. Turning to defendant characteristics, the mean age is 34.5 and 87% of defendants are male. Data on both race and ethnicity were available for this analysis – 25% of the sample was white, 21% black, and 40% Hispanic, with small numbers of Asian and Native American defendants. U.S. citizens comprised 69% of the sample. Most defendants have less than a high school education, and less than 10% have college degrees. In terms of case processing, two-thirds of federal defendants were detained prior to sentencing and more than 95% pled guilty. Drug offenses comprise 37% of the sample, followed by immigration offenses, which account for 22% of the sample. Relative to the arrest data, slightly more drug offenders and fewer immigration offenders are sentenced in district court. For other offenses, the proportions in this sample were similar to the sample for case declinations.

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Results from the multivariate analyses of charge reductions demonstrated that both the number of charges filed and the severity of the charge significantly increased the odds of a charge reduction. More charges and more serious charges likely provide greater opportunities for negotiation. Offender age had a small positive effect on charge reductions and gender had a strong negative effect such that male defendants were about 25% less likely than female defendants to receive a charge reduction. Both black and Hispanic defendants were slightly more likely to receive charge reductions relative to white defendants. U.S. Citizens were less likely to receive charge reductions and those with some college were slightly more likely to receive them. Pretrial detention was strongly associated with charging behavior, with detained suspects 30% less likely to receive a charge reduction, and going to trial had even stronger effects, reducing the odds of a charge reduction by roughly 70%. Immigration offenses were by far the least likely to receive charge reductions, being significantly less likely than all other offense types.

Analysis of the effect of charge reduction on presumptive and final sentences suggested strong effects. On average, offenders who received a charge reduction had presumptive guidelines sentences that were 17% shorter than offenders who did not receive a charge reduction. This translated into actual sentences that were about 9% shorter for offenders who received charge reductions.

Findings – Jurisdictional Variation in Prosecution

Results from multilevel statistical models designed to examine jurisdictional variation in prosecutorial outcomes demonstrated strong evidence of inter-district differences in both the probability of case declination and the likelihood of receiving a charge reduction. For case declinations, most districts had declination rates that varied between 5% and 22%. For charge

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reductions, most districts had charge reduction rates that varied between 4% and 42%. The effect of charge reduction on final sentence also varied significantly across courts. Overall, this offers strong evidence of inter-jurisdictional variation in federal prosecution outcomes across U.S. districts.

Attempts were made to explain the observed variation in declinations and charge reductions across courts using characteristics of each federal district that included the size of the district, its caseload pressure, percent black in the district, its socioeconomic status, and the district-level crime rate. On average, U.S. Attorney Offices have about 56 AUSAs. However, the smallest district has only 14 prosecutors compared to the largest district which has more than 250. The mean number of case filings is 67.6, but this ranges between a low of 21.5 and a high of 215 across districts. The heaviest caseloads tend to characterize Southwest border districts with high immigration caseloads. The proportion of the population that is African American is about 12.5%, but some districts have very small proportions, whereas others are as high as 38.6% black. The measure of socioeconomic disadvantage is an additive scale that combines poverty, employment and median home values in each district. This also varied substantially among courts. Finally, district-level crime rates ranged from a low of 5 to a high of 76 per 1,000 residents.

Findings for case declinations indicated that larger US Attorneys' offices were more likely to decline cases and district with high caseloads were slightly less likely to decline cases. However, it can be very difficult to separate the effect of district size and caseload from the effects of immigration offenses and percent Hispanic because they are strongly related. The largest districts with the heaviest caseloads tend to occur in the southwest border districts that experience high immigration caseloads. Therefore the reported effect for district size and

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caseload may partially reflect the influence of large Hispanic populations and large immigration caseloads in these districts. Some evidence also emerged to suggest that districts that are socioeconomically disadvantaged are more likely to decline cases for prosecution.

Summary of Main Research Findings	
Topic	**Findings/Conclusions**
Scope of Existing Work	Empirical research on prosecutors is rare and often based on small samples of cases from state courts. Almost no work examines federal prosecutors or jurisdictional variation in their case processing decisions.
Case Filings	Approximately 3 out of 4 arrests in the matched sample of arrest and prosecution data resulted in the case being filed in U.S. District Court.
Charge Reductions	Charging reductions, measured as a decrease in the statutory severity of the most serious charge, occurred in approximately 12% of federal cases.
Offense Types	Immigration offenses were the least likely to result in case declinations and they were the least likely to receive charge reductions.
Disparity	Older, male and black suspects were more likely to have their cases declined for prosecution. Male defendants were less likely to receive charge reductions but Black and Hispanics were more likely to receive them than white defendants.
Interaction Effects	Relative to other offenders, young, male, minority suspects were slightly more likely to have their cases filed in district courts and they were less likely to receive charge reductions.
Cumulative Disadvantage	There was little evidence of cumulative disparity that systematically disadvantaged specific age, race, or gender groups across the multiple outcomes examined.

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Jurisdictional Variation	Both case declination and charge reduction varied significantly across courts, but court and community characteristics explained relatively little of this variation. Improved measures of court context need to be examined in future work.

Analysis of jurisdictional variation in charge reductions demonstrated few significant effects for district-level predictors. Only the size of the district was significantly related to the likelihood of charge reductions. Larger districts were more likely to reduce charges than smaller districts. As with the analysis of case declinations, though, district size is related to the size of the immigration caseload so it can be difficult to separate these influences and these results should be interpreted cautiously. Few of the district-level predictors were able to explain significant variation in the effect of charge reduction across districts as well. Only percent black was significantly related to the magnitude of the sentence discount, and this effect was substantively very small. The main research findings from this study are summarized in the table above.

Summary and Conclusions

Federal prosecutors are among the most influential and least studied actors in the criminal justice system. The discretionary power of prosecutors to select cases and negotiate reduced charges as part of plea bargains raises core issues for the understanding of criminal case processing and for the potential of unwarranted disparity to enter into pre-sentence decision-making processes in criminal courts. Few prior scientific inquiries into prosecutorial decision making have been conducted and virtually none of them examine the federal justice system. Thus, the discretionary power of federal prosecutors remains poorly understood and dramatically understudied. The current research attempted to address this issue by conducting a large-scale,

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systematic investigation of early charging decisions of federal prosecutors across U.S. District court contexts.

Key findings, study conclusions, and policy recommendations from this research can be summarized as follows:

- Few extant studies of prosecutors have been conducted and virtually none of them focus on federal prosecutors. This is largely the product of a lack of high-quality, publically-available data on prosecutorial decision-making. As such, a key priority of future work will be the identification, funding and collection of new sources of data on prosecutorial decision-making.

- There is immense potential in the Bureau of Justice Statistics Data used in this study but caution should be exercised in their use as well. The ability to link cases across administrative agencies allows researchers to track individual offenders across multiple stages of case processing, but each data source also has its unique limitations and matching procedures are imperfect so it will be essential for scholars to exercise care in future research using these data.

- Findings from the current analysis demonstrate that at least 7% of federal cases are declined for prosecution and 17% result in charge reductions, though these are likely underestimates of actual prevalence rates. Findings also indicate that older, male and black suspects are more likely to have their cases declined, but male and white defendants were less likely to receive charge reductions. Immigration offenses are also consistently the least likely to be declined for prosecution and least likely to result in charge reductions.

- Significant variation characterizes the use of case declinations, charge reductions, and charge reduction discounts across U.S. district courts. However, few of the district characteristics examined significantly explained this variation, so improved measures of federal court contexts are needed in future work.

- Finally, public policy efforts in federal punishment have focused almost exclusively on judicial discretion, despite the immense power of the prosecutor. Future policy innovations need to explicitly account for the discretionary power of prosecutors. Such things as written reasons for charging decisions and charging guidelines could prove useful for increasing fairness and transparency in the justice system, but this will require the systematic collection of new data to facilitate evaluations of prosecutorial discretion and its consequences.

The goal of this study was to investigate prosecutorial discretion in the federal justice system by analyzing the correlates and consequences of charging decisions across U.S. District

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Courts. The study makes several novel contributions. First, it provides a systematic review of empirical research on prosecutorial decision-making, identifying several key limitations in prior work. This review suggests that far too little empirical attention has been devoted to the study of prosecutors. Second, this study introduces a methods approach that links multiple datasets across different federal agencies. The linking procedure helps to overcome important weakness that characterize available data on federal charging decisions and it allows individual offenders to be followed across the stages of criminal case processing. Third, this study offers the first large-scale empirical investigation of jurisdictional variation in federal charging decisions. The results indicate important contextual variation characterizes federal charging behaviors, but it also suggests the need for improved measures of social contexts in future work. Finally, this research identifies several promising directions for future policy initiatives to increase equality, uniformity and transparency in pre-sentence decision-making outcomes. These include explicit stated reasons on the part of federal prosecutors, making existing office policies overt and publically available, and new policies such as the development of formal charging guidelines aimed at increasing consistency and fairness in federal charging practices.

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CHAPTER 1: INTRODUCTION

Sentencing researchers have long struggled with the dilemma that prosecutorial discretion is highly consequential and pervasive, and yet much less visible than judicial sentencing discretion

~Jeffery T. Ulmer (2012)

Criminal prosecutors occupy a preeminent role in the American criminal justice system. They exercise enormous discretion in deciding which cases to prosecute, charges to bring, and concessions to offer in exchange for self-conviction via guilty pleas. They also control an increasing number of subsequent punishment decisions such as mandatory penalties, pretrial diversion eligibility and the availability of certain sentencing discounts. Moreover, they play an active role in defining the broader parameters of law enforcement priorities within and across jurisdictions. On the one hand, prosecutors maintain enormous control over which cases get prosecuted, how they are charged, and what punishments are likely to result. On the other hand, there is very little external oversight or formal regulation of their behavior. Therefore relatively little is known about the potential consequences of prosecutorial discretion for understanding fairness and equality in punishment. Although legal scholars and social scientists widely acknowledge the capacious power of the prosecutor, to date they have not responded with equal scope of academic inquiry. Unlike judicial discretion, which has been a primary target of recent sentencing reforms, prosecutorial discretion arguably remains the "black box" of criminal court decision making research (O'Neill Shermer and Johnson, 2010). For this reason some commentators have noted that "we actually know *less* today than we did in the 1970s and 1980s" about prosecutorial decision-making in criminal courts (Forst, 1999: 525 emphasis in original).

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There are several reasons that relatively less empirical research focuses on prosecutors. First and foremost is a lack of high-quality, publicly-available data. In the wake of dramatic sentencing reform in the late 1970s and 1980s, many states established sentencing commissions that began to systematically collect information on judicial sentencing decisions. This helped stimulate a resurgence of empirical research on criminal sentencing. Similar reform efforts were not levied at prosecutors and no large-scale data collections occurred in this area. It has therefore become notoriously difficult to analyze prosecutorial decision-making outcomes. Independent data collection efforts also remain scarce, in part because prosecutors are often reluctant to cooperate with researchers – they tend to see little to gain and much to lose by exposing themselves to empirical scrutiny – and in part because this type of research is time and resource intensive and often difficult to conduct. As a result, research that has examined prosecutorial decision making has been based primarily on relatively small samples of cases, involving specific crimes types, collected from single jurisdictions.

A second reason for the dearth of research on prosecutors stems from a targeted focus on judicial discretion in recent critiques of sentencing and sentencing reform. In the 1970s a number of social forces coincided to bring disparity in sentencing to the forefront of public discourse on justice system reform. The result was strong bipartisan support for justice reforms aimed at constraining judicial discretion (MacKenzie, 2001). However, similar reforms targeting prosecutorial discretion remained largely absent from public discourse. Recent years, however, have witnessed a growing recognition of the essential importance of incorporating prosecutors into the study of criminal court decision making outcomes. Several scholars have argued for increased consideration of prosecutorial discretion in sentencing research. As Spohn, Gruhl, and Welch (1987, p. 175) observed, "social scientists … interested in the issue of racial and sexual

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discrimination" have empirically "paid relatively little attention to the decision to prosecute." More generally, Holmes, Daudistel, and Farrell (1987, p. 233) lamented that "despite an extensive literature on differential justice … relatively few studies have examined whether inequities occur in legal decisions that precede sentencing." Piehl and Bushway (2007) reiterated these concerns, arguing that "charge bargaining is a potentially important form of discretion in criminal sentencing that is obscured in many studies of sentencing outcomes."

Among research on prosecutors, the vast majority focuses on extralegal disparity in the decision making outcomes of state prosecutors, often focusing on a single crime type, such as domestic violence or sexual assault (e.g. Beichner and Spohn, 2005; Kingnorth et al. 1998; 1999; Kingsnorth and McIntosh, 2007; Spohn and Spears, 1996; Spohn and Holleran, 2001; Spohn et al. 2001). Much less research, however, examines prosecutorial decision making in federal district courts. As Miller and Eisenstein (2005: 239) opined, "Contemporary studies of prosecutorial decision making are infrequent, and even fewer studies examine the discretionary decision making of federal prosecutors." Moreover, available research has almost exclusively used post-conviction sentencing data to investigate prosecutor-controlled guidelines departures rather than earlier charging and case processing outcomes (e.g. Hartley et al. 20076; Johnson et al. 2008; Spohn and Fornango, 2009). Only rarely have researchers examined federal charging decisions and extant work has important limitations (O'Neill Shermer and Johnson, 2010). As such, punishment scholars broadly recognize the need for improved research on prosecutorial discretion, especially in understudied social arenas such as in the federal courts. Importantly, the growing acknowledgment of the importance of prosecutors extends beyond the realm of academia. In fact, one of the recent strategic initiatives of the Bureau of Justice is explicitly the improvement of "prosecution and adjudication data" (Lynch, 2011: 5).

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The limited research examining prosecutorial outcomes in criminal courts also has yet to fully address emergent concerns over contextual variation in punitive decision making. As Sampson and Lauritsen (1997: 349) recently stated, one "distinguishing feature of recent research on sentencing is a deeper appreciation for the salience of macro-social contexts," yet research on prosecutorial decision making has only just begun to incorporate the importance of social contexts into extant empirical work. Spohn and Fornango (2009) represents one of the very few studies to demonstrate the existence of contextual disparity in prosecutorial decision making, and despite its substantial contribution, it stops short of explicating the underlying causes of inter-prosecutor variation in punitive outcomes. For this reason, in his recent review of contemporary research on criminal punishment, Jeffery Ulmer (2012: 7) identified key directions for future research that included both "investigations of sentencing and disparity in the context of earlier criminal justice (particularly prosecutorial) decisions" and additional research on "court contextual influences."

The current research attempts to address each of these emerging concerns in research on criminal justice decision making and federal punishments. The core goal of this study is to address the general lack of research on prosecutorial decision making in the federal criminal justice system, while assessing the consequences of prosecutorial discretion for issues of fairness, equality and consistency across U.S. District Courts. To do so, data from the U.S. Marshall's Service is merged with data from the Executive Office of US Courts (EOUSC), and data from the Administrative Office of US Courts (AOUSC) is merged with data from the United States Sentencing Commission (USSC). As discussed in Chapter 3, none of these data sources provides sufficient information for the full explication of prosecutorial decision-making in federal courts, but by linking different datasets together, many of their individual limitations can

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be addressed and overcome. These individual-level data are subsequently augmented with information on district court contextual environments, providing for the first large-scale and systematic investigation of inter-district variation in federal prosecution. In order to provide necessary context for the current work, Chapter 2 provides a brief history of prosecutorial decision making within the broader context of contemporary sentencing reform. It also reviews empirical research examining various aspects of prosecutorial discretion that has been conducted in the past twenty-five years, identifying key limitations and unaddressed issues. Chapter 3 provides an overview of the current study, situating it within the context of the federal criminal justice system and detailing the data, measures and methods that are used in this study. Chapter 4 summarizes and discusses the findings from the current research, beginning with individual disparities and then shifting to inter-court variations in federal charging outcomes. Finally, Chapter 5 summarizes the key findings, identifies limitations and future directions for research, and discusses some of the key policy implications of the results.

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CHAPTER 2: THE GROWING IMPORTANCE OF PROSECUTORIAL DISCRETION

Most extant and proposed determinant sentencing systems have ignored prosecutorial discretion in charging and plea-bargaining practices.

~Terence Miethe (1987)

A BRIEF HISTORY OF SENTENCING AND PROSECUTION

For most of the twentieth century, criminal sentencing in the United States remained essentially unchanged. Criminal punishment was premised on rehabilitative ideals that emphasized individualized punishments, tailored to the unique needs of specific offenders. Terms of confinement were indeterminant, unpredictable and uncertain, and lacked written reasons, systematic oversight, and appellate review (Frankel, 1973). They included sentencing ranges that set only broad minimum and maximum terms in order to provide maximum flexibility for determining when an offender was rehabilitated and ready to be released into society. Judges decided the type and range of punishment, but actual release decisions were made by prison authorities or parole boards, who exercised considerable discretion in determining the total period of imprisonment.

Although this "indeterminant" approach dominated criminal sentencing for nearly a century, a number of important events coalesced in the 1960s and 1970s and led to dramatic change. Social discord associated with race riots, prison riots and the Vietnam War helped fuel sentiments of government mistrust (Kerner Commission, 1968). As part of the broader civil rights movement, a due process revolution began, criticizing the unbridled discretion of judges and parole officials and heightening concerns over unwarranted disparities in criminal punishment. In a seminal critique of federal sentencing practices, Judge Marvin Frankel criticized judicial training, oversight, and rationality in sentencing and argued that "the almost

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wholly unchecked and sweeping powers" of judges "are terrifying and intolerable for a society that professes devotion to the rule of law" (Frankel 1973, 5). Violent crime was also on the rise, leading some conservative commentators to identify rehabilitative sentencing practices as the putative cause (Wilson, 1975). At the same time, social research drew into question the effectiveness of rehabilitation as a philosophy of punishment. The now infamous "Martinson Report" reviewed 231 rehabilitative correctional programs and was quickly though perhaps dubiously interpreted as evidence that "nothing worked" in corrections (Lipton, Martinson, and Wilks 1975).

Ultimately, the confluence of these social forces fueled the flames of criminal justice reform and placed a new "get tough" sentencing philosophy at the forefront of political discourse in the United States. An unusual alliance of interest groups emerged, including both civil rights advocates and political liberals on the Left who were concerned with inequality in sentencing, and crime-control pundits and political conservatives on the Right who were concerned with undue sentencing leniency. United in public dissatisfaction with indeterminant sentencing practices, this bipartisan coalition worked for striking reform in American sentencing systems. Rehabilitation as the core philosophical foundation of sentencing was largely abandoned, and an array of new sentencing innovations were subsequently implemented, collectively known today as the "determinate sentencing movement," which shared the unified goal of attempting to cabin in judicial discretion in order to address growing concerns over disparity, inequity, and leniency in sentencing.

Determinate sentencing reforms came in sundry forms and have resulted in a variegated mix of modern day sentencing systems, but they shared the common goal of constricting the sentencing discretion of judges and parole officials. None of the reforms were targeted at or

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even identified prosecutorial discretion as a looming concern. As Forst (1999: 514) put it, "The replacement of indeterminant sentencing with more structured approaches removed discretion from judges and parole officials, but not from prosecutors." Many states passed truth-in-sentencing laws and abolished parole to ensure offenders would serve the lion's share of their nominal sentence. Mandatory minimums proliferated, ratcheting up the minimum sentences available to judges for an increasing number of criminal offenses and offenders, and sentencing guidelines were subsequently promulgated in many states, constraining judicial discretion and striving to create greater uniformity in sentencing procedures and outcomes. Collectively, the modern reform movement fundamentally altered the contours of criminal punishment, redefining the structural and philosophical determinates of criminal court decision making in both state and federal courts and raising legitimate concerns about the shifting of sentencing discretion to earlier stages of criminal case processing controlled by the prosecutor (Nagel and Schulhofer, 1992; Alschuler, 1978).

The Increasing Discretion of the Prosecutor

According to Albert Reiss, prosecutors exercise "the greatest discretion in the formally organized criminal justice network" (Reiss, 1974, quoted in Forst, 1999, p. 518). The immense power entrusted to prosecuting attorneys is the product of at least two complementary forces. First, prosecutors control a broader range of more consequential outcomes than any other criminal court actor. They are intricately involved in the punishment process from initial arrest to final sentencing. Second, they tend to be subject to less oversight and formal mechanisms of regulation than other court actors. Unlike judges who have been the target of numerous sentencing reforms aimed at the constraint of their discretionary powers, prosecutors have remained essentially free from academic, public and political scrutiny.

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Prosecutors have largely unbridled control over a broad range of key decision-making outcomes over the complete course of criminal case processing. Prosecutors make the initial decision regarding whether or not arrested offenders are going to be prosecuted at all. Cases that are declined are effectively removed from the justice system and result in no additional punishment. They also maintain primary authority over post-arrest charge negotiations that involve decisions such as whether or not to reduce or increase the severity or number of initial charges and whether or not any or all charges will be subsequently dropped. In addition, prosecutors are key players in plea bargaining negotiations. They make material decisions regarding what concessions to offer in exchange for self-conviction in the form of defendant guilty pleas. Moreover, in recent years, prosecutors have gained additional discretionary power over a number of specific sentencing enhancements. They exercise considerable control over the invocation of diverse mandatory minimum sentencing provisions in most jurisdictions (e.g. Bjerk, 2005; Farrell, 2003; Kautt & DeLone, 2006; Ulmer, Kurlychek, & Kramer, 2007), including such things as habitual offender status and three-strike eligibility (Crawford et al. 1998; Ulmer et al. 2007). Moreover, in the federal justice system, US attorneys are also influential in specifying the facts of the case that are used to evaluate relevant conduct at sentencing (Wilmot and Spohn, 1995), and they have explicit control over specific sentencing discounts, such as substantial assistance departures for cooperating with the government and safety valve applications for low level drug offenders (Hartley et al. 2007; Johnson et al. 2008; Spohn and Fornango, 2009). In addition, prosecutors frequently make influential recommendations regarding pretrial detention status and subsequent sentencing outcomes, that have been shown in some work to be powerfully associated with actual judicial sentencing outcomes (Johnson et al. 2010; Mustard, 2001).

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In addition to the broad range of punitive decisions controlled by prosecutors, their practical influence is significantly enhanced by a general lack of systematic prosecutorial review procedures (Feeley, 1992; Free, 2002; Griffin, 2001; Kingsnorth, MacIntosh, & Sutherland, 2002; Mather, 1979). Prosecutorial charging discretion is largely unfettered, falling outside the purview of both public scrutiny and judicial review. As Richard Frase (2000, p. 440) has argued, prosecutorial discretion results in "enormous 'sentencing' power" because prosecutors "have virtually unreviewable discretion to select the initial charges and decide which charges to drop as part of plea bargaining." Although prosecutor offices often implement formal policies regarding individual charging decisions, these policies are self-policed – they are not subject to external review procedures or to any uniform system of appellate review. The absence of formal review criteria enhances the power of the prosecutor because their decision making outcomes are not typically subject to the same system of checks and balances as subsequent sentencing decisions. If a prosecutor decides not to press charges, or if he or she subsequently reduces charges, there is no legal recourse that can be taken to overturn those decisions. Moreover, many commentators argue that sentencing innovations passed in recent decades have further served to enhance the discretionary power of the American prosecutor.

Hydraulic Displacement Thesis

In the wake of modern sentencing reforms the already considerable powers of the prosecutor have grown considerably (Miethe, 1987; Coffee and Tonry, 1983; Alschuler, 1978). As Spohn and Fornango (2009: 814) have suggested, under determinant sentencing provisions "discretion has simply shifted upstream to prosecutors, who make several critical (and largely unregulated) decisions that affect the sentence that will eventually be imposed." (Spohn and Fornango 2009: 814). This process has become known as the "hydraulic displacement" or "zero-

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sum" discretion thesis, and suggests that constriction of court actor discretion in one domain will produce a concomitant increase of discretion in other domains. In the case of determinant sentencing reforms, sentencing discretion is hypothesized to have moved away from judges and toward prosecutors. Alschuler (1978: 551) was one of the first commentators to note this concern arguing that "In my view, fixed and presumptive sentencing schemes… are unlikely to achieve their objectives so long as they leave the prosecutors' power unchecked." Similarly, Miethe (1987: 155) noted, the hydraulic shift of discretion is "so firmly entrenched as a criticism of current reform efforts that most researchers begin with the assumption that the displacement of discretion exists."

Miethe's (1987) study of prosecutorial discretion, however, is one of the very few studies to empirically examine the hydraulic displacement of discretion thesis. Using pre-and-post guidelines data in Minnesota, he found little evidence for increased prosecutorial discretion under sentencing guidelines. He concluded that "Contrary to expectations based on the hydraulic effect, social differentiation in the type of persons who receive charge and sentence concessions did not increase appreciably after implementing the guidelines" (Miethe, 1987: 173). Similar conclusions were reached by Wooldredge and Griffin (2005) in their study of prosecutorial discretion under the Ohio sentencing guidelines. They examined pre-and-post guidelines data for several different prosecutorial decisions and concluded that there was only "limited evidence that the implementation of Ohio's sentencing guidelines corresponded with significant differences in charging and plea bargaining practices" (313).

Although these studies have been interpreted as evidence against the modern shift of discretion from judges to prosecutors, they both rely on a crucial and untested assumption – that increased prosecutorial discretion will manifest itself in shifting patterns of charge negotiation

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and extralegal disparity. Given constraints on prosecutorial decision making that among other things include the rules of law, established departmental policy, maintenance of working relationships with other court actors, the need to efficiently dispose of cases and the pervasive influences of institutional inertia over time, it may be that similar charging patterns are entirely consistent with increased sentencing discretion on the part of prosecutors. First, the shift toward determinant sentencing has in many cases given prosecutors decision making power over new punishment domains. In the federal system certain mandatory minimums and specific guidelines departures are now explicitly controlled by federal prosecutors. For instance, prosecutors must file a motion in order for an offender to be eligible for 5K1.1 substantial assistance departures, which are sentencing discounts awarded to offenders who provide assistance in the investigation or prosecution of another federal case. Similarly, federal prosecutors exercise considerable discretion in the application of mandatory minimum sentencing provisions. As Cohen and Tonry (1983) argued "Prosecutors…elect whether to file charges bearing mandatory minimum sentences or some other charge, and whether to dismiss charges (p. 340)." A recent report by the United States Sentencing Commission (USSC, 2011: xxvii) concludes that "inconsistencies in application of mandatory minimum penalties exist between districts, and often within districts, where individual prosecutors exercise their discretion differently." As such, prosecutorial discretion has increased in certain decision-making arenas independent of whether or not initial charging patterns have been altered by the implementation of structured sentencing regimes.

Second, the constraint of sentencing guidelines means that prosecutors' charging decisions often serve as de facto sentencing decisions. By reducing the primary charge of conviction a prosecutor can reduce the subsequent penalty imposed. Again, one would not necessarily expect general charging patterns to change, but the consequences of early charging

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decisions may be enhanced under restrictive sentencing guidelines because judges have less discretion to counterbalance the effects of charge negotiations. O'Neill, Shermer and Johnson (2007), for instance, found that federal prison terms were about 20% shorter for offenders who received charge reductions in US District Courts. This effect operated indirectly through the presumptive sentence – offenders who received charge reductions were moved within the federal guidelines into cells with less serious recommended sentences. Similarly, Wright and Engen (2006: 1937) examined the effects of charge reductions on final sentences in North Carolina and concluded that "Prosecutorial decision making takes on even greater importance in the context of late twentieth century sentencing reforms" because "They increase prosecutorial discretion over sentences relative to judicial discretion." In particular, they found that prosecutors frequently used their discretion to reduce the severity of charges filed, and that charge reductions had large and substantial impacts on the final sentences that offenders received. Although prosecutors have long maintained the power to discretionarily reduce the severity of initial charges, judicial ability to counteract these effects has become increasingly constrained under the formal structure of more restrictive sentencing guidelines systems in the modern era.

Although empirical investigations into the discretionary power of prosecutors relative to judges are quite limited (Engen, 2008), the overarching problem is that the issue of shifting discretionary power has been framed in terms of temporal changes in punishment patterns rather than in terms of the relative control that prosecutors have over punishment decisions vis-à-vis judges. No research explicitly investigates this issue in the federal justice system. Nagel and Schulhofer (1992) and Schulhofer and Nagel (1997) conclude that federal guidelines circumvention often characterizes federal sentencing, though they suggest that it does not dramatically change sentences from those that a judge would have otherwise doled out.

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However, they also point out that important jurisdictional variation characterizes prosecutorial circumvention of guidelines and they acknowledge that in many cases, the "sentencing decision is not being made by the judge" (Nagel and Schulhofer, 1992: 551).

The latter issue is at the heart of the current work – even if general charging patterns are not dramatically altered under more determinant sentencing systems, prosecutors still have considerably more discretionary power over final sentencing outcomes today than they did prior to modern sentencing reform. Moreover, this is particularly the case in the federal system, where the guidelines are relatively narrow, constraining and restrictive (Stith and Cabranes, 1998). In a comparison of sentencing outcomes under less restrictive voluntary sentencing guidelines in Maryland and more restrictive presumptive guidelines in Washington State, Bushway and Piehl, (2007) conclude that stricter guidelines significantly shift more discretion to prosecutors than under the less restrictive guidelines. Given the complexity and rigidity of the federal guidelines, one might expect federal prosecutors to be particularly powerful players in the federal sentencing game (Stith and Cabranes, 1998), even after recent Supreme Court cases that have significantly altered the landscape of federal sentencing by making the guidelines advisory instead of mandatory (Ulmer et al. 2011).

The key point is that little remains known about prosecutorial decision making outcomes in the period either before or after recent changes to federal guidelines. For this reason, it is arguably more important to understand the causes and consequences of prosecutorial discretion in federal courts today than at any other time in history. McDonald (1979), for instance, has argued that prosecutorial discretion has been increasing dramatically throughout American history. This trend has undoubtedly continued unchecked into the modern era, leading Ulmer (2011: 25) to recently conclude that when it comes to research on criminal punishment, "The

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largest gap is in understanding prosecutorial discretion, the importance of which sentencing researchers have agreed on and desired to fill since the 1970s." Given the immense discretionary powers of the prosecutor, the need for empirical investigations into the determinants and consequences of prosecutorial decision making is paramount and arguably greater today than at any preceding time in American history.

PRIOR RESEARCH ON PROSECUTORIAL DECISION-MAKING

In contrast to the immense literature on judicial sentencing decisions (Zatz, 2000; Spohn, 2000; Tonry, 1996), relatively few empirical studies investigate the many consequential case processing decisions controlled by prosecutors. Existing work clearly demonstrates that prosecutorial discretion results in the rejection of a substantial proportion of initial arrests. Prosecutors commonly decline prosecutions and they often subsequently dismiss or alter initial charges (Forst, 1999). Moreover, this may particularly be the case in the federal justice system where U.S. Attorneys are especially wont to select and prosecute only the strongest cases involving the most serious offenses (Eisenstein, 1978). In general, this prior research demonstrates that cases involving more serious crimes (e.g. Mather, 1979), with stronger evidence (e.g. Albonetti, 1987) and more culpable defendants (e.g. Spohn and Holleran, 2001) are most likely to result in full prosecution and harsh sentencing (see Forst, 1999 for a review of this work).

Some evidence also suggests that prosecutorial charging decisions are associated with unwarranted disparities in punishment, despite the fact that in general, "social scientists … interested in the issue of racial and sexual discrimination" have empirically "paid relatively little attention to the decision to prosecute" (Spohn, Gruhl, and Welch, 1987: 175). Although evidence remains mixed, many studies find that extralegal offender and victim characteristics

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such as race and gender affect prosecutorial decision making (e.g., LaFree, 1980; Paternoster and Brame, 2008; Spohn & Spears, 1996; Spohn et al., 1987). One theme that emerges from this literature is the importance of "case convictability" – offender and case characteristics that reduce uncertainty and increase the likelihood of a conviction tend to be significantly related to case processing outcomes (e.g., Albonetti, 1986, 1987; Frohmann, 1997; Mather, 1979; Nagel & Hagan, 1983; Spohn & Holleran, 2001).

The majority of early work examined either the initial decision to prosecute (e.g. Frohmann, 1991; Schmidt and Steury, 1989; Spears and Spohn, 1997; Spohn et al. 2001) or subsequent charge reductions (e.g. Wright and Engen, 2006; Albonetti, 1992; O'Neill Shermer and Johnson, 2010) with more recent research increasingly focusing on other consequential decisions such as the imposition of mandatory minimums, habitual offender or three strikes laws (e.g. Crawford et al. 1998; Crawford, 2000; Ulmer et al, 2007; Bjerk, 2005; Farrel, 2003), or more rarely, prosecutorial division programs (e.g. Albonetti and Hepburn, 1996). In the federal system, research has been almost entirely focused on the application of prosecutor-controlled departure provisions, most likely because these data are readily available in public sentencing databases that are relatively easy to access and analyze (e.g. Spohn and Fornango, 2009; Johnson et al. 2008; Hartley et al. 2007). The vast majority of research has been conducted on state rather than federal courts, often with relatively small samples of cases involving specific offense types drawn from single jurisdictions. Table 1 summarizes recent studies published in the past twenty-five years that examine prosecutorial decision making outcomes in state and federal court. Although not necessarily exhaustive, these represent the breadth of recent research published in major research outlets during this time.

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Table 1: Select Studies Examining Prosecutorial Decision Making in the Past 25 Years					
Author/s	**Year**	**Data**	**Outcome**	**Findings**	**Court**
Albonetti	1987	6014 felony cases, Superior Court of Washington, DC	Decision to file charges	Prosecutors seek to avoid uncertainty, mainly file charges where conviction is likely.	Federal
Albonetti	1992	400 burglary and robbery charges in Jacksonville, FL (1979-1980)	Decision to reduce charges from felony to misdemeanor	Prosecutors use case seriousness and offender's character in decision to reduce charges.	City
Albonetti & Hepburn	1996	5554 Maricopa County, AZ felony drug cases	Decision to divert felony drug defendants into treatment	Males, older defendants less likely to be diverted from prosecution. Combined effect of minority status and prior record has significant reduction in likelihood of diversion.	County
Beichner & Spohn	2005	Miami, FL: 140 sexual battery cases Kansas City, MO: 259 sexual offenses	Charging decisions (intake, post-intake, prosecuted)	Despite differences in specialized units treating these cases in one location (Kansas City), charging decisions and predictors of charging are similar in the jurisdictions.	City
Bjerk	2005	State Court Processing Statistics data: 1,726 felony cases from 75 of the most populous counties in U.S	Prosecutors decision to charge offenders with misdemeanors after imposition of three-strikes laws	Prosecutors become significantly more likely to lower charges from felony to misdemeanor when conviction under initial charge would lead to sentencing under a three-strikes law.	Counties
Bushway & Redlich	2011	Sample of 1,593 plea cases, 305 tried cases from 1976-1977 dataset "Plea Bargaining in the United States" covering six jurisdictions in the U.S.	Decision to issue a 'plea discount' by prosecutors.	Evidence does not support the "shadow of a trial" hypothesis; evidentiary factors either do not influence or negatively impact the probability of conviction. Findings suggest that plea bargain decision-making may not occur directly before trials.	Counties
Farrell	2003	19,995 violent offenders in Maryland, 1987-1995	Conviction with mandatory minimum firearm penalty	Mandatory firearm penalty is only applied in 37% of eligible cases; Penalty applied to more serious offenders and offenses. Males and black eligible defendants are more likely to receive this penalty.	State

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Author/s	Year	Data	Outcome	Findings	Court
Frohmann	1991	> 300 case screenings; West coast metropolitan area	Prosecutor decisions to reject sexual assault cases	Prosecutors use various resources to discredit victim allegations of sexual assaults and reject cases.	City
Frohmann	1997	Ethnographic data from 40 case processings in a metropolitan West Coast area.	Convictability; Likelihood of guilty verdict at trial in sexual assault cases	Prosecutors construct "discordant locals" through case information (on victims, offenders, communities, etc.) and use these to justify case rejection. They do this using race, gender, and class information, thus reproducing stereotypes in legal processing.	City
Hartley, Madden & Spohn	2007	9,084 federal crack- and powder-cocaine cases sentenced in 2000	Decicion to grant substantial assistance departure	Offenders charged with crack-cocaine offenses less likely to receive substantial assistance departure; Offenders facing a mandatory minimum significantly more likely to be granted sub. asst. departure; Odds of departure are lower if offender was non-citizen, black, Hispanic, or detained prior to trial	Federal
Hennin & Feder	2005	4,178 domestic violence cases from Shelby County, TN duirng 12-month period	Bond amount, accept for prosecution, verdict, sentence	Pretrial release heavily influenced by legal factors. Gender became significant to predict prosecution. A combination of legal and extralegal factors contribute to sentencing. Female defendants received more lenient treatment throughout the process.	County
Holmes, Daudistel, & Farrell	1987	684 cases (mainly burglary & robbery) from Delaware & Pima counties, 1976-1977.	Number of charges, charge reductions, likelihood of incarceration	No main effects of defendant status characteristics on charging decisions, though status characteristics may operate indirectly through influence on access to legal resources, such as private counsel and pretrial detention that affect the severity of final sentence.	Counties

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Author/s	Year	Data	Outcome	Findings	Court
Johnson, Ulmer & Kramer	2008	169,561 federal criminal cases, FY1997-2001	Type of departure (sub. asst., downward, upward, no depart), magnitude of departure	Substantial variation found in prosecutor-initiated substantial assistance departures. Organizational context (caseload pressure, environmental conditions) shown to provide a partial explanation.	Federal
Kingsnorth & MacIntosh	2007	8,461 intimate partner violence cases from Sacramento County, CA: 1999-2001	Decision to file charges, file felony/non-felony charges, dismiss case, reduce charges to misdemeanor or probation violation	Victim injuries produces more negative outcomes for males compared to females; Marriage and employment increase probability of charges being filed at intake for men, reduces likelihood of felony filing for men. Employment status increases likelihood of case dismissal among women.	County
Kingsnorth, Lopez, Wentworth, & Cummings	1998	365 sexual assault cases, Sacramento County, CA: 1992-1994	Decision to prosecute; disposition; sentencing	No significant effect of racial/ethnic composition was found at any decision point in case processing.	County
Kingsnorth, MacIntosh, & Wentworth	1999	467 sexual assault cases from Sacramento County, CA: 1992-1994.	Decision to prosecute, disposition, sentencing	Relationship and "negative" victim characteristics did not impact the decision to prosecute. Prior relationship between victim/offender associated with reduced sentence length by 35 months. Each additional negative victim characteristic increases incarceration by 17 months.	County
Piehl & Bushway	2007	State Court Processing Statistics data; Washington (257 cases) & Maryland (240 cases): 1996, 1998, 2000	Charge Bargaining	Rate of charge bargaining higher in states with voluntary guidelines; Impact of bargaining on sentences was greater in states with presumptive guidelines.	Counties
Schmidt & Steury	1989	Milwaukee domestic violence cases, 1983-1984: 200 non-charged cases, 209 charged cases	Decision to file charges	Several indicators of past and current behavior impact prosecutor's decisions to file criminal charges against domestic violence suspects.	City

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Author/s	Year	Data	Outcome	Findings	Court
O'Neill Shermer & Johnson	2010	Federal Justice Statistics Program data: 45,678 federal defendants prosecuted in 2001	Charge reduction (reduced from statutory minimum), sentence length	Charge reductions more likely in serious cases and cases with multiple charges; No evidence of racial/ethnic disparity; Gender disparity- males significantly less likely than females to have initial charges reduced.	Federal
Spears & Spohn	1997	1,046 Detroit sexual offense complaints, 1989	Decision to file charges	Prosecutors take victim characteristics into account when charging; Seek to avoid uncertainty by not charging defendants if conviction is unlikely.	City
Spohn & Fornago	2009	1,038 cases from 3 federal district courts (Minnesota, Nebraska, Iowa Southern), 1998 - 2000	Use of substantial assistance departure	Multilevel modeling; Significant inter-prosecutor variation remains in decision to apply substantial assistance. Black and female defendants are more likely to receive substantial assistance departures.	Federal
Spohn & Holleran	2001	526 sexual assault cases in Kansas City & Philadelphia, 1996-1998.	Decision to file charges	In acquaintance & intimate partner cases, prosecutors are less likely to file charges if there were questions about the victim's character at time of incident; Victim's reputation did not matter in cases involving strangers. Stereotypes of "real rapes" and "genuine victims" influence charging decisions.	Cities
Spohn, Beichner & Davis-Frenzel	2001	127 sexual battery arrest cases in Miami, FL, 1997; Interview data from sampled attorneys	Decision to file charges	Victim's decision to appear in pretrial interview or refusal to cooperate significant influence on decisions to file charges; Cases involving strangers were less likely to be prosecuted.	City
Spohn, Gruhl, & Welch	1987	33,000 cases with single count from Los Angeles County: 1977-1980	Decision to prosecute; Decision to dismiss case after charges are filed	Female defendants are more likely to receive lenient treatment at both decision points; Hispanic defendants most likely to be prosecuted followed by black defendants.	County

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Author/s	Year	Data	Outcome	Findings	Court
Ulmer, Kurlychek & Kramer	2007	Pennsylvania Commission on Sentencing data, 1998-2000	Decision to apply mandatory minimum sentence to applicable cases	When defendants negotiate guilty pleas, prosecutors choose to apply mandatory minimums significantly less often.	State
Wilmot & Spohn	2004	US Sentencing Commission random sample of 360 cases of drug offenses from 1995	Sentence length, departure, magnitude of discount, ratio between discount and adjusted guideline minimum	Number of counts has significant effect on length of sentence and magnitude of sentencing discounts. Number of counts has no effect on likelihood to receive a downward or 5K1.1 departure.	Federal
Wooldredge & Griffin	2005	5648 Ohio indicted defendants	Severity of indictment charges	Increased prosecutorial discretion has not resulted in substantial extra-legal disparities in case dispositions.	State
Wright & Engen	2006	11,614 North Carolina cases originally charged class I felonies (1999-2000)	Decision to reduce charges	The impact of charge reductions is largest for more serious offenses, but disparities appear in the impact of charge reductions among some less serious crimes as well. Charge reductions have a substantial effect on the disposition and duration of sentences.	State

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Research on State Prosecutors

The majority of previous research at the state level focuses on identifying significant correlates of prosecutorial decision making. In general, this work indicates that prosecutors are sensitive to factors that are likely to increase uncertainty in case outcomes at trial and they are more likely to prosecute relatively more serious cases. As Table 1 suggests, the vast majority of extant work on public prosecutors has been conducted at the local and state level rather than in federal courts. Much of this work has been based on samples from one or two specific cities or counties within a state justice system (e.g. Albonetti, 1992; Albonetti and Hepburn, 1996; Frohmann, 1991; Kingsnorth and McIntosh, 2007; Piehl and Bushway, 2007; Schmidt and Steury, 2005; Spears and Spohn, 1997). Only rarely has research examined state-wide data that spans multiple county or city courts (e.g. Wooldredge and Griffin, 2005; Wright and Engen, 2007; Ulmer et al. 2007), that as discussed below, is one reason for the lack of attention devoted to contextual variation in prosecutorial decision-making.

Research that has analyzed large samples of diverse cases finds consistent evidence for the importance of strength of evidence and seriousness of the crime, with mixed findings for racial, ethnic and gender disparity in prosecutorial decision-making outcomes. For instance, Albonetti (1992) examined 400 robbery and burglary cases in a Jacksonville, Florida court to test the thesis that the more "sinister" the crime the less likely prosecutors are to reduce felony charges to misdemeanors. She found that younger, habitual offenders who used weapons were least likely to have their charges reduced. Moreover, the offender/victim relationship and number of witnesses also influenced this decision. She did not find any evidence, however, for significant racial or gender differences in charge reduction outcomes. She concludes that "neither the suspect's race nor his/her gender produces a major effect on the decision to reduce

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felony charges" (Albonetti, 1992: 331). This finding is echoed by additional research findings that report null effects for race and/or gender (e.g. Bernstein et al. 1977; Bishop and Frazier, 1984; Holmes et al. 1987).

Spohn et al. (1987), on the other hand, come to quite different conclusions regarding the importance of suspect race and gender in prosecutorial charging decisions. They begin by noting that "While social scientists have long been interested in the issue of racial and sexual discrimination within the criminal justice system, they have concentrated on the decision to convict and sentence and have paid relatively little attention to the decision to prosecute" (Spohn et al. 1987: 175). Their study examined a large sample of single-count cases charged in Los Angeles County, focusing on the decision to prosecute or subsequently dismiss a case. They found that female defendants benefitted in both outcomes and that Hispanic and black defendants were most likely to be fully prosecuted. These scholars also examined reported reasons for case rejections and found that evidentiary concerns were by far the most prevalent reason. Numerous cases were also rejected because they were referred for prosecution as misdemeanors. In the end, these authors conclude that "one cannot be too sanguine about the growing number of studies finding little racial discrimination in the criminal justice process" (Spohn et al. 1987: 187). Other work examining racial and gender disparity in charging decisions suggests less clear conclusions. For instance, Wooldredge and Griffin (2005: 301) examined the impact of voluntary sentencing guidelines on changes in charging practices and reported a modest increase in charge reductions but concluded that recent "changes did not uniformly result in harsher dispositions for defendants facing greater social and economic disadvantage."

A large number of state-level studies have focused specifically on sexual assaults or domestic violence (e.g. Beichner and Spohn, 2005; Hennin and Feder, 2005; Kingsnorth et al.

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1998; Kingsnorth et al. 1999; Kingsnorth and McIntosh, 2007; Schmidt and Steury, 1989; Spears and Spohn, 1997; Spohn and Holleran, 2001; Spohn et al. 2001). Much of this work focuses on the importance of victim characteristics. For example, Kingsnorth and colleagues have conducted several high-quality studies investigating prosecutorial discretion in intimate partner violence cases. Their early work found no evidence of racial or ethnic disparity in charging decisions (Kingsnorth et al. 1998) and subsequent work also reported null effects for "negative" victim characteristics in these cases (Kingsnorth et al. 1999), though later work showed that victim injury had more pronounced effects for male than female suspects (Kingsnorth and McIntosh, 2007). The latter study focused primarily on the effect of suspect gender on the decision to prosecute, to file as a felony, and to subsequently dismiss or reduce the severity of initial charges, and found convincing evidence that charging decisions favored female suspects. Similarly, Spohn and colleagues have conducted multiple investigations of prosecutorial decision making in sexual assault cases. Their work emphasizes the importance of victim characteristics in charging decisions in these cases. In particular, victim characteristics that are likely to increase the probability of conviction tend to have a positive effect on the likelihood that a prosecutor files charges (Spears and Spohn, 1997; Spohn et al. 2001). Moreover, their work suggests that there may be some important differences in cases involving strangers offenses relative to acquaintances (Spohn and Holleran, 2001; Spohn et al. 2001). Frohmann's (1991; 1997) work on prosecutorial decision making in sexual assault cases emphasizes that prosecutors rely on stereotypical attributions of typical victims, typical offenders, and normative crime locales to distinguish cases that have a high probability of conviction at trial from those that do not.

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Relatively fewer studies examine other decisions controlled by the prosecutor in state court. Albonetti and Hepburn (1996) examined diversion of felony drug offenders into treatment programs in Maricopa County and found male and older defendants were less likely to be diverted. Moreover, the combination of offender race and prior record also interacted to reduce the odds of diversion. More recent work has focused on the application of mandatory minimum sentencing provisions that are controlled by prosecutors. Farrell (2003), for instance, found that mandatory minimums for firearms offenses were only applied by prosecutors in about one-third of eligible cases. She also reported that male and minority offenders were significantly more likely to have mandatory minimums imposed than were female and white defendants. Similarly, using data from the State Court Processing Statistics, Bjerk (2005) found that prosecutors were more likely to reduce initial charges to misdemeanors when conviction under the initial charge would invoke three-strikes sentencing enhancements. Females were slightly more likely to have their charges reduced in these cases and minorities were slightly more likely, though the latter effect was not uniform across models. These findings are consistent with results from Ulmer et al. (2007) who examined the application of mandatory minimums and three-strike provisions for defendants in Pennsylvania. They found that mandatory minimums were applied in only about 16% of eligible drug cases, and three-strikes enhancements were only applied in 29% of eligible cases. Notably, male offenders were particularly likely to receive mandatory minimums for drug crimes and Hispanics were particularly likely to receive three-strike enhancements.

Relatively less research has examined the effects that early prosecutorial charging decisions exert on final punishment outcomes in criminal courts. In their innovative work in North Carolina, Wright and Engen (2006) report that charge reductions occurred in roughly half of all felony cases resulting in conviction. Moreover, reception of a charge reduction had a

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significant effect on the final sentence one received, such that "the impact of charging decisions on average sentences is greater than the impact of judicial decisions made at the time of sentencing" (Wright and Engen, 2007: 1939). These authors also note that the legal characteristics of the criminal code, which they identify as the "depth" and "distance" of available charging options, significantly conditions prosecutorial charging options and subsequent charging behaviors. As such, the proportion of charges reduced and their concomitant sentencing discounts vary significantly from crime to crime.

Taken together, prior research suggests that prosecutors exercise enormous discretion in choosing which cases to prosecutor and what charges to ultimately bring. Severity of the offense and strength of the case are important as are certain offender and victim characteristics. Evidence for age, gender and racial/ethnic disparity is mixed but appears to be most pronounced in prosecutorial discretion regarding the use of mandatory sentencing enhancements rather than in initial charging or charge reduction decisions; however, this conclusion must be taken cautiously because the latter studies are more recent and tend to analyze larger samples of cases which increases the likelihood of finding statistically significant results. As alluded to earlier, because the majority of studies of state prosecutors analyze data from a single city or county jurisdiction, virtually no large-scale studies have examined contextual disparities in prosecutorial decision making across state courts.

Research on Federal Prosecutors

Much less research has focused on federal prosecutors relative to state prosecutors. This is significant given the uniqueness of the federal justice system. The federal system is larger than any individual state justice systems, and it is rapidly expanding. It tends to process more serious crimes and on average it metes out more serious punishments, particularly for gun and

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drug offenses. Moreover, the federal sentencing guidelines place considerable constraints on judicial sentencing discretion that arguably increases the importance of presentencing charging decisions (Stith & Cabranes, 1998). Federal prosecutors' charging decisions determine the case flow of federal criminal dockets, affects the calculation of recommended guidelines ranges, determines the application of certain sentencing discounts or enhancements and may affect the information available to judges in considering the relevant conduct of convicted offenders. Despite their considerable influence, though, federal prosecutors remain woefully understudied.

Existing research on federal punishments focuses primarily on individual disparities in incarceration and sentence length, particularly those associated with racial, ethnic, and gender differences in sentencing (Albonetti, 1997; Mustard, 2001; Steffensmeier and Demuth, 2000). Much of this work has been conducted by the USSC itself (e.g., USSC, 1991a, 1991b, 2003; 2006) or by the U.S. Government Accounting Office (GAO, 1992; 2003). There is growing evidence that despite the comprehensiveness and rigidity of the federal sentencing guidelines, important disparities remain in federal punishments, particularly in the case of drug offenses and in cases involving guidelines departures, which have been shown to disadvantage young, male and minority offenders (Johnson et al. 2008; Hartley et al. 2007; Spohn and Fornango, 2009). For instance, Steffensmeier and Demuth (2000) report that Hispanic and black offenders convicted of drug offenses have the highest likelihood of incarceration and are most likely to be disadvantaged in the use of downward departures from the Guidelines. Although this body of research provides important background for the current work, it focuses almost exclusively on *judicial* sentencing disparities in federal courts, with very little attention devoted to role of other court actors like federal prosecutors.

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Although select early work has investigated the role of U.S. Attorneys in the pre-Guidelines era (e.g., Eisenstein, 1978; Frase, 1980), very few studies examine the discretion of federal prosecutors in the modern era. In her pioneering work, Albonetti (1987) analyzed information for the District of Columbia from the PROMIS database, that collected detailed case processing information, and found that evidentiary factors such as exculpatory evidence and number of witnesses were significantly related to the likelihood that charges would be filed among AUSAs in Washington's Superior Court. Being arrested at the scene of the crime, the defendant's prior record, and the type of victim also affected the decision to prosecute. Neither race nor gender of the defendant was significant, though it should be noted that the study included relatively few white and female suspects. Although this study was in many ways ground breaking, its generalizability is limited by the fact that it examines cases from DCs Superior Court, which are crimes that would normally be prosecuted in state court but are handled by the federal courts because of Washington's unique status as a district rather than a state. Moreover, the data she analyzes come from 1974 which predates the passage of federal guidelines and are now nearly forty years old.

Wilmot and Spohn (2004) attempted to capture the influence of the prosecutor in federal courts by examining sentencing differences associated with the number of charges of conviction. Using a random sample of 5% of offenders convicted in 1995, they examined data for 360 convicted drug offenders convicted through guilty pleas, and found that offenders charged with multiple counts received about six additional months of incarceration. They interpret this as evidence for the importance of "real-offense sentencing" in the federal system, suggesting that additional charges lead to more severe penalties because judges consider the relevant conduct associated with all charges. This study offers some indirect evidence for the importance of

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federal charging decisions, but it is limited to post-conviction sentencing data so it cannot capture the actual charge negotiation process that occurs at early stages of prosecutorial decision making.

Other research that has examined prosecutorial discretion in the federal courts has been largely qualitative in nature. Nagel and Schulhofer (1992) conducted interviews and also analyzed a sample of federal case files and found that prosecutors frequently exercised their discretion to reduce sentences through the avoidance of mandatory minimums, particularly in drug and weapons cases. Contrary to work in the state courts, their research suggested that guidelines circumvention of this sort occurred in only a minority of cases. Subsequent analyses with a larger sample of cases lead to similar conclusions, suggesting prosecutors successfully circumvented the guidelines in 25-35 percent of cases. Moreover, guideline circumvention took numerous forms, including fact bargaining, bargaining over guidelines factors, and bargaining over substantial assistance departure motions (Schulhofer and Nagel, 1997). The issue of prosecutor-controlled guidelines departures has since been the focus of the majority of empirical research on federal prosecutors.

Substantial assistance departures, sometimes referred to as 5K1.1 departures, are sentence reductions for providing assistance to the government in the prosecution of another federal case. They expressly require a motion from the U.S. Attorney before the federal judge can offer a departure from the guidelines. Several studies have examined prosecutorial discretion through the use of these departures, particularly as they relate to racial, ethnic and gender disparities in federal court. Hartley et al. (2007), for instance, examined the use of substantial assistance departures in a sample of federal drug offenders. Their findings suggested that these departures were used to circumvent mandatory minimums and that they were disproportionately likely to be

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awarded to white offenders and to female offenders. Johnson et al. (2008) also examined the use of substantial assistance as well as other federal departure provisions. They also found that race, ethnicity and gender were significantly related to the probability of receiving substantial assistance in federal courts and that these effects were similar to those observed for judge-controlled departures. Importantly, this study also showed that the likelihood of departure varied starkly across federal districts and was associated with certain structural characteristics of the court including the caseload pressure and racial demography of the district. Moreover, qualitative interview data from this work highlighted the fact that standards for assessing what qualifies as substantial assistance clearly varied across courts as well, with different definitions emerging in different locales. Finally, Spohn and Fornango (2009) extended this work by examining inter-prosecutor disparity in the use of substantial assistance in three federal districts. They found that the likelihood of departure varied significantly across federal prosecutors even within a district. As with prior work, they also found that female and white offenders were more likely to receive these discounts.

Despite the contributions of research on federal departures, these decisions are intricately intertwined with the discretion of other court actors. For example, federal judges must grant the substantial assistance motion and then they control the magnitude of the sentencing discount. Where federal prosecutors arguably maintain the greatest freedom is in earlier case processing decisions regarding what cases to prosecute and what charges to bring. As Hartley et al (2007: 383) acknowledged in their review of research on federal prosecutors "there are no studies that systematically examine prosecutors' charging and plea bargaining decisions or that investigate the effect of these decisions on sentence severity." Since their review, only one study has been published that examines charging decisions among federal prosecutors in U.S. district courts.

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O'Neill Shermer and Johnson (2010) merged one year of data from the Administrative Office of US Courts with data from the US Sentencing Commission to investigate charge bargaining in federal court. The focus of their study was on the effect that charge negotiation exerts on federal sentencing outcomes. They found that males were substantially less likely to receive charge reductions and that charge reductions significantly affected sentencing through the relative placement of offenders within the Guidelines. Offenders who received charge reductions got sentences that were about 20% shorter, all else being equal. This study, however, was unable to investigate cases in which federal prosecutors dismissed charges or cases that did not result in conviction, and it does not examine the important issue of inter-district variation in charging.

Research on Contextual Disparity

One emergent development in contemporary sentencing research has been an increased appreciation for the importance of the social contexts of criminal punishment. Criminal justice scholars have long acknowledged that punishment practices are likely to vary across contexts. For instance, Smith (1986: 967) argued that "plea bargaining and sentence discounts vary substantially across different jurisdictions, and we need to know more about the factors which may contribute to this inter-jurisdictional variation." A number of contemporary theoretical perspectives on court decision making also emphasize the importance of court context. This work argues for the theoretical notion of courts as "communities" and it emphasizes the emergence of "local norms" related to "going rates" that are applied as part of larger differences in the case-processing strategies of different courts (Eisenstein and Jacob, 1977; Dixon, 1995; Ulmer and Johnson, 2004). One of the core goals of contemporary sentencing reform was to create greater uniformity in punishments across contexts. For instance, an express goal of the federal guidelines was to create "uniformity in sentencing by narrowing the wide disparity in

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sentences imposed by different federal courts for similar criminal conduct by similar offenders" (USSC, 2004: §1A1.1, p.s.: 2).

Two important understudied issues in research and theorizing on the social contexts of punishment, then, are the extent to which contextual disparity characterizes the federal justice system and the extent to which it conditions the decision-making processes of presentencing outcomes controlled by federal prosecutors. Research on state jurisdictions has convincingly demonstrated that sentencing outcomes vary significantly across county courts. This variation is often associated with characteristics of the court environment, such as the size of the court, its relative caseload pressure and composition, and in some cases, the surrounding characteristics of the community environment, such as socioeconomic and political contexts (Ulmer and Johnson, 2004; Johnson, 2005; 2006; Crawford et al. 1998). Although individual factors in sentencing account for the lion's share of sentencing variation, contextual characteristics often exert important cumulative, indirect and conditioning effects over individual punishment decisions.

Relatively less research examines inter-jurisdictional variation in federal punishment processes, although select government and Commission-based reports have explicitly addressed concerns over inter-district variation in federal sentencing (USSC, 2003; 2006; GAO, 2003). For instance, in their study of federal drug offenders, the GAO (2003: 4) concluded, "Our statistical analysis showed major variation among certain judicial circuits and districts in the likelihood of an offender receiving a substantial assistance departure, other downward departure, or a sentence falling below a mandatory minimum." Studies conducted by independent researchers generally concur, finding that significant variation exists in sentencing outcomes, particularly those associated with departures below the Guidelines (Maxfield and Kramer, 1998; Hartley et al. 2007; Johnson et al. 2008). For instance, Nagel and Schulhofer (1992), in their well-known

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examination of federal guidelines circumvention, compared practices in three federal districts and concluded that "In each district, the contextual environment influences the degree of guidelines circumvention—the jurisdiction makes a difference" (Nagel and Schulhofer, 1992: 554). They called for additional research examining the sources of underlying variations in federal punishments. Ulmer (2005) similarly examined case processing variation in four federal district courts. He suggests that federal courts can be understood as decision-making arenas that develop distinct organizational culture, practices and relationships. His analysis reveals substantial variation in criminal punishment practices between districts, including certain outcomes controlled by federal prosecutors, such as the use of substantial assistance departures.

Both Kautt (2002) and Johnson et al. (2008) also find significant inter-district variation in federal punishments. Kautt (2002) conducted the first multilevel analysis of variations in federal sentence lengths, focusing on differences in the punishment of drug traffickers. She concluded that significant differences existed across federal districts in the punishments that were meted out, though her district-level predictors were largely unable to account for this variation. More recently, Johnson et al. (2008) conducted a multilevel analysis of inter-district variation in downward departures under the federal guidelines. They found that preferred methods of guidelines circumvention varied in accord with local sentencing norms and that district characteristics like caseload pressure, political liberalism, and racial composition were significantly related to the likelihood of downward departure under the federal Guidelines. Neither of these studies, though directly addresses variation among federal prosecutors. The only research on contextual disparity that focuses on prosecutors was recently conducted by Spohn and Fornango (2009), who specifically investigated inter-prosecutor variation in the use of substantial assistance departures. They collected data from three federal districts and showed

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that the probability of receiving substantive assistance depended in part on the prosecutor assigned to the case. Their study, however, did not attempt to explain between-prosecutor differences and it only focused on the post-conviction departure outcomes.

All of this prior research provides invaluable insights into contextual variations in sentencing, but it all shares a fundamental limitation – by focusing exclusively on final sentencing outcomes, important case processing decisions that precede sentencing are all but ignored. In particular, very little extant research examines inter-jurisdictional variation in prosecutorial charging behaviors in federal court, despite recent assertions by scholars that "prosecutors are free to go about their business in quite different ways from one jurisdiction to another" (Forst, 2002: 516). With regard to federal prosecution policies, Stith and Cabranes (1998: 137; 139) concluded that "the ability of higher-ups in the Department of Justice to restrict local discretion is severely limited," resulting in "enormous variation…from district to district and prosecutor to prosecutor." They suggest that policy attempts to control inter-jurisdictional variation in prosecutorial decision making have been limited and ineffectual, but there is virtually no empirical research that investigates inter-jurisdictional variations in prosecutorial charging or plea bargaining practices. One isolated exception is an early study conducted by Judge Heaney, who concluded that plea bargaining and charging practices varied widely among the four U.S. Attorney's offices he studied in the Eighth Circuit (Heaney, 1991). Though suggestive, this study is dated and based on only four federal districts. As such, a large-scale investigation of contextual variations in the charging practices of U.S. Attorney's Offices across the entire U.S. offers a substantial contribution to extant research on federal sentencing, prosecution, and contextual variations in punishment. The current study offers such an analysis.

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CHAPTER 3: ANALYZING PROSECUTORIAL DISCRETION IN FEDERAL COURTS

In the future more empirical research "where the action is" in earlier court proceedings is needed in order to have a better understanding of the judicial processes.

~Huey-tsyh Chen (1991)

Researchers, practitioners and public policy advocates have long noted that perhaps the most important limitation of extant research on criminal justice case processing is an inability to track offenders across decision-making points (Klepper et al. 1983). For instance, Hagan (1974: 379) has suggested that available data are inadequate for answering important questions about the criminal justice system because they capture only a snapshot of a more dynamic process – he argues "what is required is longitudinal data" of decision-making outcome for defendants "in transit through the criminal justice system." As Unah (2011: 3) recently suggested, "By focusing narrowly on outcomes rather than on process, scholars very often ignore important decisional events of low visibility that take place at earlier stages of [criminal punishment] but are connected to later stages within a much broader and complex process." By combining data on federal arrests, prosecutions, and sentences, the current project overcomes this near-universal limitation of contemporary research on criminal punishment, offering a unique opportunity to track individual offenders across stages of the federal justice system in order to better study the process of punishment across multiple decision-making stages of the federal justice system.

This research is first situated within the broader structural context of contemporary federal punishments. Then contemporary theoretical perspectives are used to develop testable research hypotheses, which are presented in turn before turning to a full description of the data, method and analysis performed in this study.

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THE FEDERAL COURT RESEARCH CONTEXT

Relatively little empirical research has been conducted on the federal justice system relative to state courts. This is unfortunate for several reasons. The federal criminal justice system is unique in its scope, caseload and broader societal influence. It encompasses the full breadth of the 50 US states, the District of Columbia, and select US territories, which are divided into 94 districts housed within 12 federal circuits. The federal justice system processes more criminal cases than any single state system and it has been rapidly expanding in recent years. Federal criminal caseloads involve large numbers of drug and immigration offenses as well as relatively high volumes of fraud and firearms offenses, and it plays an essential role in the punishment process of illegal aliens in the U.S. The federal system also metes out punishments that are typically more severe than state courts and it plays a prominent social, political, and symbolic role in society (Kautt, 2002). More than 250,000 offenders are under the supervision of the federal justice system (Bureau of Justice Statistics, 2005). The federal justice system is also characterized by greater legal visibility and policy prominence than state justice systems – it serves as a national example of contemporary criminal justice policy and it holds important influence over the administration of justice at state and local levels (Johnson et al. 2008). Examination of punitive processes and outcomes in federal courts therefore carry great significance for the influence of contemporary trends in criminal justice policy and punishment.

Federal prosecutors are undoubtedly one of the most, if not the most, influential and powerful persons in the federal justice system. Their substantial influence stems from their involvement in multiple case-processing decisions and it is directly related to the lack of prosecutorial review procedures and the general absence of organizational and public oversight (Forst, 1999). Among other key decisions, prosecutors control whether or not to file criminal

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charges, whether a case is dismissed, what initial charges are brought and whether they are reduced as part of a plea bargain (Albonetti, 1987). This issue has particular policy relevance in the wake of sentencing reforms like structured guidelines that have significantly constrained judicial discretion in sentencing. As Richard Frase (2000:440) has argued, "Prosecutors in American jurisdictions wield enormous 'sentencing' power because they have virtually unreviewable discretion to select the initial charges and decide which charges to drop as part of plea bargaining." This raises potential concerns over inequalities in punishment. Because prosecutors control key decisions for which there is little oversight or public record, prosecutorial discretion may represent an important reservoir of unwarranted sentencing disparities that has not been addressed by recent criminal justice policy reforms.

Federal prosecutors are in many ways unique court actors. Each federal district is headed by a U.S. Attorney, who is a senate-confirmed Presidential appointment. According to the Executive Office, federal prosecutors received more than 166,000 criminal matters for investigation and ultimately convicted more than 82,000 defendants in 2010.[3] The overall conviction rate was 93% and more than 80% of defendants received terms of federal imprisonment (U.S. Department of Justice, 2010). Federal criminal caseloads have been increasing substantially over the past decade. Between 2002 and 2010, the number of cases filed in federal court rose by 21%, with much of the increase due to an expansion of immigration prosecutions, which comprised 43.5% of all cases filed in 2010. The United States Attorneys receive most of their criminal referrals from federal investigative agencies, including the Drug Enforcement Administration, the Federal Bureau of Investigation, Immigration and Customs Enforcement, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. They may also

[3] These statistics do not include the more than 73,000 defendants who had criminal charges filed against them in US Magistrates Courts in 2010.

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receive criminal matters from state and local investigative agencies or become aware of criminal activities in the course of investigating or prosecuting other cases. Unlike most state prosecutors, federal prosecutors often work closely with law enforcement to build criminal cases from the ground up, so federal indictments may occur prior to an arrest being made. Many of the crimes that are brought to federal prosecutors are also eligible for prosecution in either state or federal court, so they have greater discretion than state's attorneys in selecting which cases to pursue. Despite considerable growth in federal caseloads, overall caseload pressure tends to be considerably lower than in state courts, which allows more time and court resources to be devoted to each individual federal case, although federal investigations tend to be far more complex than state court prosecutions.

Criminal punishments in the federal system are guided by the federal sentencing guidelines, which are also unique in several ways. The Guidelines were enacted to address what Frankle (1973: vii) termed the "gross evils and defaults" of federal sentencing in the indeterminant era. In 1984, the Federal Sentencing Reform Act was passed, establishing the United States Sentencing Commission and tasking it with the promulgation of federal Guidelines. On November 1, 1987, the Guidelines were formally enacted with the express goals of reducing disparity, assuring certainty and severity, and increasing transparency and rationality in federal punishments. Relative to state guidelines systems, they are relatively more complex, rigid and severe, comprised of 43 offense levels and six criminal history categories. The guidelines involve detailed calculations that take into account numerous offense-specific adjustments as well as general sentencing enhancements (see Stith & Cabranes, 1998 for a detailed account of federal sentencing practices). Common factors that enter into the final

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guidelines score include the offense type, one's role in the offense, drug or loss types and amounts, and certain victim characteristics among many others.

The federal guidelines are unique in that they were based on "real offense" sentencing in which judges were to consider all relevant conduct for any offense behavior that is reasonably believed to have occurred, even if it was not part of the convicted charges (see Tonry, 1996: 42–43). The goal of real offense sentencing was to prevent the prosecutor's charging decision from becoming the *de facto* sentencing decision. However, by altering final charges, prosecutors could still move offenders within the formal structure of the guidelines, which was likely to significantly impact their final sentence. Recent Supreme Court decisions have challenged the legality of the federal guidelines, ruling that they must be advisory rather than mandatory (*US v. Booker*, 2005). As such, the balance of sentencing power may be shifting back toward federal justices, though recent research suggests relatively few significant changes have occurred in the wake of the High Court's ruling (e.g. Ulmer and Light, 2010; Ulmer et al. 2011; Frase, 2007). Given the recent changes in federal sentencing practices, an investigation into the role of prosecutorial discretion and charging disparity is arguably more important today than ever. The overarching research questions and specific hypotheses guiding the current investigation are elaborated below before describing the data and methods used in this study in additional detail.

RESEARCH QUESTIONS AND THEORETICAL HYPOTHESES

The core research questions for this study involve two interrelated issues: 1) what factors affect federal prosecutors' decisions to decline cases for prosecution or to subsequently reduce initial charges, and 2) to what extent do charging practices vary across federal district court contexts. Each of these questions is elaborated below along with the specific theoretical hypotheses that are subsequently investigated.

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The first research question involves the use of charge declinations and charge reductions by federal prosecutors with a particular focus on potential age, race and gender disparities in these decisions. Prior theorizing on prosecutorial decision-making suggests that the ways in which prosecutors exercise their power and control involves a complex process involving both the desire to seek individual justice and to avoid uncertainty in case outcomes (Albonetti, 1987). According to uncertainty-avoidance theory (Albonetti, 1991), under time and information constraints, prosecutors like other court actors, are often forced to rely on stereotypical attributions about the underlying causes of criminal intent and the likelihood of future offending. Over time, they are thought to develop "going rates" (Eisenstein et al. 1988) for "normal crimes" (Sudnow, 1965), which involve the application of "patterned responses" (Hawkins, 1987) rooted in past experience and societal stereotypes. Moreover, scholarship on the sociology of punishment suggests that the criminal justice system represents a structural tool for the maintenance of existing power relations in society. As Garland points out, "the penal system" can be understood as "an apparatus of power and control" in society (Garland, 1990: 2). The consequence of this is that prosecutorial charging decisions are likely to be associated with unwarranted disparities, especially involving young, male and minority defendants (Steffensmeier et al. 1998). Assessments of dangerousness and culpability for these classes of offender are likely to be greater, resulting in reduced odds of either case declinations or favorable charge reductions for young, male and minority offenders. To test this expectation this study will investigate the following hypotheses:

H1: Young, male and minority offenders will be less likely to have their charges declined by federal prosecutors.

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H2: Young, male and minority offenders will be less likely to receive favorable charge reductions from federal prosecutors.

H3: When charge reductions are granted, they will have less salutary effects for young, male and minority offenders.

Scholarship on extralegal disparities repeatedly highlights the potential for cumulative disadvantages across stages of criminal case processing. Very little research has investigated cumulative disadvantages in punishment, however, because of the challenges of locating appropriate data and of modeling complex dynamic processes. In line with the above theoretical arguments, one would expect similar attribution processes to characterize the punishment decisions of federal judges, resulting in cumulative disadvantages for young, male and minority offenders. To assess this, the current study will examine the joint effects these factors exert on both charging and sentencing outcomes as elaborated in the following hypotheses:

H4: Male offenders will be less likely to receive charge declinations or reductions and more likely to receive lengthier sentences than females, resulting in cumulative gender disparity.

H5: Minority offenders will be less likely to receive charge declinations or reductions and more likely to receive lengthier sentences than white offenders resulting in cumulative racial disparity.

Finally, prior research and theorizing on court communities suggests there may be important contextual variations in prosecutorial charging practices across district courts. Although there are forces for uniformity in federal punishment, such as national policy, procedures and conventions handed down from the Department of Justice for U.S. Attorneys, along with the Guidelines for judges at sentencing, there are also important differences among federal district courts. Both court community theory and the focal concerns perspective on

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sentencing emphasize that courts have distinctive and localized organizational, political and legal cultures (Dixon, 1995; Eisenstein and Jacob, 1977; Steffensmeier et al. 1998). These theoretical perspectives suggest that local sociopolitical and court organizational factors, including the size of the court, its caseload pressure and its demographic and political surroundings, will influence prosecution and sentencing outcomes. Moreover, the interpretation and influence of individual considerations in punishment are assumed to vary among courts because they are embedded in local court community normative and organizational environments. As such, one should expect district variation in prosecutorial charging practices as suggested in the following hypotheses:

H6: Significant variation will exist across federal districts in the probability of prosecutorial case declinations.

H7: Significant variation will exist across federal districts in the probability of prosecutorial charge reductions.

H8: Significant variation will exist across federal districts in the effects of charge reductions on federal sentencing outcomes.

In addition to examining whether or not significant inter-district variation characterizes prosecutorial behaviors, this research also examines the social correlates of inter-district variation in federal justice. Several theoretical perspectives offer guidance on court characteristics that are likely to affect charging decisions. In particular, contemporary theoretical perspectives suggest that inter-court variations in case processing are related to its organizational characteristics. Key among these are the size of the court, its caseload pressure, and its case processing norms. According to court community theory, larger courts tend to have reduced media visibility and greater bureaucratization that results in less severe dispositions (Eisenstein et al. 1988). According to organizational efficiency theory (Dixon, 1995), the caseload pressure

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of the court also affects punishment. Higher caseload pressure increases the premium on efficient case disposition, resulting in less severe case dispositions and increased use of charge bargaining. Collectively, then, prior research and theorizing on organizational court characteristics would suggest the following:

H9: Charge dismissals and charge reductions will be more likely in larger federal districts and in districts with greater caseload pressure.

Finally, several theoretical perspectives on criminal courts also suggest that case processing outcomes will be influenced by characteristics of their surrounding community environments. In particular, large or increasing minority populations are expected to be associated with racial and ethnic threat processes that result in harsher case dispositions and reduced chances of charge dismissals or reductions (Blumer, 1958; Liska, 1992; Johnson et al. 2010). Similar processes may accompany marginal socioeconomic populations as well, resulting in an inverse relationship between district SES and charge bargaining. Finally, charging decisions may be related to aggregate patterns of crime as well. Higher crime rates may reduce prosecutorial use of case dismissals and/or charge reductions. Collectively, then one would expect the following relationships:

H10: Charge declinations and reductions will be more likely in federal districts with smaller minority populations, higher socioeconomic conditions, and lower crime rates.

DATA, VARIABLES, AND ANALYSIS

Data

In order to study prosecutorial discretion in the federal justice system it is necessary to draw on the strengths of several different sources of information. Although a number of different federal agencies collect data on charging and sentencing outcomes, each has important

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limitations. However, by linking the different data sources to one another, many of these limitations can be overcome. This is the approach taken by the present study. It uses data from the Federal Justice Statistics Resource Program (FJSRP) designed and compiled by the Urban Institute and the Bureau of Justice Statistics (BJS) and maintained by the National Archive of Criminal Justice Data (NACJD). These data contain comprehensive information describing suspects and defendants who are processed through the federal criminal justice system. Data are available from the FJSRP from 1994 to 2009. The current study uses data from the cohorts of federal defendants arrested and prosecuted in federal court.[4] It begins by linking a cohort of federal bookings and arrests from the 2003-2005 US Marshall's Service (USMS) data to the Executive Office of US Courts (EOUSC) records from 2000-2009. Then it separately analyzes the cohort of defendants charged in District Court from the 2003-2006 AOUSC data linked to the US Sentencing Commission (USSC) data from 2000-2009.[5] The datasets are linked together using dyadic linking files, which are data files created by researchers at the Bureau of Justice Statistics (BJS) that consist of unique identifiers that tie offenders in one dataset to offenders in a dataset from an adjacent stage of federal case processing. In addition to the FJSRP data, additional data are collected on the social, political and demographic contexts of U.S. District Courts. By merging the individual offender data with information on court environments, it is possible to begin to investigate inter-district variations in prosecutorial decision-making outcomes across federal court contexts. The various data sources used in the current study are briefly reviewed in additional detail below.

[4] Although not the primary focus of the present work, this time frame was in part selected to allow for subsequent investigation of potential differences in charging and sentencing practices before and after the watershed Supreme Court case in U.S. v. *Booker* in January of 2005, which made the federal sentencing guidelines advisory rather than mandatory. Future research using these data will address that issue.

[5] Preliminary investigation revealed that cases arrested and prosecuted in specific years often linked to cases in other data sets for prior or subsequent years. Therefore each cohort of arrestees and charged defendants is linked to its companion dataset for additional years ranging from 2000-2009. In the case of arrestees, the link rates for years after 2005 declined significantly so the decision was made to limit that cohort to the years 2003-2005.

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United States Marshall's Service (USMS)

Data on federal arrests and bookings come from the USMS. Offenders arrested and booked for violations of federal law are transferred to the custody of the USMS for processing, transportation, and detention. Their Prisoner Tracking System (PTS) collects basic data for all offenders under their custody, which includes demographic characteristics, offense data, and information about the arresting agency. The data provide unique information on the categorization of the offense at initial arrest but they lack information on offender ethnicity. Both citizenship and race of the offender are included in the data however. The USMS data are therefore useful for identifying certain basic offender characteristics and also for examining potential differences in case processing across different federal law enforcement agencies.

Executive Office of U.S. Courts (EOUSC)

Data on federal prosecutions are drawn from both the EOUSC and the AOUSC. The EOUSC is an administrative office that provides executive assistance and supervision to all United States Attorneys' offices, coordinating services such as information technology, legal training and support staff. Data from the EOUSC come from the National LIONS System files, which contain information on the investigation and prosecution of suspects in federal criminal matters received and terminated during the study period. These data include suspects in criminal matters as well as criminal cases, which means they include cases handled by U.S. District Magistrates as well as those filed in District Court. These data are constructed from the Executive Office's Central System file and account for approximately 95 percent of all prosecutions handled by the Department of Justice. Unique information is available in the EOUSC data regarding such things as stated reasons for case declinations but these data do not

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contain demographic information for individual offenders nor do they provide detailed records regarding changes in charges from case filing to termination.

Administrative Office of U.S. Courts (AOUSC)

The AOUSC data contain information about the criminal proceedings against defendants whose cases were filed and terminated in U.S. District Court during the study period. The data come from the AOUSC's Criminal Master Files and include data for each defendant in each case filed and concluded. Included in the records are data from court proceedings that incorporate offense codes for up to five offenses charged at the time of filing and at termination. Charges at filing may differ from termination due to plea bargaining or the actions of the judge or jury. In cases with multiple charges, the most serious charge is determined by a hierarchy of offenses based on statutory maximum penalties associated with each charge. These data provide detailed information regarding the number, severity and type of charges brought in each case, but they lack demographic information for individual defendants.

United States Sentencing Commission Data (USSC)

Data on criminal sentences are obtained from the USSC, an independent administrative agency that develops and monitors sentencing policy in the federal system. These data contain detailed records of criminal defendants sentenced under the federal sentencing guidelines during the study period. The data come from the USSC Office of Policy Analysis (OPA) Standardized Research Data File, which includes variables from the Monitoring Department's database. Sentencing records for convicted offenders are furnished to the USSC by U.S. district courts and U.S. magistrates. These data are unusually detailed, including information from the Judgment and Conviction order submitted by the court as well as from the Presentencing Report and the Statement of Reasons summarizing the sentencing hearing. Detailed offense level, guidelines

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calculation, and offender demographic information are included in the USSC data; however, they do not contain any information on the charging processes and outcomes that precede sentencing.

Linking Files

Each of the individual data sources above has distinct limitations. Although the EOUSC and AOUSC collect useful data on prosecutorial outcomes, they lack basic demographic offender information. For this reason, little prior work has used these unique resources. However, by linking these files to the USMS and USSC data, key limitations of individual datasets can be successfully overcome. This can be accomplished using link files created by the Urban Institute and BJS. These files include unique identifiers that track federal offenders across federal agencies – they are agency-based dyadic files, designed to link adjacent stages of federal case processing. The link files were recently updated using improved algorithmic matching procedures that increase match rates across agencies. The system, then, allows researchers to track individual defendant-cases through sequential stages of criminal case processing in the federal justice system.

Court Context Data

Prior research and theorizing suggest important variations may be associated with inter-court differences in social, political and organizational characteristics (Eisenstein and Jacob, 1977; Dixon, 1995; Ulmer and Johnson, 2004). The current project therefore augments the individual offender data with aggregate data on the social environments of federal courts. These district-level data are then merged with the individual offender data to examine variations in case processing outcomes across federal court contexts. Given the breadth of geographical area along with the diversity of locations subsumed under the federal justice system, inter-jurisdictional variations in case-processing are expected. Data on federal court contexts come from a variety

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of sources, including Fedstats, the U.S. Census, and the Uniform Crime Reports (UCR). These measures are designed to capture the structural context of federal courts, their organizational environments, and their surrounding community characteristics as elaborate in greater detail below.

Overall, this research project creates a unified and integrated linked dataset that combines key information about federal case processing decisions on initial arrest, prosecutorial charging and final sentencing outcomes. The final linked datasets exclude cases processed in foreign territories and in the District of Columbia because aggregate data on court contexts were not available for foreign territories and because Washington DC represents a unique jurisdiction.

Variables

Dependent Variables

The key dependent variables of interest are 1) whether or not a case is initially declined for prosecution, filed in magistrate court or filed in district court, 2) whether or not initial charges are subsequently reduced by the prosecutor, and 3) the effect that charge reductions exert on final sentence lengths under the Guidelines. First, case declinations are captured with a dichotomous measure indicating whether or not a case was dismissed prior to sentencing. Because some cases are also filed in magistrate rather than district court, declinations are analyzed with a multinomial outcome that compares declinations and magistrate filings to district court filings. Some scholars maintain that the most important case-processing decision involves the prosecutor's decision to decline to prosecute cases altogether. This decision involves very little oversight or accountability and data limitations largely preclude investigation of these cases because they are removed from the system at such an early stage. As Davis (1969: 188) stated, "The affirmative

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power to prosecute is enormous, but the negative power to withhold prosecution may be even greater, because it is less protected against abuse" (Davis, 1969: 188).

Second, charge reductions are captured using the charge severity measure in the AOUSC data, which measures the statutory maximum fine and maximum term of imprisonment for all federal offenses. Any changes from initial filing to termination which result in a lowering of the statutory severity of the offense are coded 1 for charge reduction and 0 otherwise. Third, the impact of charge reductions on final sentence is estimated using sentencing data from the USSC. A dummy variable identifying offenders who did and did not receive charge reductions in federal court is included in a model estimating the log length of imprisonment to ascertain the effect of charge reductions on final sentencing outcomes. Consistent with prior work, this study focuses on sentence length because the majority of federal offenders receive some term of confinement (Kautt, 2002), and it uses the natural log of the sentence length to address the problematic positive skew that characterizes federal sentence length distributions (Ulmer and Johnson, 2004).

Independent Variables

The independent variables for this project include both individual predictors and contextual predictors. The individual predictors incorporate a broad variety of legally relevant considerations, criminal case-processing details, and individual offender characteristics. Of primary interest is the impact of age, gender, race and ethnicity in criminal charging decisions. Information on offender background characteristics come from the USMS and USSC data. Age is coded as a continuous variable that captures the number of years at the time of arrest. Gender is coded 1 for male defendants and 0 for female defendants. Race is captured with a series of dummy variables for whites, blacks, and other racial groups. Analyses that rely on the USMS data lack information on offender ethnicity but those using USSC data include an additional

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dummy variable for Hispanic defendants. Citizenship is also captured with a dummy variable coded 1 for U.S. citizens and 0 otherwise. Marital status is examined using a dummy variable for married offenders, coded 1, compared to non-married offenders, coded 0. Where available, controls are also included for educational status measured in four ordinal categories: less than a high school degree, a high school degree, some college, and college degree.

Offense severity is measured in two ways. First, for analyses of charge declinations and reductions, offense severity codes from the AOUSC data are examined, which consist of the most serious filing offense based on statutory severity, ranging from -3 to 12. The three negative values correspond to misdemeanor and petty offenses that are punishable with less than a year of incarceration. The positive integers represent an ordinal scale that captures statutory maximum terms of imprisonment that exceed 1 year. For instance, a severity score of 3 represents maximum terms of imprisonment from 6-10 years, whereas a score of 7 includes any maximum greater than 25 years. Scores of 8 and 9 are reserved for life imprisonment and death sentences respectively.

For analyses of sentence length reductions, more detailed offense severity measures are available that capture the presumptive sentence recommendation under the federal sentencing guidelines. As with sentence length, the presumptive sentence recommendation is transformed using the natural log of the minimum number of months of imprisonment after accounting for specific offense adjustments and mandatory minimums. Type of offense is additionally controlled using Bureau of Justice Statistics (BJS) dummy variables for violent, property, fraud, public order, weapons, and immigration offenses, with immigration offense the reference.[6] In

[6] Although some analyses of federal sentencing data omit immigration offenses, these cases are included in this analysis for several reasons. First, immigration offenses comprise the largest single offense category in the federal arrest data. Second, because this is a preliminary investigation of federal charging effects, it is important to investigate differences between immigration and other offense types – no prior work examines this issue. Third, a

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sentence length analyses pretrial detainment is included using a dummy variable that identifies offenders incarcerated prior to sentencing and an additional dummy variable is included for offenders convicted at trial. In analyses of charge declinations and reductions, a continuous variable representing the total number of filing charges is also included. Analyses that rely on USMS data include additional controls for the arresting agency and those that use EOUSC data include a variable capturing whether or not the case was labeled as a national priority by the U.S. Attorneys office. Although all offense types can be designated as national priorities depending on their individual circumstances, and the label is somewhat subjective, it tends to be most commonly applied to drug trafficking and weapons crimes. One limitation of the current data is that they lack information on strength of evidence in the case, which is likely related to charging decisions. Unfortunately no measure is available to capture this influence in prosecutorial decision making in federal court. However, supplemental analyses are performed examining reported reasons for case declinations where available.

These individual-level variables are augmented with data on court contexts. Specifically, court size is measured by the number of Assistant U.S. Attorneys in each district, which was obtained from the EOUSC through a Freedom of Information Act (FOIA) request. Prosecutorial caseload pressure is measured as the average number of cases processed in each district per year divided by the number of AUSAs in the district. The demography of racial and ethnic minority populations in the surrounding community are measured with a variable identifying the percent

number of different federal agencies focus explicitly on immigration enforcement, so inclusion of these cases allows for more detailed examination of differences among law enforcement agencies. Finally, although it is true that immigration cases are often handled in unique ways in the federal justice system, little is known about these differences or their effects on federal charging and sentencing practices. It is therefore important to both compare them to other offense categories and to investigate these cases separately in future work.

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of the population in that is African American and Hispanic in each federal district.[7] The socioeconomic status in each district is also investigated using a standardized scale that sums the percent of the population living below the poverty level, the inverse median income per capita in each federal district, and the district-level unemployment rate. Finally, district-level crime rates are aggregated from the county level up to the district level and measured as the total number of index crimes per 1,000 people in each federal district. This variable addresses normative crime control concerns that suggest high crime will be associated with greater punishment.

Analytic Approach

The current study investigates the correlates of prosecutorial charging decisions across federal district courts using a series of fixed effects and hierarchical generalized linear regression models. To examine the individual correlates of prosecutorial charging decisions, a series of models are first estimated using fixed effects for federal district courts. The fixed effects remove all between-district variation and correct for any intraclass correlation, allowing one to isolate the impact of case level and defendant characteristics on individual charging outcomes. This approach is used for its simplicity of estimation and interpretation. The basic logistic regression fixed effects model is summarized in equation 1 below.

$$\begin{aligned} &\textit{Logit Link Function} \quad Y_i = \ln\left(\frac{p}{1-p}\right) \\ &Y_i = \beta_0 + \beta_j X_{ij} + \beta_k Z_{ik} \end{aligned} \tag{1}$$

In this equation, Y_i represents the log odds of the probability of a charge reduction for each individual defendant in the data. β_0 is the model intercept and the $\beta_j X_{ij}$ parameter

[7] Percent Hispanic was subsequently removed from the final HLM model specifications because it was highly correlated with district size. Additional measures capturing the percent that is foreign born and speaking non-English as a primary language in the household were also examined but had to be excluded as well because they were too highly correlated with other variables in the model. Future work is needed that examines these omitted variables in additional detail.

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represents a vector for all individual-level case and defendant covariates along with their associated regression coefficients. The $\beta_j Z_{ik}$ parameter represents a vector of fixed effects consisting of one dummy variable for each district court (with one removed as the reference group), which serves to remove the between-district variation in the likelihood of receiving a charge reduction in federal court. For the declination outcome, which consists of three categories (declination, magistrate filing, district court), multinomial models are estimated. The logistic fixed effects model summarized in equation 1 can be easily extended to the case of the multinomial fixed effects model (Borooah, 2002). The fixed effects models are estimated using only the individual level case data in order to investigate the individual level correlates of federal charging decisions.

Subsequent analyzes used two-level hierarchical linear (HLM) and generalized linear models (HGLM), which are estimated to investigate variation in charging outcomes between federal district courts. Because individual criminal cases are nested within district courts, two levels of analysis characterize the current data.[8] In line with prior work, all variables are centered at their grand means (Ulmer and Johnson, 2004). These models offer several advantages over traditional regression techniques. They correct misestimated standard errors caused by data clustering, provide properly adjusted statistical significance tests, and offer other analytical advantages such as the parceling of variation across multiple levels of analysis, the modeling of heterogeneity in regression coefficients where relevant, and the proper estimation of cross-level interactions effects (see Britt, 2000; Johnson, 2006; 2010; Ulmer and Johnson, 2004). These multilevel models allow for the simultaneous inclusion of predictors at multiple levels of

[8] Preliminary analysis began by estimating 3-level models with cases nested within district and districts nested within circuits but the variance between circuits was nominally small so the final model was reduced to 2 levels of analysis.

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analysis. In the case of the current study, this means that individual and district-level predictors of federal charging decisions can be simultaneously included in the statistical model.

This part of the analysis begins with unconditional models that provide estimates of the extent to which prosecutorial decision-making outcomes vary across federal district courts. Then individual level predictors are added to the models to assess the extent to which between-district variation is accounted for by compositional differences in the types of cases prosecuted in different district courts. Lastly, the final reported models incorporate the contextual predictors of charging to investigate the extent to which inter-district variations are related to the organizational and demographic characteristics of each federal district. As with the fixed effects models, multinomial outcomes are analyzed for early case processing decisions that involve three categories (decline, magistrate, district court), whereas logistic outcomes are analyzed for binary outcomes (charge reduction or not). For the final model examining the effect of charge reduction on sentence length, hierarchical linear models are estimated. For illustrative purposes, the basic multilevel logistic random intercept model is presented in Equation 2 below, though the multinomial and linear variations of the model are straightforward (see Raudenbush and Bryk, 2002):

$$\begin{aligned} &\textit{Logit Link Function} \quad Y_{ij} = \ln\left(\frac{p}{1-p}\right) \\ &\textit{Level } 1 \qquad Y_{ij} = \beta_{0j} + \beta_{kj} X_k \\ &\textit{Level } 2 \qquad \beta_{0j} = \gamma_{00} + \gamma_{0m} W_m + u_{0j} \end{aligned} \tag{2}$$

In this equation, Y_{ij} represents the likelihood of a charge reduction for suspect or defendant *i* prosecuted in federal district *j*. The β_{0j} coefficient represents the mean probability of receiving the outcome across districts, which is subsequently modeled as an outcome in level

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2 of the analysis. The $\beta_{kj}X_k$ parameter represents a vector of individual-level covariates, centered on their grand means, along with their associated regression coefficients. Because the outcome measure is dichotomous there is no level 1 error term included in the model, but an error term is included at level 2 of the model, u_{0j}, which capture the between-district variability in charging practices. At this level of analysis, γ_{00} represents the model intercept and $\gamma_{0m}W_m$ is a vector of district-level covariates, also centered on their grand means, which are used to explain between-court variation in the use of charge reductions. HLM6 software is used to estimate these models, the results of which are presented in the next chapter of the report.

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CHAPTER 4: THE SOCIAL CONTEXTS OF FEDERAL PROSECUTION

Since their founding, federal courts have been organized and administered geographically

~Paula Kautt (2002)

LINKING DATA FILES ACROSS STAGES OF CRIMINAL CASE PROCESSING

Before turning to the results of the descriptive and multivariate analyses, some additional discussion of the data linking procedures are required. Before linking datasets, it is necessary to first decide which agencies to track and for which years. The current study begins with the cohort of federal arrests from 2003-2005. The use of multiple years is advantageous for ensuring large enough sample sizes across districts. Analysis of case declinations and early case filing decisions is accomplished by linking the arrested defendants to charging data from the EOUSC data from 2000-2009. These data contain criminal matters received and terminated, including matters that are dismissed by U.S. Attorneys and those that are filed in magistrate rather than district court. Because these data lack offender information they must be linked to the USMS data in order to examine the effects of offender characteristics on these early case processing decisions. Analysis of subsequent charge negotiations for cases filed in US District Courts is accomplished by linking the cohort of prosecuted offenders from the AOUSC data from 2003-2006 to the USSC sentencing data for 2000-2009. Once again, by linking the AOUSC data to the USSC data it is possible to examine the effects of defendant characteristics on charge negotiation processes in federal court. Figure 1 summarizes the linked data files used in subsequent analyses.

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Figure 1: Analytical Diagrams of Data Linking Strategy for Statistical Analyses

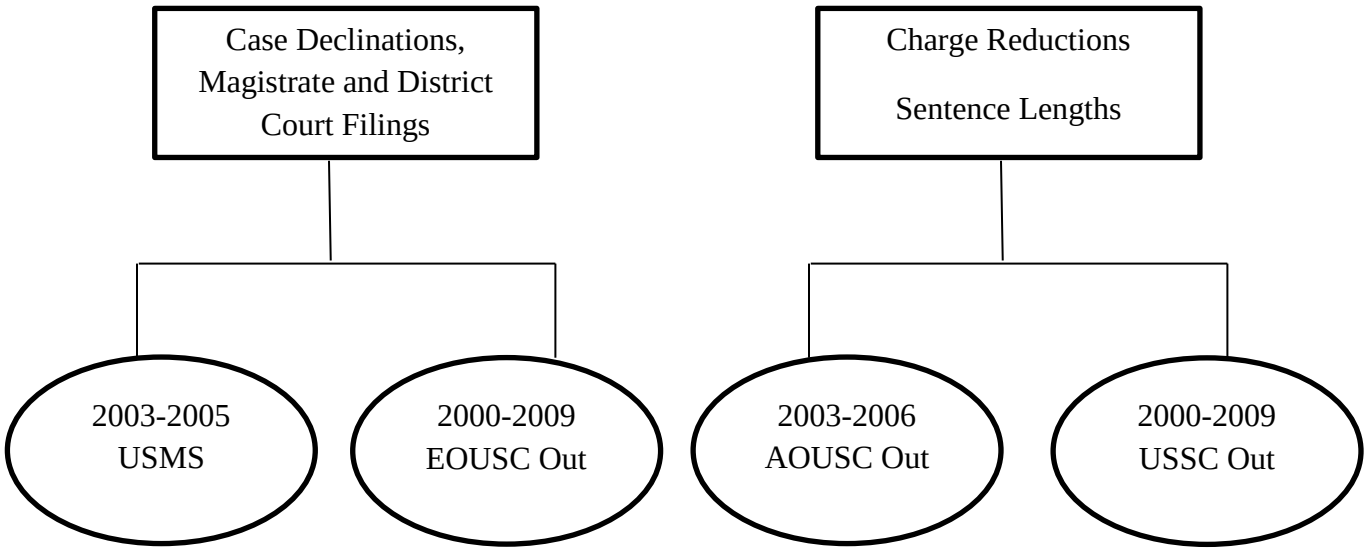

Table 2 presents the distributions of case matches for USMS and EOUSC data. In total 368,506 federal arrests were booked by the US Marshalls Office from 2003-2005. Of these, 284,869 cases were successfully linked to the EOUSC data for a match rate of 78.4%. This is the final sample used in the analysis of case declinations. Because the sample size is extremely large comparisons are all statistically significant, but substantively speaking, some key differences stand out. Most notably, among the unmatched cases, 40% are immigration offenses compared to only 27.6% in the matched sample. Immigration crimes are sometimes handled in unique, expeditious ways which may explain why they are more likely to be absent from the EOUSC data. For instance, illegal aliens are sometimes summarily deported rather than fully processed through the federal court system. This also likely explains why US citizens are more likely to be linked in the EOUSC data. On the other hand, drug crimes are relatively more likely to result in a matched case whereas public order crimes are less likely. The latter is largely explained by traffic offenses which have very low match rates, probably because these cases are

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seldom fully pursued in the federal system. Finally, more than 80% of arrests in the District of Columbia failed to match to the EOUSC data. Washington DC is unique in that its Superior Court cases fall under the auspices of the federal justice system, but given its unique status this district along with foreign territories are removed from the final models. After removing the District of Columbia and traffic offenses, the match rate between the USMS and EOUSC increases to more than 80%. The remaining unmatched cases likely reflect data entry errors or inconsistencies, failure on the part of the matching algorithm to identify unique cases, as well as the fact that federal law enforcement agents may make the determination not to forward certain cases to the US Attorneys' Office for prosecution.

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Table 2: Comparison of Linked and Unlinked Cases Between USMS and EOUSC Data

		Linked Mean	Unlinked Mean	%Δ
Suspect Age		33.4	33.3	0%
Suspect Gender				
	Male	.86	.87	-1%
Suspect Race				
	Black/Black Hispanic	.24	.23	1%
	Asian	.02	.02	0%
	Indian	.02	.01	1%
Suspect Citizenship				
	U.S. Citizen	.56	.44	12%
Marital Status				
	Married	.29	.25	5%
Offense Category				
	Violent	.05	.04	1%
	Property	.15	.14	2%
	Drug	.34	.23	11%
	Public Order	.07	.13	-6%
	Weapon	.10	.05	6%
	Immigration	.28	.40	-12%
Arresting Agency				
	Alcohol Tobacco Firearms	.07	.03	4%
	Customs and Immigration	.34	.37	-3%
	Drug Enforcement Agency	.14	.07	7%
	Federal Bureau of	.10	.07	3%
	Local Law Enforcement	.04	.08	-4%
	US Marshalls	.17	.19	-2%
	Other Federal Agency	.14	.20	-6%

For the subsequent analyses, four years of AOUSC data were merged together and then linked to United States Sentencing Commission. Because this analysis focuses on the effects of prosecutorial discretion on sentence lengths, it is limited to cases that resulted in a conviction. In total, 346,043 cases were prosecuted in the federal justice system between 2003 and 2006. Of these, 86,440 cases or roughly 25% could not be matched to the United States Sentencing Commission data. The AOUSC data lack information on specific case characteristics such as offender demographics, but Table 3 presents a comparison of matched and unmatched cases for

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available measures in the AOUSC data. Results indicate that 40% of the unmatched cases (34,751 of these cases) are the result of cases that did not result in a conviction, which are not recorded in the USSC data. Thirty percent of the unmatched cases were less serious offenses handled by district magistrates that are also not reported in the USSC data. This is consistent with the fact that 28% of unmatched cases were misdemeanors and another 5% were petty crimes. As with the prior analysis, public-order crimes are overrepresented in the unmatched cases because they include traffic offenses which seldom make their way to federal court. After adjusting for these known reasons, the match rate between the AOUSC and USSC data for non-traffic offenses convicted by district judges is approximately 88%. The remaining unmatched cases may reflect data entry errors, failure on the part of the matching algorithm to identify cases, or the fact that some cases recorded by the AOUSC are never turned over to the USSC and therefore do not appear in those data (Adams & Motivans, 2003). A total of 259,603 AOUSC prosecutions terminating in 2003-2006 were successfully matched. This is the final sample used in the analysis charge reductions.

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Table 3: Comparison of Linked and Unlinked Cases Between AOUSC and USSC Data

			Linked Mean	Unlinked Mean	%Δ	
Federal Judge			0.95	0.70	26%	
Federal Magistrate			0.05	0.30	-26%	
Conviction			1.00	0.57	43%	
No Conviction			0.00	0.40	-40%	
Most Serious Severity Level						
	Unrecorded		0.00	0.03	3%	
	Petty		0.00	0.05	5%	
	Misdemeanor		0.06	0.28	22%	
	Felony		0.94	0.64	31%	
Offense Category						
	Violent		0.04	0.05	-1%	
	Property		0.18	0.19	-1%	
	Drug		0.37	0.31	6%	
	Public Order		0.08	0.25	-17%	
	Weapon		0.11	0.09	3%	
	Immigration		0.22	0.11	11%	

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Table 4: Federal Justice Statistics Reporting Program Data, Descritpive Statistics					
USMS and EOUSC Linked Data					
	Mean	Std Dev.	Min.	Max.	
Declination	.07	.26	0	1	
Concluded by Magistrate	.17	.37	0	1	
Case Filed	.76	.43	0	1	
Suspect Age	33.42	10.50	13	90	
Suspect Gender					
Male	.86	.35	0	1	
Female	.14	.35	0	1	
Suspect Race					
White/White Hispanic	.72	.45	0	1	
Black/Black Hispanic	.24	.43	0	1	
Asian	.02	.14	0	1	
Indian	.02	.12	0	1	
Suspect Citizenship					
U.S. Citizen	.56	.50	0	1	
Marital Status					
Married	.29	.45	0	1	
Single/Divorced	.44	.50	0	1	
Marital Status Unknown	.26	.44	0	1	
Number of Charges Filed	1.72	1.35	0	5	
Offense Category					
Violent	.04	.21	0	1	
Property	.15	.36	0	1	
Drug	.34	.47	0	1	
Public Order	.07	.25	0	1	
Weapon	.10	.31	0	1	
Immigration	.28	.45	0	1	
Arresting Agency					
Alcohol Tobacco Firearms	.07	.25	0	1	
Border Patrol	.35	.48	0	1	
Drug Enforcement Agency	.14	.35	0	1	
Federal Bureau of Invistigation	.10	.30	0	1	
Local Law Enforcement	.04	.04	0	1	
US Marshalls	.17	.37	0	1	
Other Agency	.14	.35	0	1	
National Priority	.32	.32	0	1	
N=284,869					

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DESCRIPTIVE STATISTICS

Descriptive statistics are reported for the linked USMS and EOUSC dataset in Table 4 above. The EOUSC includes flags in the data for initial cases dispositions. About 7% of all federal cases result in declinations, 17% are concluded by magistrates, and the rest – about three-quarters – are filed in federal district court. The mean age of defendants is 33 years, only 14% of defendants are female and nearly three-quarters are white. Because ethnicity is not coded separately in the USMS data, Hispanic defendants are grouped in the white and black racial categories. Just over half of all defendants are US citizens and the majority for whom marital status is known is single or divorced. The mean number of charges filed is 1.7, though this variable was capped at 5 because a small number of cases had very high numbers of charges. The untransformed measure of charges filed had a mean of 2.2 and ranged from 0 to 651. Together, drug crimes and immigration offenses account for more than half of the federal criminal caseload. Information is also available on whether or not the case was considered a national priority – nearly one-third of offenses are thus classified by the EOUSC.

Descriptive statistics for the analysis of charge reductions is presented in Table 5. The AOUSC data report up to 5 filing charges and up to 5 terminating charges. The charge reduction measure is calculated by identifying the filing charge with the greatest statutory severity and comparing it to the terminating charge with the greatest statutory severity. Charge reductions are coded 1 if the most serious terminating charge is less severe than the most serious filing charge. Measured in this way, charge reductions occur in 12% of federal cases. This is likely an underestimate of actual charge negotiations because it only captures reductions that reduce the statutory severity of the crime. Other charge negotiations that do not lower the statutory severity are not captured in this measure. Also examined is the effect of charge reduction on final

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sentence length, which is measured with the natural log number of months of incarceration, which has a mean of 3.46, or roughly, 32 months. The logged version of sentence length has a mean that is lower than the actual mean number of months (56.5 months) because it draws in the extreme values in the tail of the sentence length distribution that result in a positively skewed distribution for sentence length. The mean number of charges filed is 1.9 and the mean number of charges terminated is 2.0, which suggests that federal prosecutors slightly increase the number of charges against defendants from filing to termination. Turning to the defendant characteristics, the mean age is 34.5, which is very similar to the arrest data. Also similar is the distribution of gender, which is 87% male. Unlike the arrest data, the sentencing data contain separate measures of race and ethnicity – 25% of the sample is white, 21% black, and 40% Hispanic, with only small numbers of Asian and Native American defendants. Sixty-nine percent of the sample is U.S. citizens. More defendants appear to be single than married, but there are very high rates of missing data for marital status so this variable is omitted from the multivariate analyses. Most defendants have less than a high school education, and less than 10% have college degrees. In terms of case processing, two-thirds of federal defendants are detained prior to sentencing and more than 95% plead guilty rather than going to trial. Drug offenses comprise 37% of the sample, followed by immigration offenses, which account for 22% of the sample. Relative to the arrest data, slightly more drug offenders and fewer immigration offenders are sentenced in district court. For other offenses, the proportions in the AOUSC and USSC data are similar to the USMS and EOUSC sample.

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Table 5: Federal Justice Statistics Reporting Program Data -- Descritpive Statistics					
AOUSC and USSC Linked Data					
	Mean	Std Dev.	Min.	Max.	
Charge Reduction	.12	.33	0	1	
Charge Reduction Scale	-.35	1.26	-11	11	
Ln(Presumptive)	3.29	1.54	.00	9.21	
Ln(Sentence Length)	3.46	1.17	.03	8.49	
Max Filing Charge Severity	4.18	3.25	-3	12	
Charges Filed	1.92	1.24	0	5	
Charges Terminated	2.01	1.29	0	5	
Defendant Age	34.52	10.52	16	103	
Defendant Gender					
Male	.87	.34	0	1	
Female	.13	.34	0	1	
Defendant Race					
Non-Hisp White	.25	.43	0	1	
Non-Hisp Black	.21	.40	0	1	
Hispanic	.40	.49	0	1	
Asian	.02	.14	0	1	
Indian	.02	.13	0	1	
Citizenship					
U.S. Citizen	.69	.46	0	1	
Marital Status					
Married	.07	.46	0	1	
Single/Divorced	.16	.46	0	1	
Marital Status Unknown	.77	.42	0	1	
Dependents	1.59	1.71			
Education					
Less than High School	.43	.50	0	1	
High School Grad	.27	.44	0	1	
Some College	.13	.34	0	1	
College Grad	.07	.25	0	1	
Detained	.66	.47	0	1	
Trial	.04	.21	0	1	
Offense Categories					
Violent	.04	.19	0	1	
Property	.18	.39	0	1	
Drug	.37	.48	0	1	
Public Order	.08	.27	0	1	
Weapon	.11	.32	0	1	
Immigration	.22	.41	0	1	
N=256,598					

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Table 6: Multinomial Regression of Case Declination, Magistrate, and District Court, USMS and EOUSC Data

	Declination vs. District Court								Magistrate vs. District Court							
	b	SE	Exp(b)		b	SE	Exp(b)		b	SE	Exp(b)		b	SE	Exp(b)	
Intercept	1.26	.10	--	**	1.30	.10	--	**	-.29	.05	--	**	-.51	.05	--	**
Offender Characteristics																
Suspect Age	.01	.00	1.01	**	.01	.00	1.01	**	-.01	.00	.99	**	-.01	.00	.99	**
Male	.42	.03	1.53	**	.45	.03	1.57	**	-.33	.02	.72	**	-.31	.02	.73	**
Black	.16	.03	1.17	**	.21	.03	1.24	**	.00	.02	1.00		.01	.02	1.01	
Asian	.10	.07	1.10		.15	.07	1.16		-.25	.05	.78	**	-.22	.05	.80	**
Native American	-.04	.10	.96		.03	.10	1.03		-.51	.06	.60	**	-.44	.06	.64	**
Young Male Minority	--	--	--		-.17	.04	.84	**					-.05	.03	.95	†
US Citizen	.12	.03	1.13	**	.13	.03	1.13	**	-.37	.02	.69	**	-.35	.02	.71	**
Married	-.05	.03	.95	*	-.06	.03	.95	*	-.05	.01	.95	**	-.05	.01	.95	**
National Priority	-.29	.02	.75	**	-.29	.02	.75	**	-.29	.02	.75	**	-.28	.01	.76	**
Number of Charges	-4.61	.03	.01	**	-4.61	.03	.01	**	-.74	.01	.48	**	-.56	.01	.57	**
Offense Type																
Violent	.50	.07	1.64	**	.50	.07	1.65	**	.54	.04	1.72	**	.46	.04	1.59	**
Property	.55	.06	1.74	**	.55	.06	1.74	**	.18	.03	1.20	**	.17	.03	1.18	**
Drug	.02	.06	1.02		.02	.06	1.02		.14	.03	1.16	**	.12	.03	1.13	**
Public Order	.57	.06	1.77	**	.57	.06	1.78	**	1.23	.03	3.43	**	1.16	.03	3.17	**
Weapon	.28	.07	1.32	**	.28	.07	1.32	**	-.28	.04	.75	**	-.22	.04	.80	**
Arresting Agency																
Alcohol Tobacco Firearms	.05	.06	1.05		.05	.06	1.06		-.60	.05	.55	**	-.56	.04	.57	**
Border Patrol	-.71	.08	.49	**	-.71	.08	.49	**	.23	.03	1.26	**	.25	.03	1.28	**
Drug Enforcement Agency	-.22	.05	.80	**	-.22	.05	.80	**	-.55	.03	.58	**	-.51	.03	.60	**
Federal Bureau of Invistigation	-.10	.05	.90	*	-.10	.05	.90	*	-.70	.03	.49	**	-.65	.03	.52	**
Immigration Customs Enforcement	-.75	.09	.47	**	-.75	.09	.47	**	-.60	.04	.55	**	-.56	.04	.57	**
Immigraion Naturalization Services	-.46	.07	.63	**	-.46	.07	.63	**	-.47	.03	.62	**	-.43	.03	.65	**
Local Law Enforcement	.05	.07	1.05		.06	.07	1.06		-.53	.05	.59	**	-.54	.05	.58	**
Self Committal	-.67	.06	.51	**	-.66	.06	.51	**	-.67	.04	.51	**	-.62	.04	.54	**
Secret Service	-.12	.08	.89		-.12	.08	.88		-.56	.05	.57	**	-.53	.05	.59	**
US Customs	-.06	.07	.95		-.06	.07	.94		-.36	.03	.70	**	-.38	.03	.68	**
US Marshalls	.08	.04	1.09		.08	.04	1.09		-.57	.03	.57	**	-.54	.03	.58	**
Block of District Dummies	--	--	--		--	--	--		--	--	--		--	--	--	
N	284,869				284,869				284,869				284,869			

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

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INDIVIDUAL CORRELATES OF PROSECUTORIAL CHARGING BEHAVIOR

Case Declinations and Magistrate Court

Table 6 presents results from multinomial logistic regression models analyzing the likelihood of prosecution being declined or cases being filed in magistrate court relative to filing in district court. Offender age has a small positive effect on case declination, with younger offenders more likely to have their cases accepted. Male offenders are significantly more likely to have their cases declined for prosecution. This was unexpected. In bivariate analysis, 7.8% of male suspects had their cases declined compared to only 5.4% of female suspects. Also unexpected was the finding that black and Asian suspects were slightly more likely to have their cases declined relative to white defendants. However, it is important to remember that Hispanic offenders cannot be separated out from whites and blacks in these analyses so the results must be interpreted cautiously. US citizens are significantly more likely to have their cases declined relative to non-citizens. Cases that reflect national prosecution priorities are significantly more likely to result in prosecution, whereas cases involving fewer charges are significantly less likely. Relative to immigration offenses, which serve as the omitted category, nearly all other offense types are significantly more likely to be declined for prosecution. The only exception is for drug offenses, which were not statistically distinguishable from immigration in their likelihood of case declination. Finally, examination of the effects of different arresting agencies suggests some interesting results. Declinations are highest among cases arrested by US Marshalls and the Bureau of Alcohol, Tobacco and Firearms, and they are lowest for Border Patrol, Immigration and Customs Enforcement, Immigration and Naturalization Services and self-commitment. Taken as a whole, these results suggest that immigration-related crimes are especially likely to result in federal prosecution – non-citizens, immigration offenses, and arrests

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made by immigration enforcement agencies are all significantly less likely to be declined for prosecution. When examining the main effects of gender and race, little evidence emerges for systemic bias in case declination decisions among federal prosecutors. However, in the interaction model, a significant effect emerges for the combined effect of young, black, males; specifically, they are .83 times less likely to have their cases declined relative to other offenders. This effect is particularly noteworthy given that the main effects of race and gender favor male and black offenders when they are not examined in combination.

The second outcome examined is whether a matter was concluded by a magistrate rather than being filed in district court. Results for this outcome are reported in the final two columns of Table 6. Again suspect age has a small but significant effect on magistrate court, with older offenders less likely to have their cases concluded by a magistrate. Male suspects are about 25% more likely to have their cases filed in district court, but there is no meaningful difference between black and white defendants. Asian and Native American defendants are less likely than white defendants to have their cases handled by magistrates. U.S. citizens and married defendants are significantly less likely to have their cases disposed of by magistrates as well. As with case declinations, both national priority and number of charges significantly reduces the odds of a matter being concluded by a magistrate instead of being filed in district court.

Among offense types, public order offenses are by far the most likely to be handled in magistrate court, and the only cases that are less likely than immigration to be concluded by a magistrate are weapons offenses. Federal suspects arrested by Border Patrol are particularly likely to be handled in magistrate court, but arrests by any other major federal agency substantially increase the odds that a case is filed in federal district court. To some degree, however, it is difficult to separate the effects of offense type from law enforcement agency.

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Several agencies are specifically tasked with enforcing immigration laws, for instance, whereas others specialize in drug or firearms offenses. Ideally, stronger measures of the severity of the arrest charges would be included as well, but unfortunately this information in not recorded in the USMS or EOUSC data. The final model in Table 6 examines the interaction between age, gender and race by adding an interaction term for young, black, male defendants. This effect approached but did not reach conventional standards of statistical significance (p=.07), but its direction suggests that young black males may be slightly less likely to have their cases concluded in magistrate court. Although not reported in the interest of space, fixed effects for federal districts were also included in all models as well. Results for district-level dummy variables suggested there may be important differences between courts in both case declinations and the use of magistrate courts, which is the explicit focus of subsequent analyses.

In addition to the included variables, the EOUSC data also report reasons for case dispositions. The top fifteen reasons reported for declinations are summarized in Table 7.

Table 7: Top 15 Reasons for Case Declinations in EOUSC Data

Rank	Reason	N	%
1	Weak/insufficient admissible evidence	3,719	17.5%
2	Arrest for failure to appear in another district	3,358	15.8%
3	Lack of evidence of criminal intent	2,999	14.1%
4	To be prosecuted by other authorities	2,964	14.0%
5	Arresting agency request	1,474	6.9%
6	Being prosecuted on other charges	1,273	6.0%
7	No Federal offense evident	620	2.9%
8	Minimal fed interest	576	2.7%
9	Office policy	441	2.1%
10	Lack of prosecutive resources	423	2.0%
11	Case opened in error/office error	419	2.0%
12	Pre-trial diversion completed	366	1.7%
13	Lack of investigative resources	341	1.6%
14	Staleness	248	1.2%
15	Civil, administrative or other alternatives	196	0.9%
Total		21,218	

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Among them, evidentiary problems accounted for the largest number of cases declined for federal prosecution. Rule 40 cases involving arrests for failure to appear in another district were second. It is not clear from the data whether or not these cases were ultimately transferred to and prosecuted in another federal district court. The next most frequent reason for declining prosecution involved lack of evidence of criminal intent, followed by cases that were prosecuted by other authorities, such as state courts. About 7% of cases were declined due to requests on the part of arresting agencies and only slightly fewer were declined because they were being prosecuted on other charges. The remaining reasons for case declinations occurred in less than 3% of all cases and included such reasons as minimal federal interest, office policy, lack of resources, diversion or other punitive alternatives, and staleness of the case. Although these reasons are quite informative, they are not recorded systematically for all cases in the data. Collection of more systematic data on U.S. Attorneys' reasons for declinations and other case processing decisions would considerably advance our understanding of prosecutorial discretion in the federal justice system.

Charge Reductions and Sentence Discounts

Table 8 presents the results of logistic regression analysis examining the individual level correlates of charge reductions in federal courts. Both the number of charges filed and the severity of the charge significantly increase the odds of a charge reduction. Presumably, more charges and more serious charges provide greater opportunities for negotiation. Several offender characteristics are also significantly associated with the probability of charge reduction. Age has a negligible positive effect but gender is strongly related to charging decisions. Male defendants are about 25% less likely to receive a reduction in charges relative to female defendants. The race and ethnicity findings were counter to those predicted, with both black and Hispanic

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defendants being slightly more likely to receive charge reductions. Notably, these results are consistent with those for case declinations. US Citizens were less likely to receive charge reductions and those with some college were slightly more likely to receive them.[9] Pretrial detention was strongly associated with charging behavior, with detained suspects 30% less likely to receive a charge reduction, and going to trial had even stronger effects, multiplying the odds of charge reduction by a factor of .29. All types of offenses are significantly more likely to receive charge reductions than the omitted category, immigration offenses. The magnitude of these differences is notable, with property and public order offenses being more than 4 times more likely to receive charge reductions. Even drug crime, the second least likely offense type, was 2.6 times more likely than immigration crime to receive a charge reduction. The second model in Table 8 includes an interaction term for young, male, minority offenders. As with the earlier analyses, several of the dummy variables included for district effects suggested significant differences between courts in the likelihood of charge reduction.

[9] The unexpected findings for citizenship may in part reflect its strong relationship with immigration offenses in the data. The correlation between the two is .65 which suggests that the two variables share a considerable amount of variation. Both are retained in the model but their effects should be interpreted cautiously given the strong relationship between them.

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Table 8: Logistic Regression of Charge Reductions, AOUSC and USSC Data										
		Charge Reduction					Charge Reduction			
		b	SE	Exp(b)			b	SE	Exp(b)	
Intercept		1.43	.05	--						
Initial Charges										
	Number Charges Filed	.53	.01	1.70	**		.53	.01	1.70	**
	Max Filing Severity	.31	.00	1.36	**		.31	.00	1.36	**
Offender Characteristics										
	Defendant Age	.00	.00	1.00	**		.00	.00	1.00	**
	Male	-.29	.02	.75	**		-.28	.02	.75	**
	Black	.07	.02	1.08	**		.09	.02	1.09	**
	Hispanic	.09	.02	1.10	**		.10	.02	1.10	**
	Asian	-.06	.05	.95			-.06	.05	.94	
	Native American	.18	.05	1.19	**		.17	.05	1.19	**
	Young Male Minority	--	--	--			-.04	.02	.96	*
	US Citizen	-.25	.02	.78	**		-.24	.02	.78	**
	Dependents	-.01	.00	.99			-.01	.00	.99	
	High School Grad	-.03	.02	.97			-.03	.02	.97	
	Some College	-.05	.02	.96	*		-.05	.02	.95	*
	College Grad	.01	.03	1.01			.01	.03	1.01	
Detained		-.35	.02	.70	**		-.35	.02	.70	**
Trial		-1.23	.04	.29	**		-1.23	.04	.29	**
Offense Categories										
	Violent	1.09	.06	2.99	**		1.09	.06	2.99	**
	Property	1.51	.05	4.54	**		1.51	.05	4.54	**
	Drug	.95	.05	2.59	**		.95	.05	2.59	**
	Public Order	1.43	.05	4.17	**		1.43	.05	4.17	**
	Weapon	1.38	.05	3.99	**		1.39	.05	4.00	**
Block of District Dummies		--	--	--			--	--	--	
N		N=256,598					N=256,598			
* p ≤.05										
**p ≤.01										

In addition to examining the likelihood of charge reduction, it is also instructive to estimate its consequence for one's final sentence in federal court. Table 9 estimates three models, the first predicting the recommended presumptive guidelines sentence, the second the actual sentence length, and the third the sentence length controlling for the recommended sentence. The variable of interest is whether or not an offender received a charge reduction.

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Because the sentence length measures are logged, the exponentiated coefficients can be interpreted as the percent change in the outcome. In the first model, the charge reduction variable reduces the presumptive sentence length by 17%. What this suggests is that defendants who receive charge reductions are moved within the structure of the sentencing guidelines into cells that, on average, have shorter recommended sentence lengths. Results of the second model suggest that charge reduction lowers the actual sentence length by about 9%. The difference between the effect of a charge reduction on the recommended and actual sentences suggests that judges may partially counteract the effects of charge negotiations at sentencing. Finally, the last model demonstrates that charge reductions have little impact on final sentences once their impact on the presumptive guidelines recommendation is accounted for in the model. This is consistent with the interpretation that reception of a charge reduction moves offenders within the formal structure of the sentencing guidelines. What is not apparent from Table 9, however, is whether or not charge reductions have differential effects on sentencing outcomes across courts. This is examined below.

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Table 9: Logistic Regression of Charge Reductions on Sentence Length, AOUSC and USSC Data													
	Ln Presumptive Sentence				Ln Sentence Length				Ln Sentence Length			
	b	SE	Exp(b)		b	SE	Exp(b)		b	SE	Exp(b)	
Intercept	.92	.01	--		1.55	.01	--		.63	.01	--	**
Charge Reduction	-.17	.01	.84	**	-.09	.01	.92	**	.01	.00	1.01	*
Criminal History	.27	.00	1.31	**	.21	.00	1.23	**	.04	.00	1.05	**
Presumptive Sentence	--	--	--		--	--	--		.68	.00	1.97	**
Offender Characteristics												
Defendant Age	.01	.00	1.01	**	.01	.00	1.01	**	.00	.00	1.00	**
Male	.30	.01	1.35	**	.31	.01	1.37	**	.18	.00	1.19	**
Black	.13	.01	1.14	**	.14	.01	1.15	**	.05	.00	1.05	**
Hispanic	.12	.01	1.13	**	.02	.01	1.02	**	-.01	.00	.99	**
Asian	.13	.02	1.14	**	.05	.01	1.05	**	-.02	.01	.98	*
Native American	-.12	.02	.89	**	-.06	.02	.94	**	.01	.01	1.01	**
US Citizen	.35	.01	1.41	**	.19	.01	1.21	**	-.03	.00	.97	**
Dependents	.02	.00	1.02	**	.01	.00	1.01	**	.00	.00	1.00	**
High School Grad	.10	.01	1.11	**	.07	.00	1.07	**	.07	.00	1.07	
Some College	.18	.01	1.19	**	.10	.01	1.10	**	.00	.00	1.00	**
College Grad	.27	.01	1.31	**	.16	.01	1.17	**	-.03	.00	.97	**
Detained	.56	.01	1.75	**	.42	.00	1.51	**	.23	.00	1.26	**
Trial	.96	.01	2.60	**	.84	.01	2.33	**	.25	.01	1.28	**
Offense Categories												
Violent	1.01	.01	2.74	**	.99	.01	2.70	**	.30	.01	1.35	**
Property	-.39	.01	.68	**	-.15	.01	.86	**	.02	.00	1.02	**
Drug	1.36	.01	3.88	**	1.08	.01	2.93	**	.18	.00	1.19	**
Public Order	.34	.01	1.40	**	.45	.01	1.57	**	.11	.01	1.12	**
Weapon	.74	.01	2.10	**	.69	.01	1.99	**	.20	.00	1.22	**
Block of District Dummies	--	--	--		--	--	--		--	--	--	
N	212,148				212,148				212,148			
* $p \leq .05$ ** $p \leq .01$												

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CONTEXTUAL VARIATIONS IN PROSECUTORIAL CHARGING BEHAVIOR

Case Declinations and Magistrate Court Filings

Table 10 reports the results of a fully unconditional two-level HGLM multinomial model for case declinations, magistrate, and district court filings. A two-level model is examined because preliminary analysis using a three-level model with federal districts nested within circuits suggested minimal variation among circuits. The unconditional model partitions the variance in the outcome between levels of analysis. Results of the unconditional model indicate that significant inter-district variation clearly characterizes both the probability of case declination and the likelihood of matters being concluded by magistrates rather than being filed in federal district court.

Table 10: Unconditional HGLM Models of Declinations and Magistrate Filings

	HGLM Multinomial Model						
	Declination vs. District Court				Magistrate vs. District Court		
	b	SE	p-value		b	SE	p-value
Intercept	-2.27	.04	.00		-2.48	.09	.00
District	Var	SD	p-value		Var	SD	p-value
Variation	.15	.39	.00		.66	.81	.00

Because the multinomial model does not include a level 1 variance parameter, the relative magnitude of the contextual effects can be difficult to judge from the unconditional model alone, but by adding and subtracting two standard deviations from the intercept for both outcomes, a range of probable values across districts can be calculated. For case declinations, this suggests that most districts have declination rates between 5% and 22%. For magistrate court, the same calculations produce a range between 2% and 42%. In other words, given the variance estimates from the unconditional model, one would expect some districts to initially decline only about 5% of cases for prosecution, whereas others would decline up to 22% of cases. Similarly, in some

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districts we would expect only about 2% of cases to be concluded by magistrates whereas in others it would be as high as 42%. The goal of the subsequent analyses is attempt to explain this inter-district variation in the use of case declinations and magistrate filings across federal court contexts.

Table 11 presents descriptive statistics for the district-level covariates examined. On average, U.S. Attorney Offices have about 56 AUSAs. However, the smallest district has only 14 prosecutors compared to the largest district which has more than 250. Caseload pressure also varies notably across courts. The mean number of case filings is 67.6, but this ranges between a low of 21.5 and a high of 215. The heaviest caseloads tend to characterize Southwest border districts with high immigration caseloads. The proportion of the population that is African American is about 12.5%, but some districts have very small proportions, whereas others are as high as 38.6% black. Percent Hispanic varies even more dramatically, with some districts reporting less than 1% Hispanic residents whereas others are comprised of 44.7%, or nearly half Hispanic residents. The measures of socioeconomic disadvantage is an additive scale that combines several indices so it is difficult to directly interpret, but notable variation existed in poverty, employment and median home values across districts as well. Finally, crime rates were also substantially different across federal districts, ranging from a low of 5 to a high of 76 per 1,000 residents.

Table 11: Level 2 Descriptive Statistics

	Mean	Std Dev.	Min.	Max.
USAO Size	56.35	48.35	14	258
Caseload	67.59	35.23	21.53	215.23
Percent Black	12.54	10.68	0.6	38.58
Percent Hispanic	9.72	11.08	0	44.74
SES Disadvantage	0	0.87	-2.63	1.59
Crime Rate	36.26	13.14	5.33	76.31

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Table 12 presents a correlation matrix for these variables. Although several of the district level characteristics are related, one stands out of clearly problematic. The correlation between district size and percent Hispanic was .70, which exceeds conventional standards of acceptability in multivariate analyses. For this reason, the decision was made to exclude percent Hispanic from the subsequent analyses. District size is a key theoretical predictor so it was selected for inclusion. The high correlation reflects the fact that Southwest border districts tend to have larger Hispanic populations and also larger U.S. Attorneys' offices due to the high incidence of immigration crime and the resultant caseload pressures that characterize these federal court environments. As discussed in the next section, additional research is clearly needed that ferrets out the complex relationships among USAO size, Hispanic populations and immigration caseloads.

Table 12: Correlation Matrix for District Level Predictors

		1	2	3	4	5	6
1	USAO Size	1.00					
2	Crime Rate	-0.05	1.00				
3	% Black	0.10	0.12	1.00			
4	% Hispanic	0.70	0.20	-0.14	1.00		
5	SES Disadvantage	-0.45	0.18	0.29	-0.28	1.00	
6	Caseload Pressure	0.00	0.31	-0.04	0.39	0.19	1.00

Table 13 reports the results of the district-level effects from random-intercept HGLM multinomial models investigating the influence of contextual correlates of case declinations and magistrate court filings. The individual-level effects were not reported in this table because they were essentially redundant to those reported in Table 6. The findings from Table 13 suggest that larger US Attorneys' offices are significantly more likely to decline cases for prosecution. The reported coefficient and standard error are multiplied by a factor of 10, so each additional 10 AUSAs in a district increases the odds of declination by about 7%. It is important to remember, though, that the size of the US Attorney's office is significantly related to the proportion of the

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population that is Hispanic foreign born and non-English speaking, which are omitted variables. Because district size was highly correlated with percent Hispanic (r=.70) both were not included in the level 2 specification of the model. Supplemental analyses including percent Hispanic in this model indicated it was not statistically significant, but it is very difficult to separate the effects of ethnicity from district size, and it is likely that some of the reported effect for district size reflects the influence of large Hispanic populations and large immigration caseloads in the districts with the most AUSAs.

The caseload pressure of the district was also marginally related to case declinations (p=.06), such that districts with heavier caseloads are the ones that are least likely to decline cases for prosecution. This suggests that declinations are inversely related to caseloads. Finally, districts that are socioeconomically disadvantaged were more likely to decline cases for prosecution. One possibility is that federal courts in these environments have fewer prosecutorial resources, but data is needed on actual district-level economic assets to explicitly test that supposition.

The second set of results in Table 13 reports findings for cases filed in magistrate court rather than district court. The results indicate that larger districts are more likely to prosecute defendants in magistrate court, though again this may partially capture the influence of ethnicity and immigration at the district level. The caseload pressure of the court is also positively related to the use of magistrate court – districts with heavier caseloads are more likely to send offenders to magistrate court, which may reflect organizational efficiency concerns at the district level. None of the other district-level covariates were statistically significant in the model.

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Table 13: HGLM Multinomial Model of Case Declination, Magistrate, and District Court									
District-Level Effects									
	Declination vs. District Court				Magistrate vs. District Court			
	b	SE	Exp(b)		b	SE	Exp(b)	
Intercept	-7.13	.63	--	**	-2.57	.12	--	**
District Characteristics								
USAO Size	.07	.02	1.07	**	.04	.02	1.04	*
Caseload	-.03	.02	.97	†	.05	.02	1.05	*
Percent Black	-.01	.01	.99		-.03	.08	.97	
SES Disadvantage	.19	.09	1.21	*	-.10	.10	.91	
Crime Rate	.05	.04	1.05		-.02	.05	.98	
N (Cases)	278,569				278,569			
N (Districts)	89				89			
† p ≤.10								
* p ≤.05								
**p ≤.01								

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Charge Reductions and Sentence Discounts

Table 14 reports the results of a fully unconditional two-level HGLM logistic regression model for charge reductions. As with case declinations, a two-level model is used because there was minimal variation across federal circuits. Results of the unconditional model indicate that significant inter-district variation clearly characterizes charge reductions in federal court. Adding and subtracting two standard deviations from the intercept suggests that most districts have charge reduction rates between 4% and 42%. In other words, given the variance estimates from the unconditional model, one would expect some districts to reduce charges in only about 4% of cases whereas other districts would be expected to reduce charges in up to 42% of all cases.

Table 14: Unconditional HGLM Model of Charge Reductions

	HGLM Logistic Model					
	Charge Reduction					
	b	SE	p-value			
Intercept	-2.07	.06	.00			
District	Var	SD	p-value			
Variation	.36	.60	.00			

Table 15 reports the results of random-intercept HGLM logistic regression models investigating the influence of several district-level correlates of charge reductions in federal district courts. The individual-level effects are not reported in this table because they are essentially redundant with those reported in Table 8. The findings in Table 15 suggest that few of the district level variables are significant predictors of charge reductions in district court. Among them, only the size of the district was statistically significant, suggesting that larger districts are more likely to reduce charges than smaller districts. Again, though, it is important to recall that the size of the district is closely related to ethnic and immigrant populations.

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Table 15: HGLM Logistic Model of Charge Reductions					
District-Level Effects					
	Charge Reduction				
	b	SE	Exp(b)		
Intercept	-2.95	.11	--		
District Characteristics					
USAO Size	.02	.01	1.03	*	
Caseload	.02	.02	1.02		
Percent Black	-.01	.01	.99		
SES Disadvantage	.09	.08	1.09		
Crime Rate	-.02	.05	.98		
N (Cases)		255,196			
N (Districts)		89			
† p ≤.10					
* p ≤.05					
**p ≤.01					

Supplemental analyses including percent Hispanic in the model indicated that it too was significantly and positively related to charge reductions (b=.035; SE=.012). It is therefore difficult to isolate the causal mechanism behind the association between large districts, large Hispanic and immigrant populations, and the increased use of charge reductions in federal court. Future research is needed on the topic. Other district level characteristics were generally in expected directions but failed to reach conventional levels of statistical significance.

The final models reported in Table 16 examine variation in the effect of charge reduction on final sentence across federal district courts. Although the sentencing discount associated with charge reductions varies substantially across court contexts (σ^2 =.047; p<.001), few of the court-level predictors were significantly associated with that variation. In the main effects model, federal sentence lengths were positively associated with crime rates and negatively associated with caseload pressure. In the interaction model, where district level predictors were included to explain between-district variation in the effect of charge reduction on sentence length, only percent black in the district was significantly associated with the charge reduction sentencing

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discount. Districts with larger black populations had slightly smaller sentence reductions associated with charge negotiations.

Table 16: HGLM Logistic Regression of Charge Reduction on Sentence Length

District-Level Effects	Ln Sentence Length Main Effects				Ln Sentence Length With Interactions			
	b	SE	Exp(b)		b	SE	Exp(b)	
Intercept	3.06	.02	--	**	3.06	.02	--	**
Charge Reduction	-.08	.03	.92	**	-.08	.03	.92	**
USAO Size Interaction	--	--	--		.00	.00	1.00	
Caseload Interaction	--	--	--		.01	.01	1.01	
% Black Interaction	--	--	--		.01	.00	1.01	**
SES Interaction	--	--	--		-.01	.03	.99	
Crime Rate Interaction	--	--	--		.00	.02	1.00	
District Characteristics								
USAO Size	.00	.01	1.00		.00	.01	1.00	
Caseload	-.02	.01	.98	*	-.02	.01	.98	*
Percent Black	.00	.00	1.00		.00	.00	1.00	
SES Disadvantage	.03	.03	1.03		.03	.03	1.03	
Crime Rate	.04	.02	1.04	*	.04	.02	1.04	*

* $p \leq .05$

** $p \leq .01$

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CHAPTER 5: SUMMARY AND CONCLUSIONS

Richer statistical models and individually based longitudinal data through the various processing stages of the criminal justice system will be required to be able to estimate…the nature and magnitude of discrimination in the criminal justice process

~Alfred Blumstein (1982)

Federal prosecutors are among the most influential and least studied actors in the criminal justice system. The discretionary power of prosecutors to select cases and negotiate reduced charges as part of plea bargains raises core issues for the understanding of criminal case processing and for the potential of unwarranted disparity to enter into pre-sentence decision-making processes in criminal courts. As Kenneth Culp Davis stated more than forty years ago:

> "The reality is that nearly all his decisions to prosecute or not to prosecute, nearly all of the influences brought to bear upon such decisions, and nearly all his reasons for decisions are carefully kept secret, so that review by the electorate is nonexistent except for the occasional case that happens to be publicized. The plain fact is that more than nine-tenths of local prosecutors' decisions are supervised or reviewed by no one" (Davis, 1969: 188; 207-208).

Davis' statement is probably an overgeneralization that does not apply equally to all prosecutors, and it may be less applicable to federal prosecutors' offices, many of which have established charging standards, office review procedures or others policies in place to structure charging decisions, but it does serve to highlight the long-standing concern with lack of transparency and public oversight in prosecutorial decision making. Although scientific inquiry into prosecutorial discretion has advanced in important ways since that time, many aspects of prosecutorial decision making remain poorly understood and dramatically understudied. The current research attempts to address some of the limitations of existing work by conducting a large-scale

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investigation of early charging decisions of federal prosecutors across U.S. District Court environmental contexts.

PROSECUTORIAL MOTIVATIONS FOR CHARGING DECISIONS

Prosecutorial decisions to decline cases for prosecution or to subsequently reduce charges are likely to reflect several interrelated concerns. On the one hand, these decisions may be driven by prosecutorial assessments of the "trial-worthiness" of a case. Trial-worthiness incorporates both the moral gravity of the offense and the likelihood of conviction. Some cases that are deemed serious enough for arrest by law enforcement agents may not be viewed by federal prosecutors as serious enough for prosecution. As such, lack of criminal intent, limited harm to society, or limited public interest may provide justifiable reasons for case declinations and charge reductions. Significant research suggests that prosecutors are wont to pursue cases that are unlikely to be convictable at trial (Albonetti, 1986; 1987; Spears and Spohn, 1997; Frohmann, 1997). Charging decisions may therefore reflect judgments that initial charges are not readily provable or are not serious enough to warrant the expenditure of office resources. In some cases, law enforcement or less experienced AUSAs may settle on initial charges, for instance, that over-represent the relative seriousness of the case or that are overcharged relative to what is able to be proven in court. Prosecutors may also learn more about cases over time. Evidentiary strength of the case may change with new information that emerges through the lifecycle of the criminal prosecution. Witnesses who are uncooperative or lack credibility on the stand, for instance, may lead prosecutors to reduce charges or dismiss cases altogether (Spears and Spohn, 1997).

On the other hand, discretionary preferences on the part of prosecutors may also affect charging decisions in federal court. Some research suggests that prosecutors intentionally alter

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charges in order to tailor final punishments to individual and collective views of justice. For instance, they may use charging decisions to circumvent certain sentencing enhancements or to mold sentences to local norms and court actor expectations (Frase, 2004; Wright and Engen, 2006; Ulmer et al. 2007). Nagle and Schulhofer (1992) suggest that this process accurately characterizes the federal justice system. Additional work suggests prosecutorial charging decisions are driven in part by organizational efficiency concerns such that charging discounts are provided in order to ensure guilty pleas that expedite cases through the justice system while maintaining manageable caseloads (Rosette and Cressey, 1976). Given limited time and resources, prosecutors would simply be unable to resolve all cases by trial. Therefore mechanisms are needed to encourage case resolution without a trial, and charge reductions provide the necessary incentives to encourage offenders to plead guilty. Some formal economic models of plea bargaining are based explicitly on this assumption (e.g. Baker and Mezzetti, 2001).

Prosecutors may also use charge negotiations to enlist the assistance of some defendants in the prosecution of other, higher priority cases. For instance, in the federal system, substantial assistance guidelines departures are explicitly reserved for offenders who provide cooperation in the prosecution of another federal criminal case (Hartley et al. 2007). Finally, some work suggests that prosecutors are primarily concerned with conviction rates than with the relative severity of conviction charges. AUSA positions are political offices that may be viewed as career-building stages in the broader political aspirations of practicing attorneys, and conviction rates are the key indicator used to measure prosecutorial success (Boylan and Long, 2005). From this point of view, prosecutors are motivated to maximize convictions and to minimize acquittals and declinations and plea bargaining represent instrumental approaches for selecting

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more convictable cases and for inducing convictions in cases that may be difficult to prove at trial.

In order to investigate the various factors that affect early case processing decisions in federal prosecutions, this study examined the correlates and consequences of prosecutorial charging decisions in federal district courts. Focusing on case declinations and subsequent charge reductions, it investigated the individual determinants of charging decisions as well as the extent to which charging outcomes varied across federal district court social contexts. Key findings from this research are summarized below before discussing their broader implications for future research and policy in the area.

SUMMARY OF KEY FINDINGS

A number of key findings emerged from the current study. A summary review of prior research indicated the following:

- Relatively few studies have been published in the past 25 years examining prosecutorial discretion to decline, dismiss or reduce charges in criminal cases.
- Among the published research, many are based on small samples of specific crime types from a single city or county jurisdiction.
- Almost no existing studies focus on federal prosecutors.
- Almost no existing studies examine inter-court variation in prosecutorial charging behaviors.

Although a number of very influential studies were published in the 1980s and 1990s (e.g. Albonetti, 1986; 1987; 1992; Kingsnorth et al. 1998; 1999; Spohn et al. 1987), relatively few large-scale studies of prosecutorial charging behavior have been conducted in recent years. Much of the most recent work on prosecutors uses post-conviction sentencing data to examine

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prosecutorial discretion in the use of outcomes such as mandatory minimums (e.g. Ulmer et al. 2007) or guidelines departures (e.g. Hartley et al. 2007). Although this research is extremely valuable, it represents part of a larger trend in criminal punishment research that relies on data from sentencing commissions that fail to capture consequential decision-making outcomes at earlier stages of the justice system (Wellford, 2007). Given the broad charging powers of the prosecutor, the general lack of oversight in these decisions, and the growing importance of prosecutorial charging decisions under more structured sentencing systems, additional research is badly needed on prosecutorial charging decisions across diverse court contexts.

To be clear, a number of high-quality studies have been conducted on prosecutorial decision making in state courts, such as the work by Kingsnorth and colleagues (Kingsnorth et al. 1998; 1999; 2007) and Spohn and colleagues (Spohn et al. 1987; Spears and Spohn, 2007; Spohn and Holleran, 2001; Spohn et al. 2001) among others. The strength of this work is that it collects in-depth data on early case processing outcomes, which is extremely important for better understanding the key processes that precede final punishment decisions. The tradeoff, however, is that because these data typically have to be collected by the researcher, the samples sizes tend to be relatively small and much of the highest quality work is limited to single offense categories, such as sexual assault cases, from single jurisdictions. Important insights have undoubtedly resulted from this work, but its generalizability to other crime types and to diverse jurisdictional contexts can be difficult to establish. As such, large-scale data collection efforts are needed that systematically collect information on prosecutorial decision-making outcomes for diverse offense types across a broad range of jurisdictional contexts. Such efforts deserve strong priority in future research.

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Moreover, although several recent studies examine guidelines departures controlled by federal prosecutors (Hartley et al 2007; Johnson et al. 2008; Spohn and Holleran, 2009), virtually no research exists on federal prosecutors charging decisions or on the social contexts in federal criminal prosecution. Even less is therefore known about prosecution in the federal justice system relative to state systems. O'Neill Shermer and Johnson's (2010) work on federal plea bargains offers an important starting point for the current research, but it was limited only to an examination of charge reductions and it included no measures of court context. Spohn and Fornango's (2009) innovative research on inter-prosecutor variation in the use of substantial assistance demonstrated important differences in the use of departures among federal prosecutors but it did not attempt to explain that variation. Additional research efforts are therefore needed that go beyond the current work in identifying and capturing consequential decision-making outcomes of federal prosecutors to better identify the underlying processes that tailor federal punishments in the pre-sentencing stages of criminal case processing.

In order to examine charging decisions among federal prosecutors across court contexts, the current research merged together data from multiple federal agencies. Results from the data merger process suggest the following conclusion:

- Linking rates between federal agencies are relatively high, especially after adjusting for known differences across data sources, but additional methodological work is clearly needed that further examines the causes and consequences of unmatched cases across linked datasets.

Investigation of matched and unmatched cases across datasets revealed strong consistencies, but also some important differences. Key demographic characteristics of suspects were generally consistent across the matched and unmatched cases, suggesting little systemic bias in the types of

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defendants who were successfully tracked across agencies. Moreover, match rates were substantially improved after known sources of differences were taken into account. For instance, certain misdemeanor offenses are recorded in the AOUSC data but not in the USSC data as are a number of cases handled by U.S. magistrates instead of district court judges. One area of particular concern surrounds citizenship, because non-U.S. citizens are less likely to be matched between arrest and prosecution datasets. It is not clear whether non-citizens may be held in detention facilities, deported, or dealt with summarily in other ways or whether they are simply more difficult to match because they lack key information on such things as social security numbers or permanent addresses. Other differences characterized offense types. Public order offenses were less likely to be matched across both datasets, which likely reflects the fact that these include a portion of relatively minor crimes such as traffic offenses that tend to drop out of the system. Drug offenses, on the other hand, tended to have relatively high match rates. Additional work using the linked data to further investigate the potential sources of selection bias that may characterize different matching procedures in the data needs to be a priority in future research. Such investigations are likely to provide new and important insights into existing sources of selection bias that characterize analyses limited to individual datasets (Bushway et al. 2007).

Turning to the analysis of prosecutorial discretion in the federal courts, the following findings emerged:

- Case declinations occurred in approximately 7% of matched USMS and EOUSC cases.
- 17% of federal cases were handled by magistrates rather than filed in district court.

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- Overall, 76% of matched arrest cases were filed for prosecution in district court.

Case declinations occurred in just over 7% of cases in the matched data. However, this is almost certainly an underestimate of the actual case declination rate. Examination of declination rates in the unmatched EOUSC data suggested that closer to 1 in 5 cases resulted in a declination. The sizeable difference reflects the fact that arrests are much less likely to be matched to cases that are declined compared to cases that are accepted for prosecution. It may be that law enforcement agents are less likely to record data for cases that are declined for prosecution, but whatever the cause, it is clear that these cases are less likely to result in successful matches. Although comparison of defendant characteristics for matched and unmatched cases in the USMS and EOUSC data suggested few notable differences, future investigation is needed to more fully explore the potential consequences of differential match rates for cases that are declined for prosecution. As such, the reported estimate from the matched data should be considered a lower bound for the extent to which federal prosecutors decline cases for prosecution.

About 17% of cases in the matched data are disposed of by district magistrates rather than filed in district court. This is also slightly below the proportion reported in the unmatched EOUSC data, which is approximately 21%. As with case declinations, arrests handled by magistrate cases are slightly less likely to result in a match compared to cases filed in district court, explaining the discrepancy. More detailed future research is clearly needed that further explores the sources of these differences and their potential consequences for the subsequent reported analyses. For this reason, the findings of this study should be considered tentative and exploratory in nature.

Turning to the descriptive analysis of charge reductions, the findings suggest the following:

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- Charge reductions occur in about 12% of federal cases.
- On average, about 2 charges are filed per offender in federal court.

Charge reductions were measured as changes that occur from case filing to termination that involve a reduction in the statutory severity of the offense. Because this is a conservative definition of charge reduction, it is likely to underestimate the actual prevalence of charge bargaining in federal courts. Notably, this is the same definition used by O'Neill Shermer and Johnson (2010) and the magnitude of the estimate is equivalent despite the use of more recent years of data in this study. The mean number of filing charges was just under 2 and the mean number of terminating charges was just over 2. It is difficult to fully capture charge negotiations involving the number of charges, however, because the AOUSC records a maximum of 5 filing and 5 terminating charges so these distributions are artificially truncated. Because the seriousness of charges is only reported in terms of their broad statutory severity, this is the most straightforward approach to capturing charge reductions in the AOUSC data. However, future work would benefit greatly from developing more refined charge reduction measures. In all likelihood, U.S. Attorneys bargain over additional factors that fall outside of the statutory severity of the most serious offense. More subtle distinctions among charges should ultimately be examined along with other factors such as the number of charges, magnitude of the sentence reductions, prosecutor-controlled departure provisions and fact stipulations involving such things as amounts of loss or narcotics weights that are likely to occur as part of the negotiated plea process in federal court.

Examination of the multivariate analysis of case declinations and magistrate court filings suggests the following conclusions:

- Older, male and black suspects were more likely to have their cases declined.

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- Young male minority suspects were less likely to have their cases declined.
- Cases identified as a "national priority" were significantly less likely to be declined.
- Immigration offenses and arrests made by immigration-related federal law enforcement agencies were particularly unlikely to result in case declination.
- Arrests made by the DEA, FBI, and self-committals were also less likely to result in case declination.
- The most frequently reported reasons for case declinations included weak/inadmissible evidence, arrests for failure to appear in another district, and lack of evidence of criminal intent.

Somewhat unexpectedly, older, male and African American suspects were significantly more likely to have their cases declined than younger, female and white suspects. The race finding should be interpreted with caution however. The USMS data do not include a measure of ethnicity so the "white" reference category in the statistical model includes a mix of white-Hispanic and white non-Hispanic suspects, making it difficult to draw firm conclusions regarding the impact of race on case declinations. Interestingly, though, young male minority suspects were significantly less likely to have their cases declined. This finding is consistent with some research that suggests young minority males are singled out for the harshest punishments in criminal courts (Steffensmeier et al. 1998). U.S. citizens were more likely to have their cases declined. One unique measure in the EOUSC data is a prosecutorial assessment of the priority of the case. Cases that were deemed to be national priorities were about 25% less likely to be declined by prosecutors.

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Relative to other offense types, immigration offenses were singled out as particularly unlikely to result in case declinations as were arrests made by immigration enforcement officials such as U.S. Border Patrol, ICE, and INS. Given the high proportion of immigration offenses that involve Hispanic defendants, this may partially explain the unexpected results for suspect race. Unfortunately though, improved data is required to investigate this possibility. One recommendation, then, is for federal law enforcement agencies to begin to collect more systematic suspect information that at a minimum includes data on offender ethnicity. Finally, arrests made by the DEA and FBI were also relatively unlikely to result in case dismissals as were self-committals. The DEA effect was consistent with the fact that drug offenses were the only crime category that was not significantly more likely to be dismissed when compared with immigration crime. The effect for self-committal likely reflects the fact that suspects who turn themselves in are, by definition, more likely to admit guilt and cooperate with prosecutors in the act of self-conviction.

Finally, the most commonly cited reasons for case dismissals included weak or inadmissible evidence, arrests for failure to appear in another district, and lack of criminal intent. Other interesting reasons reported by prosecutors included prosecution by other authorities, such as state justice systems, the request of arresting agencies, minimal federal interest in the offense, and lack of resources. These reasons highlight a number of common themes in the research literature on prosecutorial decision making and they also serve to illustrate the uniqueness of the federal justice system. Commonly-reported concerns with strength of evidence speak directly to prosecutorial assessments of convictability and the trial-worthiness of the case, whereas minimal federal interest and the option to have other authorities prosecute a case reflects a singular feature of the federal system – many federal offenses are also state crimes that can be

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alternatively prosecuted in state rather than federal court. Requests of arresting agencies highlight the importance of maintaining strong working relationships with other court actors and with law enforcement, and concerns over lack of prosecutorial or investigative resources point squarely to organizational efficiency concerns over timely and effective case disposition.

The results for cases being filed in magistrate court as opposed to district court also produced some noteworthy findings which included the following:

- Older and male suspects were more likely to have their cases filed in district rather than magistrate court.
- Young male minority suspects were marginally more likely to have their cases filed in district rather than magistrate court.
- Cases identified as a "national priority" were significantly more likely to be filed in district rather than magistrate court.
- Weapons offenses were most likely to be filed in district rather than magistrate court, followed by immigration offenses.
- Arrests made by the U.S. Border Patrol were least likely to be filed in district rather than magistrate court.

Although male suspects were more likely to have their cases declined, they were less likely to have them filed in magistrate rather than district court. In part this may reflect the severity of the offense committed. The only measures available that tap into the seriousness of the offense are the prosecutorial priority level, number of charges, and type of offense, making it difficult to rule out spurious influences for more subtle elements of case seriousness. Young male minority suspects were slightly more likely to have their cases filed in district court as well, though this effect was of marginal statistical significance ($p=.06$). As with case declinations, national

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priority cases were significantly less likely to be filed in magistrate court. Public order offenses were most likely to be handled in magistrate court whereas weapons and immigration offenses were least likely. Among arresting agencies, arrests made by the U.S. Border Patrol were most likely to be handled in magistrate court. This may reflect the use of magistrate courts as a mechanism for dealing with the high immigration caseloads that characterize Southwest border districts in the federal criminal justice system.

The last set of results for individual-level analyses examined the use of charge reductions in federal court. These findings can be summarized as follows:

- Both the severity and number of initial charges are strongly related to charge reductions.
- Male defendants are less likely to receive charge reductions but black and Hispanic defendants are slightly more likely.
- Young male minority defendants are slightly less likely to receive charge reductions.
- Pretrial detention and trial are negatively related to charge reduction.
- Immigration offenses are the least likely to receive charge reductions.
- Receipt of a charge reduction reduces final sentence length by about 9% on average.

Suspects charged with more serious offenses and with more charges are substantially more likely to receive charge reductions. This could reflect two complementary processes. On the one hand, prosecutors may initially overcharge defendants with whom they intend to subsequently negotiate. By including additional charges or more serious charges, they provide greater opportunity and greater incentive for defendants to plead guilty in exchange for reduced

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charges. On the other hand, crimes that involve more serious offenses and multiple charges may inherently offer more opportunity to negotiate even when they accurately represent the defendant's offense conduct. Wright and Engen (2006), for instance, argue that the "depth" and "distance" of a charge reduction depends on the scope of related criminal statutes that are available in the bargaining process. More serious offenses and offenses involving more charges are likely to provide greater opportunities for negotiating charge bargains, especially those that are substantial enough to reduce the statutory severity of the most serious offense.

Consistent with prior work (O'Neill Shermer and Johnson, 2010), male defendants are less likely to receive a charge reduction, even after controlling for the severity and number of initial charges. Black and Hispanic defendants, however, were slightly more likely to receive charge reductions. Although unexpected, this is consistent with some prior work that finds little evidence of racial and ethnic disadvantage in early charging decisions (e.g. Albonetti, 1992). Moreover, the interaction term for young male minority defendants was in the opposite direction, suggesting that this particular class of defendant may in fact be less likely to receive charge reductions in the federal justice system, though the substantive magnitude of this interaction effect was relatively small.

Two predictors that were strongly associated with charge reductions were pretrial detention and the decision to go to trial. Defendants who were detained prior to trial were about 30% less likely to receive a charge reduction whereas defendants who exercised their right to trial were less than one-third as likely to receive a charge reduction. This is consistent with the notion that charge reductions are routinely used as part of the negotiated plea process in which charging discounts are traded in a sense for the act of self-conviction on the part of the accused. Additionally, immigration offenses were particularly unlikely to receive charge reductions. Even

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drug offenses, which were the second least likely offense category to receive charge reductions were still more than 2.5 times more likely than immigration crimes. This finding is consistent with a general trend in the data that suggests immigration offenses are often singled out for unique treatment in early case processing decisions in federal district courts. Finally, receipt of a charge reduction lowers one's presumptive sentence by about 17% which translates into actual sentence lengths that are about 9% shorter on average. This suggests that charge reductions have a nontrivial effect on the ultimate punishment one receives, which is consistent with the limited prior work that has examined the issue (e.g. Bushway and Piehl, 2007; Wright and Engen, 2006; O'Neill Shermer and Johnson, 2010).

The final set of analyses examined the contextual influences associated with prosecutorial charging decisions in U.S. District Courts. These findings are summarized below beginning with case declinations and magistrate filings:

- Significant variation characterizes the prosecutorial use of case declinations and magistrate filings across U.S. District Courts.
- The size of the US Attorneys' office is positively associated with declinations and magistrate filings.
- Higher caseload pressure is negatively associated with declinations but positively associated with magistrate filings across courts.
- Socioeconomically disadvantaged contexts are positively associated with declinations.

Unconditional HGLM models examining inter-district variation unequivocally demonstrated that the use of case declinations, magistrate filings and charge reductions varied significantly across federal court contexts. This variation was of a nontrivial magnitude. For

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instance, the predicted values for magistrate filings ranged from a low of 2% to a high of 42% across courts.

Several district level characteristics were examined as potential explanatory variables of this inter-district variation. Among them, the size of the U.S. Attorneys' office and the caseload were both related to case declinations and magistrate filings. Larger offices were more likely to decline cases and more likely to file in magistrate court. However, it is important to note that district size was highly correlated with the percent Hispanic, foreign born, and non-English speaking population in the district. Districts with the largest offices were those with the largest absolute caseloads which tended to be located in areas with higher proportions of immigration offenses. Given the high correlation among these variables, they could not be simultaneously included in the model, so the effect of court size may, in part, be capturing the influence of the omitted population demographics that reflect large caseloads of immigration offenses. Future research is clearly needed, then, that begins to disaggregate the effect of district size into its constituent parts.

Caseload pressure was also related to both outcomes, though in opposite directions. Higher caseloads were associated with lower odds of case declination. Although this may seem counterintuitive at first, it likely reflects the fact that declined cases do not factor into the caseload pressure statistics. Therefore it is not surprising that high caseloads are associated with lower rates of declination. Caseload pressure was positively related to the odds of magistrate court filing, which may indicate that magistrate courts are used in some districts as a mechanism for expediting case processing in order to address caseload pressure. Finally, the effect for socioeconomic disadvantage suggests that more disadvantaged environments are more likely to decline cases. Although this effect is contrary to expectations grounded in economic threat

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perspectives that emphasize increased punishment in more socially threatening environments, it is consistent with the notion that more disadvantaged areas may have fewer court resources and are therefore less likely to accept cases for prosecution. Of course a true test of this supposition would require more direct measures of federal court prosecutorial resources, which should be a priority in future research as well.

Relatively few significant factors were related to inter-district variation in charge reductions across federal district courts. Findings from that analysis can be briefly summarized as follows:

- Significant variation characterizes the prosecutorial use of charge reductions and the relative magnitude of charge reduction discounts across U.S. District Courts.
- The size of the US Attorneys' office is positively associated with charge reductions.
- Caseload pressure is positively related and crime rates are negatively related to the magnitude of the charging discount.
- Percent black interacts with the charging discount so that smaller discounts are offered where African American populations are relatively larger.
- Collectively, the court context measures that were examined explained relatively little of the inter-district variation in the use of declinations, magistrate filings, charge reductions and charge reduction discounts across federal court contexts.

As with case declinations and magistrate filings, significant variation characterizes the use and magnitude of charge reductions across federal courts. Expected values for charge reductions across courts, for instance, ranged from a low of 4% to a high of 42%. Despite substantial variation, though, only the size of the U.S. Attorneys' office was significantly related

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to the likelihood of receiving a charge reduction in an individual case. Larger districts were more likely to offer charge reductions such that each increase of 10 additional AUSAs increased the odds of charge reduction by about 3%. As with the previous analysis, though, it is important to reiterate that part of the effect for district size may be capturing the omitted influence of percent Hispanic in the district. Examination of the sentencing discount associated with receipt of a charge reduction suggested that larger discounts were offered in districts with higher caseloads. Presumably, caseload pressure increases the premium placed on efficient case disposal, increasing the discount offered in exchange for a guilty plea. Crime rates, on the other hand, were negatively related to charging discounts, suggesting that higher crime areas may heighten crime control concerns thereby reducing the charging discount that is offered. Finally, only percent black interacted with the charge reduction effect, such that smaller reductions were associated with district environments characterized by larger proportions of African Americans in the population. Such a finding in theory is consistent with racial threat perspectives that emphasize increased social control in areas with larger or growing minority populations.

Despite significant variation in each charging outcome across court contexts and the fact that several of the contextual measures were statistically significant in the model, collectively, the battery of district-level characteristics examined explained relatively little of the between-district variation in each outcome. After accounting for compositional differences in cases across courts, the addition of contextual measures explained approximately 20% of the remaining inter-court variation in case declinations and about 10% of the remaining variation in magistrate filings. For charge reductions, the addition of contextual level predictors did not significantly reduce the residual level 2 variance, which suggests that they failed to significantly explain between-court variation in the use of prosecutorial charge reductions. The fact that few

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of the district level contextual measures were strongly related to the charging outcomes indicates that other unexamined factors need to be incorporated into future research.

Many of the district level characteristics are structural predictors that have been found to be related to sentencing variation across courts, but it may be that alternative courtroom processes characterize early case processing decisions controlled by prosecutors. What are needed are more proximate measures of court culture and district level charging policies as well as additional information about the AUSAs in each district. Future work will need to collect improved measures of federal court contexts to better explain inter-district variation in charging outcomes. One strategy might be to conduct surveys of federal court actors to create measures of court culture in each district. Among other factors, some interesting measures that could be introduced in future work include the punitiveness of the district culture, the degree of cooperation and camaraderie among different members of the courtroom workgroup, and office policies regarding which cases should be pursued and what standards are applied in deciding how and when to offer plea bargains to defendants in individual cases.

Support for Theoretical Hypotheses

Overall support for the theoretical hypotheses in this study was mixed. Table 17 presents a summary of the findings in relation to expected relationships. The first three hypotheses, rooted in attribution and focal concerns perspectives, suggested that early case processing outcomes would systematically disadvantage young, male and minority defendants in federal court. Although evidence remains somewhat controversial, substantial prior literature suggests that these demographic groups receive more severe punishments in the federal justice system (Albonetti, 1997; Steffensmeier and Demuth, 2000; Johnson et al. 2010). Very little research examines the consequential decision-making stages that precede federal sentencing however.

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Results from this research offer very limited support for the global expectation that charging decisions are systematically biased against young, male and minority defendants. Young suspects were less likely to receive case declinations but male and black suspects were more likely. Although young and male defendants were less likely to receive charge reductions, black and Hispanic defendants were more likely. Moreover, supplemental analyses (not reported) revealed no evidence to suggest that the magnitude of the average charge reduction varied significantly across defendants, with less than a 1% difference in separate estimates that were calculated independently for racial and gender subgroups.

Hypotheses 4 and 5 both address expectations regarding cumulative disadvantages across multiple decision-making points. Limited evidence emerged for cumulative gender disparity in early charging outcomes. As expected, male defendants were less likely to have their cases diverted to magistrate court and they were less likely to receive charge reductions, but they were more likely to have their cases declined for prosecution. No evidence materialized for cumulative racial bias in federal charging. Black defendants were more likely to have their cases declined and more likely to receive charge reductions. This result is not uncommon in the literature and some work has suggested that favorable outcomes for minority defendants in early charging decisions reflects the use of prosecutorial discretion to correct earlier biases on the part of law enforcement agents. For instance, (Chen, 1991: 15-16) concluded that charging decisions are used to "sort out cases with a low degree of convictablity or a lesser degree of criminality" but that they also can be used to correct the fact that "police officers may make differential arrest decisions in terms of convictability across the race groups". If law enforcement agents are prone to arrest minority suspects in cases with lower degrees of convictablity or criminality, subsequent charging decisions may be used to counterbalance these effects.

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This post-hoc explanation, however, may be less valid for the federal justice system. Federal prosecutors often work directly with law enforcement agents, collecting evidence and building a case against suspects before arrests are made. Comparisons of cases initiated by federal prosecutors with those initiated by federal law enforcement could perhaps provide some leverage on this issue but a direct test of this supposition is not possible with the current data. This once again highlights the need for more comprehensive data collection efforts regarding federal arrests and prosecutions. Detailed information about the strength of the evidence, the seriousness of the offense, and prosecutorial rationales for declinations and reductions would allow researchers to begin to better capture key differences in the types of case that are presented to U.S. Attorneys for prosecution and their reasons for employing dismissals and charge reductions in some cases but not others.

The only area where the findings demonstrated consistency across outcomes was for the interaction term capturing the joint impact of young male minority status. Relative to other age, gender and race combinations, young male minorities were less likely to receive both case declinations and charge reductions and they were also less likely to have their cases diverted to magistrate court rather than filed in district court. This is consistent with a growing literature that argues for the importance of examining intersectionality among multiple status characteristics, which tends to find the largest disadvantages for youthful male minority defendants (e.g. Steffensmeier et al. 1998; Spohn and Holleran, 2001). It should be noted, though, that the interaction effects for young male minority defendants were relatively small in magnitude, particularly for the magistrate and charge reduction outcomes. Table 18 summarizes the limited evidence for cumulative disadvantages across prosecutorial outcomes in federal court.

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Table 17: Support for Theoretical Hypotheses

		Level of Support for Hypothesis		
		Strong	Mixed	Weak
Hypothesis 1	*Case declinations will be less likely for young, male, and minority suspects*			X
Hypothesis 2	*Charge reductions will be less likely for young, male, and minority suspects*		X	
Hypothesis 3	*Charging discounts will be smaller for young, male and minoirty suspects*			X
Hypothesis 4	*There will be cumulative gender disparity across case processing outcomes*		X	
Hypothesis 5	*There will be cumulative race disparity across case processing outcomes*			X
Hypothesis 6	*Significant variation will exist across federal districts in case dismissals*	X		
Hypothesis 7	*Significant variation will exist across federal districts in charge reductions*	X		
Hypothesis 8	*Significant variation will exist in the effect of charge reductions on sentencing*	X		
Hypothesis 9	*Court size and caseload pressure will be positively related to declinations/charge reductions*		X	
Hypothesis 10	*% Black, SES disadvantage, and crime will be negatively related to declinations/charge reductions*			X

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Table 18: Cumulative Effects of Age, Gender and Race/Ethnicity across Outcomes

	Declination	Magistrate	Charge Reduction
Offender Characteristics			
Young	-	+	-
Male	+	-	-
Black	+	ns	+
Hispanic	n/a	n/a	+
Young Male Minority	-	-	-

+ = positive relationship
- = negative relationship
ns = non-significant relationship
n/a = not applicable

The remaining predictions focused on contextual variations in prosecutorial discretion across federal district court environments. Hypotheses 6-8 predicted significant inter-court variation in the use of declinations, charge reductions, and the effects of charge reductions on final sentence lengths. Strong support was found for each of these expectations. Unconditional HLM models clearly demonstrated significant variation across district courts in each outcome. This is consistent with court community perspectives that highlight the importance of locally-varying cultural mores, case processing strategies, and routinized punishment norms across federal district court contexts (Eisenstein and Jacob, 1977; Eisenstein et al. 1988; Ulmer, 2005; Johnson et al. 2010). Moreover, the magnitude of inter-court variation was substantial. For instance, expected charge reduction rates varied from a low 4% to a high of 42% across courts.

Several contextual measures were examined in the final two hypotheses to explain inter-court variation in charging outcomes. Moderate support was found for predictions about the size and caseload of the court. Court size was consistently found to be positively related to declinations, magistrate filings and charge reductions, but caseload pressure was not. Caseload pressure demonstrated positive effects on magistrate filings but negative effects on declinations.

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Heavier caseloads were also associated with shorter sentence lengths on average. Although the results for court size are consistent with expectations and with prior work examining sentencing outcomes in state courts (e.g. Ulmer and Johnson, 2004), it is difficult to disentangle the independent effect of court size from other related characteristics of the surrounding environment. Districts that process the most cases generally have the largest U.S. Attorneys' offices and these tend to be disproportionately located in areas with large Hispanic populations and high immigration caseloads. Future research is therefore needed that better separates out the independent effects of court structure from correlated community characteristics. Examining the independent effects of office size in different geographic locales would be one way to investigate this issue in future work. Additional work is also needed on caseload pressure. This study examined one global measure capturing cases filed per Assistant U.S. Attorney, but more refined measures might be examined in future work that incorporate different measures of caseload pressure across crime types. For instance, it may be that large immigration or drug caseloads exert unique effects relative to other offense categories. Such investigations should be the focus of future research on caseload pressure in U.S. District Courts.

Finally, the last hypothesis focused on the role of broader community contexts, including percent Black, socioeconomic disadvantage and crime rates. Very little support was found for these measures in the current study. The only influence to demonstrate significant effects on prosecutorial case outcomes was SES disadvantage on case declinations across courts. The theoretical expectation was that poorer socioeconomic conditions would translate into harsher charging outcomes, but this relationship was in the opposite direction. One possibility is that socioeconomic context is positively correlated with the resources of the federal court such that courts located in poorer districts have fewer resources and are therefore more likely to decline

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cases for prosecution. However, actual data on federal court resources would be needed to test this possibility. One fruitful avenue for future investigation, then, would be to collect additional data on the funding resources across federal district courts to see whether or not this might account for the unexpected effect of SES disadvantage. The only other significant effects for community characteristics emerged in the analysis of sentence lengths, where higher crime rates increased average sentences and percent black mitigated the effect of charge reduction on sentence length slightly. In general, then, this study finds limited evidence that the broader socio-demographic characteristics of the surrounding district court environment exert significant influence over the prosecutorial use of charging decisions in individual criminal cases.

POLICY IMPLICATIONS

The implications of the current research for criminal justice policy and practice in the United States are potentially far-reaching. Although federal prosecutors have incredible discretionary power to dismiss cases, reduce charges, and determine sentencing discounts and enhancements, they remain among the least scrutinized and the least well-researched of any actor in the justice system. This is particularly the case in the federal justice system. The current research offers several insights into key policy domains in federal prosecution.

First, the current results help to inform ongoing policy concerns over the specter of systemic social inequality in the federal criminal justice system. Federal sentencing reform was driven in large part by concern over unwarranted disparity in federal punishments, yet the focus of modern reform efforts has been exclusively on the control of sentencing discretion of federal judges. Relatively little attention has been devoted to unwarranted disparities that may be associated with federal prosecutors' charging decisions, despite suggestions by some commentators that these decisions are the most consequential of all in the formal punishment

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process (Forst, 1999). Although the results of this study do not indicate a systemic pattern of uniform bias against specific defendant groups, it does suggest significant differences characterize the probability of different prosecutorial outcomes across groups. From the available data, it is difficult to fully capture the reasons for these differences. This suggests that to better inform policy, improved sources of information are needed that better capture the decision making rationales of federal prosecutors at initial charging and subsequent plea negotiation stages of criminal case processing.

To facilitate this process, prosecutors should be required to provide written reasons for their charging decisions, including initial declinations, dismissals, and subsequent charge reductions, similar to the way that judges provide reasons for sentences that depart from the federal guidelines. Provision of explicit charging explanations would increase the transparency of the process and could ultimately contribute to greater equity and fairness in the pre-sentencing processes that factor into federal criminal punishments. U.S. Attorneys' offices should also be required to have explicit charging policies that guide the decisions of AUSAs in individual cases. Many offices already have these types of policies, which vary in their degree of formality across districts, but they could be more formally codified and made more publicly available in all districts. This would allow for more facile comparison of federal charging policies across contexts, which could lead to greater uniformity as well as the dissemination of successful policy initiatives across U.S. District Attorneys' offices in different districts.

Second, the current results provide new information about inter-district consistency in early case processing outcomes across federal court contexts. Findings from this study clearly suggest that considerable variation exists in the use of case declinations, magistrate filings and charge reductions across federal districts. On the one hand, the federal justice system is

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comprised of a uniform set of legal statutes, with uniform policies established by Main Justice and the same set of federal sentencing guidelines applied equally to all convicted criminal cases. These forces for uniformity may be expected to create consistency in case processing strategies and outcomes across federal districts. On the other hand, though, the federal justice system confronts an enormous variety of diverse social, political and cultural contexts, spanning the entire United States and even including certain foreign territories. Prosecutorial priorities, caseload pressure and composition, and characteristics of the communities being served vary widely across federal court contexts. For these reasons, it is perhaps not surprising that different charging strategies characterize different district court environments.

From a public policy perspective, the relevant question is whether or not uniformity in charging practices across federal districts is desirable and if so how can it be achieved. An answer to the first part of that question requires informed debate on the part of policy makers and criminal justice practitioners. One of the explicit goals of federal sentencing reform was to create greater uniformity in punishments across districts (USSC, 2004). If uniformity in pre-sentence outcomes is also a goal of the federal justice system, then, new policy initiatives are likely needed to achieve greater consistency in charging practices across federal court contexts.

Before formal policies can be enacted, though, additional research is needed on both individual and contextual disparities in federal prosecution. The current results are far from definitive, but they might serve as a foundation for the accumulation of future research on prosecutorial charging decisions that could be used ultimately to establish more clearly articulated charging guidelines for federal prosecutors. The idea of prosecutorial charging guidelines is not new, in fact it has been implemented, even if to limited degree, in certain international justice contexts such as The Netherlands (Tak, 2001). If additional research

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identifies important loci of unwarranted charging disparity, systematic charging guidelines could serve as a useful tool for addressing that inequity. In the case of both individual defendant disparity and inter-district contextual disparity, formal charging guidelines that clearly articulate the criteria and considerations U.S. Attorneys are meant to consider would help increase transparency and consistency in the process and would provide a useful mechanism for formalizing what are otherwise highly discretionary and largely unregulated punishment decisions. At the very least, introducing the possibility of charging guidelines should serve to stimulate thoughtful discussion and public debate about the relevant and irrelevant factors that prosecutors should consider when deciding whom to charge, what charges to invoke, and how to achieve greater inter-district consistency in federal justice. Such a discussion would contribute enormously to ongoing academic discussions and contemporary policy debates regarding the growing importance of prosecutorial discretion in the federal justice system.

Before policies such as charging guidelines can be developed, though, improvements will be needed in government oversight of prosecutorial behavior and in the data that is collected to assess fairness and consistency in charging behavior across courts. Somewhat ironically, around the same time that judicial discretion was identified as an emergent concern in criminal punishment, sparking new, large-scale data collection efforts on post-conviction sentencing outcomes, the large-scale existing data collection efforts on prosecutors were systematically defunded.[10] Today, extremely detailed data are readily available on judicial sentencing decisions in the federal justice system, but almost no data are publicly available on the decisions of federal prosecutors that precede sentencing. What is required is a broad paradigm shift on the part of

[10] The most prominent example was the Prosecutors Management Information System (PROMIS) which was a detailed federal case management system dating from the 1970s and 1980s. It recorded criminal case information such as defendant and case characteristics, charge, sentencing and continuance processes and provided the raw data for a number of early groundbreaking studies of prosecutorial discretion (e.g. Albonetti, 1986; 1987), but it has since been discontinued.

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academics, court actors, and federal policy makers to recognize the importance of pre-sentence charging decisions and the necessity of improved data sources for studying these outcomes, for improved policies will require improved data at the core of new evidence-based charging policies.

The first step in improving fairness, consistency and transparency in federal charging practices, then, must be to collect more detailed and comprehensive data on current prosecutorial behaviors. U.S. Attorneys' offices already use automated case management data systems, such as the Legal Information Office Network System (LIONS), which tracks the status of criminal and civil matters, cases, and appeals. Although these data are occasionally used for administrative purposes, such as monitoring caseloads or forecasting budgets, they are not widely available to researchers and do not contain essential information for analyzing federal charging decisions. However, it would be relatively easy to improve existing case management systems to include information on case processing considerations, such as the strength of the evidence, availability of witnesses or testifying co-conspirators, and individual AUSA rationales for various case decisions, as well as including basic demographic and background information about individual defendants. These data, then, could be made more readily available to U.S. Attorneys, policymakers and independent researchers to facilitate our understanding of federal charging procedures and outcomes. Ideally, a research division or administrative agency, such as the U.S. Sentencing Commission, that has a vested interest in collecting high-quality data on prosecutorial decision-making may be the most promising approach to achieving improved information systems in federal prosecution.

Ostrum et al. (2004: 333), in their comprehensive review of sentencing concluded that "effective sentencing reform has a greater likelihood of success if firmly grounded in both the

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theory and realities of sentencing in the United States." The same is true of prosecutorial reform, but before effective reforms can be identified and introduced, it is imperative for the research and policy communities to invest in improved data and methods for better identifying and understanding the core "realities of prosecution" in the federal courts. Although the FJSRC data examined in this study represent a considerable advance in the availability of information on federal prosecution, they have several important limitations that restrict their ability to inform contemporary justice policy and should be used to inform improvements in future research endeavors examining prosecutorial discretion in the federal justice system.

LIMITATIONS AND FUTURE DIRECTIONS FOR RESEARCH

The current study has a number of important limitations that should be acknowledged and should serve as a useful framework for improving future research on prosecutorial discretion in the federal court system. Because the data for this project come from multiple federal agencies, there are important differences in the quality and content of information that is available across datasets. For instance, the AOUSC data include Class B and C misdemeanor offenses which are not included in the USSC sentencing data. It is important to account for these differences when linking files across datasets. Match rates, for instance, are much higher after adjusting for these differences. Although the current research examined differences between matched and unmatched cases, additional work is required in this area. In order for valid conclusions to be drawn regarding the treatment of individual offenders it is essential that the sample being analyzed is representative of the population of all federal offenders. Future work is therefore needed that examines in greater depth the case attrition process across linked datasets and its potential consequences for conclusions regarding prosecutorial decision making outcomes across courts.

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A related concern is that there are instances where data on specific variables of interest are not reliably reported or are not reported consistently across datasets. For instance, Hispanic ethnicity is only reported in the USSC data. Therefore it is not possible to examine the cumulative effects of Hispanic ethnicity across the earlier prosecutorial outcomes like dismissals and magistrate filings. Moreover, the estimates for race effects in these analyses are almost certainly biased by the exclusion of suspect ethnicity. If, for example, Hispanics are discriminated against at the initial case processing stage, and if the majority of Hispanics are classified as whites, then this may well account for the positive effects that race demonstrated in the analysis of criminal case declinations. Such anomalies in the data make it extremely difficult to examine racial and ethnic differences in analyses that rely on the US Marshall's data for offender characteristics, so these results should be interpreted very cautiously. Because of the differences in the quality of information reported in different datasets, it is imperative that future research carefully considers which research questions can be best addressed by which data.

Perhaps the most important limitation of the current work is that none of the datasets report any measures that capture the strength of evidence in the case. Prior research clearly demonstrates that this is an important correlate of prosecutorial decision making (Albonetti, 1987; Chen, 1991; Spohn et al. 1987) so it represents a substantial limitation of the current study. The only information on evidentiary strength is reported in prosecutors' reasons for case dismissals, and unfortunately, parallel information is not reported in cases that are filed, making it impossible to include a measure of case strength in the analyses. Although this is a clear and important limitation, it should only affect the reported disparity findings to the extent that evidentiary strength varies systematically across gender or racial groups or across jurisdictions. There is no a priori reason to believe that this is the case, and it is not uncommon for other

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research on prosecutorial charging decisions to suffer from the same limitation (e.g. Wright and Engen, 2006). Given the paucity of data for tracking offenders across early case-processing stages of the federal justice system, the current work, even with its limitations, arguably represents an important step forward, but this once again highlights the essential need for more systematic data collection efforts on early case processing outcomes in federal court to better understand prosecutorial charging decisions.

The current study provides a basic analysis of variations in charging outcomes across defendants and across district-court contextual environments in the federal justice system that could be extended in several additional ways in future research. Analyses in this study are based on the linking of USMS arrests records to EOUSC data and on the linking of AOUSC data to USSC sentencing data. Future work should continue to extend this approach by linking additional data across additional years. For instance, the linked USMS-EOUSC data can ultimately be combined with the AOUSC-USSC data to more fully explore the criminal punishment process from arrest to sentencing. That approach was not followed in the current work due to concerns over high rates of unlinked cases across the multiple merger procedures, but with additional circumspection and careful analysis of the consequences of case attrition such endeavors could have substantial payoffs in future research. For instance, many of the detailed variables available in the sentencing data are absent from early stages of case processing so it may be possible to use the fully linked data to examine additional correlates of early case processing decisions not considered in the current study. Although not examined in the present study, data from the Bureau of Prisons (BOP) are also available and can be linked to the USSC sentencing data to examine additional outcomes of interest, such as time served in prison.

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The FJSRC data are also available for a much broader time frame than examined in the current work. This offers unique opportunities to investigate changes in federal case processing outcomes over time. Research of this ilk is extremely rare, largely because the available data has not been heretofore available. With the FJSRC data, though, longitudinal analysis of arrest, prosecution, sentencing and imprisonment can be performed, shedding new light on trends in federal criminal case processing. This is especially important given important changes that have occurred in federal punishment practices in the past few decades. Analyses can be conducted on key policy changes that have occurred, such as the recent Supreme Court decision in *U.S. v. Booker* (2005) which made the federal sentencing guidelines advisory rather than mandatory. A number of studies have focused on the effects of *Booker* on sentencing (Frase, 2007; Ulmer et al. 2010; Ulmer and Light, 2010), but it is likely that such a dramatic policy shift would have important ripple effects through earlier stages of criminal case processing. With the FJSRC data such changes over time could be the focus of innovative and information future research endeavors. The research opportunities that are available through the linking of federal datasets across agencies and years are exciting and expansive and should serve as an important impetus for future work on federal criminal case processing.

Future research would also benefit tremendously from the improvement of measures that better capture more proximate elements of federal district court contexts. This study examines common correlates of social context that have been used in prior research, but substantial variation remains unexplained between-courts even after these predictors are included in the models. Future work therefore needs to begin to develop and incorporate improved theoretical measures of federal court contexts. There are several possibilities that should be pursued. First, additional measures that have been examined in extant work should be investigated. These

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include additional structural court factors, such as differential case compositions, trial rates, and departure rates, as well as additional measures of the surrounding courtroom environment, such as indicators of political conservatism or geographic location.

Second, additional measures of both structural and environmental factors should be theorized and examined in future work. For instance, early work argued for the importance of the bureaucratization level of criminal courts (e.g. Hagan, 1977), but relatively little empirical work has incorporated quality measures of bureaucratic structure. This may be particularly important in studies of federal prosecutors' offices where the bureaucratic organization varies both vertically and horizontally and across district courts. Some US Attorneys' offices assign entire cases to individual AUSAs, whereas others are organized by tasks. In most offices, some degree of specialization is present among AUSAs, but the degree of specialization varies across contexts. Direct measures of these types of organizational factors could substantially improve our ability to understand and explain inter-district differences in prosecutorial behavior.

Additional influences from the surrounding community environment should also be investigated in future work. For instance, some research suggests that minority population growth matters more than its absolute size (Johnson et al. 2010; Wang and Mears, 2010). The demographic explosion in both the Hispanic and immigrant populations in recent years may affect punishment processes, particularly in Southwest border districts where growth has been most pronounced. Future work should investigate the influence of additional district-level measures such as proximity to the Mexican border and the size and growth of immigrant and Hispanic populations. Changes in other environmental conditions could also prove important. For example, growth in federal crime rates or patterns of drug trafficking activity may have important influences on charging decisions. Specific prosecution initiatives in different districts

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also need to be incorporated into future research. For instance, some jurisdictions participate in immigration initiatives, such as the Northwest and Southwest Border Prosecution Initiative, which provide funds for state and county prosecutors to dispose of federally-initiated cases. The availability of programs such as this may have important influences on federal prosecutors' declination decisions.

Third, there is a clear need for the development of new and innovative measures that better capture important elements of the courtroom punishment process. Paramount among these are measures of court actor interaction and measures of local court context. Court community perspectives emphasize the importance of interaction patterns among members of the court workgroup as well as the resulting norms and mores that emerge over time, yet empirical research seldom is able to incorporate reliable measures of these influences. Rare exceptions exist in research on state courts, such as the work by Haynes et al. (2010) which examines the effects that similarity, proximity, and stability of the court workgroup exert on final punishment outcomes, but similar measures have not been incorporated into research on prosecutors generally or into studies of the federal justice system. Moreover, despite the theoretical emphasis on local court contexts, direct measures of cultural norms are seldom included in research on inter-jurisdictional variations in punishment. This is primarily because it can be difficult to capture amorphous theoretical constructs such as "court culture", however, it is certainly worth the effort to pursue this in future work. Given the centrality of theoretical concepts involving local normative case processing expectations, it is imperative for future work to develop improved measures in this area.

One promising direction would be to engage in multi-method approaches that incorporate unique sources of data, such as surveys of court actors that specifically tap into various

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dimensions of court culture across districts. The survey measures, then, could be used to develop cultural indicators of different case processing and punishment norms across districts, which could be used to extend analyses like the one presented in this study. Other approaches might involve the collection of historical data on case processing outcomes to identify cultural patterns in case dispositions over time. Without engaging in the development of these types of new and creative approaches to the measurement of key theoretical contextual constructs, future research on inter-court variations in prosecution and punishment is likely to continue to struggle to explain the significant inter-district variations that characterize case processing outcomes in the federal criminal justice system.

Finally, research is also needed that further disaggregates inter-district variation to investigate differences among offense types and court actors in the system. Some prior research emphasizes that racial and gender inequality in federal justice may be conditional on the type of offense (e.g. Steffensmeier and Demuth, 2000; Johnson et al. 2010). In particular, much work focuses on racial disparity in federal drug offenses (e.g. Albonetti, 1997; Hartley et al. 2007; Sevigny, 2009), with more recent work highlighting the uniqueness of case processing approaches to immigration offenses (Hartley and Tillyer, 2012). Some limited work also suggests that prosecutorial charging decisions may vary across offense categories (O'Neill Shermer and Johnson, 2010) so this should be investigated in additional detail in future work.

Ideally, future extensions of the current analysis should also begin to incorporate information on the individual court actors involved in federal decision making processes. Spohn and Fornango (2009), for instance, reported that significant variation exists between federal prosecutors in the likelihood of granting substantial assistance departures to defendants. Similar types of analyses are needed for earlier case processing decisions in order to better disentangle

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the extent to which observed differences between courts are the product of differences among the court actors that constitute those courts. At a minimum, data should be collected on federal prosecutors, judges and public defenders. Unfortunately, no information of this sort is currently available and the identification of individual court actors is not reported in publicly available federal data. Federal agencies should begin to collect and report this information which would improve our understanding of federal court punishment processes and would add greater transparency and accountability to the system as a whole.

CONCLUSION

In the late 1970s, political pundits, academics and policymakers united in a dramatic bipartisan effort to establish greater fairness and uniformity in criminal sentencing procedures. Numerous sentencing reforms emerged, such as structured sentencing guidelines that were aimed at constraining the unbridled discretion of the judge and creating increased consistency and transparency in criminal punishment. Although a number of commentators have cautioned that modern reforms have shifted the balance of punitive power toward prosecutors, relatively little research or public debate has focused on the immense discretionary power of district attorneys. Whether or not the expansion of prosecutorial discretion is overly problematic remains an open empirical policy question, but it is one that it is absolutely essential to continue asking.

The goal of this study was to investigate prosecutorial discretion in the federal justice system by analyzing the correlates and consequences of charging decisions across U.S. District Courts. The study makes several novel contributions. First, it provides a systematic review of empirical research on prosecutorial decision-making, identifying several key limitations in prior work. This review suggests that far too little empirical attention has been devoted to the study of prosecutors in the criminal justice system. Much of the available research is dated, limited to

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small restrictive samples and conducted on specific offense types in limited jurisdictions, which limits its generalizability, especially to the federal justice system. One of the most fundamental issues confronting both researchers and policymakers, then, is devoting greater attention to the importance of the prosecutor in the punishment process of criminal courts.

Second, this study introduces an underused methods approach that links multiple datasets across different federal agencies. The linking procedure helps to overcome important weakness that characterize available data on federal charging decisions and it allows individual offenders to be followed across the multiple stages of federal criminal case processing. These FJSRC data have not been widely used by researchers but they contain vast potential for addressing a wide variety of important policy and research questions in the federal justice system. This study represents an exploratory example of how multiple datasets can be combined to investigate potential disparities in prosecutorial decision-making outcomes in federal criminal courts. The federal justice system is among the largest and fasting growing, so future work should continue to build on this study, combining additional datasets to address a broader range of research questions in order to continue to improve our understanding of the processes that constitute federal criminal punishments in the U.S.

Third, this study offers the first large-scale empirical investigation of jurisdictional variation in federal charging decisions. By extending the linked FJSRC data to include several theoretically-informed measures of federal court social contexts, this study offers unique insights into inter-jurisdictional variation in criminal case processing. Although the results of this work clearly indicate that important contextual variation characterizes federal charging behaviors, it also suggests the need for more creative approaches to studying social contexts in future work. The size of the U.S. Attorneys' office and the caseload pressure appear to be important elements

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tied to district court differences, but additional sources of information are needed as well that better capture proximate differences in the qualities of local court legal culture across federal districts. Qualitative approaches to data collection should be combined with quantitative approaches like the one in this study to provide a broader context of understanding that helps to explicate more fully the subtle complexities of the quantitative results. One particularly promising avenue is to conduct surveys with court actors that capture unique aspects of local court culture, such as the dominant case processing strategies, local office policies, and the relative emphasis on punitiveness, crime control, due process and organizational efficiency concerns at the district level. Ultimately, improved measures of the cultural milieu of the court will be required to better explain inter-jurisdictional variation in charging practices. The current study clearly demonstrates that these variations exist and suggest that improved measures of court context should be an essential priority of future work.

Finally, this research identifies several promising directions for future policy initiatives that might be pursued to increase equality, uniformity and transparency in federal pre-sentence decision-making outcomes. These include explicit stated reasons on the part of federal prosecutors for declining or dismissing cases and for subsequent charge negotiations that are introduced. Without explicit reasons for how and why prosecutors make charging decisions it will remain extremely difficult to identify and address key pitfalls in existing procedures. Existing office policies should be overt and made publically available and new policies should be developed that are aimed at consistency and fairness in federal charging practices. To facilitate improved policies, advances need to be made in data collection efforts of federal prosecutors. Existing case management systems could be readily adapted to include additional information on the strength of the case, the qualities of the defendants, and prosecutorial charging rationales.

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Academics, policymakers and criminal justice practitioners also need to co-engage in productive discussion regarding existing disparities across jurisdictions and the extent to which future policy initiatives need to be developed to address contextual disparity in prosecution. One promising policy initiative would be the development of prosecutorial charging guidelines that create more systematic standards for how and when to dismiss cases or negotiate reduced charges across federal court environments.

For decades, public policy efforts have been aimed at constraining judicial discretion, while equally consequential decisions at early court proceedings have been largely ignored. Assessments of the effects of sentencing guidelines have been positive, but recent commentary question these sanguine conclusions, noting that "Sentencing research, because it usually does not consider how discretion operates before and after the sentencing stage, does not actually provide an empirical basis for such satisfaction" (Bushway and Piehl, 2007: 461). The focus of future research and policy efforts need to redress this omission by incorporating a more dynamic understanding of criminal punishment that begins at arrest and continues through the final sentencing decision. In its report on the "Challenge of Crime in a Free Society" the 1967 President's Commission on Law Enforcement and the Administration of Justice first identified the systemic nature of the criminal justice system, with criminal cases beginning at arrest and flowing through multiple stages to final disposition. For too long now, researchers and policymakers have neglected the systemic nature of criminal justice. As such, the true challenge of crime research and policy in the coming decades will be to incorporate a broader notion of punishment that explicitly includes the consequential decisions of prosecutors and other court actors that precede and condition final punishment determinations in the federal justice system.

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