

## "Data Can Be Manipulated": How Prosecutors' Attitudes Toward Racial Disparities and Data-Informed Decision-Making Diverge

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### ABSTRACT

Research examining prosecutorial decision-making has grown considerably in recent years. Much of this research is focused on assessing unwarranted disparities in case processing outcomes using administrative case data. Comparatively few studies analyze prosecutors' perceptions using qualitative sources. Additionally, little is known about how prosecutors view their role in reducing racial disparities or how they can use data as a decision-making aid despite recent innovations in prosecutorial data collection capacity. The current study addresses this dearth of scholarship by analyzing interview data from two mid-sized Florida State Attorney's Offices conducted in 2018. Results suggest two main groups of prosecutors: data-positive and data-hesitant prosecutors. Among data-positive prosecutors, three key themes emerged regarding tracking trends over time, increasing case processing efficiency, and identifying racial disparities. For data-hesitant prosecutors, there were also three important themes, including individualized case processing, the potential for data reports to be misconstrued by the media and public, and race trend data isn't helpful because disparities are due to other factors. The findings related to these two broad categorizations of prosecutors are discussed in terms of future research in this area, as well as prosecutorial office policy and practice.

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State prosecutors are widely cited as the most powerful actors in the American criminal legal system (Bellin, 2018; Davis, 2019; Sklansky, 2016). They decide which cases referred by police warrant charges and which statutes to pursue, and they play a key role in negotiated pleas. Despite the importance of their role, most research focuses on policing and judicial decisions, with the "black box" of prosecution remaining understudied (Wright et al., 2021). This is changing, however, for two reasons. First, criminal justice researchers acknowledge the relevance of prosecutors for both policy and communities.

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Additionally, elected state prosecutors are increasingly open to working with researchers to increase the utility of the data they collect, assist them in developing online dashboards for public consumption, and track trends to identify unwarranted disparities during case processing. This culture of data-savvy and transparent elected prosecutors has been referenced in media and empirical work as a driver of policy changes and reforms (e.g., Pearson, 2020).

Despite the strides made in recent years, there is still much that is unknown about how prosecutors make decisions. This is partially due to a lack of qualitative research; most analyses of prosecutorial decisions rely on quantitative data sources. Qualitative studies in this area are rare, but the few that exist provide insight into prosecutors' perceptions and decision-making processes (e.g., Arndt, 2022; Dunlea, 2022; Frederick & Stemen, 2012; Grodensky et al., 2023; Richardson & Kutateladze, 2021; Levine & Wright, 2017; Webster, 2020). One unexplored area of prosecutorial research is prosecutors' hesitancy or affinity for data-informed decision-making. Some prosecutors may find data useful because they can track trends or compare similar cases, while others may subscribe to a more individualized view of case processing (Richardson & Kutateladze, 2021).

The present study uses interview data from two mid-sized Florida State Attorney's Offices. Interviews were conducted in 2018 as part of a MacArthur Foundation project examining data-driven prosecution, efficiency, transparency, and unwarranted disparities. The interviews provide insight into prosecutors' views about various issues related to their role in the legal system and how data can be used in prosecution. Two recurring concepts that prosecutors discussed were data-informed prosecution and unwarranted disparities. For both concepts, the prosecutors interviewed in both offices had divergent views. Some argued data was not useful to them because each case is unique, while other prosecutors felt it could help them understand trends in case processing for their office. The discussion of unwarranted disparities yielded a similar pattern; some prosecutors did not think disparities were due to race, while others addressed systemic disparities for minority defendants compared to similarly situated white defendants. The findings and themes from the interviews are discussed in terms of prosecutorial office culture and practice.

## **Prosecutorial Discretion Research**

Prosecutorial discretion research, while still in its early stages, has revealed some consistent findings. First, prosecutors are often limited by institutional constraints, including high caseloads, limited evidentiary information, and perhaps supervisors' expectations. These constraints influence decision-making, as well as criminal justice agents' perceptions of defendant dangerousness (e.g., Hartley, 2014; Steffensmeier et

al., 1998; Steffensmeier & Painter-Davis, 2017). While originally applied to sentencing, these focal concerns are also important for earlier decisions, such as charging and arrests (Lapsley et al., 2016).

In addition to the influence of such institutional features, larger systemic factors are potential drivers of these disparities. Prior records and disparities in policing practices are also important factors that lead to differences in outcomes under the purview of prosecutors. Some studies examine the relationship between arrests and charging decisions (e.g., Holleran et al., 2010; O'Neal & Spohn, 2017). More recent studies have examined the relationship between arrests and subsequent decisions made by prosecutors, finding that increased probability of arrests for minority defendants, particularly Latinx and Black non-Latinx defendants, are associated with the subsequent magnification of disparities for charging, filing, and incarceration decisions (Johnson et al., 2023).

There is also a growing body of research examining how elected prosecutors' political affiliation influences case outcomes (e.g., LaPrade, 2020). This factor in decision-making may also be related to prosecutors' decisions (D'Angelo & McCannon, 2019) and, tangentially, their willingness to pursue progressive approaches to prosecution. A new group of progressive prosecutors leads the charge toward criminal justice reform (Davis, 2019). Progressive elected prosecutors emphasize decreased reliance on incarceration, diversion programs for first-time or low-level offenders, increasing case processing efficiency, and reducing unwarranted disparities in case outcomes (Grodensky et al., 2023). To address the potential changes in how cases are handled in offices under the leadership of progressive elected prosecutors, researchers have compared cases handled under more traditional versus progressive prosecutors (Mitchell et al., 2022) and examined the differences in attitudes of progressive versus more traditional prosecutors (Meldrum et al., 2021).

Mitchell et al. (2022) compared cases adjudicated in four progressive prosecutors' offices to 16 more traditional offices in Florida, finding racial disparities were less pronounced in offices headed by progressive State Attorneys. Additionally, cases were less likely to result in felony convictions, and incarceration was less likely in jurisdictions with progressive prosecutors (Mitchell et al., 2022). These findings demonstrate progressive prosecutors' stated goal of reducing reliance on incarceration and avoiding felony convictions in certain cases.

Meldrum, Stemen, and Kutateladze (2021) surveyed prosecutors in four jurisdictions to assess their priorities and perceptions. Using 24 prosecutorial priorities and nine statements about criminal defendants. Participants were asked to rank

prosecutorial priorities on a scale of one to five, where one is “unimportant” and five is “very important”. Statements about defendants, such as “our court system over-relies on pretrial detention” and “prosecutors are too soft on defendants with prior convictions”, were ranked from “strongly disagree” to “strongly agree”. Results demonstrate that certain punitive attitudes are associated with the more traditional orientation of prosecution, while those attitudes are negatively associated with the progressive orientation. Importantly, participants’ race and supervisory experience were also associated with attitudes related to punitiveness - White prosecutors had more punitive attitudes, and overall punitiveness was lower for prosecutors in supervisory positions (Meldrum et al., 2021). These results demonstrate the importance of experience in shaping prosecutors’ attitudes about punishment and case outcomes.

### Interviews with Prosecutors

Qualitative analyses of prosecutors’ attitudes have also revealed insights into their decision-making and perceptions of their role in the legal system. Early work examines prosecutors’ role in and perceptions of plea bargaining (Huemann, 1978; Utz, 1978). In an early study of state prosecutors in Connecticut, Huemann (1978) explored prosecutors’ and defense attorneys’ attitudes toward plea bargaining. Responses from prosecutors reveal plea bargaining is an essential practice regardless of office caseload. They felt plea bargaining would occur simply if the defense showed a willingness to negotiate. While efficiently disposing of cases was a positive outcome of plea negotiations, prosecutors did not see this as the goal of plea bargaining (Huemann, 1978).

More recently, Frederick and Stemen (2012) conducted interviews and focus groups with prosecutors in addition to quantitative analysis in two jurisdictions to examine what factors influence case outcomes. Their report revealed several consistent findings in both jurisdictions. First, prosecutors are mostly guided by objective case facts for earlier screening decisions. Specifically, evidence strength drives prosecutors’ decisions to file charges. The strength of evidence guides later decisions as well, but other factors like victim characteristics and defendants’ prior records also come into play for later decisions. Importantly, they found that whether a case moves forward influences later outcomes. Prosecutors may have evidence that the case could progress, but they consider public safety, ensuring defendants are treated justly, and limited court resources (Frederick & Stemen, 2012). Other qualitative studies with prosecutors have clarified how they make decisions, how they view their role, and what their motivations are during case dispensation (Levine & R.F. Wright, 2012; Levine & R.F. Wright, 2017; Richardson & Kutateladze, 2021; R.F. Wright & Levine, 2018).

Levine and R.F. Wright (2012) examined how office culture and professional identity influence prosecutorial decision-making, revealing the importance of informal language and training on prosecutors' decisions. In subsequent work, Levine and R.F. Wright (2017) examined prosecutors' attitudes about their profession, finding that they see themselves as "wearing the white hat" and as defenders of public safety. In a later study, R.F. Wright and Levine (2018) used interviews with 260 prosecutors, finding that respondents were motivated by four main concepts: reinforcing their absolutist identity, trial experience, public service, and establishing work-life balance (R.F. Wright & Levine, 2018). Together, these studies demonstrate the context in which prosecutors make decisions. They are motivated by a combination of factors, including career advancement, the pursuit of justice, and making decisions that are aligned with their worldviews.

Qualitative work by others has also demonstrated interesting findings. Richardson and Kutateladze (2021) interviewed prosecutors in two Florida jurisdictions to provide insight into their attitudes toward data-informed decision-making, efficiency in case processing, and their role in reducing disparities and reforming the criminal justice system. The interviews revealed several key findings. First, prosecutors expressed that there is a disconnect between the goals of the State Attorney and mid-level supervisors, which decreases the effectiveness of progressive prosecutorial policies. For example, even if line prosecutors wanted to reduce caseloads, specifically for low-level offenses, they may not be able to if their direct supervisor does not share that progressive goal. Additionally, prosecutors overwhelmingly expressed the importance of individualized case processing since they view cases as unique. Individualized decision-making may also make it harder for prosecutors to reduce caseload for low-level offenses. To illustrate, traffic offenses like driving with a suspended license may be difficult to dismiss, given the clear evidence that the offense occurred (Arndt, 2022). As a result, prosecutors may not be able to dismiss these cases in the interest of reducing caseload and preventing first-time offenders from having criminal charges.

A more recent qualitative study examining progressive goals and plea dispositions in a southern jurisdiction. Grodensky and colleagues (2023) interviewed 19 attorneys to assess how prosecutors in a progressive District Attorney's Office balance the potentially coercive nature of plea bargaining with progressive goals. Responses relate to plea dispositions and, to some extent, dismissals due to the leverage line prosecutors have when deciding to dismiss secondary charges in exchange for guilty pleas. Participants cited five overarching goals: reducing caseloads for low-level drug offenses, avoiding over-penalization, declining weak cases, better communication with defense counsel, and reducing racial disparities. Results showed that line attorneys felt progressive prosecution could be achieved through changes to policies related to plea negotiations and, to some extent, dismissals.

These studies examine the factors that influence prosecutors' decisions and their perceptions of progressive prosecutorial policies, like reducing over-reliance on incarceration and increasing racial equity. A lesser-explored area of research involves prosecutors' attitudes toward data and how it can be used to achieve these reform goals. Data provides prosecutors with the ability to track trends and examine how similar cases are processed; however, some attorneys may be hesitant to use data or may think it is not useful for their work. Other attorneys may acknowledge the importance of data to accomplish the stated goals of progressive elected prosecutors. This gap in research is largely due to the recent development of data-informed decision-making in prosecution (M.S. Wright et al., 2021).

### **Data-Driven Decision Making**

While still fairly new to prosecutorial decision-making, data-driven policy solutions have been used in various fields, including education (e.g., Custer et al., 2018; Gullo, 2013; Selwyn, 2018), healthcare (e.g., Grossglauser & Saner, 2014; Rice et al., 2018), and marketing (e.g., Timoumi et al., 2022). Given the importance of data in these fields, some state prosecutors have aligned with researchers to lead the charge for data-informed prosecution. Prosecutors have wide discretion, yet it is often difficult to find data to examine their decisions, so the "black box" of prosecution remains despite recent strides in research (M.S. Wright et al., 2021).

The emerging interest and media reports of prosecutors engaging in data and transparency initiatives suggest data inform how prosecutors operate, leading to policy changes and internal office discussions about how their decisions influence their communities at large. However, it is likely many prosecutors' offices are still lagging in terms of data collection and use in decision-making (Olsen et al., 2018). Even though elected prosecutors are increasingly becoming more inclined to work with researchers and policy groups, little is known about how line-level attorneys and division chiefs view data and how they can be used to aid decision-making and track trends over time. Importantly, prosecutors are evaluated on more basic measures like conviction rates or the number of cases brought to trial. Line-level attorneys may also be rewarded for their alignment with supervisors' goals (Bibas, 2004).

Prior work assessing the extent to which data are collected and used in state prosecutors' offices suggests most offices are not collecting basic information about filing and disposition decisions. Despite this trend, data can be an important tool for prosecutors to manage their offices and improve case processing efficiency (Olsen et al., 2018; Tallon et al., 2016). In an assessment of intelligence-driven prosecution, findings demonstrate prosecutors use data from innovative metrics like Arrest Alerts to inform

case decisions. Similarly, bail decisions were also affected by Arrest Alert information (Tallon et al., 2016). These findings suggest prosecutors and other adjacent court actors find data useful when evaluating cases. Still, there are few assessments of prosecutors' perceptions of data- what they can and cannot do, whether they are concerned data will be misinterpreted, or the systemic and office-level barriers to data-informed prosecution.

In an Urban Institute report assessing data collection practices in prosecutors' offices, Olsen and colleagues (2018) surveyed 158 offices. Their sample of offices included urban and rural offices to account for differences in office size and resources. Findings from this report showed several important conclusions related to data collection methods and capacity. First, nearly every office included in the study collected some form of data related to case flow. However, the report showed most offices were not collecting data related to all points in case processing (cases referred, initial charges, final charges, cases declined, cases dismissed, cases resolved by plea, and cases that go to trial). The Urban Institute uses the information gathered from participating officers to suggest steps for offices to evaluate and improve data collection capability.

### **Data-Positive Versus Data-Hesitant Prosecutors**

While evidence suggests it is important to use data to track trends in prosecutors' offices, much is unknown about how prosecutors view the utility of data and data-informed decision-making. This is due to the insulated nature of prosecutors' offices and the lack of data to examine this subject. An emerging group of newly elected prosecutors is focused on transparency and data-informed prosecution; however, more traditional prosecutors working as line attorneys may be more hesitant to enter and use data. Realistically, most prosecutors' offices are not equipped to analyze the data they collect. Some jurisdictions have online dashboards to show trends in rejections, dismissals, diversion, or convictions (e.g., 13<sup>th</sup> Circuit of Florida State Attorney's Office Data Dashboards, 2018; Kutateladze et al., 2023), but these are not the norm.

Given that many jurisdictions do not have publicly available data regarding prosecutors' decisions, it stands to reason some prosecutors may be hesitant to join the progressive prosecution movement. Prosecutors in jurisdictions who have only recently started publishing data online or still do not have online dashboards may have divergent ideas about the relevance of data in their day-to-day work. Some that are younger and in larger jurisdictions may be more open to data collection to streamline caseloads and address trend changes.

However, some prosecutors may not want to use data. The field of prosecution has historically been less data-driven than other areas of the legal system, such as

policing (Concannon & Hemmady, 2020). Those who consider themselves more traditional prosecutors, who view cases individually, may be more hesitant to shift to consulting data trends to aid in decision-making. It is also possible prosecutors are concerned about data breaches and privacy, which has been demonstrated in other fields like marketing (e.g., Bleier et al., 2020) or education (e.g., Beaudin, 2017). Additionally, prosecutors with less experience entering and interpreting data may hesitate to use them as decision-making aids. Despite the push to train prosecutors to collect and analyze data (Olsen et al., 2018), this is still a new undertaking in many prosecutors' offices. To date, there are no studies examining data hesitancy in prosecutors' offices; however, the extant research on data-informed prosecution demonstrates the potential benefits of collecting and analyzing data.

## The Current Study

The current study evaluates the attitudes prosecutors hold regarding data using interviews with Florida assistant state attorneys in 2018. An important consideration progressive prosecutors have about data is that it can assist them in identifying unwarranted disparities, such as racial or ethnic differences in case processing. The interview instrument, part of a larger technical assistance project aiding prosecutors' offices, contains items that address respondents' perspectives about data-informed decision-making and unwarranted disparities. These interview responses also shed light on the barriers to data-informed office culture, in addition to the data collection possibilities some prosecutors see for the future of the office.

To address the gap in research focusing on prosecutors' attitudes toward data, this study examines semi-structured interview responses using interpretive phenomenological analysis (IPA). This procedure allows respondents to express their perceptions and lived experiences (Alase, 2017), which is particularly important to understand how prosecutors view data in relation to their day-to-day responsibilities and workload. The current study poses two research questions:

### *Research Question 1*

Do line-level prosecutors think data plays a role in their decision-making and day-to-day tasks?

Extant qualitative analyses of prosecutors typically focus on prosecutors' attitudes toward cases, defendants, and broad legal issues (Arndt, 2022; Frederick & Stemen, 2012; Richardson & Kutateladze, 2021). Thus, it remains unclear how prosecutors view data collection practices and the importance of data for decision-making. It is possible some



prosecutors think data would be a helpful decision-making aid, while others may not consider the importance of data even if presented with data reports.

### *Research Question 2*

Among line-level prosecutors who think data collection is important, is there a sentiment that data can help identify and address racial and ethnic disparities or lead to fairer outcomes?

Building upon the first research question, prosecutors who view data as important may have different views about why data reports can help them. The interview instrument used in this study has a section focusing on racial and ethnic disparities, so prosecutors' discussion of data was linked to unwarranted disparities in case outcomes. The topic of unwarranted disparities is relevant to prosecutorial discretion because prior research typically finds racial differences in various points in criminal case processing even when controlling for prior record, offense severity, and other relevant factors (e.g., Kutateladze et al., 2016; Owens et al., 2017; Petersen & Omori, 2020; Romain Dagenhardt et al., 2022; Wu, 2016). However, there are only a few examples of qualitative studies that examine prosecutors' perceptions of race and unwarranted disparities (Dunlea, 2022; Grodensky et al., 2023).

Some prosecutors may view racial disparities as a real and serious issue facing their offices, while others think their office handles cases fairly across different groups of defendants. Some prosecutors may acknowledge that unwarranted disparities exist, but they may not think that data can help them address disparities. For example, if prosecutors feel unwarranted disparities are outside the control of their office, then they may not think data would be useful. Conversely, there may be some who think collecting and tracking certain data points will help them make equitable decisions over time. These prosecutors may make statements suggesting their openness to data-informed decision-making and name specific data points they think may be important for their offices to collect routinely.

## **Data and Method**

### *Interviews*

The interviews used in this study were collected as part of a larger MacArthur Foundation-funded project examining prosecutorial office data collection capacity, transparency, and equity. They took place in two mid-sized Florida jurisdictions in 2018. Each office has between 100 and 150 attorneys. The attorneys were selected through stratified random sampling to allow attorneys from different divisions and levels of experience to have an

opportunity to be interviewed. The research team reached out to a total of 30 attorneys from each jurisdiction. Twenty-two attorneys agreed to participate in one office, and 29 participating attorneys in the other. The interviews lasted 45 to 75 minutes, with one researcher asking questions while another transcribed the interviews. There were two researcher-transcriber pairs to ensure the team could conduct all the interviews during two separate site visits.

The interviews were semi-structured, which allowed respondents to give follow-up information or additional insights. This also encouraged discussion between respondents and the researchers who were asking questions. Respondents could ask the researchers to provide examples or clarity if they were unsure of questions. The interview instrument contains five sections with questions addressing (1) priorities of the prosecutor's office, (2) prosecutorial success, (3) prosecutorial reform, (4) racial and ethnic disparities, and (5) data and efficiency. While responses were not specifically aimed at addressing data hesitancy, there were consistent responses from prosecutors supporting data-informed decision-making or resistance to reliance on data. For example, prosecutors were asked, "What data reports do you think would be useful for your job?". Then, respondents could ask follow-up questions or for examples of data points that are relevant to prosecutorial decisions if necessary. All prosecutors interviewed were asked this general question and follow-up questions related to how they view data and if they think data can be helpful to them, and their responses were split into two categories: data-positive and data-hesitant. Respondents were also asked to self-report their sex, race, ethnicity, and assigned division.

### *Analysis Plan*

To address the two research questions posed by this study, the interviews were coded using interpretative phenomenological analysis (IPA). This inductive coding strategy involves using recurring ideas or attitudes expressed in interviews to form themes (Eatough & Smith, 2017; Noon, 2018; Smith et al., 1999) instead of relying on one theory generated from commonly used grounded theory (Charmaz, 2006; Dougherty, 2017). The primary underpinning of IPA is that it is a "participant-oriented" approach (Alase, 2017, p. 11), meaning respondents' subjective experiences are used to generate themes. For this study, there is not a single theoretical underpinning that arose during the interviews, so IPA is an appropriate analysis method.

IPA is particularly advantageous in studies of participants' perceptions related to their lived experiences (Smith et al., 1999; Smith, 2017). To illustrate, in their study related to chronic pain, Smith and colleagues (1999) provided steps to generate themes related to participants' responses. They read through transcripts and made notes when

necessary. Then, they created a master list of themes from the notes. These themes may not be used; some are dropped from the master list if they do not have enough evidence from statements in the interview transcripts. The strength of IPA of semi-structured interviews is that themes can be generated from responses to questions from the interview instrument, or they can be new ideas from follow-up questions or tangential discussions. After narrowing down relevant themes, IPA requires certain commonly used words or phrases that illustrate specific themes (Smith et al., 1999).

Prior research using IPA has generated nuanced findings related to organizational psychology (e.g., Arslan et al., 2022), hospital patient experiences (Flahault et al., 2022), and mental health (Cooper et al., 2022; Punton et al., 2022). While IPA is used more frequently in these types of psychology or healthcare studies, IPA is also beneficial for prosecutorial decision-making research because there is still much that is unknown about how prosecutors perceive certain offenses, defendants, and data. The main underpinning of IPA is that participants can discuss their perceptions based on lived experiences. In this case, prosecutors' responses to their experiences would reveal more than traditional quantitative analyses of case processing decisions. There are examples of this in analyses of interviews with prosecutors (e.g., Arndt, 2022). Other analyses of interviews use similar methods, such as thematic analysis, to report prosecutors' sentiments about progressive prosecution (Grodensky et al., 2023). Prosecutors may express views that are different from what researchers expect; therefore, IPA is a useful coding scheme to analyze interview responses that both align and deviate from interview instruments.

After reading transcripts once without highlighting or selecting relevant statements, interviews were read again, noting any consistencies in responses to data-related questions. Then, specific words or phrases were chosen that indicated certain attitudes and made a list of recurring ideas. Not every theme on the initial list was used in the final coding strategy since there may not have been enough prosecutors with statements illustrating each theme. Once the final list of themes was complete, the research team coded the interview transcripts by searching for statements illustrating each theme. For example, if a respondent said, "data isn't useful", we would have searched the interview transcripts to see if other prosecutors expressed similar opinions.

Each theme has several examples of words or phrases to illustrate a shared attitude held by respondents. Phrases were grouped into categories that were either "data-hesitant" or "data-positive". For instance, responses that contained certain key phrases such as "I would not use data" or "data is not useful because cases are unique" would be classified as "data-hesitant". If prosecutors' responses contain phrases including "data could help me with my decisions" or "data on racial disparities may be helpful to make sure decisions are equitable," then those statements were grouped under

the “data-positive” thematic category. Prosecutors typically had consistent views throughout their interviews, so their statements allowed them to be grouped under either “data-positive” or “data-hesitant” categories. Results are discussed in terms of these two broad classifications of prosecutors with more detailed themes for each category to provide context.

## Results

The interviews revealed several themes concerning prosecutors’ sentiments toward data-informed decision-making and racial disparities. Importantly, prosecutors’ attitudes toward data and unwarranted disparities diverged; some prosecutors did not feel data are useful and that if disparities exist, they are not something their office could address. Conversely, others felt that data could be useful for tracking overall case processing trends and reducing racial differences and other unwarranted disparities in case outcomes. The identification of data-hesitant prosecutors and data-positive prosecutors addresses the first research question, while the themes related to the ways data can be useful are in response to the second research question.

The first set of themes is associated with data-hesitant prosecutors. Three themes emerged: 1) data isn’t useful for prosecutors because each case is unique, 2) data might be useful to measure success in some fields, but they can also be misconstrued in the legal system or the media, and 3) race data would not be helpful for prosecutors because they are not responsible for the overrepresentation of minorities in the criminal legal system. The second set of themes related to prosecutors who felt data could be useful for them and could be used to identify and address unwarranted racial disparities. Three themes represent this data-positive category: 1) data can be used to understand trends over time, 2) data can increase case processing efficiency, and 3) data can lead to more equitable outcomes.

Respondents’ demographic characteristics were self-reported at the end of each interview. The interviewer asked about their sex, race, ethnicity (Hispanic or non-Hispanic), years of prosecutorial experience, and the division they were assigned during the interviews. For prosecutor sex, 33 respondents identified as female, and 11 identified as male. There were 25 White prosecutors, seven Black prosecutors, nine Hispanic prosecutors, two Asian prosecutors, and four multiracial prosecutors included in the sample. Experience is defined as the time the respondent has worked as a prosecutor, including in other offices. Fifteen attorneys had zero to five years of experience as prosecutors, seven had six to 10 years of experience, eight had 11 to 15 years of experience, six had 16 to 20 years of experience, and another six had more than 20 years

of experience. Prosecutor sex and race had some missing data, with three interviews missing sex information and two missing race or ethnicity information.

### *Data-Hesitant Attitudes*

#### Data Isn't Useful for Prosecutors Because Each Case is Unique

Participants were asked questions about data they wished they had when making decisions. Some prosecutors felt data or tracking trends were not useful because they would not influence how they make decisions. A White female division chief argued data is not useful because “every case is different, so they should be treated differently.” This group of prosecutors in both offices emphasized handling decisions case-by-case, as demonstrated in previous studies (Arndt, 2022; Richardson & Kutateladze, 2021). Another White female felony prosecutor felt it was prudent for prosecutors to avoid looking “at the grand scheme.” This sentiment illustrates the tension between individualized case processing and uniform decision-making that has been described at various points in the legal system (Ohlin & Remington, 1993). For prosecutors who view cases as unique and requiring individualized approaches to charging, plea bargaining, and other vital decisions, data are not helpful. A White female felony prosecutor elaborated:

I don't look at each case like a data point or statistical point. Each case is a person's life, and it affects a bunch of people's lives. Data can never represent the wide impact of each case. Data will never capture the whole picture. I have to know my cases inside and out, get to know the victims and witnesses on a personal level, to do my job. And data is never going to help me do those things.

Prosecutors who share this view of case processing also cited the time spent learning every detail of their caseloads. A multiracial female felony attorney asked, “How much time would I be required to expend?” She said she already felt overworked without thinking about using data to make decisions. Ultimately, the data-hesitant prosecutors did not view data as important for their work; they preferred to spend any administrative time meeting with victims, witnesses, or defense counsel.

#### Data Might be Useful to Measure Success in Some Fields, But Can Also Be Misconstrued in the Legal System or by Media

Some data-hesitant prosecutors also expressed concerns about how data would be used, reported, and interpreted. A multiracial female prosecutor in a felony division expressed concerns “that data can be manipulated by whoever is doing a study.” This

apprehension was shared with other prosecutors, with a White female felony prosecutor stating, “data can never represent the wide impact of each case. Data will never capture the whole picture.” This statement also suggests prosecutors are hesitant to collect and share data because there are aspects of a case that cannot be understood through numbers alone. If media and other outlets report data without context, prosecutors may feel that the entire picture of a defendant, case, or victim is not shown.

Data-hesitant prosecutors also questioned whether data are helpful in their field specifically. They acknowledged it could be useful in other jobs, but they did not see the value in using data in prosecution. A White female prosecutor who works in the office part-time said she does not view “prosecution as something that is data-driven. They can lead us to certain conclusions.” She then explained that there are factors related to policing that might also impact cases that are not a direct result of prosecutors’ decisions. When prompted to see if she would use information about law enforcement practices, she said, “I would not use something like that.” Prosecutors in both jurisdictions were concerned with data being misrepresented, with another White female prosecutor in a felony division echoing this sentiment the data “could misrepresent what is actually happening.” This prosecutor did feel “data could be interesting, but not that useful” in day-to-day decision-making.

A White female felony supervisor explained her hesitation using the current data entry practices. Data are “only as good as what is inputted, so the numbers could be skewed because of improper use of codes or lack of consistency in adding information.” This suggests prosecutors may need more assistance or training for data entry to ensure the information collected is as accurate as possible. A White female prosecutor in a different felony division also shared the same skepticism of the current data collection practices, saying, “Not a single person in the office is really data knowledgeable. No, I don’t trust any of our data.” These two prosecutors were more apprehensive about the data collection practices within their office since most prosecutors are not data-oriented or concerned with data analysis. One Hispanic female felony prosecutor explained they were “a little perplexed by all that data”, so it may not be relevant to their day-to-day decisions if prosecutors cannot understand data reports.

Still, more prosecutors in the data-hesitant category were uneasy about how data would be reported by the media or interpreted by the public. The multiracial female prosecutor who expressed skepticism about the utility of data also stated, “The way the media reports racial and ethnic disparities is a problem.” Prior qualitative evidence suggests prosecutors are concerned with public safety and perceptions (e.g., Richardson & Kutateladze, 2021), so data may influence public attitudes toward their offices, which is a cause for trepidation. For data-hesitant prosecutors, data would not be helpful

because they would not compare similarly situated defendants, examine patterns in policing, or other trends over time.

### Racial Disparities Data Would Not Change My Decisions Because Prosecutors do Not Cause Disparities

When data-hesitant prosecutors were asked about race, they expressed one of two sentiments. First, some attorneys did not think racial disparities were a systemic issue; they felt culture and differential offending were the problem. Others felt that unwarranted racial disparities existed, resulting from biased police practices in some communities. A White female misdemeanor prosecutor asserted, "I don't think that's our place to reduce racial disparities; that's the police's job." Attorneys who did not think racial disparities were unwarranted were few and felt these differences were attributed to disparate participation in criminal behavior. A White male prosecutor in the juvenile division said, "I see a lot more Black people in court than White people," but that did not mean he assumed disparities were unwarranted.

A multiracial female felony prosecutor asserted "there are disparities," but she felt it was "mostly due to differential offending." When asked about racial disparities, a Black female felony prosecutor stated, "They exist. A lot. Starting from the beginning, minorities are raised in more violent cultures." The same prosecutor felt that communities were responsible for reducing crime and violence, explaining that "individuals in those communities would have to take part and stop reinforcing that violent culture." Other prosecutors mentioned culture as a key driver of crime, with a White male prosecutor in a targeted prosecution unit saying disparities are "not about color, it's about culture", reiterating that "cultures exist that make crime possible."

Other prosecutors felt racial disparities resulted from economic inequity that office policies could not address. Three said minorities are more likely to be involved in crime because poverty is the more salient issue for communities of color that are lower income as opposed to prosecutorial policies. A Black female attorney in the county court division, when asked about her view of whether racial disparities exist, said, "Oh yeah, [but] income matters." Another prosecutor, a White male in the county court division, felt a combination of poverty and over-policing were at play, saying the following while acknowledging the need for community engagement:

I think racial bias training in the police department would have to be where it would start. We don't get cases unless the police department has gotten involved. When it comes down to it, poverty rates and SES, that ties into it too. What neighborhood you live in, what access you have. I know Florida

public schools aren't....they could be better, to say the least. There is a school-to-prison pipeline. So it starts outside of this office.

Prosecutors acknowledged that these racial disparities due to socioeconomic inequities were at play in pretrial detention outcomes and defense counsel type, which meant there was nothing they could do as prosecutors. Notably, several attorneys expressed that they prosecute what comes across their desks. They understood disparities existed, but they could not change how they make decisions. To illustrate, a White female misdemeanor prosecutor asserted:

Do I think African Americans are prosecuted more than whites? Yes, because they live in the projects, and they don't have a lot of supervision. What are we supposed to do? If I can prove the case and it is a lawful arrest, am I supposed to let them go because it's fairer? It's not my place to decide who to prosecute and who not to prosecute.

These prosecutors argued that they could not dismiss cases even if those cases were the result of disparate policing or poverty, so data capturing race is not useful. A White female felony prosecutor explained:

If you've broken the law, if you've committed a crime, you need to be prosecuted for that. If we're putting race and gender at the forefront, I'm making it into an issue. But when I'm not taking race into consideration and so it's not an issue.

She followed up with a response to a question about the prevalence of racial disparities in the legal system:

A lot of that is driven by the media to prove political views that are far beyond what the justice system handles. I think the statistics show that minorities go to prison more. We're prosecuting crimes based on the facts of the case, not their race. If they've broken the law, they need to be punished.

For these prosecutors, data may be useful but would not influence how they do their jobs because cases that are referred by police are evaluated on objective evidentiary information.

The last group of recurring statements about racial disparities that prosecutors in both offices expressed was biased policing or over-policing in certain areas. These prosecutors acknowledged that this was a serious problem, but there was nothing



prosecutors' offices could do to address the issue. Several prosecutors expressed that disparities resulted from policing practices, and there was nothing their office could do even though they knew it was an issue. To illustrate this view, an Asian female prosecutor in the Special Prosecution Division acknowledged disparate policing affecting prosecutors' caseloads, saying, "We can't send all the African Americans to diversion because they are arrested at higher rates." These statements suggest that their office is merely prosecuting referred cases, even if they know they result from over-policing in certain areas.

Interestingly, most respondents who expressed data-hesitant views identified as female. Two White males expressed hesitation about using data to track trends. There were 17 prosecutors in the data-hesitant category, with one multiracial female attorney (who accounts for two quotes), two Black female attorneys, nine White female attorneys, two Asian female attorneys, and one Hispanic female attorney. There was no discernible pattern for experience level and whether an attorney expressed data-hesitant views, as there were attorneys with little experience and some with over a decade of experience.

### *Data-Positive Attitudes*

#### Data Can Be Used to Understand Trends Over Time

While 17 prosecutors hesitated to use data, others were open to or interested in using data to assess case processing patterns over time. Respondents were asked specific questions about data they wished they had or would find useful. These questions led to responses that span two broad categories of data: case processing outcomes and timeliness (e.g., disposition types and sentences) and recidivism or diversion program completion rates.

*Case Outcomes and Timeliness Data.* A White male felony prosecutor expressed the need for "information related to timeliness of prosecutors' decisions to reduce unnecessary pretrial detention due to lags in processing time". He also said he would like data regarding "comparison(s) of what the initial plea offer is versus the ultimate case resolution and sentencing numbers across divisions," including the sentence type and length. For data related to unwarranted disparities, he "would like to see data regarding geographic location to determine why crimes are occurring and what can be done." This prosecutor also felt that comparing previous administrations could help determine what office practices are effective. He also brought up charging information, stating, "charging should be based on mitigating factors, but there are trends that could be used for indicators of success," indicating that data could be used to determine how cases are being processed under different State Attorneys. There were also concerns with the

timeliness of case processing decisions, as well as information about pretrial detention from the county sheriff's office. Another White male felony prosecutor was concerned that defendants are "sitting in jail and should be processed more quickly than those out on bond," which suggests data capturing time to disposition for pretrial detainees would be useful.

While nearly every participant emphasized the importance of fairness and equity in case outcomes, several prosecutors expressed that data-informed decision-making is a path to more egalitarian output. Some argued that case processing efficiency was an important data point their office needs to collect. Prosecutors who suggested efficiency was important had different metrics they would like to see captured in the office data management system. To illustrate, two attorneys, a Black female, and a White male, suggested that their offices could regularly collect data about time to filing, including tracking their own caseloads, to increase efficiency. Another Black female felony prosecutor suggested that data capturing "time to dismissal with reasoning behind it - [for example,] we shouldn't be holding onto cases where there was a Brady evidence problem.", which suggests that prosecutors are concerned with time not only for defendants but also for case processing integrity and efficiency.

Still, others argue they want to know how long people sit in jail, although this may also be affected by judges and defense counsel or how long processing paperwork takes, which depends on the prosecutor assigned to the case. When asked about data reports that would be useful, a White felony prosecutor explained their office should know:

how much time are we spending in a case, and why does it take a year to resolve a burglary that doesn't go to trial? What are we doing to enhance the efficiency in the system, in the number of court appearances, in the number of times a prosecutor has to touch a file. Attorneys don't currently track time, or how much time/energy is spent on each case. There are certainly cases where 10 court appearances lead to a misdemeanor plea deal. Why?

It is possible prosecutors would be more cognizant of how long cases are pending if every case processing decision was included in data reports.

In a related sentiment, two prosecutors also acknowledged the need to streamline case processing in addition to increasing data collecting capacity, with a Hispanic prosecutor in a white-collar crimes division saying, "When you send the paperwork several different places, it can sometimes take too much time coming back up to you." A White male county court prosecutor stated, "Things come to a grinding halt. We just have

to wait. There are less things we need approval for now than in the current administration, but we still often have to wait to get people to sign things." In offices with more supervision of line attorneys, decisions may be pending longer due to the approval process. Even so, attorneys who spoke about this issue also understood the need for improved data collection. The White male county court prosecutor who expressed that supervisor approval slows case processing still said he wanted information about "sentencing decisions across judges."

Another issue closely related to efficiency that prosecutors discussed was pretrial detention. While prior research suggests case volume is the primary driver of case processing time (Wolff et al., 2022), defendants in pretrial detention are disadvantaged compared to defendants who are granted bail while their cases are pending (Petersen, 2020). Data-positive prosecutors in both study sites acknowledged the implications of inadequate data collection regarding case processing time for low-income defendants. A White female division chief said she would want more information about prosecutors' decisions at early case processing stages to "reduce pre-trial detention for cases that are later dismissed." In addition to reducing unnecessary punitiveness related to defendants' inability to post bail or pay for programs and services, participants also stated the need to reduce differences in plea offers and final sentences. They expressed that fairness is a main goal of their offices and felt consistent outcomes were important indicators of fairness.

*Recidivism and Program Completion Data.* Several prosecutors felt recidivism rates could measure success, so collecting data could help them assess which defendants recidivate. A White prosecutor said, "That's the ultimate goal [reducing recidivism] – is the person going to spend enough time in incarceration or probation to make him not reoffend?" Prosecutors in both study sites reiterated that office success can be measured with data capturing program completion and recidivism rates. A White male felony prosecutor stated, "Diversion completion rates would be helpful for all divisions. If there is an inherent problem in the process we can correct," which reflects this prosecutor acknowledging their responsibility in ensuring programs meet defendants' needs and reduce the likelihood of future offending. Often, defendants are referred to prosecutor-led diversion programs in lieu of custodial sanctions (Johnson et al., 2020; Lowry & Kerodal, 2019).

Data-positive prosecutors wanted to know whether those who complete probation or diversion commit crimes after program completion. A multiracial female felony prosecutor wanted information about:

Successful completion of programs and stated if I knew that diversion completion went down 10% from last month, I'd first want to know how many people we put in. And how many people dropped out because of an inability to pay. But I'd find it useful as a starting point. And then I'd find it useful to know after someone completes probation, do they come back again [without supervision] within another six months?

A White male felony prosecutor in the same office discussed the importance of data related to probation completion. He argued they should use "any [kind] of data on successful completion of probation [no re-arrest or violations]. To avoid more work and more files, this is why probation is not used as often as hard time. Violators are common." This statement also speaks to the importance of program completion data to provide information about program efficacy and to increase prosecutors' awareness of what happens after a case is resolved through probation or diversion. A White female division chief echoed this sentiment, saying, "I would like to know our success rate for mental health court, how juveniles do after they've been through court or diversion programs. I want to know that these things we want to work are actually working" [success rate in terms of recidivism, versus testing positive for drugs before it stuck, or program completion]. Program completion data would provide information about program efficacy and increase prosecutors' awareness of what happens after a case is resolved through probation or diversion.

Prosecutors and other court actors may also find it beneficial to have information about probation violations. A Black female county court prosecutor said:

I would like to see cases that violate probation. But it comes back to the same courtroom if there is a VOP. I'd like to know who are these people, what are they doing. You can see the same person like five times before the judge finally gets over it and puts them in jail.

This suggests that data-positive prosecutors are open to using data to reduce blanket incarceration policies and achieve progressive prosecution (Covert, 2021). For example, understanding trends in probation violations could lead to reserving custodial sentences for repeat offenders and not first-time or low-level offenders.

### Data Can Be Used to Make Outcomes More Equitable

For data reports on fairness and equity, prosecutors cited the importance of tracking extralegal factors like defendants' race, ethnicity, and socioeconomic status. Nearly all data-positive prosecutors discussed socioeconomic status in response to questions

related to the question about data and racial disparities. These prosecutors felt racial and socioeconomic disparities were a serious problem that required changes to office policies and practices. Of these groups of prosecutors with data-positive attitudes, most wanted to know about defendant race trends in addition to case processing data.

Data-positive prosecutors who felt racial disparities were a problem expressed interest in regularly collecting information about defendants' race to examine trends for specific decision points (e.g., diversion and sentencing). A White female prosecutor in a supervisory role stated that she "would like to know the sentencing trends for white versus black defendants." Others echoed this for other decision points. For example, a Black female prosecutor in the homicide division stated that it was important for the office to "track race in diversions". A prosecutor in the homicide division, a Hispanic female, wanted information about disposition types by race over time, indicating the importance of understanding unwarranted disparities in pleas and convictions as well. This prosecutor stated, "We [the office] could look at the race of defendants and which ones are getting pleas more often."

In total, three data-positive prosecutors specifically wanted information about pleas and race. A White female chief assistant state attorney suggested that the "initial plea offer versus the ultimate case resolution" could help address whether plea offers are also equitable across different groups of defendants. Overall, the data-positive prosecutors in this group were aware disparities occurred but had different ideas related to the causes and whether their offices should address them. There was a range of interest related to race data; some prosecutors felt it would be interesting but irrelevant to day-to-day decision-making, while others thought their decisions could be more equitable if they had data on race trends over time.

Overall, 18 attorneys felt data could help them make more equitable decisions promptly. Importantly, there were more male prosecutors in this category, with six quotes from White males expressing that there were data reports that would be relevant to their work. Additionally, there were four Black female attorneys with varying levels of experience, one multiracial female attorney, a Hispanic female attorney, and four White female attorneys. Sex information was missing for two attorneys- one White and one Hispanic. Consistent with the data-hesitant prosecutors, there was no pattern for the experience level of attorneys and their attitudes; there were attorneys with minimal experience handling misdemeanors and attorneys in supervisory positions who shared sentiments related to data reports and their utility.

## Limitations of the Current Study

Given that scholarship examining prosecutors' attitudes toward data-informed decision-making is in its infancy, this study presents important findings to guide future research. Still, this study is not without limitations. First, interviews only took place in two State Attorney's Offices in Florida, so the findings may not be generalizable to other states with different levels of data collection and analytic capacity. There may also be other factors in Florida, including political affiliation and the types of cases prosecutors routinely handle.

While the offices included in this study are headed by attorneys with different political affiliations (one Democrat and one Republican), individual attorneys who participated in the study may be influenced by their own political beliefs, thus influencing their handling of certain cases. Prior research examining punitiveness and political ideology finds those with more conservative views hold more punitive attitudes than those with liberal views (Burton et al., 2020; Payne et al., 2004). At present, the data collected as part of this study does not ask assistant prosecutors to disclose their political affiliations or views. This limitation is an important consideration for research moving forward since the views expressed by these attorneys may differ from those of attorneys in other states with differences in the dominant political ideology. Thus, the political beliefs of line prosecutors and mid-level supervisors may be more relevant than the elected State Attorney's political affiliation.

Prosecutors may also be affected by the types of cases they handle. Prosecutors who handle more serious cases such as homicides, sexual assaults, or crimes involving child victims may be less concerned with data. However, prosecutors in offices or divisions that handle mostly misdemeanors may be more open to data-informed decision-making since they have higher caseloads, cases that may not constitute a risk to public safety, or they may recognize unwarranted disparities that can occur in these cases. Qualitative studies with prosecutors are rare; however, important findings have been generated by previous qualitative work in this area (e.g., Dunlea, 2022; Frederick & Stemen, 2012; Grodensky et al., 2023; Richardson & Kutateladze, 2021). Prosecutors in various jurisdictions have expressed views on progressive prosecution, individualized case processing, and their discretion to discontinue prosecution when they see fit. Still, further research in this area is necessary to understand how prosecutors view data and data-informed prosecution.

## Implications

While still an emerging area of study, prosecutorial decision-making research has made great strides in recent years (Arndt, 2022; Dunlea, 2022; Frederick & Stemen, 2012; Richardson & Kutateladze, 2021; Levine & Wright, 2017). Much of this scholarship is focused on assessing racial and ethnic differences in case outcomes (Johnson et al., 2023; Kutateladze, 2018; Donnelly & MacDonald, 2018). Contemporary studies have also analyzed interviews with prosecutors to gain insight into their perceptions of their role and racial disparities (Dunlea, 2022), attitudes about certain cases (Arndt, 2022), and criminal justice reform (Grodensky et al., 2023). The current study adds to this body of research by examining how prosecutors view data. Elected prosecutors increasingly call for data-informed decision-making to make more equitable decisions and improve case processing efficiency (Krinsky & Butler, 2021). However, little is known about how line prosecutors view the usefulness of data. To address this knowledge gap, this study analyzed interviews conducted in two Florida State Attorney's Offices in 2018 as part of a larger MacArthur Foundation-funded project assessing indicators of prosecutorial success and efficiency.

Findings suggest some prosecutors view data as important, while others do not think it is necessary or safe to rely on data to make decisions. Among data-hesitant prosecutors, the main issues prosecutors cited with data were that data could be manipulated or used only to prove partisan arguments about the legal system. Others felt it was unimportant because each case is unique and requires individualized decision-making, which is supported by extant qualitative research (Richardson & Kutateladze, 2021). Conversely, there were prosecutors in both offices who thought data could be a useful decision-making aid and that they could lead to more equitable case outcomes. These data-positive prosecutors wanted detailed information about various extra-legal and case-specific factors to assess how efficiently their offices dispose of cases and whether there are obvious unwarranted disparities over time. Some prosecutors were conflicted about the importance of data and fairness- some understood disparities existed, but they did not think data would help them because differences were due to policing, poverty, and differential offending. Importantly, prosecutors with varying experience levels were represented in the data-hesitant and data-positive categories.

It is possible prosecutors would answer differently if they were trained in basic data collection and analysis. A prosecutor in the sample acknowledged the reason some prosecutors might be hesitant to use data is due to the lack of understanding most people have related to basic statistical analysis. In offices with State Attorneys that push improving data collection capacity, it is likely prosecutors would benefit from basic data training in addition to implicit bias training that is often available. These trainings may

increase compliance with data collection and lead to new or updated data fields as prosecutors consider what fields would be useful. Without such training or changes to office culture related to data-informed decision-making, it is possible racial and ethnic disparities will continue, defendants in pretrial detention could face long periods while their cases are pending, and office-wide delays in case processing may persist. The current study addresses new research questions about prosecutors' views regarding data-informed decision-making to address these issues related to prosecutorial policy and practice.

This study also has implications for prosecutorial decision-making research. There are numerous studies examining prosecutors' decisions, with most relying on quantitative data sources, assessing unwarranted disparities in case outcomes and cumulative disadvantage (Kurlychek & Johnson, 2019; Kutateladze et al., 2016). Fewer studies analyze qualitative data sources like interviews due to prosecutors being historically hesitant to be interviewed by researchers. These studies provide insight into prosecutors' views of racial disparities (Dunlea, 2022) and progressive reforms (Grodensky et al., 2023); however, these studies focus on how prosecutors view data-informed decision-making. The current study addresses this issue, revealing several key findings. First, some prosecutors want access to data reports to assist them in decision-making, while others do not think data would be helpful or that reports could spread harmful narratives about prosecutors.

These two distinct findings have important implications for both quantitative and qualitative research. More information about what factors contribute to prosecutors holding data-positive or data-hesitant attitudes could be achieved through surveys. Prosecutors' backgrounds and attributes may play a role, necessitating more research with larger samples. While no clear patterns emerged related to years of experience and attitudes toward data, these results may differ in other jurisdictions. There were also fewer responses from prosecutors of color, particularly Black males, which limits the conclusions that can be drawn. Additionally, more interviews with an interview instrument specifically geared toward understanding these two perspectives of data would provide greater insight into the justifications prosecutors have for either viewpoint. More research in this area is required in different states and jurisdictions to contribute to the growing body of prosecutorial discretion scholarship.

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