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**Prosecution and Racial Justice in New York County**  
Partnership Report

Submitted to the National Institute of Justice  
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## Introduction

The number of blacks and Latinos involved in the criminal justice system is disproportionately large compared to their numbers in the general population. This phenomenon, known as minority overrepresentation in the criminal justice system, has attracted the attention and concern of researchers, policymakers, and advocates nationwide. Yet attempts to understand the factors contributing to this disproportion historically have been limited by some inherent aspects of the justice system structure. Specifically, the system grants prosecutors broad, largely unchecked, and virtually unreviewable discretion in filing, changing, or reducing charges, plea bargaining, and making sentencing recommendations.

Despite the vast influence of prosecutors in the criminal justice system, there is little existing research that adequately examines the extent to which prosecutors may contribute to unwarranted racial and ethnic disparities. Researchers rarely get access to the data necessary to investigate the relationship between race or ethnicity and prosecutorial outcomes; indeed, most jurisdictions do not systematically capture this information. When researchers are able to use available data, they typically examine the data in isolation from prosecutorial practices. The results are of relatively little use to prosecutors concerned with developing a more deliberate approach to the exercise of discretion within their offices and with ensuring the equitable treatment of defendants.

With an interest in addressing this gap in the research and providing practical findings and evidence-based technical assistance, the Prosecution and Racial Justice Program (PRJ) of the Vera Institute of Justice (Vera) has partnered with a number of district attorneys' (DAs') offices around the country, using a unique researcher-practitioner model.

This report describes Vera's most recent partnership, with the New York County District Attorney's Office (DANY), which was funded by the National Institute of Justice (NIJ). The partnership allowed Vera to place two-to-three researchers, depending on the phase of the project, at DANY for 20 months to work closely with DANY staff and analyze felony and misdemeanor cases disposed in 2010 and 2011. The study began in January 2012.. It aimed to explore the influence of defendants' race and ethnicity on case acceptance for prosecution; detention status; plea offers to a lesser charge and custodial punishment offers; case dismissals; sentencing; and charge dynamics while considering a host of other factors influencing prosecutorial decision making (e.g., prior record or charge seriousness). The project involved: (1) evaluating and analyzing existing administrative data; (2) conducting prosecutorial semi-structured interviews to better understand case processing and data limitations; (3) collecting additional data from a sample of 2,409 case files; (4) hosting meetings to discuss research findings and their policy implications; and (5) disseminating findings through reports, peer-reviewed publications, and conference presentations.

This report serves as a supplement to the technical report *Prosecution and Racial Justice in New York County*. It is intended to guide researchers who are planning to study the issues of race and prosecution, and district and county attorneys and the managers of other criminal justice agencies who are contemplating similar partnerships. It will focus on the process of partner selection, research-practitioner relationship building, project start-up and logistics, understanding of the office and the jurisdiction, data collection, data analyses, and the development of the technical

report based on the findings. It will not review existing literature, research questions, methods, and findings; for those subjects, please see the technical report.

## 1. Identifying a Partner

The collaboration between Vera and DANY represents an ideal context for a study of this nature. New York County is one of the world's wealthiest places yet it encompasses the greatest income inequality by race of New York City's five boroughs: median income for Latino and black households is one-third that of white households<sup>1</sup> and, as this study suggests, low income is associated with more punitive case outcomes. New York City is also the epicenter of the ongoing controversy surrounding police stop-and-frisk practices, which highlights racial tensions and the need for law-enforcement to achieve race-neutral decision making. Moreover, recent changes in New York State's so-called Rockefeller drug laws generated much interest among policymakers, practitioners, and researchers because of a longstanding public debate over their possible relationship to overrepresentation of blacks and Latinos in the criminal justice system. Furthermore, Vera's legacy of racial justice work in New York traces back to the early 1960s, when the Institute implemented the Manhattan Bail Project, which showed that many people accused of committing a crime can be relied on to appear in court without having to post bail or be held in pretrial detention. Finally, New York County's selection as a study site was also motivated by DANY's commitment to achieve greater equality in case outcomes.

New York County district attorney Cyrus R. Vance, Jr. was elected to office in 2010 with a commitment to fairness and integrity and a desire to examine racial and ethnic equity in the

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<sup>1</sup> Based on the U.S. Census Bureau 2010 American Community Survey, the median household income for whites (excluding Hispanics/Latinos) is \$94,945, for Asians - \$63,820, for Hispanics/Latinos - \$32,104, and for blacks - \$31,802.

office's decision making. In January 2011, Vera's then president, Michael Jacobson; the study's principal investigator, Besiki L. Kutateladze; PRJ's then program director, Wayne McKenzie; and legal counsel, Karen Goldstein began conversations with DANY staff about establishing a partnership that would allow a thorough study of DANY's case-processing and disposition practices in order to identify and reduce unwarranted racial and ethnic disparities. These discussions were largely triggered by the National Institute of Justice proposal solicitation with a March 1, 2011 deadline. In order to respond to the solicitation, Vera and DANY developed a memorandum of understanding (see Section Two and Appendix) while Vera researchers drafted a proposal to NIJ.

## **2. Relationship Building**

A fundamental aspect of establishing a strong researcher-practitioner partnership is relationship building. Parallel to the process of developing a work proposal, Vera staff began to build trust and mutual understanding with the DANY staff. DANY's chief of the trial division, Karen Friedman Agnifilo, identified staff who would serve as Vera's primary contacts. In turn, Vera staff working on the project developed a strong, working relationship with these people during the past two years. They included:

- line ADAs and bureau chiefs who were available to assist and guide Vera researchers in understanding how cases are handled and the factors that influence decision making and outcomes;
- a working group of analysts from DANY's planning and management department who were assigned to work with Vera on a regular basis;



- a contact from DANY's IT department who helped set up a work space for a Vera researcher in the DANY office and assisted with the transfer of data to Vera's network; and
- a contact in the records department who located paper case files and provided them to the Vera researcher in a timely fashion.

Prior to the project's launch, on January 1, 2012, Vera met twice with DANY staff. The first meeting included multiple executive staff from DANY—bureau chiefs, the chief of the trial division, and executive assistant district attorneys. During this initial meeting, Vera staff explained past experiences working with other district attorneys' offices and described their expectations for DANY's involvement in decision making about how to analyze data and use research findings. Vera staff fielded questions about what methods they might use to analyze complicated information. They also encouraged DANY staff to share what their office hoped to accomplish in doing this work and to explain some of their hypotheses about other factors that might be linked with race in determining defendants' disparate case outcomes, such as socio-economic status.

During the second meeting, Vera staff met with analysts from DANY's planning and management department and the deputy chief of trial division in charge of criminal court, Nitin Savur, to discuss data sources to which DANY has access and to learn how each system stores information on each major discretion point. This meeting informed Vera's understanding of what data DANY had and what information DANY staff might want.

These early conversations demonstrated Vera's commitment to collaboration and relationship building and the extent to which Vera staff truly value the input and knowledge of the DANY staff. The conversations helped develop trust and assurance that this partnership was to be mutually beneficial. Similarly, these meetings showed Vera that DANY would be a committed and active partner, open to discussions about the office's practices, the implications of findings, and anything else that might arise.

Another essential aspect of developing a trusting working relationship between Vera and DANY was the crafting of a memorandum of understanding (MOU) (see Appendix B). While this MOU was a NIJ requirement for this project and had to be submitted along with the proposal, in the past Vera researchers have developed discretionary MOUs because of the important role they can play in articulating the roles of each party in a partnership, allowing each side to understand what is expected in the relationship and any restrictions on the work.

The MOU spelled out the goals of the project, the roles that Vera and DANY would play, including specific tasks that each would complete, and confidentiality guidelines for data use. It stipulated that Vera researchers would collect and analyze data, draft reports, and disseminate findings to the public. DANY would provide Vera with all data necessary for the analyses of discretion points, provide administrative support, and in-house office space for one full-time and one part-time Vera researcher for the 18-month study period, where DANY staff would be available to Vera researchers to answer questions that may arise.<sup>2</sup>

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<sup>2</sup> The study was initially envisioned as an 18-month engagement; however because of delays in data collection from paper files, Vera obtained a no-cost extension for an additional two months.

### 3. Project Start-up and Logistics

These early efforts to build a strong relationship with clear-cut roles identified in the MOU allowed the project to get off to a quick and productive start as soon as Vera received funding on January 1, 2012.<sup>3</sup>

On January 18, Vera staff and DANY's principal participants met. They reviewed the MOU and began to talk about the logistics of data sharing, setting up workspace for Vera staff at DANY, and Internet access for the Vera researcher.

Vera and DANY decided that Vera's workspace would be located within DANY's planning and management department, because Vera could maintain a close partnership with the working group of analysts within the department during the project period, and project staff from both Vera and DANY could address various issues as they transpired (e.g., confusions about variables or codes). To ensure data security, no data obtained from DANY or collected by Vera's researchers was stored on computers assigned to the project; instead, these data were saved on Vera's secure research drive. Researchers accessed Vera's secure research drive remotely and DANY provided Vera with Internet access to enable this access. Throughout the project, Vera's and DANY's IT departments were available to assist with any issues around the research workstation. Vera researchers also received a DANY ID card, which allowed them easy entrance into the DANY offices in order to facilitate their work.

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<sup>3</sup> Before receiving any funds, in December 2011, the project team obtained Vera's Institutional Review Board's approval for the implementation of the project.

To ensure a secure transfer of data, Vera used the password-protected file-sharing system called FileShare that is used for secure data exchange with our partners located across the county.

Vera's FileShare system has a maximum data upload capacity of 1GB, and can hold up to 30GB of data for an extended period. DANY analysts were instructed in how to use FileShare to upload all relevant data. Vera's researchers downloaded the data and stored it on Vera's secure research drive.

As the project ramped up and Vera and DANY started to review the data Vera would want to access, Vera made every effort to minimize the amount of time and effort this work would require of DANY's analysts. Vera and DANY staff agreed that, while the time and effort required would be greater during the project's initial stages, when the analysts would be helping with data retrieval and while Vera's research team would be familiarizing themselves with the DANY database, the staff should not be disrupted from their work on DANY-related matters at any point during the project. Therefore, it was decided that Vera researchers and the DANY analysts would meet twice a month to discuss any questions that arise with the dataset and its variables. This arrangement minimized disruptions from the analysts' main duties while ensuring that Vera researchers had access to the information they needed in a timely manner.

#### **4. Understanding the Office and the Jurisdiction**

The process of gathering qualitative information about the office and the jurisdiction was necessary for informing data collection and analyses. In order to collect qualitative information, Vera staff continued to meet with DANY staff throughout the project set-up period to build on information learned from conversations prior to the project launch and specifically to learn more

about the office, the data that would be useful for analysis, and case processing in the Manhattan jurisdiction.

Vera researchers met with DANY analysts assigned to help with the project just after the launch to review the DANY data system, learn more about the data points stored in each system, and begin discussions about what type of data the VERA researchers would want to access. Based on this conversation, the analysts came up with a list of people they recommended the Vera researchers meet with prior to handling the dataset. This included staff from case management services, which coordinates the office of intelligence and is a free-standing unit begun by district attorney Vance, the special victims bureau, witness aid services unit, 1<sup>st</sup> and 2<sup>nd</sup> level ADAs – including bureau chiefs William Darrow and Connie L. Fernandez – and the IT department. Visits with the director of case management services, Gregory Garone, the chief of the special victims bureau, Audrey S. Moore, and the director of the witness aid services unit, Thomas Alessandro, proved most helpful. In February 2012, the director of case management services provided Vera staff with a tour of the early case assessment bureau (ECAB), the office where most cases are first processed after an arrest. This tour included a step-by-step explanation of the case-management process, describing the key players at each stage in the process, and the legal documents that are used to record information about cases. In ECAB, Vera researchers learned about how cases first come to DANY as an arrest report completed by the arresting officer(s) as well as the process for determining which of these cases should be arraigned versus those that should become desk ticket appearances. Vera was also given an extensive explanation of how cases are first assigned to ADAs. The chief of the special victims bureau and director of the witness aid services unit provided Vera with a detailed explanation of victim services and a

glimpse of one of the limitations of the DANY database—that little information about victims is recorded electronically.

The DANY analysts organized a series of mini-lectures to teach Vera’s researchers about how data are collected and entered into the electronic database and which variables are the most reliable and could best inform Vera’s research questions. During these sessions, the analysts provided Vera researchers with a flow chart diagramming the organization of DANY’s offices, bureaus, and units and another flow chart<sup>4</sup> describing case processing from arrest to sentence, including summaries of the number of cases at each stage in the process. They highlighted the major discretionary points in this process. Finally, they provided additional detail on data entry and data storage.

Beginning in August 2012, Vera researchers conducted a series of 16 interviews with prosecutors (see technical report, Section 1.4.3. and Appendices A and B). The interviews, which were meant to inform the review of case files, were scheduled as 30-minute, semi-structured sessions that focused on case processing and served as a tutorial for reading case files. However, they ultimately evolved into relatively informal conversations about the main factors that influence the office’s decision to prosecute cases, to increase or decrease charges, and to make bail recommendations at arraignment. Prosecutors’ responses – because of their interest in the project and desire to share as much information as possible – exceeded Vera’s expectations in their specificity and depth. They frequently went significantly over the 30 minutes allotted. These interviews were incredibly informative and yielded DANY-specific information that was not

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<sup>4</sup> The chart is included in Chapter 1.7 of the technical report (see Figure 2: Case Processing Chart with Five Discretionary Decisions).

available through any other source. For example, Vera learned that informal protocols and procedures can be quite different across DANY's five main trial bureaus. These interviews also served as a means of educating ADAs about the project and building confidence in Vera's work. Vera researchers also reviewed pertinent written policies from the DA's office, including plea guidelines and New York State criminal statutes in order to gain necessary background to better understand conversations with DANY staff, the data, and the findings.

## 5. Data Collection

Based on conversations with DANY staff, Vera researchers determined the data sources, variables, and discretionary points they wanted to investigate. Recognizing the limitations of DANY's administrative data, Vera researchers planned to supplement their administrative data analysis with a case file review, which was largely informed by the 16 interviews with ADAs (see Section 4).

Vera researchers worked closely with the DANY analysts to generate data from DANY's case management system. In mid-January 2012, in a meeting with the analysts, Vera's researchers requested data on 2010-2011 disposed cases for all misdemeanors and a selection of felonies, including all drug offenses, weapons offenses (DANY flags them separately), domestic violence (DANY flags them as well), burglary, and robbery. The offense selection was informed by the existing literature, Vera's work in other DAs' offices, and DANY's initiative.<sup>5</sup> Based on this request, the DANY analysts pulled the requested data and transferred them to Vera through FileShare (see Section 3). Once Vera received the data, there were several more meetings with

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<sup>5</sup> Given the public discourse on issues surrounding drugs and guns, DANY was particularly interested in misdemeanor drug offenses and offenses involving weapons.

the DANY analysts for clarification of the general coding scheme and definitions of the variables.

Ultimately, Vera obtained data on 222,542 cases disposed in 2010-2011. The dataset included all misdemeanors ( $N=165,791$ ), all violations ( $N = 27,303$ ), and a selection of felonies ( $N = 27,704$ ). Felony offenses consisted of: (a) drug offenses ( $n = 5,794$ ; handled by DANY as opposed to the office of the special narcotics prosecutor<sup>6</sup>), weapons offenses ( $n = 1,880$ ), domestic violence ( $n = 1,746$ ), burglary<sup>7</sup> ( $n = 1,959$ ), and robbery<sup>8</sup> ( $n = 3,521$  cases). The dataset included information on defendant race and ethnicity, prior records (arrest, conviction, and custodial sentence), number of charges and counts, screening decisions, dismissals, plea offers, and sentencing outcomes.

However, as robust as DANY's dataset is, because it is not built for the purposes of conducting research on race and prosecution, the data still presented significant flaws. Perhaps the biggest flaw was the missing values. For example, information on victims' race was missing for 83% of cases involving victims. Similarly, the dataset did not contain information for ADAs' characteristics and defendants' socio-economic status (SES). Vera researchers were able to address the first issue by obtaining data on ADAs' experience (i.e., number of years employed by DANY), gender, and race from DANY's human resources office. This required a few additional meetings with the DANY senior executive staff in order to ensure the complete confidentiality of the data. Vera researchers agreed not to collect any names or other identifiers that would overtly

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<sup>6</sup> Cases between DANY and the Office of the Special Narcotics Prosecutor for the City of New York are split randomly, roughly in half, based on police officers' decision where to bring a case.

<sup>7</sup> New York Penal Law, §140

<sup>8</sup> New York Penal Law, §160



link ADAs to the information recorded, and to analyze and report all of the information in aggregate, making it impossible to connect any discretionary decision to individual prosecutors. This arrangement was mutually agreeable as it allowed DANY staff to feel comfortable sharing this sensitive information and did not impede Vera's research goals.

In order to obtain socio-economic characteristics of the neighborhoods where defendants live as a proxy for defendants' socio-economic status (SES), Vera researchers used New York City government and U.S. Census data to collect specific information for each neighborhood. Using information about the police precinct closest to where defendants live, the researchers connected each precinct number with Zip Codes<sup>9</sup> and used them to gather data on the percentage of: (a) white population; (b) population in public housing; (c) population on Medicaid; (d) population on public assistance; and (e) population on food stamps. Unfortunately, because of missing values on the neighborhoods where defendants live (49% missing on defendants' resident police precinct), Vera researchers were unable to incorporate this information in their analysis models. Instead, they used the neighborhood in which defendants were *arrested* as a rough proxy of SES, under the assumption that defendants commit crimes close to where they reside. Including this variable also provided an avenue for exploring whether the neighborhood where defendants are arrested affects how punitive the case outcome is. Fortunately, when collecting data from paper case files (see below), Vera researchers were able to obtain more detailed and complete information on the defendants' home address, and, using the same retrieval protocol from Census data as described above, were able to explore this research question further.

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<sup>9</sup> There were 65 zip codes, mainly from Manhattan.

Finally, when the researchers received the dataset, they noticed that there were a significant number of duplicate cases. Through conversations with the DANY analysts, the researchers learned that duplicate cases were a result of the way SQL (Structured Query Language) — a programming language that DANY uses to manage data — organizes cases with multiple victims. Vera had to identify the duplicate cases and manually remove them from the data file in SPSS before running any analyses.

As mentioned earlier, while the dataset was robust in many ways, it did not include information on many essential variables, including on evidence, which necessitated additional data collection from case files. One of the main goals of the case file review was to collect evidentiary and plea-offer information, which greatly influence case outcomes but are not reliably recorded in the DANY electronic database. In August 2012, a meeting was held with Vera’s project consultants to decide a case-sampling strategy; specifically, the types of cases from which to sample within paper case files. Vera researchers presented key findings from preliminary analyses of the administrative data and interviews with ADAs, which informed the case sampling strategy. The Vera team ultimately decided to review 1,200 *misdemeanor* marijuana cases and 1,200 *felony* drug (i.e., non-marijuana) cases. The focus on drug offenses was motivated by a number of considerations. First, after New York State significantly amended its so-called Rockefeller drug laws in 2009, prosecution of drug-related offenses gained greater attention from the public, politicians, researchers, and criminal justice professionals.<sup>10</sup> Second, because of a marked

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<sup>10</sup> The Rockefeller Drug Laws are the statutes dealing with the sale and possession of narcotics in the New York State Penal Law, named under Governor Nelson Rockefeller who signed them in 1973. The statutes carried a minimum of 15 years to life in prison, and a maximum of 25 years to life in prison for *selling* two ounces (57 g) or more of heroin, morphine, opium, cocaine, or cannabis, or *possessing* four ounces (113 g) or more of the same substances. In April 2009, these statutes were revised to remove the mandatory minimum sentences and to allow judges to sentence individuals convicted of drug offences to treatment or to shorter prison terms.

inconsistency with which ADAs record data on the evidence, it was not possible to collect reliable data on the evidentiary strength of complex cases. Vera selected drug offenses because there is not much variation in the type of evidence gathered in these cases (all typically involve drugs obtained through police searches or undercover investigations). Third, given the public discourse on the impact of the changes in drug laws, our partners at DANY expressed a particular interest in examining cases involving drug offenses.

Based on interviews with the ADAs, the Vera team determined that the case file review would be more complicated than originally expected. As a result, Vera decided to hire an additional researcher with a legal background and familiarity working with case files and an understanding of case processing, legal strategy, and evidence. Beginning in September 2012, the researchers began the case-file review, which lasted through April 2013. Vera researchers were introduced to a contact person in the DANY records department. This contact was given a list of all of the cases randomly selected for review and made sure that the cases were pulled and delivered to the researchers.

DANY provided Vera with a lockable cabinet to safely store the case files. Vera received about 100 cases at a time, and information from 30-50 cases was entered daily, depending on whether they were misdemeanor or felony cases. There were a number of challenges that Vera researchers faced while reviewing the case files. For example, many of the files contained incomplete information; ADA handwriting was often difficult to decipher; and ADAs frequently used acronyms that were unknown to Vera staff. At first this slowed the data entry process, but staff from the planning and management department and the deputy chief of trials, who were

better versed in the ADAs' language, were able to help, and the data entry process eventually quickened.

Vera also struggled to develop a strategy for quantifying drug weight information, which is particularly important evidence given the way drug laws are written with harsher penalties for greater quantities. In indicted felony cases, drugs are usually sent to a lab where they are properly weighed and a reliable drug weight is included in the case file, but in all other cases, drug amounts are omitted, checked yes or no in a field marked "greater than 1/8 oz" (taken from drug field test forms provided by NYPD), or designated by a police officer's rough estimate. Working with DANY's deputy chief of trials, Vera researchers developed a fitting coding strategy, which is discussed in further detail in the technical report (see Sections 5.4.B and 5.4.C).

A logistical challenge the Vera researchers faced was that there were a number of files that had been randomly selected for review that were not stored in the record room. This posed a significant challenge and delayed data collection from paper files by nearly four months.<sup>11</sup> Fortunately, the researchers had developed a convivial relationship with their contact in the records department, who made every effort to find missing files and keep researchers updated whenever a new set of cases were located. While a great help, the DANY records department was unable to retrieve the full set of case files because some of the cases in the sample were either lost, locked in an ADA's filing cabinet, or had been pulled from the storage room by

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<sup>11</sup> Vera's initial plan was to complete case file reviews early January 2013. However, they were still entering data in April 2013.

DANY staff. As a result, there is still missing data on plea offers and variables measuring evidentiary strength, such as drug weight, for certain cases.

## 6. Data Analyses

Data were analyzed in a number of different stages that spanned the entire length of the project and ran parallel to ADA interviews and the case file review. This enabled Vera researchers to employ an iterative approach to analysis as well as to inform the ADA interviews, case file review, and conversations with DANY staff based on information that could not be obtained from the dataset.

After receiving data from DANY in March 2012, Vera researchers took about three months to run descriptive analyses, clean the dataset, and draft a report of descriptive statistics. The initial dataset came with 190 variables, and a significant amount of time was dedicated to learning and contextualizing these variables. In late June, the project staff met with two project consultants to review the dataset, address remaining limitations, and discuss preliminary findings (based on counts and percentages). During this meeting, project staff and consultants also brainstormed about the future analysis plan and refined the research questions to reflect what they would feasibly be able to answer. This preliminary data analysis was also used to inform the ADA interviews and, to some extent, the case file review.

In late summer 2012, Vera researchers ran preliminary analyses on the population data (all cases disposed in 2010-2011). These analyses revealed that there are a number of variables missing most of their data. Subsequently, the researchers focused much of the fall identifying the variables with the most missing data and trying to understand the reasons and patterns for

missing data; for example, determining whether the variable in question was not applicable for the given case, was really unknown, or whether there was another reason. Answering such questions was possible only through multiple meetings with DANY analysts and prosecutors.

In December 2012, the Vera researchers began analyzing data from the misdemeanor marijuana case sample and in March 2013 began analysis of data from the felony drug case sample. These analyses inevitably led to more questions about the data and Vera staff, given their increased understanding of the data, were able to ask for more specific information about the case samples; for example, Vera requested variables that flag whether the cases selected were indicted or diverted to a drug program.

## **7. Report Development**

The main deliverable of the NIJ grant was the technical report, which outlines research questions, methods, and findings. Vera researchers continued to work closely with DANY staff while they finalized data analyses and drafted the report. This collaboration both benefited the research and maintained the open and communicative researcher-practitioner relationship. Throughout the analysis phase, Vera met frequently with high-level DANY staff to share preliminary findings, fully understand the limitations of the study, and seek suggestions on how to improve the analyses. DANY staff was often able to shed light on additional factors that might be implicated in the findings that had not been clear from the data, case files, ADA interviews, or other meetings. For example, in a meeting held in April 2013, Vera researchers learned from the DANY chief of the trial division that certain adjournments reserved for misdemeanor marijuana cases are not considered offers made by the ADA, but rather options for which defendants with

particular criminal justice characteristics (e.g., no prior record) are legally eligible. This sort of additional information makes the findings richer and more meaningful.

During these meetings, DANY staff also offered valuable advice on additional analyses. For example, DANY's chief of trials and deputy chief of trials expressed their particular interest in plea offers to a lesser charge (in addition to custodial sentence offers as a part of the plea bargaining process). Unfortunately, Vera researchers were not able to conduct plea-to-a-lesser-charge analyses for the full dataset because DANY started capturing this information more systematically only in 2012 (while our data included cases disposed in 2010-2011). However, Vera was able to collect the reduced charge offer information based on the case-file reviews and conducted these analyses for a sample of misdemeanor marijuana (see technical report, Section 5.4.B.) and non-marijuana drug felony cases (Section 5.4.C.).

Vera staff provided DANY's executive team with the opportunity to review and comment on all written materials and findings before their release to the public. This review process served an important mechanism for eliciting additional feedback, in turn improving the quality of the research findings. It also allowed DANY to maintain ownership over the findings and think critically about their implications for DANY's policy and practice. It is important to note however, that as an independent research organization, Vera has ultimate authority over the dissemination of research findings, thus preserving the integrity of the research. This was a unique aspect of the Vera-DANY relationship and contributed to the strength of this study both in terms of the validity of the findings and the impact the research can have on case processing at DANY and other prosecutorial offices.

## Conclusion

Vera has demonstrated the effectiveness of its model for building researcher-practitioner partnerships in a number of jurisdictions and believes that its relationship with DANY has been equally successful, maximizing this opportunity to conduct unprecedented research in a vast and diverse jurisdiction. Vera analyzed a complicated dataset and collected additional data necessary for understanding all aspects of case processing, from the initial screening of a case to its sentencing outcome. In this truly collaborative process of exchanging ideas and supporting one another, Vera and DANY were able to produce a number of findings with practical implications both for DANY and district attorneys' offices nationwide (see technical report for findings).

The success of this project rests heavily on the fact that Vera and DANY trusted each other, relied on each other, and benefited from this work. The strength of the partnership is a result of three significant factors. First, this was a research project that evolved organically from a mutual desire to work together—Vera's desire to conduct ground-breaking research that would have wide-scale impact in both New York City and nationwide and DANY's desire to examine racial and ethnic equity in the office's decision making to ensure that they are employing fair and ethical practices that truly improve the safety of Manhattan. Second, from the outset, both partners emphasized the importance of building an open, comfortable, and trusting relationship. This was supported by early conversations that clearly laid out each partners' interest in working together and the development of a MOU. Third, throughout the duration of the project, both partners upheld their commitments as laid out in the MOU and discussed in early conversations about confidentiality, goals for the project, and the role of each partner.

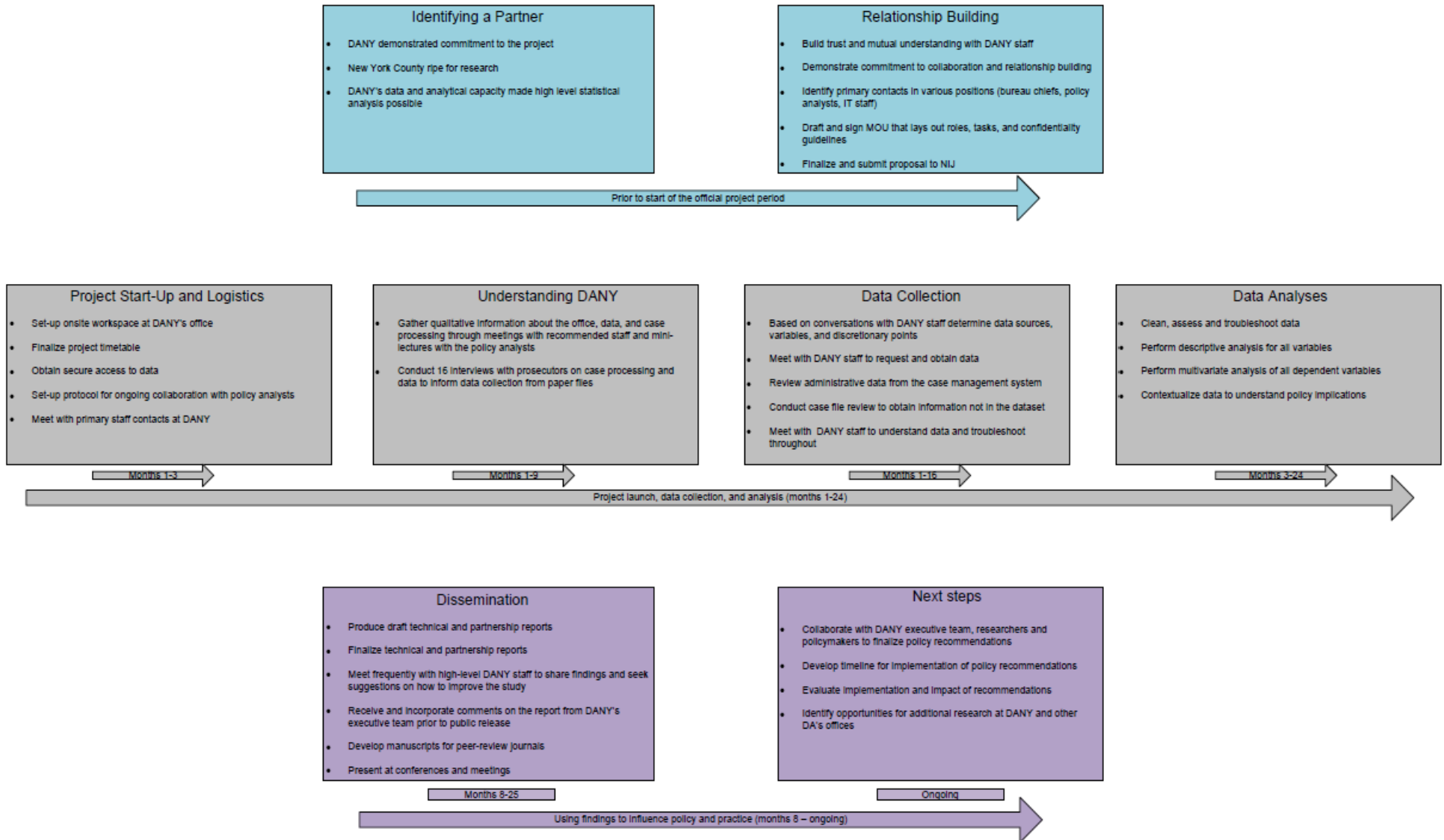


The success of this project also highlights the importance of engaging practitioners in every stage of the research process: they are the true experts on prosecution, their jurisdiction, and their office. Practitioners should be involved in developing the research design; their input on the research questions is essential, because they know what information would be most useful for them and surely have hypotheses about the implications of their office's policies. When there are limits and challenges working with the data, practitioners will likely be extremely helpful brainstorming ways to get around these limits or at least understanding the implications of the limits. Throughout the analysis, engaging practitioners to interpret the data, determine the significance of the findings, and recognize the policy implications will ensure that findings are comprehensive and reflect subtleties that the researcher may not grasp such as the laws, office policies or culture, and jurisdictional peculiarities.

Although NIJ funding for the researcher-practitioner partnership between Vera and DANY has ended, Vera hopes to continue to work closely with DANY, providing technical assistance based on the findings. This is a vital aspect of the researcher-practitioner partnership, because it is in this stage that the practitioner can most benefit from research findings yielded by this study. Vera proposes developing a working group that will be tasked with reviewing research findings and policy suggestions, producing additional policy recommendations, implementing them, and assessing their impact on policy and practice with an eye to more race-neutral case outcomes.

# Appendix A: Process Map

## Partnership Phases Prosecution and Racial Justice in New York County



## Appendix B: Memorandum of Understanding

### MEMORANDUM OF UNDERSTANDING BETWEEN VERA INSTITUTE OF JUSTICE, INC. AND NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE

This memorandum documents the understanding between the Vera Institute of Justice (“Vera”) and the New York County District Attorney’s Office (“DANY”). This memorandum is part of an application for the National Institute of Justice (“NIJ”) project “Building and Enhancing Criminal Justice Researcher-Practitioner Partnerships” (CFDA No. 16.560), Area 2 “Criminal Justice Researcher-Practitioner Placement Program”, and all obligations and representations made here are contingent upon the application’s approval by NIJ and the award of sufficient funds to undertake the work.

NIJ’s goal is to support collaborative partnerships between researchers and criminal justice practice-based agencies to capture significant lessons that will lead to better criminal justice policy, practice, and research. Vera is proposing to place one full-time and one part-time researcher at DANY for a period of 18 months, in order to identify any racial or ethnic disparities in case outcomes; to work with DANY to discern and review what factors and/or specific practices, if any, may influence such outcomes; and together develop protocols or management processes that will assist prosecutors in reducing or eliminating unwarranted racial and ethnic disparities in case outcomes.

Through this collaborative process, Vera’s Prosecution and Racial Justice Program (“PRJ”), will help DANY to establish internal, data-driven management of discretionary decisions. DANY, in turn, will provide Vera with practitioner-based knowledge of the various key factors and considerations that influence decision-making in order to contribute to a more accurate interpretation of the data findings. As DANY is a nationally recognized leader in the prosecutorial field, by participating in this project it can serve as a model of how to deploy and manage discretion in an equitable manner for prosecutors’ offices around the nation.

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

#### **I. Vera**

- 1. Collecting and analyzing data.** After working with DANY to determine which trial bureaus will provide the most representative and greatest depth and quality of information, Vera will use administrative data from DANY’s case management system and will collect supplemental data from randomly selected case files. Additionally, Vera will interview a select number of prosecutors to ensure that it has a full understanding of case processing and to inform the interpretation of data. The goal of these interviews is to provide Vera with an overall picture of the various factors prosecutors consider, as well as other factors that influence case

outcomes. In addition, Vera will use these ongoing exchanges to coach prosecutors in supervisory and managerial roles on how to use data to identify outcome patterns that require further attention or that indicate good practices.

- 2. Drafting a technical report and a policy brief on its findings.** Vera will draft a technical report detailing its methodology and research findings. This document, written for an audience of researchers and specialists, will include a foreword by a DANY representative and appendices with statistical tables.

In addition, for practitioners and more general audiences, Vera will draft a policy brief describing selected research findings and explaining their implications for prosecutors' offices. Vera will provide DANY with a draft of the technical report and policy brief at least six weeks before submitting it to NIJ and/or releasing it to the public so that the agency can prepare its foreword, make other contributions, and provide any necessary feedback.

Vera, in collaboration with DANY, will develop discretion report formats. These reports will detail aggregate outcomes at key discretion points from initial intake to final disposition, and can be produced at intervals—for example, monthly, quarterly, and annually—that supervisors/managers determine are most useful for their routine review.

- 3. Disseminating the technical report and policy brief.** Vera will be the primary party responsible for disseminating the final technical report and policy brief. Vera will present findings at a minimum of three academic, policy, and practitioner conferences (e.g., Bureau of Justice Statistics, Justice Research and Statistics Association, American Bar Association, American Society of Criminology, The National Consortium on Racial and Ethnic Fairness in Courts), produce at least one peer-reviewed publication, and will post the technical report, the policy brief, and/or partnership report (see below) on its website.

## II. DANY

- 1. Providing Vera researchers access to all data necessary for the analyses of discretion reports.** DANY will provide Vera researchers with access to administrative data. To supplement this administrative data with information about decision-making processes, DANY will also provide access to an agreed-upon random selection of case files and will allow informational interviews with a selected group of Assistant District Attorneys. These interviews are intended to provide Vera with a better understanding of how cases are handled in the office, and will be coordinated by DANY.
- 2. Providing in house office space and administrative support for one full-time and one part-time Vera researcher for the eighteen-month study period.** These accommodations will include secure locations where confidential information can be stored. DANY may or may not provide the computers and other office supplies the researchers will require. The researchers will be employed by Vera, maintain a Vera e-mail address, and will be subject to all of Vera's personnel policies, confidentiality protocols, and training requirements while working in DANY's office.

3. **Making DANY staff regularly available to Vera.** DANY will create a PRJ project team of select Assistant District Attorneys and other necessary staff to assist and guide researchers in understanding how cases are handled and the factors that influence decision-making and outcomes. The project team should include a prosecutor to function as the primary contact person, and an IT specialist to guide Vera in their work with DANY's case management system (DANYCaseInfo). Furthermore, DANY will coordinate regularly scheduled data briefings at which researchers and PRJ staff will present findings to senior and executive staff.
4. **Participating in Vera's report-drafting process.** While responsibility for writing the initial drafts of the technical report and policy brief is Vera's (see above), DANY will play an integral role in this process and will review and comment on draft reports.
5. **Working with Vera to disseminate the technical report and policy brief.** DANY will collaborate with Vera to develop a dissemination strategy that encompasses both researcher and practitioner audiences. DANY will also disseminate and publish the technical report, policy brief, and/or partnership report (see below) as it sees fit.

### III. Mutual Agreements

1. **Collaborating on the partnership report.** Both Vera and DANY will contribute to a written report on their partnership in this project, to be completed by the end of the grant period. This report will be submitted to NIJ at the completion of the grant period, and will describe the placement effort, obstacles experienced, and solutions put into practice. Both DANY and Vera will draft the report, but Vera, as the potential grantee, will be ultimately responsible for submitting this report to NIJ, and will also post it on the Vera website.
2. **Holding regular, joint Vera-DANY meetings.** Vera and DANY will hold monthly meetings to discuss the work. Together, members of both staffs will review updates, discuss methodology, identify data limitations and the ways to address them, and interpret and contextualize findings. The two staffs will also work together to determine the most useful way for Vera to report results to DANY staff.
3. **No assignment of rights.** Neither party may assign its rights under this Memorandum of Understanding without the express written permission of the other party. Any assignment that does not comply adhere to this provision will be deemed null and void.
4. **Amendment only by mutual agreement.** This memorandum may be amended only by mutual, written agreement of the parties. Either party may terminate the agreement with thirty (30) days written notice to the other.
5. **Term.** This Memorandum of Understanding shall be in effect upon execution until March 1, 2013, unless terminated sooner by DANY or Vera. The Memorandum of

Understanding may be extended to a date agreed upon by mutual, written agreement of both parties.

#### IV. CONFIDENTIALITY

1. **Storing Data, Stripping Data and Access to Identifiable Information.** Vera will implement procedures to protect information provided by DANY from unauthorized access, alteration, use, or dissemination. Vera will strip out identifying information for all data it receives. Identifying information includes: defendant's name and date of birth, victim's name and date of birth, arresting officers' and reviewing/assigned prosecutors' name or other individual identifiers. Access to the data will be restricted to Program Administrators designated by and within Vera who will be able to view identifiable information only for data management purposes. No other Vera staff will have access to identifiable DANY data.
2. **Vera Staff Access to Data.** Access to the data will be limited to Vera researchers who are working with the data on this project. These research users will be able to view and work with *only* non-identifiable information (for example, when viewing a case record a researcher will only see an internally generated "Vera ID" rather than the real Respondent ID.) No part of the case record constructed by the database will contain identifying information.
3. **Prohibition on Disclosing Identifiable Data.** Vera will not disseminate or disclose identifiable information provided by DANY to any other organization or individual, without first obtaining permission from DANY. Any and all reports or publications produced as a part of this project will present only anonymized, aggregated data findings.
4. **Certification of Vera staff.** Vera represents and affirms that researchers working on this project are certified by the National Institutes of Health Office of Extramural Research. Vera's work will be consistent with regulations governing humans subject research, and will be reviewed by the Vera Institutional Review Board which includes strict requirements for data confidentiality and informed consent.

THE FOREGOING IS UNDERSTOOD, ACCEPTED, AND AGREED TO BY VERA AND DANY.

#### NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE:

Print Name:

Title:

Signature:

Date:

**VERA INSTITUTE OF JUSTICE, INC.:**

Print Name:

Title:

Signature:

Date: