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Rules, Resources, and Relationships: Contextual Constraints on Prosecutorial Decision Making

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Abstract

In the American criminal justice system, prosecuting attorneys arguably enjoy broader discretion than any other system actor. Research, however, is beginning to show that prosecutorial discretion is not nearly as unconstrained as initially thought. Relying on in-depth interviews and surveys of prosecutors in two large urban/suburban county prosecutors’ offices, this article examines prosecutors’ decision making processes, exploring internal and external, formal and informal mechanisms that regulate prosecutors’ decision making. We find that prosecutorial discretion is constrained by several factors. Internal rules or policies within the prosecutor’s office often determine whether a case is accepted or rejected for prosecution, what the appropriate charge in the case should be, or what the appropriate plea offer should entail. The lack of resources in the prosecutor’s office and the local court system often require prosecutors to reject, dismiss, or amend charges in order to work within available resource limits. Relationships with law enforcement officers, judges, and defense attorneys often alter how a case will be handled. All three of these constraints – rules, resources, and relationships – can significantly influence case outcomes. Moreover, these constraints often trump evaluations of case level factors (e.g. strength of the evidence, severity of the offense, defendant criminal history), forcing prosecutors to make decisions that they may not make in the absence of such constraints.
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INTRODUCTION

In the American criminal justice system, discretion is perhaps broader, more often available, and less constrained in the hands of the prosecuting attorney than in the hands of any other system actor.\(^1\) Prosecutors are seen as having nearly unbounded discretion to accept the cases they want, file the charges they think appropriate, amend or dismiss cases as they see fit, and negotiate the sentences they feel are deserved. Moreover, the prosecutor’s decision making process remains largely a “black box,” the inner workings of which are hidden from public and legal scrutiny.\(^2\) Yet, this black box is becoming increasingly less opaque and research implies that prosecutorial discretion is not nearly as unconstrained as initially thought.\(^3\)

Once regarded as the abandonment of law,\(^4\) prosecutorial decision making is often governed by internal rules.\(^5\) In some instances, these rules derive from criminal procedural constraints or

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\(^2\) Marc L. Miller & Ronald F. Wright, The Black Box, 94 IOWA LAW REVIEW 125, at 129 (2008) (describing the inner workings of prosecutors’ offices as a black box).

\(^3\) See, e.g. Id (arguing that prosecutors are governed by internal rules that operate to constrain prosecutorial discretion).


\(^5\) See, e.g., Leonard R. Mellon, Joan E. Jacoby & Marion A. Brewer, The Prosecutor Constrained by His Environment: A New Look at Discretionary Justice in the United States, 72 J. CRIM. L. & CRIMINOLOGY 52 (1981) (arguing that office policies often constrain individual prosecutors’ decisions); Miller & Wright, supra note __ (arguing that internal social norms function as internal regulations within prosecutors’ offices). Several authors have also argued that prosecutors can create additional models of internal regulation. See, e.g., Darryl K. Brown, Cost-Benefit Analysis in Criminal Law, 92 CAL. L. REV. 323 (2004) (arguing for a cost–benefit approach to management of prosecutors’ offices); Michael M. O’Hear, Plea Bargaining and Procedural Justice, 42 GA. L. REV. 407 (2008) (arguing that internal regulations can be used to control plea bargaining).
restrictions created by substantive criminal law. In other instances, internal rules derive from explicit philosophies or policies created by the chief prosecutor and enforced through internal, supervisory structures. Agency-level social norms also develop through adherence to procedural rules or policy directives and act as internal regulations on decision making. In all of these instances, internal rules constrain and regulate, to a certain degree, the discretion of individual line prosecutors.

Prosecutors, like other government actors, also operate within (sometimes severe) resource limitations. As a result of high caseloads and limited staffing, prosecutors make decisions to ensure the efficient use of these limited resources. They may also be concerned with general

See, e.g., Miller & Wright, supra note __ (arguing that constitutional criminal procedure – such as search and seizure – and substantive criminal law constrain prosecutors’ decisions).

See, e.g., Mellon, Jacoby & Brewer, supra note __ (arguing that offices often create clear philosophies that dictate the expected course of action in cases and office structures can either tightly or loosely supervise individual prosecutors’ use of discretion); Ronald F. Wright & Marc L. Miller, The Screening/Bargaining Tradeoff, 55 STAN. L. REV. 29, 30–36 (2002); Ronald F. Wright & Marc L. Miller, Honesty and Opacity in Charge Bargains, 55 STAN. L. REV. 1409, 1409–17 (2003) (arguing that practices in New Orleans and other jurisdictions demonstrated that prosecutors could restrict plea bargaining through strict screening practices); Richard S. Frase, The Decision to File Federal Criminal Charges: A Quantitative Study of Prosecutorial Discretion, 47 U. CHI. L. REV. 246 (1980) (showing that office policies explained approximately one-third of declinations in federal prosecution); Michael Edmund O’Neill, Understanding Federal Prosecutorial Declinations: An Empirical Analysis of Predictive Factors, 41 AM. CRIM. L. REV. 1409, 1409–17 (2004) (finding that 17 percent of declinations in federal court were due to office policy and 5 were due to resource constraints).

See, e.g., Greg Bluestein, State Budget Cuts Clog Criminal Justice System, The Washington Post, October 31, 2011 (describing cuts to court and prosecutor budgets across the country and how they have increased processing times and forced jurisdictions to cut down on trials); Beth Musgrove, Prosecutors Warn of Layoffs, Furloughs if Budgets Are Cut Again, Lexington Herald Ledger, February 1, 2012 (describing the impact of a 2.2 percent decrease in funding for prosecutors in Lexington, Kentucky); Tim Hrenchir, District Attorney Speaks against Budget Cuts, The Capital Journal, August 21, 2011 (describing the effect of a 10 percent cut to the county prosecutor’s budget in Shawnee County, Kansas); A.G. Sulzberger, Facing Cuts, a City Repeals Its Domestic Violence Law, The New York Times, October 10, 2011 (detailing the repeal of a local domestic violence ordinance in Topeka, Kansas in response to budget cuts to the County and City prosecutors’ offices); Chris Henry, Kitsap County Prosecutor, Auditor Steamed about Proposed Budget Cuts, Kitsap Sun, October 31, 2011 (detailing a 6.8 percent decrease in the county prosecutor’s office in Kitsap County, Washington and the potential decrease in staff that would result); Debra Cassens Weiss, DA Budget Woes: Job Threats in Wisconsin, and a Standoff Over Budget Cuts in Nevada, ABA Journal, April 8, 2011 (describing the effects of budgets cuts to county prosecutors’ offices in Wisconsin and Nevada resulting in potential reductions in staffing levels). As these few articles demonstrate, the impact of budget cuts are felt by both large and small prosecutors’ offices. Prosecutors generally respond by decreasing staff or focusing resources on increasingly smaller subsets of offenses.

courtroom efficiency and make decisions based on the need to dispose of cases, to avoid court and case backlogs, and to conserve limited court resources for complex or serious cases.\(^\text{11}\)

Moreover, some argue that such efficiency concerns can supersede both formal evaluations of case strength and office policies.\(^\text{12}\) Thus, resources both internal and external to the prosecutor’s office may limit discretionary decision making as prosecutors are encouraged to focus on efficiency.

Scholars have also long recognized that prosecutors operate within a courtroom community in which decision making is the product of courtroom social contexts and shared norms.\(^\text{13}\)

According to this perspective, through regular interactions over a long period of time, the courtroom workgroup – judges, prosecutors, defense attorneys – forms a set of interdependent relationships and produces a local legal culture characterized by shared traditions, values, and norms.\(^\text{14}\) These shared values include common perceptions about the value or prioritization of that among other substantive concerns, prosecutors’ decisions to impose mandatory sentences are shaped by efficiency concerns).

\(^\text{11}\) See, e.g., Jo Dixon, *The Organizational Context of Criminal Sentencing*, 100 *American Journal of Sociology* 1157-1198 (1995) (arguing that courtroom actors make decisions to ensure organizational efficiency); Rodney L. Engen & Sara Steen, *The Power to Punish: Discretion and Sentencing Reform in the War on Drugs*, 105 *American Journal of Sociology* 1357-1395 (2000) (arguing that the need for courtroom efficiency often affects sentencing recommendations and sentences imposed); Paula M. Kautt & Miriam A. Delone, *Sentencing Outcomes under Competing but Coexisting Sentencing Interventions: Untying the Gordian Knot*, 31 *Criminal Justice Review* 105-131 (2006) (arguing that prosecutors avoid the use of mandatory prison sentences for efficiency reasons, using the promise to convict on an offense not subject to the mandatory sentence to encourage a guilty plea); see also, Ulmer, Kurlycheck, Kramer, supra note __ (arguing that guilty pleas in Pennsylvania generally resulted in sentencing discounts as a way to promote efficiency).

\(^\text{12}\) See, e.g., Dixon, supra note __ (arguing that efficiency concerns were more important than other case-specific factors in determining sentencing outcomes); John H. Kramer & Jeffery T. Ulmer, *Downward Departures for Serious Violent Offenders: Local Court ‘Corrections’ to Pennsylvania’s Sentencing Guidelines*, 40 *Criminology* 897-932 (2002) (arguing that departures from the Pennsylvania guidelines were affected by court resources).


\(^\text{14}\) See generally, EISENSTEIN & JACOB, supra note __.
cases, the proper resolution of cases, or “going rates” that determine decisions in most cases and that make the decision making process more predictable.\textsuperscript{15} Members of the courtroom workgroup generally find it in their professional interests to abide by the values and norms of the court community and often make decisions to maintain good relationships with other courtroom actors.\textsuperscript{16} In the end, these relationships produce a set of expectations about how other courtroom actors will behave in future interactions and influence the decision making of all actors.

This article explores the extent to which rules, resources, and relationships constrain prosecutorial decision making. Relying on in-depth interviews and surveys of prosecutors in two large urban/suburban county prosecutors’ offices – Midwestern County and Southeastern County\textsuperscript{17} – the article investigates prosecutors’ decision making processes, exploring several internal and external, formal and informal mechanisms that regulate prosecutors’ decision making, including prosecutorial policies and practices, office and court resources, and relationships with other actors in the criminal justice system.

Prior empirical research generally has examined decision making only indirectly. An extensive body of research, for example, has examined case outcomes across the prosecutorial process, from initial case screening to sentence recommendation. Scholars have shown that prosecutorial outcomes are primarily associated with legal factors, including strength of the evidence,\textsuperscript{18} type and seriousness of offense,\textsuperscript{19} and defendant culpability\textsuperscript{20} as well as other case-

\textsuperscript{15} See generally \textit{Id}; \textit{ULMER}, supra note __.
\textsuperscript{16} \textit{Id}.
\textsuperscript{17} The county names are disguised as per agreements with the participating prosecutors’ offices.
\textsuperscript{18} See, e.g., Celesta Albonetti, \textit{Prosecutorial Discretion: The Effects of Uncertainty}, \textit{LAW AND SOCIETY REVIEW} 21, 291-313 (1987) (finding that cases with stronger evidence were more likely to be prosecuted); \textit{JOAN E. JACOBY, ET AL. PROSECUTORIAL DECISION MAKING: A NATIONAL STUDY} (1982) (finding that in hypothetical cases, prosecutors were more likely to prosecute cases with stronger evidence); Cassia C. Spohn and David Holleran, \textit{Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners}, \textit{JUSTICE QUARTERLY} 18, : 651-88 (2001) (finding that sexual assault cases involving stronger evidence were more likely to be charged).
\textsuperscript{19} See, e.g., Albonetti, supra note __ (finding that cases involving more serious offenses were more likely to be prosecuted; Jacoby et al., supra note __ (finding that in hypothetical cases, prosecutors were more likely to prosecute
level factors, including defendant race, gender, defendant-victim relationships, and perceptions of victim credibility. Two areas long suspected of being important to understanding case outcomes have remained understudied—the effect of prosecutor characteristics, such as demographics and experience, and organizational constraints, such as caseloads and inter-agency relationships. Although this literature has begun to illuminate case-

specific factors that may impact prosecutorial decision making, it relies on quantitative analyses of the association between various case-level factors and case outcomes in an attempt to discern the underlying rationale for prosecutors’ decisions. In other words, this research looks at what goes into the black box of prosecutorial decision making and what comes out, and from that attempts to understand the mechanisms inside the black box; it does not peer inside the black box.

A limited body of empirical research has explored how prosecutors make decisions.27 This research has sought to examine explicitly decision making processes through field observation within prosecutors’ offices,28 interviews with prosecutors,29 and examination of prosecutors’ case management systems.30 Although methodologically groundbreaking, prior studies are limited, focusing on just one unit that handles just one offense type31 or examining a single decision point in the prosecutorial process.32 As such, these studies expose just a portion of prosecutorial decision making processes.

By moving beyond an examination of case outcomes, this article explores the context in which decisions are made and outcomes produced. We do this by allowing prosecutors to discuss the decision making process in their own words. Moreover, we examine decision making across the prosecutorial process, from initial case screening to sentence recommendation,
and across a range of prosecutorial units, from those prosecuting only misdemeanor offences to those prosecuting felony sex crimes. Finally, by exploring decision making processes in two prosecutors’ offices, we can begin to illuminate similarities and differences in office philosophies, structures, and external environments and to explore how these affect prosecutorial decision making.

Based on our analyses, we argue that rules, resources, and relationships often pose considerable limitations on prosecutorial discretion, constraining or expanding discretion in individual cases. As prosecutors noted, cases do not exist in a vacuum; they exist within a system that acts as a help or a hindrance to decision making. For example, office policies may screen out certain cases or may require a specific charge or sentence in a plea offer regardless of the strength of the evidence. A lack of available support staff to track down witnesses or a lack of courtroom space may alter the ability to fully pursue a case, requiring prosecutors to reassess whether even strong cases should proceed. A close relationship with law enforcement may lead prosecutors to accept weak case, while an antagonistic relationship may lead them to discount officers’ versions of events. As our analyses show, the outcomes in individual cases are not only shaped by external constraints but are often determined by them, with the resolution of a case often seemingly outside the control of the individual prosecutor.

The Article proceeds in five parts. In Part I, we provide an overview of the methods used in the study and describe the two county prosecutors’ offices in which the study takes place – Midwestern County and Southeastern County. The basic descriptions of the offices – including staffing levels, volume of cases, organizational structures – provide the initial context in which decision making exists and begin to set the boundaries within which decision making occurs.
In Part II, we describe mechanisms of internal regulation within each office. We extend the research of Marc Miller and Ronald Wright, which examined the impact of office-wide social norms and rules on decision making. We find that the creation and enforcement of office policies, social norms, and rules in Midwestern and Southeastern Counties occurred at a lower level of aggregation – within individual, specialized units. While the chief prosecutors in each office articulated a clear, office-wide philosophy, unit managers were given authority to translate that philosophy into unit-specific policies or unit-specific “norms of practice.” As such, within prosecutors’ offices with multiple units there are opportunities for inconsistencies in social norms and regulation across units and a need to further explore internal regulation mechanisms.

In Part III we begin to look for contextual constraints external to the prosecutor’s office by examining the influence of resources on prosecutorial decision making. Although internal resource constraints – staffing, caseloads – are often seen as having the largest impact on prosecutors, we find that external resource constraints – primarily, court availability – have a greater impact in Midwestern and Southeastern Counties. Prosecutors in our study routinely altered screening, charging, and plea bargaining strategies to account for decreasing trial availability. Prosecutors in many instances had to reduce charges, renegotiate plea offers, or simply dismiss cases in response to reductions in courtroom space, shortened court calendars, and judicially initiated continuances. Although prosecutors are often seen as making decisions

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33 Miller & Wright, supra note __ (finding that office priorities and policies created social norms that acted as rules on decision making); see also Mellon, Jacoby, & Brewer, supra note __ (finding that office policies constrained decision making). Although these scholars highlight the internal regulation that occurs in prosecutors’ offices, it is unclear from their findings at what level the internal regulation occurs. In both instances, it appears that the authors mean regulation by the chief prosecutor. In large offices divided into specialized units with multiple layers middle management, however, it is unclear how directly a chief prosecutor can regulate decision making.
“in the shadow of the trial,”34 our findings suggest a need to further explore this proposition when the likelihood of the trial is greatly diminished due to decreasing court resources.

Part IV turns to the influence of relationships, examining relationships between prosecutors and judges, defense attorneys, and law enforcement officers. We find that these relationships exert a strong influence on prosecutorial decision making. Specifically, the relationship between prosecutors and law enforcement officers is marked by an institutional tension in which prosecutors have an obligation to scrutinize cases brought by law enforcement and must decline to prosecute or dismiss many cases. In Midwestern and Southeastern Counties, prosecutors, particularly less experienced ones, tended to feel and to respond to pressure from law enforcement to accept marginal or poor cases. We also find that changes in the priorities of law enforcement agencies within these jurisdictions – e.g. shifting resources from investigation to patrol, focusing resources on particular types of crimes – affected the ability of prosecutors to prosecute cases. Thus, since law enforcement determines the quantity and quality of cases entering system, maintaining relationships between prosecutors and law enforcement officers becomes vitally important.

In Part V we discuss the implications of the findings from the current study. We address how our findings about the constraints of rules, resources, and relationships in Midwestern and Southeastern Counties fit with the practical constraints generally seen as part of the prosecutorial

decision making process. We argue that future evaluations of prosecutorial outcomes and decision making processes should be cognizant of these internal and external constraints when assessing the impact of case-level factors. Moreover, chief prosecutors and criminal justice policy makers should be alert to the potential for contextual factors to influence and possibly distort the exercise of prosecutorial discretion.

I. RESEARCH SETTINGS AND METHODS

A. Research Sites

The study relies on data from two county prosecutors’ offices – Midwestern County and Southeastern County. The two offices are similar in several important ways that facilitate cross-site comparisons: medium-sized offices serving urban/suburban populations and handling large numbers and varied types of cases. The sites also differ in two key ways that facilitate cross-site contrasts: organizational structures and operational approaches.

Both Midwestern and Southeastern Counties have populations of just less than 1 million people, with one large urban center and several surrounding suburban municipalities (Table 1). While Midwestern County witnessed a flat population growth over the last decade (increasing just 0.8 percent between 2000 and 2010), Southeastern County experienced rapid population growth, growing 32 percent over the last decade.\(^\text{35}\) Both counties are very similar demographically; roughly 50 percent of the general populations in both counties are white, 30 percent are African American, and 12 percent are Hispanic.\(^\text{36}\) The defendants prosecuted in each county are also similar demographically – although roughly 42 percent of the general population is non-white, approximately 66 percent of the defendant population in each county is non-white.

\(^{35}\) United States Census Bureau, State and County Quickfacts, available at http://quickfacts.census.gov/qfd/index.html (last visited February, 28, 2012) (the specific URL for each county is not included here to ensure masking the identity of each research site).

\(^{36}\) Id.
The minority populations in both counties are largely concentrated in central urban areas, while non-minority populations are concentrated in suburban municipalities. Between 2000 and 2010, both counties also saw increases in the proportion of African American and Hispanic residents and decreases in the proportion of white residents. These fluctuations were relatively small in Midwestern County; in contrast, in Southeastern County the relative proportion of white residents in the population decreased 10 percentage points (from 61 percent to 51 percent) as the proportion of Hispanic residents increased 5 percentage points (from 7 percent to 12 percent) and the proportion of African American residents increased 3 percentage points (from 28 percent to 31 percent).\(^{37}\)

The median household income is significantly higher in Southeastern County relative to Midwestern County ($55,000 versus $43,000 in 2010).\(^{38}\) Midwestern County, however, experienced an increase in median household income between 2000 and 2010, while Southeastern County experienced a decrease. Moreover, while Midwestern County saw a 2 percentage point decrease in the poverty rate between 2000 and 2010, Southeastern County experienced a 2 percentage point increase.

\(^{37}\) Id. 
\(^{38}\) Id.
Table 1. Characteristics of the population served, by research site

<table>
<thead>
<tr>
<th>Selected Characteristics</th>
<th>Midwestern County</th>
<th>Southeastern County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
<td>2010</td>
</tr>
<tr>
<td>Approximate total population</td>
<td>900,000</td>
<td>950,000</td>
</tr>
<tr>
<td>% white, non-Hispanic</td>
<td>58%</td>
<td>54%</td>
</tr>
<tr>
<td>% black, non-Hispanic</td>
<td>26%</td>
<td>27%</td>
</tr>
<tr>
<td>% Hispanic, any race</td>
<td>11%</td>
<td>13%</td>
</tr>
<tr>
<td>Median household income (2010$)</td>
<td>$40,500</td>
<td>$43,000</td>
</tr>
<tr>
<td>% of population below poverty</td>
<td>21%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Both jurisdictions operate within states that have abolished discretionary parole release from prison; yet both states have maintained some form of mandatory supervision after release. Both jurisdictions also operate within states with some form of sentencing guidelines. The guidelines under which Midwestern County operates are advisory, meaning that judges are not required to follow the sentence recommendations in the guidelines and neither the prosecutor nor defense can appeal sentences that do not adhere to the guidelines. In contrast, the guidelines under which Southeastern County operates are presumptive, meaning that judges are required to follow the sentence recommendations in the guidelines and both the prosecutor and defense can appeal sentences that do not adhere to the guidelines.

The Midwestern County prosecutor’s office employs approximately 125 prosecutors who handle roughly 30,000 felony and misdemeanor cases per year (Table 2). The office is organized
into a series of eighteen specialized units that handle specific offense types (e.g. domestic violence, felony drug, guns) and five general crimes units that handle all felony and misdemeanor cases not handled by specialized units. All new prosecutors in Midwestern County are assigned to one of the five general crimes units comprised of both new and experienced prosecutors; prosecutors may remain in a general crimes unit for their entire careers. All prosecutors are responsible for screening cases within their unit; cases accepted for prosecution are then assigned to specific prosecutors and prosecuted vertically (i.e. a single prosecutor handles the case throughout the entire prosecutorial process). The office is structured along a three-tiered system of management, with prosecutors reporting to twenty-three unit managers who are supervised by five deputy prosecutors who, in turn, report to the chief prosecutor. The chief prosecutor in Midwestern County was first elected within the last ten years and has implemented innovative prosecution models, creating community-prosecution units, organizing units around geographic areas, and instituting programs based on restorative-justice.

The Southeastern County prosecutor’s office employs roughly 75 prosecutors who handle approximately 13,500 felony and misdemeanor cases per year (Table 2). The office is organized around seven specialized felony units that handle broad categories of offense types (e.g. person, property, drugs) and one misdemeanor unit that handles all misdemeanor and criminal traffic cases. All new prosecutors in Southeastern County are assigned to the misdemeanor unit which is comprised solely of new prosecutors; prosecutors are then transferred to another unit, usually the felony drug unit, after nine to eighteen months. Experienced prosecutors are responsible for screening felony cases; cases accepted for prosecution are then assigned to specific prosecutors within units and prosecuted vertically, with the exception of felony drug offenses which are prosecuted horizontally (i.e. cases are handled by multiple prosecutors, each handling the case at
one stage of the process). The Southeastern County prosecutor’s office is a flat system, with prosecutors reporting to seven unit managers who report directly to the chief prosecutor; two deputy prosecutors function as office managers but do not act as intermediaries between unit managers and the chief prosecutor. The chief prosecutor in Southeastern County has retained the office for more than two decades and follows a traditional prosecution model.

Table 2. Selected characteristics of participating prosecutors’ offices

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Southeastern County</th>
<th>Midwestern County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of prosecutors$^{39}$</td>
<td>75</td>
<td>125</td>
</tr>
<tr>
<td>Approximate number of criminal cases per year</td>
<td>13,500</td>
<td>30,000</td>
</tr>
<tr>
<td>Office organization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 7 felony units, specialized by crime type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 1 misdemeanor unit that handles both misdemeanors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and criminal traffic violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Managerial structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>prosecutors report to 8 unit managers who report to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the chief prosecutor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vertical or horizontal prosecution</td>
<td>Horizontal for felony drug cases; vertical for other cases after initial screening</td>
<td>Vertical after initial screening</td>
</tr>
<tr>
<td>Strong orientation toward diversion programs and</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>community prosecution?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenure of the chief prosecutor (at start of project)</td>
<td>30 years</td>
<td>2 years</td>
</tr>
</tbody>
</table>

$^{39}$ This number does not include the chief prosecutor or deputy prosecutors.
Although prosecutors in both jurisdictions are similar in terms of gender and race, prosecutors in Midwestern County tend to be older and have more experience than prosecutors in Southeastern County (Table 3). For example, roughly 46 percent of prosecutors in Midwestern County were 40 years of age or older, compared to just 19 percent of prosecutors in Southeastern County. In addition, while roughly 40 percent of prosecutors in Midwestern County have 10 or more years experience as a prosecutor, just 9 percent of prosecutors in Southeastern County have a similar level of experience.

Table 3. Characteristics of prosecutors, by jurisdiction

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Southeastern County Survey Data</th>
<th>Midwestern County Survey Data</th>
<th>Administrative Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of prosecutors responding</td>
<td>65</td>
<td>62</td>
<td>145</td>
</tr>
<tr>
<td>Percentage male</td>
<td>56%</td>
<td>71%</td>
<td>56%</td>
</tr>
<tr>
<td>Percentage nonwhite or Hispanic</td>
<td>17%</td>
<td>10%</td>
<td>-</td>
</tr>
<tr>
<td>Age distribution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 30 years old</td>
<td>26%</td>
<td>15%</td>
<td>-</td>
</tr>
<tr>
<td>30 – 39 years old</td>
<td>55%</td>
<td>39%</td>
<td>-</td>
</tr>
<tr>
<td>40 years old or older</td>
<td>19%</td>
<td>46%</td>
<td>-</td>
</tr>
<tr>
<td>Distribution of experience in present prosecutor’s office</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 1 year</td>
<td>11%</td>
<td>13%</td>
<td>14%</td>
</tr>
<tr>
<td>1 – 9 years</td>
<td>80%</td>
<td>49%</td>
<td>46%</td>
</tr>
<tr>
<td>10 or more years</td>
<td>9%</td>
<td>38%</td>
<td>40%</td>
</tr>
</tbody>
</table>

40 We derived a limited amount of demographic information about prosecutors (age, gender, race/ethnicity, level of experience) in each jurisdiction from a general survey of prosecutors in each site; some descriptive information was also available in administrative data maintained by the Midwestern County prosecutor’s office. See Infra section B of this Part for a description of the survey.

41 From responses to the general survey for prosecutors assigned to non-juvenile cases. The response rate for that group was 95 percent in Southeastern County and 67 percent in Midwestern County, see infra section B of this Part, discussing the general survey of prosecutors.

42 From administrative data for prosecutors who screened cases between January 2009 and June 2011. Comparison with the survey data suggests that the survey responses were biased toward male respondents in Midwestern County.
B. Research Methods

The chief prosecutors in both Midwestern and Southeastern Counties allowed us unfettered access to their staff in order to explore several research questions about prosecutorial decision making. These included: What formal and informal internal controls guide prosecutors when making decisions about cases? How do office structures, policies, and practices regulate decision making? How do prosecutors balance organizational needs for efficiency and resource management with the maintenance of inter-agency relationships and the just outcome of cases? How do routine interactions with law enforcement, judges, defense attorneys, and colleagues affect the ways prosecutors handle cases? To answer these questions, the study relied on interviews and an attitudinal survey of prosecutors and supervisors in the participating jurisdictions.

Two waves of individual interviews and focus group interviews were conducted in each of the research sites. Individual interviews were conducted with the chief prosecutor and deputy prosecutors in each site; in both sites, respondents were interviewed on two occasions, with each interview roughly 1.5 hours in duration. In Midwestern County, individual interviews were conducted with the chief prosecutor and four deputy prosecutors; in Southeastern County, individual interviews were conducted with the chief prosecutor and the two deputy prosecutors in the office.

Focus group interviews were conducted with line prosecutors and unit managers. Focus group participants were divided by years of experience as a prosecutor (less than one year experience, one to ten years experience, more than ten years experience, unit managers) in order to reduce the likelihood that junior prosecutors might be unduly reticent in the presence of their supervisors or other more experienced prosecutors. In Southeastern County, focus groups
included six prosecutors with less than one year experience, eight prosecutors with one to ten years experience, and seven unit managers. In Midwestern County, there were not enough participants to divide focus groups by years of experience; instead, focus groups included seven prosecutors responsible for different types of cases (general crimes, domestic violence, drugs, weapons) and seven unit managers. In both sites, respondents were interviewed on two occasions, with each interview roughly 1.5 hours in duration. The same respondents were included in each wave of the two waves of focus groups, with the exception of Midwestern County in which two prosecutors were added to the second wave of focus groups (thus, a total of nine different prosecutors were included).

The interviews/focus groups focused primarily on contextual conditions and circumstances that influence decision making: goals of prosecution and guiding philosophies; formal and informal policies and practices; relationships with police, defense attorneys, and judges; relationships with colleagues within the prosecutor’s office; resource constraints and efficiency concerns; and processes that promote adherence to policy and consistency in decision making, such as training, supervision, mentoring, and informal communication.\(^4\)

Prosecutors in both jurisdictions were also invited to respond to a structured, attitudinal survey. Whereas the focus group sessions allowed in-depth exploration of beliefs and opinions volunteered by the participants, the attitudinal survey permitted researchers to elicit structured responses to a broader array of questions and statements and to examine the prevalence of ideas expressed in the focus groups. The attitudinal survey incorporated a total of seventy-six questions, organized into eight substantive categories: factors that define individual professional

\(^4\) The feedback received from prosecutors was recorded as field notes. To analyze these data, field notes were classified by type of respondent, topic, and site. Notes were analyzed across topics and sites, noting the clustering of responses around specific issues or actors, as well as outliers and other unique data. Through iteration, a number of substantive themes were developed, some of which coincided with interview protocols and others which emerged from the interviews themselves.
success; factors that define organizational success for the prosecutor’s office; the influence of relationships among prosecutors, police, defense attorneys, and judges on decision making; resource and policy constraints; principles that guide screening decisions and the development of plea offers; general goals and functions of the criminal justice system; and training and oversight.44

In Southeastern County, survey responses were received from 74 respondents from a pool of 78 prosecutors (95 percent response rate). Excluding the chief prosecutor, the deputy prosecutors, and juvenile court prosecutors, the sample was reduced to 65 respondents from a pool of 69 prosecutors (93 percent response rate). In Midwestern County, responses were received from 81 prosecutors from a pool of 135 prosecutors (60 percent response rate). Excluding the chief prosecutor, deputy prosecutors, and juvenile court prosecutors, the sample was reduced to 62 respondents from a pool of 93 prosecutors (67 percent response rate).

II. THE INFLUENCE OF RULES ON DECISION MAKING

While formal criminal procedural rules govern how prosecutors may proceed on a case, these rules do not necessarily govern decision making. Policies within the prosecutor’s office, however, might. Both jurisdictions in the current study had office-wide rules pertaining to specific offenses that required a deferred prosecution, or prohibited reducing charges to a lesser offense, or required a recommendation of a prison sentence following conviction. Nonetheless, in both jurisdictions prosecutors noted a general absence of such rules or policies governing decision making. Even when policies existed, they were often not well-publicized or well-

44 Responses to all but two of the items were ratings on five-point scales that reflected either perceived frequency of occurrence, degree of agreement, or perceived importance, as appropriate; responses to the remaining two items involved categorical choices rather than quantitative ratings. The survey instrument was accompanied by a background questionnaire that captured respondent age, race, ethnicity, gender, and years of experience as a defense attorney and prosecutor. Copies of the complete survey instrument, the instructions to respondents, and the background questionnaire are available upon request. For the analyses here, simple descriptive statistics from the analysis of survey responses are included.
communicated to staff. As one prosecutor in Midwestern County noted, “Office policies are urban legends.” This comment indicated a tension that existed, at least in Midwestern County, between a desire for some guidance on decision making and a desire for unguided discretion. As the chief prosecutor in Midwestern County noted, “Prosecutors want 100 percent discretion with 100 percent guidance.”

While craving some guidance, few prosecutors saw the absence of office-wide rules as a problem; rather, most noted that crafting rules for decision making was impossible given the complexity and uniqueness of cases. In place of written rules, a “guiding philosophy” pervaded each office. The guiding philosophy was communicated by the chief prosecutors to the staff through routine meetings and through supervision by deputies and unit managers. The unit managers translated the philosophy into unit-specific policies and, what many called, “norms of practice.” These policies and norms existed within specialized units and were often unique to those units. It was the policy making within these units that more closely guided or constrained decision making in individual cases.

In the following sections, we examine how prosecutors interpreted the philosophy of the office and how office-wide rules and unit-specific rules and norms were created and disseminated.

A. Guiding Philosophy

According to the American Bar Association’s General Standards for the Prosecution Function, “the duty of the prosecutor is to seek justice, not merely to convict.”\textsuperscript{45} The ABA standards, however, do not define justice nor do they instruct the prosecutor in what factors to use to ensure justice in decision making. In both jurisdictions, the chief prosecutor similarly set out a simple philosophy of \textit{do justice} for prosecuting cases. The chief prosecutor in Southeastern

\textsuperscript{45} \textsc{American Bar Association General Standards for the Prosecution Function} Standard 3- 1.2(c).
County maintained that he wanted “people to do the right thing.” His intent was that this would guide not only outcomes but also decision making processes and interactions with police officers, defense attorneys, judges, and defendants. For the chief prosecutor, that meant that “prosecutors should try to be open-minded and treat people fairly and with respect.” The chief prosecutor in Midwestern County communicated a similar philosophy, stating that prosecutors were told to “do the right thing, to do justice, to keep the community safe and protect the constitutional rights of defendants.” This articulation of philosophy as an overarching desire to do justice shaped how the chief prosecutor in Midwestern County viewed success; success was “not necessarily about winning cases and getting convictions, but about protecting constitutional rights of citizens and defendants.” This same chief prosecutor noted that, in some instances, this philosophy acted as a constraint, forcing prosecutors to “do what is appropriate, not everything that you can.” This, however, creates a fundamental tension with which prosecutors must contend. One unit manager stated that prosecutors have to always ask the question, “even if the defendant is guilty, is a conviction the right outcome?”

Indeed, with a philosophy of “doing justice” as the primary guideline for handling cases, the interpretation of what justice means in any case is left to individual prosecutors, which, as the chief prosecutor in Southeastern County acknowledged, can vary from person to person. To gain some consistency in the meaning of justice, each office relied heavily on unit managers and office peer pressure to communicate and ensure adherence to the philosophy. Both offices were highly decentralized, with prosecutors assigned to small units of four to ten prosecutors; in most cases, these units were subject-specialized (e.g. drugs, weapons, person offenses, etc.), with the exception of five general crimes units in Midwestern County (which prosecuted a mix of felony and misdemeanor person, property, drug, and public order offenses) and the one misdemeanor
unit in Southeastern County (which prosecuted all misdemeanors and traffic offenses). The unit approach allowed for direct supervision of a small number of prosecutors by one supervisor and for the routine communication among unit members about the just or fair decision in individual cases. This did not, however, always lead to the same evaluation of justice since, as one unit manager acknowledged, “a supervisor’s idea of ‘do the right thing’ may be different than an individual prosecutor’s.” In such instances, most prosecutors in both jurisdictions agreed that deference was given to the individual prosecutor’s definition of justice, noting that as long as prosecutors can explain how they got to a decision then it is generally seen as acceptable. This response underscores the power of the individual prosecutor – with a strong acceptance of office philosophy and close supervision, the individual prosecutor’s perception of justice or decision on an individual case is allowed to prevail even when it conflicts with a supervisor’s perception of justice or opinion of the decision in a particular case.

Although there was a clearly articulated philosophy of “doing justice” in each jurisdiction, some prosecutors argued that justice meant ensuring consistency in outcomes while others argued that justice meant ensuring consistency in decision making. In the latter conceptualization, doing justice was seen as being fair or considering the implications of decisions for defendants, victims, and society. One prosecutor in Midwestern County observed that while prosecutors were told to do justice, this did not tell them how to handle a case; as the

46 These conceptualizations of justice coincide with traditional notions of distributive justice and procedural justice. In evaluating criminal justice decision making, legal philosophers and social scientists have generally differentiated between distributive justice and procedural justice, see John Rawls, A Theory of Justice (1971). For a discussion of distributive and procedural justice in court proceedings, see, e.g. Tom R. Tyler, Why People Obey the Law (1990). Distributive justice is focused on outcomes and whether the outcome of legal decision making is equitable. In the case of prosecutorial decision making, distributive justice is achieved if outcomes are consistent across social groups or across prosecutors. In contrast, procedural justice is focused on processes and whether the procedures used in legal decision making are fair. In the case of prosecutorial decision making, procedural justice is achieved if decision making processes are consistently applied across social groups or across prosecutors.

47 This is similar to Tom Tyler’s argument that procedural justice includes decision makers being benevolent, caring, and considering the needs of individuals (“trustworthy”), see, Tom R. Tyler, T.R. & Y.J. Huo, Trust in the Law: Encouraging Public Cooperation with the Police and Courts (2002).
prosecutor noted, “there is no way to do justice in an absolute sense.” Thus, in some cases, prosecutors recognized that the difficulties in determining or measuring “fairness” in process often led them to see justice as consistency in outcomes, since, according to one prosecutor, “this is the only approach that makes sense.”

Indeed, in both offices, managers put mechanisms in place that were designed to ensure consistency in decision-making processes and outcomes. As the Deputy in Southeastern County noted, supervisors wanted to ensure that “personal opinions are not allowed to translate into inconsistency in outcome.” This was achieved through strategies like division of staff into small units or teams, routine case review within units, supervisor approval of pleas, and review of overall case statistics. In Southeastern County, most units relied on routine “roundtables” in which individual cases were discussed. As one unit manager in Southeastern County noted, these roundtables were “where peoples’ opinions tend to stick out and where such opinions are corrected.” The offices also took steps to avoid hiring individuals with opinions that differed widely from those of the chief prosecutor. As the Deputy in Southeastern County noted, the office tried to “avoid hiring zealots – or those not open to prioritization of cases and who do not realize that they cannot go to the max on every case.” In other words, the office tried to avoid hiring prosecutors who would tend to be overly punitive or harsh, supporting the idea that the norm in the office was an adherence to less punitive attitudes.

In the end, inconsistency in both process and outcomes was generally not a concern in Southeastern County; the office was divided into units by crime type with no two units prosecuting the same offenses. As the chief prosecutor in Southeastern County noted, “within units, inconsistency is likely attenuated due to tight supervision and roundtablimg of cases.” The use of roundtablimg was discussed by all respondents in Southeastern County. In this particular
office, the practice was nearly universal and occurred on a very regular basis, with the exception of the misdemeanor unit which was comprised of the least experienced prosecutors. Thus, ironically, the least experienced prosecutors in Southeastern County – those likely with opinions furthest from the norm – were not corrected through the use of roundtables. For other units, however, the roundtable was often used to determine the charges to file and the plea offer to make, resulting in a great deal of consistency in outcomes across cases. As discussed below, this particular strategy often determines the outcomes of cases in other ways, particularly in the face of limited resource and time constraints.48

Midwestern County had a similar structure of small units which was intended to similarly attenuate inconsistency. However, this attenuation was seen as dependant largely on peer pressure from colleagues. Roundtables did not occur in Midwestern County. The domestic violence team in Midwestern County had formal monthly meetings to discuss cases and monthly trainings in which they went over files; according to the unit manager of the domestic violence unit, this was largely because many young prosecutors were in this unit and needed that direction. Other units in Midwestern County never met as a unit to discuss cases but encouraged informal interactions among unit members to discuss cases. As a unit manager in Midwestern County noted, “people in units try to be consistent with each other.” Unlike Southeastern County, Midwestern County has several general crimes units which handle identical cases (all offenses not handled by specialized units). As such, there is more potential for inconsistency across the office in handling similar cases. This potential was recognized by prosecutors, who noted that there was generally a great deal of consistency within units, but acknowledged that

48 Infra Part III. When court space was limited, the group rather than the individual prosecutor often made the decision to alter a plea offer or dismiss a case in order to make space for more important cases.
across units there was some inconsistency. In fact, prosecutors in Midwestern County indicated that consistency across units was likely impossible.

Moreover, while consistency was seen as important, many respondents also maintained that there was a need for flexibility. In some respects, consistency was not always seen as a clear goal of prosecution. In fact, *inconsistency* was often seen as acceptable, particularly by newer prosecutors in Southeastern County. As noted above, newer prosecutors in Southeastern County work on the misdemeanor unit and do not roundtable cases like other units; rather, they are supervised by one unit manager who monitors decisions after the fact. As several new prosecutors noted, each individual prosecutor has particular types of offenses that “they care about more” and for which they may take a particular approach that is inconsistent with other prosecutors. For example, as one newer prosecutor noted, he “hate[d] people who pass stopped school buses.” While this prosecutor acknowledged that he could “offer something similar to his colleagues,” such as a lesser charge of speeding or failure to yield, he did not; as this prosecutor noted, “other prosecutors may not care about passing a stopped school bus and will plead it down to something else, but I tell defendants that they can either plead guilty to that offense or go to trial.” Again, as noted above, this approach was supported by supervisors in Southeastern County who maintained that individual prosecutors were allowed to seek outcomes outside the norm as long as the prosecutor could justify the result; in this case, the justification appeared to be a personal dislike. In Midwestern County, prosecutors also were generally willing to accept a certain level of inconsistency in outcomes. As one prosecutor argued, “since prosecutors are dealing with facts, inconsistencies are bound to occur because no two cases have the same facts.” According to some prosecutors, they were comfortable with other prosecutors coming to different conclusions than their colleagues or supervisors, as long as unit managers know what
prosecutors in their units are doing. Thus, according to some prosecutors in Midwestern County, inconsistency in outcomes was acceptable as long as it was supervised.

As this discussion indicates, prosecutors who participated in the focus groups expressed a mixture of concern about consistency, confidence in the processes in place to promote consistency, and acceptance of a certain degree of inconsistency. Ratings by the broader sample of prosecutors who responded to the general survey were less mixed, yet still highlighted variation in opinions within the offices. Large majorities identified consistency as an important goal. Roughly 87 percent of respondents agreed or strongly agreed that there should be a great deal of consistency across prosecutors in the factors that influence the decision in a case (Figure 1). Thus, consistency in process across units appeared to be very important. In line with the interview/focus group responses, however, prosecutors were less concerned with consistency in outcomes across units. Sixty-three percent of respondents considered similar outcomes across units to be important or very important for organizational success (Figure 2). Survey respondents were more concerned about consistency within units. Nearly three-quarters of respondents (74.8 percent) considered similar outcomes for similar cases within units to be important or very important in defining organizational success (Figure 3).

49 There is some question as to the appropriate interpretation of these findings. Some of the focus group discussions explicitly distinguished between consistency of outcomes and consistency of process while others did not; as a result, it was not always clear which form of consistency prosecutors were discussing, which may explain variation in responses. However, prosecutors’ responses to the general survey showed less variation in their support for consistency in both decision criteria and outcomes. It is possible that the survey responses reflected primarily abstract ideas, while the focus group discussions may have reflected more pragmatic views about what it is possible to achieve.
Figure 1. Responses to the question: “For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision in a case”

Figure 2. Responses to the question: “How important is the following to evaluating the overall success of the prosecutor’s office: similar outcomes for similar cases across units?”
Figure 3. Responses to the question: “How important is the following to evaluating the overall success of the prosecutor’s office: similar outcomes for similar cases within units?”

In both offices, the chief prosecutor had a simple philosophy to “do justice.” Individual prosecutors and prosecution units were granted considerable discretion for translating that broad philosophy into operational objectives. Taken together, the focus group discussions and survey responses revealed that prosecutors interpreted justice largely as consistency in process and ascribed great importance to office-wide consistency in process. While prosecutors generally considered consistency in outcomes important as well, they evaluated that consistency at a very local level – within units. As a result, there is the potential for inconsistencies in outcomes across units, as different units potentially operationalize justice in different ways. Chief prosecutors could minimize potential inconsistencies through the creation of office-wide rules; as discussed in the following section, however, the chief prosecutors in Midwestern and Southeastern Counties relied on very few office-wide rules.
B. Office-Wide Rules

As prosecutors recognized, a strong philosophy does not necessarily translate into consistent
decision making outcomes or processes. Moreover, although the large majority of prosecutors
saw consistency as important, few were willing to acknowledge the need for rules of decision
making. And the chief prosecutor in each jurisdiction was reluctant to create office-wide rules to
ensure consistency.

In both jurisdictions a very limited number of office-wide rules dictated how prosecutors
were to handle specific cases. For example, according to the Deputy in Southeastern County,
there were two office-wide rules: prosecutors were required to prosecute all DUI cases above a
certain blood-alcohol level and prosecutors could not reduce felony residential breaking and
entering to a misdemeanor. Prosecutors in the misdemeanor unit in Southeastern County noted
two additional rules: prosecutors could not reduce a speeding ticket to driving school and could
not reduce or dismiss cases involving the possession of weapons on school grounds; according to
these prosecutors, the latter offenses must result in plea of guilty or a trial and could be reduced
or dismissed only by the chief prosecutor. More experienced prosecutors detailed two more
rules: residential break-ins involving defendants with no criminal history must receive at least a
thirty day split sentence and armed robbery could not be pled down to an unarmed robbery. The
fact that each focus group detailed different policies or added policies not mentioned by previous
groups underscores the lack of communication of office-wide rules that many prosecutors
expressed. The chief prosecutor in Midwestern County also noted that “there was a conscious
decision not to constrain the discretion of prosecutors with written policies.” Indeed, prosecutors
in Midwestern County described just one office-wide rule: residential burglary cases should be
treated as violent crimes with the expectation that the defendant will get a prison sentence.
While office-wide rules were largely absent, the chief prosecutor in each jurisdiction recognized the potential need for some formality. As the chief prosecutor in Midwestern County noted, the job of prosecution “is as much about working with your heart as working with your head, and, as a result, sometimes decision making gets a little loose.” Thus, at times, it appeared that written rules would provide needed direction and consistency in decision making. Indeed, some prosecutors in Midwestern County recognized this need as well, particularly for ensuring consistency across units that handle the same types of crimes and when changes in management occur. At the same time, prosecutors and the chief prosecutors in both jurisdictions noted the problems inherent in creating written rules. As the chief prosecutor in Southeastern County noted, “it is difficult to write a policy for screening each case due to the variation in the factors of cases. A written policy would be such a matter of judgment that it would not be of much value and would create more problems than it solves.”

Prosecutors in Midwestern County also noted that rigid rules potentially disrupted interactions with defense attorneys and judges. Prosecutors argued that, when there is a rigid rule affecting a specific charge (e.g. a rule requiring a specific plea or a specific sentence), defense attorneys aggressively argue to have alternative charges filed that are not bound by the rule. Prosecutors also argued that rules affect prosecutors’ credibility in front of the judge by tying a prosecutor’s hands without the judge clearly knowing the context. This was echoed by the chief prosecutor in Midwestern County who described the reaction following the creation of the office-wide rule requiring prosecutors to treat residential burglary as a violent crime requiring a recommendation for a prison sentence. Residential burglary in the jurisdiction involved a high degree of overlap between the juvenile and adult systems, with many offenses committed together by a 16 year old juvenile and an 18 year old adult; the formal rule created a
disparity between juvenile court and adult court which created problems with defense attorneys who saw the disparity in treatment for defendants who were nearly identical in age. Prosecutors in Midwestern County noted an increasing tension with defense attorneys around such cases and a difficulty in reaching agreement on plea offers and sentence recommendations.

As one prosecutor in Midwestern County noted, “policies should be flexible and evolve over time; written policies are not flexible.” This was echoed by prosecutors in Southeastern County, where one prosecutor maintained that “you could not build a rule book big enough for all the different types of cases; prosecutors have a lot of flexibility and that is the only way it could work.” In the end, we found little support for office-wide rules at either the supervisory or prosecutor level. What is interesting, however, is that, although prosecutors generally disagreed with the logic of office-wide rules, they were largely comfortable with rules created at lower levels of aggregation – namely within units.

C. Unit-Specific Rules

Rather than office-wide rules, prosecutors argued that unit-specific rules often governed decision making in both jurisdictions. The chief prosecutors in both counties delegated supervisory and policy-making responsibilities to the unit manager within each unit. As the chief prosecutor in Southeastern County stated, “policy making was delegated to individual units because the problems of each unit are different based on the nature of the crimes that each unit prosecutes.” The Deputy in Southeastern County echoed this, stating that “unit managers are free to make up new policies, but they must rise to some level of justification – they have to be able to justify it to [the chief prosecutor].” The chief prosecutor in Midwestern County viewed the unit structure in the same way, structuring the office so that “the policy leaders are the unit
managers;” essentially, “the unit structure allows for a delegation of authority and supervision to
very experienced prosecutors who are then responsible for articulating philosophy into practice.”

Some prosecutors described the unit-specific policies as “norms of practice” that “grew out
office philosophy” and “were learned through interactions with colleagues.” This was echoed by
the chief prosecutor in Southeastern County who argued that “rather than policies we have norms – a regular way of handling cases and expectations about outcomes.” Prosecutors in Midwestern
County noted a similar creation of policy through routine practice stating that there were “not
necessarily policies in the office but longstanding practices about how to handle cases; these are
practices that have become routine.” What is interesting is that prosecutors maintained that these
norms of practice often required specific outcomes in cases.

Whether written or unwritten, the unit-level policies were clearly seen as binding on
prosecutors. While there are too many units to describe all unit-specific policies, it was clear that
these policies governed decision making in certain circumstances, calling for prosecutors to
decline certain cases at screening, charge cases in a particular way, and offer specific criteria in
plea offers. The binding nature of these policies derives largely from prosecutors’ desires to
ensure their decisions are consistent with colleagues and to maintain good working relationships
with colleagues.

Although the chief prosecutors in each jurisdiction recognized the flexibility that the unit-
level policy making approach allowed, the chief prosecutor in Midwestern County also realized
the danger of allowing informal policies to develop, particularly if those policies were
unorganized or led to conflicting outcomes across units. Indeed, unit managers also recognized
the problem of allowing each unit to develop policies autonomously. As one unit manager in
Midwestern County noted, “this may be a negative or it may be a positive. Too many policies are
a bad thing; but not enough policies leads to a potential problematic culture.” Indeed, several prosecutors noted that this could lead to inconsistencies in priorities and outcomes across units.50

The ability to achieve consistent results through heavy reliance on unit structure and informal processes depends critically on various forms of internal communication. We explored the extent to which prosecutors felt these mechanisms were effective at communicating expectations about practices and norms.

In both jurisdictions, respondents were markedly divided with respect to whether office goals and priorities were clearly communicated to staff. For the two jurisdictions combined, nearly 40 percent agreed or strongly agreed that there was clear communication of office goals and priorities, but roughly 40 percent disagreed or strongly disagreed (Figures 4). The slightly higher percentages in Southeastern County may be due to the smaller office and flatter management structure; yet, even with this, roughly 30 percent of respondents in Southeastern County disagreed that policies and priorities were clearly communicated to staff.

50 This could also lead to inconsistencies over time. For example, in Southeastern County a unit manager had a policy of accepting all or nearly all cases brought by the police department and dismissing problem cases later in the process; in effect, the unit was not screening cases at the start of the process. As a result, declinations (the decision to decline to prosecute a case) were very low but dismissals after charges were filed were high. When a new unit manager was promoted, the unit began more strictly screening cases and declination rates rose; in turn, dismissal rates dropped since many problematic cases were disposed of at screening.
Given the general lack of agreement about the effectiveness of communication, it may not be surprising that prosecutors disagreed about the extent to which office policies provided clear guidance on how to handle cases (Figure 5). In Midwestern County, for example, just 20 percent of respondents agreed or strongly agreed that office policies provided clear guidance, while 40 percent of students disagreed or strongly disagreed. In contrast, in Southeastern County, nearly 50 percent of respondents agreed that office policies provided clear guidance on how to handle cases, while just over 20 percent disagree. Again, the differences across jurisdictions may be due to differences in office size and structure. More importantly, though, is the variability in responses within both offices, which raises questions about the ability to internally regulate decision making. If chief prosecutors are not effective in communicating office policies and priorities to staff and these policies are not effective at clearly guiding decision making, then internal regulation may not be possible at high levels of aggregation.
The ability to create and enforce policies at lower levels of aggregation then becomes increasingly important and highly dependent on supervisory structures. Nearly 75 percent of prosecutors in Southeastern County and roughly 60 percent of prosecutors in Midwestern County agreed or strongly agreed that supervisors provided adequate guidance on when to accept or reject cases (Figure 6). Thus, unit managers appear to provide adequate guidance. However, it also appears that prosecutors retain a sense of independence and do not feel constrained by supervisors. This is particularly true in Midwestern County – nearly 70 percent of prosecutors in Midwestern County noted that they never or very rarely made decisions based on how they would be perceived by supervisors (Figure 7). In contrast, less than 40 percent of prosecutors stated that they never or very rarely made decisions based on perceptions of supervisors. Thus, internal regulation through the use of unit managers and supervisory structures appeared to be much stronger in Southeastern County.
Internal regulation through interaction with colleagues also appeared stronger in Southeastern County. In Southeastern County, for example, nearly 60 percent of prosecutors frequently or very frequently compared their cases to those of their colleagues to ensure they were getting similar outcomes, compared to just over 40 percent of prosecutors in Midwestern County (Figure 8); moreover, roughly 35 percent of prosecutors in Midwestern County never or very rarely...
compared their cases to those of their colleagues, compared to just over 10 percent in Southeastern County. Similarly, nearly 80 percent of prosecutors in Southeastern County agreed or strongly agreed that it was important to routinely review cases as a group, compared to less than 40 percent of prosecutors in Midwestern County; indeed, just 3 percent of prosecutors in Southeastern County disagreed that it was important to review cases as a group, while nearly 40 percent of prosecutors disagreed that it was important (Figure 9). Again, these differences are likely due to the routine use of roundtables to determine how to handle cases in Southeastern County and the near absence of this approach in Midwestern County. What is interesting, however, is that prosecutors in Midwestern County were equally likely to agree that there was a need for more communication among staff to ensure greater consistency in outcomes, with roughly 60 percent of prosecutors agreeing or strongly agreeing with the statement (Figure 10).

**Figure 8. Response to question: “I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes”**

![Bar chart showing comparison between Midwestern and Southeastern counties](image)
Overall, the survey responses suggest that substantial percentages of prosecutors in both jurisdictions were comfortable with a philosophy that relies heavily on unit-level supervision and communication among colleagues to establish guidelines and norms of practice that foster consistency of results. According to respondents’ claims about their own collaborative activity, adherence to these principles appears to be even more prevalent among prosecutors in Southeastern County than among prosecutors in Midwestern County. In addition, there was a
perceived need for still more communication among staff, which could also be interpreted as a commitment to the informal norming process.

D. Rules and Internal Regulation

The general survey did not include items that addressed directly the prevalence or advisability of office-wide policies; rather, the survey asked about policies generally. However, it did include items that support indirect inferences about beliefs and opinions relating to the assertions summarized above. Most respondents did not believe that their decisions were unduly constrained by office policies. Eighty percent disagreed that they felt constrained by office policies about when to accept or decline cases for prosecution (Figure 11). Over 85 percent said that office policies never or rarely compelled them to decline cases they would have preferred to prosecute (Figure 12). And over 90 percent disagreed that office policies required outcomes in which they personally did not believe (Figure 13). These numbers could reflect an overall lack of policies at the office level; if there are few written policies in the office, then the instances in which prosecutors feel constrained would be rare. Conversely, these results could reflect a high degree of congruence between office policies and the individual judgments of most prosecutors in the office; if prosecutors generally agree with the content of the policies, then policies would rarely require them to make decisions with which they did not agreed. Read another way, however, this also shows that roughly 20 percent of prosecutors felt constrained by office policies when accepting or declining cases, 15 percent felt office policies required them to decline cases they would otherwise prosecute, and 10 percent agreed that office policies required outcomes in which they personally did not believe. In other words, they show that in some instances, prosecutors’ decision making is governed by office-wide rules.
Figure 11. Responses to the question: “I feel constrained by office policies and practices about when to accept or decline cases for prosecution”

Figure 12. Responses to the question: “Office policies compel me to decline cases I would prefer to prosecute”
These findings are only indicative of prosecutors’ beliefs. How those beliefs relate to case-level decisions is a separate question. Nonetheless, the preceding discussion reflects general agreement on several key points. Formal, office-wide rules were largely absent in both jurisdictions, though there were a few rules governing decisions for specific types of cases under narrowly defined circumstances. In turn, prosecutors believed that office-wide policies should generally emphasize ethical standards and guiding principles rather than particular dispositions for specific types of cases. Nonetheless, prosecutors were comfortable with the creation of unit-specific rules that governed decision-making and, in many instances, dictated a clear disposition for a case. The need to impose greater control on such unit-specific policies, however, may become more pressing as resource constraints limit the options available to prosecutors.

III. THE INFLUENCE OF RESOURCES ON DECISION MAKING

While rules influenced decision making in specific cases, prosecutors argued that a more important influence on decision making in nearly all cases was resources. In fact, in an environment marked by increasing resource constraints, there was a sense that fewer internal
policies were necessary. The chief prosecutor in Southeastern County felt that “rather than written policies prosecutors need more flexibility to survive the problem of resource constraints.” Concerns about resources dominated much of the discussion in both offices. Surprisingly, prosecutors argued that a lack of resources within the prosecutor’s office did not appreciably influence decision making; rather, a lack of resources outside the prosecutor’s office presented significant constraints. Specifically, in both jurisdictions the restricted availability of courtrooms limited the ability of prosecutors to bring cases to trial and, in some instances, resulted in the dismissal of cases or the changing of plea offers to expedite a resolution. In the end, the lack of court resources often resulted in prosecutors having to dispose of cases in ways they would not otherwise have to if adequate resources were available.

A. Internal Resources

While strength of the evidence may determine whether or not a prosecutor can prove a case, the prosecutor may not be able to adequately prepare a case without the time, resources, and support to track down witnesses, access information, or prepare discovery materials. The lack of internal resources affected both jurisdictions, revolving primarily around the availability of support staff and largely affecting the prosecutor’s ability to ready a case for trial.

In Southeastern County, for example, the chief prosecutor stated that internal resources were routinely a problem, arguing that “the lack of support staff forces prosecutors to do clerical work – track down files, set appointments, keep track of victims and witnesses – which hinders their ability to make timely, well informed legal decisions.” One experienced prosecutor in Southeastern County estimated that “about 50 percent of a prosecutor’s time is spent doing clerical and support staff work.” Prosecutors in Midwestern County noted similar problems with a lack of support staff; one prosecutor argued that a lack of support staff “means that prosecutors
have to spend a lot of time searching for files, typing letters, doing paper work and then have no time for legal work.” The result, according to one experienced prosecutor, was that “the quality of legal work can be poor.”

Prosecutors also noted that the lack of support staff particularly affected cases that involved a lot of preparatory or investigative work, such as persons and property cases; drug cases, on the other hand, were less affected since they did not involve witnesses or victims. Moreover, the lack of support staff, particularly for assistance with follow-up after a case was charged, was seen as more problematic for general crimes teams in Midwestern County and less problematic for specialized units in the jurisdiction, such as sex crimes or homicide. Specialized police units continued investigations for specialized prosecution units after charging; in contrast, prosecutors maintained that general crimes prosecution units that dealt only with general detectives or patrol officers in the law enforcement agencies did not get the same level of investigation from the police. As discussed below, this was primarily due to recent changes in the police departments in both jurisdictions.51

Other practical constraints affected how cases were handled as well. For example, prosecutors in both jurisdictions noted a lack of case management systems that would allow them to keep track of cases. Southeastern County lacked an electronic case management system for the entire office; only the felony drug unit has access to an electronic case management system – all other units in the office relied entirely on paper files. Even in Midwestern County, which has a sophisticated electronic case management system, the system was not available to prosecutors while in court; rather, prosecutors were still required to carry paper files to court, which was, again, hampered by a lack of support staff to track and store files. Moreover, the lack of laptops,

51 Infa Part IV, we discuss shifts in the largest municipal police department in each jurisdictions; these shifts primarily involved a change in focus from investigations to arrest and a shift in police resources away from detectives toward patrol.
TVs, and CD burners in both jurisdictions prevented the effective presentation of electronic evidence in court, which, in turn, affected the type and quality of evidence available to present.

Despite the myriad of problems potentially associated with a lack of staff support, prosecutors who responded to the general survey were far from unanimous in their evaluations of the consequences of such problems. In Southeastern County, for example, roughly 25 percent of prosecutors said that a lack of investigators frequently or very frequently adversely affected the outcomes of their cases, yet an equal percentage said it rarely or never affected cases (Figure 14). In contrast, in Midwestern County just 10 percent of prosecutors said that a lack of investigators frequently or very frequently adversely affected cases, while roughly 45 percent said that it rarely or never affected cases. Less than half of respondents (45 percent) indicated that a lack of support staff to coordinate contacts with victims, witnesses, and defense counsel frequently or very frequently affected their cases (Figure 15). Again, the lack of support staff was seen as frequently or very frequently problematic by a significantly higher percentage of Southeastern County prosecutors (60 percent) than Midwestern County prosecutors (30 percent), and in Southeastern County, average ratings of the frequency of these problems tended to increase with increasing levels of experience (in other words, prosecutors with more experience tended to see the lack of support staff as more problematic relative to prosecutors with less experience).
Figure 14. Response to the question: “A lack of investigators in my office adversely affects the outcomes of my cases”

Figure 15. Response to question: “The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases”

A final problem of internal resources expressed in Midwestern County was a shortage of prosecutors and resulting high caseloads. As one unit manager in Midwestern County noted, “high caseloads force prosecutors to decide to get rid of some cases, to not prosecute certain cases.” Prosecutors recognized the problem as well, noting that the high caseloads prevented them from devoting enough time to cases. Although a majority of the prosecutors who responded
to the general survey (60 percent) indicated that caseloads frequently or very frequently prevented them from devoting enough time to all their cases, a majority (62 percent) also indicated that they very rarely or never declined or dismissed cases when the amount of time and effort needed to obtain a conviction exceeded the benefits of the potential sentence (Figures 16 and 17). Moreover, although prosecutors in Midwestern County who participated in the focus groups maintained that such staffing problems affected case outcomes, prosecutors who responded to the survey expressed very different views – just 5 percent of prosecutors in Midwestern County said that they frequently or very frequently declined or dismissed cases when the amount of time and effort needed to obtain a conviction exceeded the benefits of the potential sentence. Prosecutors in Southeastern County, however, had slightly different reactions to time constraints than prosecutors in Midwestern County – nearly 20 percent of prosecutors in Southeastern County said that they frequently or very frequently declined or dismissed cases when the amount of time and effort needed to obtain a conviction exceeded the benefits of the potential sentence.

**Figure 16. Response to question: “High caseloads prevent me from devoting enough time to all my cases”**
Nonetheless, in both jurisdictions, prosecutors noted that a lack of internal resources did not affect whether a case would be accepted. As the Deputy in Southeastern County noted, “We work with the idea that we do not spend money on cases we will not win. So we push police to exhaust all resources on investigation before we make that decision. But to take a perfectly good winnable felony and say that we will not accept it because we do not have resources – we do not do that.” Prosecutors in both jurisdictions, however, did argue that, once accepted, a winnable felony case may be dismissed or reduced because the courts do not have the resources to hear all cases.

B. External Resources

In both jurisdictions, a lack of court space (i.e. the lack of available court time to try all cases possible) was expressed as a persistent problem facing prosecutors. According to prosecutors in Southeastern County, the lack of court space was the product of a limited number of trial courtrooms and not enough judges, clerks, and court reporters to staff all courtrooms. As a result, there were more cases than available slots to hear those cases. In Midwestern County,
prosecutors maintained that there were not enough courtrooms and that judges routinely opened court late in the day or closed court early, which significantly shortened the amount of time available each day for hearing cases. According to the chief prosecutor in Midwestern County, this led to a decrease in jury trials, with a particular decrease in misdemeanor trials; according to the chief prosecutor, “the message from the judiciary is that they do not have enough time to handle misdemeanor jury trials.”

In Southeastern County the lack of available court space was due not only to a lack of resources; it was also due to a quirk in the system in which felony court judges do not carry inventories of cases. Rather, cases are assigned to a courtroom and judges rotate through the courtroom; judges in Southeastern County rotate throughout a judicial district (composed of several counties) and hear cases in the county for a short period of time (a few months). Thus, a judge handles whatever cases are in the courtroom during their assigned period and then the judge rotates out. If a case is unresolved when the judge is scheduled to rotate out, the judge is supposed to stay in the courtroom until the case is resolved. However, if the case is continued, then the judge may rotate out. According to prosecutors in Southeastern County, this results in judges either closing court to avoid starting trials that may extend beyond the time at which they are to rotate out or issuing a continuance which would move the trial to another week and, in turn, to another judge. According to the chief prosecutor in Southeastern County the office experiences roughly 100 judicially initiated continuances per week. More importantly, perhaps, the lack of available court space and high rate of continuances in Southeastern County significantly has affected the ability of the office to try cases and has altered the way the office handles cases. Knowing that all cases could not be tried, one unit manager argued that prosecutors “had to change plea offers to ensure a high volume of cases were disposed of before
As the chief prosecutor in Southeastern County noted, “[The county] has the capacity to try about 450 trials per year. Our office processes about 10,000 felonies per year. In almost every case we make a plea offer because we do not have the capacity to try all cases…Therefore, we are trying to avoid trials in most cases.” The chief prosecutor also noted that “prosecutors are forced to resolve cases in ways they would not otherwise do.” As one experienced prosecutor in Southeaster County stated, “To deal with this, you give away the farm.” In other words, prosecutors “do everything they can to get a guilty plea.”

The chief prosecutor in Midwestern County argued that the lack of court resources did not affect how cases were handled, but it did affect how resources were allocated within the office. According to the chief prosecutor, “cases are evaluated the same and views about the right thing to do on a case remains unchanged; however, the low trial numbers free up prosecutors to do more work on cases at the front end and, as a result, the office can restructure the criminal justice process to get people out of the system early.” In other words, since the office knows that court resource constraints prevent it from trying all cases, prosecutors work harder to evaluate cases at screening for declination or deferral. Thus, while the chief prosecutor did not see resource constraints as affecting decision making, it appeared that resource constraints did affect outcomes by funneling more cases out of the system earlier than would have occurred in the absence of such a constraint. Indeed, the chief prosecutor in Midwestern County recognized this, noting that the resolution of cases early in the process “comes with a political cost and pushes staff to make different decisions.”

In both jurisdictions, the lack of courtroom space or the continuance of cases required prosecutors to re-evaluate pleas and, as one prosecutor stated, “to try to come up with better pleas to get rid of cases.” As one unit manager in Southeastern County argued, prosecutors “have
to pick and choose what to do – some cases are continued and some cases are simply dismissed.”

In many instances, prosecutors in Southeastern County used roundtabling (i.e. discussing cases as a group) to determine what to do on a case; in these instances, the entire unit would vote on the particular plea offer or dismissal decision to make on a case and the outcome would be determined through majority rule. This was partially due to how trials were scheduled in the jurisdictions. In Southeastern County, each unit was assigned to a courtroom for a set period of time (e.g. two weeks) and then rotated out as another unit occupied the courtroom; a unit may wait several weeks before being scheduled for trials again. Each prosecutor got just a portion of his or her entire unit’s trial time and, in essence, had to compete with colleagues to get a case to trial. As one prosecutor stated, roundtabling was used to “get rid of the worst cases the unit had on its caseload.” It was a process of deciding what the unit as a whole thought the proper decision was to make on a case; as one prosecutor commented, the process was used to determine whether the unit “wanted to waste a trial on a particular case.” Thus, prosecutors relied on a process of prioritizing in which, as one unit manager described, “cases are ranked from strongest to weakest, from the worst to least bad offense, from a high amount of victim cooperation to a low amount, from newest to oldest, from in custody defendants to not in custody.”

When there are more cases scheduled for trial than available court space, prosecutors “roundtabled cases to decide what will be dismissed or have a new plea offer made.” Delays in cases due to continuances presented a similar problem. As one unit manager in Southeastern County noted, “continuances mean that some cases will have to be dismissed.” According to one unit manager, all of this “changed the threshold of what prosecutors were willing to accept or dismiss and often cases were dismissed simply because they sat at the bottom of the trial
calendar for too long.” Another unit manager argued that units also “may consider our entire inventory of cases when making a plea offer;” for example, if there is not enough trial time for all cases if they went to trial, “prosecutors may make an offer that the defendant is more likely to take. So, there is an incentive to make the best offer to get the case resolved.” Thus, as prosecutors pointed out, in Southeastern County the decision of what to do on a particular case was often completely outside the control of an individual prosecutor; rather, when resource constraints prohibited the trying of all triable cases, entire units re-evaluated the cases to be tried using roundtables and the unit as a whole made the decision of how to proceed on a case. According to some, this resulted in prosecutors “making decisions that they may not be comfortable with because of court constraints and time.”

C. The Need for Efficiency

The lack of resources clearly changed the way prosecutors in Midwestern and Southeastern Counties made decisions in individual cases. However, the fact that prosecutors were primarily concerned with external resources changes ideas about the connection between decision making and efficiency. Prosecutors, particularly in Southeastern County, appeared unlikely to dismiss or amend cases when individual or even unit caseloads became high – an indicator of internal resource constraints; rather, prosecutors were dismissing or amending cases when there was not enough courtroom space to try all the cases they were prepared to try – an indicator of external resource constraints. Thus, prosecutors were making decisions largely to maintain the efficiency of the courts.

In some instances, prosecutors, indeed, saw their role broadly as gatekeepers to the criminal justice system. As such, they often saw themselves as ensuring efficiency not just in the prosecutor’s office but in the entire system as well. One prosecutor in Midwestern County
argued that “prosecutors see themselves as stewards of criminal justice resources and seek to move minor cases to municipal court so they could do better justice to more serious crimes.”

Often, the prosecutor’s office was seen by prosecutors as the only party interested in efficiency. This was particularly true in Southeastern County, in which judges do not carry dockets, rather they rotate through courtrooms according to a set schedule. As the Deputy in Southeastern County noted, “in most jurisdictions, judges, the public defender, and the prosecutor have a need for efficiency, but with judges not having their own calendar, judges have no need for efficiency except to get out of court. And the public defender has some interest in delay which means it is only the prosecutor that has an interest in efficiency.”

Unlike goals of justice and consistency, efficiency as a goal was also difficult for supervisors to convey to new prosecutors. The Deputy in Southeastern County noted that “the toughest thing to get across to new prosecutors is that they cannot try all cases and, as prosecutors are promoted from the misdemeanor unit to felony units, supervisors must keep repeating the lesson.” This was echoed by unit managers in Southeastern County, who routinely instruct new prosecutors “that they have to dismiss, plead down, or otherwise get rid of cases.” And newer prosecutors in Southeastern County clearly recognized the tension between doing their job and ensuring efficiency; one new prosecutor in Southeastern County saw the job as “to get rid of every case before trial.”

The general survey revealed mixed opinions regarding the importance of efficiency, which may be a reflection of the difficulty in communicating the need for efficiency to new prosecutors and the clear tension that exists when decisions on individual cases must be made for efficiency reasons. On the one hand, 88 percent of respondents agreed or strongly agreed that the quick resolution of cases is a legitimate goal of the criminal justice system (Figure 18). On the other
hand, prosecutors were divided in their ratings of the importance of expediting cases. In Southeastern County, roughly 30 percent of prosecutors felt it was important or very important to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system, while approximately 40 percent felt this was of little importance or unimportant (Figure 19). Prosecutors in Midwestern County were similarly divided, but the average importance ratings in Midwestern County were lower than those in Southeastern County. This is surprising given that the chief prosecutor in Midwestern County shifted internal resources to the screening decision in response to decreasing trial availability; this seems to imply that prosecutors in Midwestern County continue to screen cases primarily in terms of convictability rather than in terms of efficiency. Indeed, prosecutors in Midwestern County were less likely than prosecutors in Southeastern County to adjust their decisions in order to increase courtroom efficiency. Just 6 percent of prosecutors in Midwestern County said that they were frequently or very frequently willing to adjust their decisions for the sake of efficiency while roughly 31 percent of prosecutors in Southeastern County said that they were frequently or very frequently willing to do so (Figure 20).
Figure 18. Responses to question: “The quick resolution of cases is a legitimate goal of the criminal justice system”

Figure 19. Responses to question: “How important is it to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system”
The differences across jurisdictions – in the evaluation and adjustment of cases for efficiency reasons – may be a product of several factors. First, the extent of external resource constraints in Southeastern County may be more severe; although prosecutors in both jurisdictions noted the problems of reduced courtroom space, the descriptions of these problems by focus group/interview respondents in Southeastern County – from the chief prosecutor to the newest prosecutors – described them as a much more extensive and persistent than the descriptions in Midwestern County. Second, the response by the chief prosecutor in Midwestern County was to shift the emphasis to stricter screening; in Southeastern County, screening procedures remained largely the same but emphasis was placed on resolving cases after charges were filed. Finally, the use of roundtabling in Southeastern County actually required prosecutors to adjust decisions explicitly for efficiency reasons. All of these may have made prosecutors in

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52 In fact, the chief prosecutor in Southeastern County showed us a log book that detailed for a full year of court proceedings every late start, early adjournment, break, continuance, or other disruption initiated by every judge that rotated through the county. The chief prosecutor had totaled all of the time that judges effectively closed court over the course of a year and determined how many trials had been prevented due to these.
Southeastern County more cognizant of external constraints and more prone to react to those constraints.

D. Resources as Constraints

Again, these findings are only indicative of prosecutors’ opinions and may represent general dissatisfaction with perceived resources; in other words, while prosecutors maintain that resource constraints influence decision making, in actuality they may have little real import. This seems particularly true for internal resource constraints. While prosecutors may argue that a lack of support staff or perceived inadequate staffing affects cases, on the general survey few admitted that these constraints actually led them to handle cases differently. Rather, prosecutors described a lack of internal resources generally leading to additional paper work and clerical work rather than an actual need to dispose of cases. In contrast, external resource constraints clearly affected case outcomes. In Southeastern County, prosecutors at all levels discussed several specific ways in which the lack of available court space led directly to the re-evaluation of evidence and the eventual dismissal or downgrading of plea offers in many cases. Moreover, the perceived changes to external resources – specifically, the reduction in court time and the redeployment of law enforcement resources – had the potential to affect personal and agency-level relationships between prosecutors and other criminal justice actors.

III. The Influence of Relationships on Decision Making

Successfully prosecuting cases requires prosecutors to navigate relationships with other justice system actors – judges, defense attorneys, law enforcement officers. The quality of relationships with these actors, like rules and resources, may affect how a prosecutor approaches a case. While a good or bad relationship may not determine the outcome of a specific case, these relationships certainly affect how a case may be handled or how certain information is evaluated.
Moreover, routine interactions with other system actors creates a set of expectations about, for example, how a specific judge will sentence, what types of pleas a specific defense attorney will be receptive to, or the quality evidence produced by a particular police officer. As noted above, the norms of practice within an office set clearly defined rules of practice for prosecutors and prosecutors’ decisions are partially shaped by how they may be perceived by colleagues. In a similar way, relationships with other system actors create norms of practice that may influence decision making as well.

A. Relationships with the Judges

Prosecutors in both jurisdictions noted that the judge on a particular case can affect how the case is handled. In several instances, prosecutors noted that they had to “know their judge.” This meant that prosecutors had to know, for example, what the judge would view as an acceptable charge, what motions would likely be looked on favorably, or what evidence the judge would expect to see. As one newer prosecutor in Southeastern County noted, “There is a diverse array of what judges want and do not want. A judge will let you know what they want. You need to learn the different styles of judge and develop approaches to everything.” As another newer prosecutor noted, “The judges have different stands on different issues. Certain statutes they do not necessarily agree with. There is certain evidence that they will not accept and certain evidence that they expect to see.” However, prosecutors were quick to maintain that the particular judge on a case did not determine decisions; however, as one prosecutor noted, they also “know what judges will do and tailor charges, pleas, etc. based on that.” Indeed, as one prosecutor in Midwestern County noted, “We must work within the confines of the system – who the judge is will affect pleas and trials. Judges affect what prosecutors CAN do.”
Surprisingly, only 6 percent of prosecutors who responded to the general survey indicated that they frequently or very frequently tailored their decisions to fit the expectations of judges, while over 60 percent said they very rarely or never did (Figure 21). Nonetheless, roughly 30 percent of prosecutors in each office stated that they occasionally tailored decisions to the expectations of judges. Moreover, only 3 percent of respondents indicated that the specific charges they filed in a case were frequently or very frequently affected by the judge that will hear the case (Figure 22). Prosecutors in Midwestern County were more likely to be affected by the judge at charging – roughly 55 percent of prosecutors in Midwestern County stated that charges were never affected by the judge compared to 84 percent of prosecutors in Southeastern County.

**Figure 21. Response to question: “I tailor my decisions to fit the expectations of judges”**
The differences across jurisdictions may be a product of how prosecutors and judges are assigned to the courts in each jurisdiction. In Midwestern County, units are assigned to specific judges and appear before the same judge for roughly one year before the judge is rotated out. Moreover, prosecutors screen cases that will be assigned to their units; thus, when screening and charging a case, the screening prosecutor knows who the judge assigned to the case will be. As a result, in all cases – felony and misdemeanor – prosecutors in Midwestern County are very familiar with how the judge runs their courtroom. As one unit manager noted, “prosecutors are cognizant of what judges are willing to accept in terms of charges and plea offers and what kinds of evidence the judge will admit. All of this determines what charges to file, what offer to make, etc. because the prosecutor gets tired of being rejected and fighting with the judge.” Indeed, a Deputy in Midwestern County hinted that tailoring decisions to the judge was a matter of efficiency, arguing that prosecutors “have to get a resolution with the defense attorney and knowing what the judge will accept is important.” While some unit managers agreed with this
statement, others disagreed; one unit manager argued that “for the most part, we issue cases based on what we can prove and do not modify it for the judge.” Another prosecutor echoed this, stating that “The judge should not pull the prosecutor; rather the prosecutor must pull the judge to the appropriate place. Our job is to decide what is just and worthwhile regardless of what the judge will do. The prosecutor has the right to have put on the record what they think is just and fair.”

In contrast, in Southeastern County units are assigned to specific courtrooms and judges rotate through the courtroom. According to a unit manager in Southeastern County, as a result, it was “impossible to tailor charging or plea decisions to judges because we do not know who the judge will be on a case.” As such, unit managers and prosecutors in Southeastern County did not see the judge affecting a case. However, they did acknowledge that the judge may affect which motions to file or the general approach to a case once it was before the judge. Prosecutors also acknowledged that the particular judge assigned to a courtroom may affect whether a case is scheduled for trial; prosecutors stated that a case may be continued if assigned to a particular judge. Rather than tailoring a decision to a particular judge, the more experienced prosecutors in Southeastern County tailored decisions to the “typical judge.” As one prosecutor noted, prosecutors “know what the extremes are in judges’ sentencing decisions and shoot for the middle. Basically, there is a sense of what the going rate is among the collective of judges in the district and prosecutors tailor decisions to what the going rate or norm is.”

Prosecutors in both jurisdictions also argued that cases revolved around assessments of who the “good” judges were. In this sense, prosecutors scheduled cases for trial in order to trust the “good” judges with the cases prosecutors really cared about. For example, if a case turned on complicated issues, prosecutors may want a certain judge and, therefore, may not fight a defense
request for a continuance. In Midwestern County, prosecutors had a slightly different notion of a “good” judge. As one prosecutor pointed out, “some judges make doing the job difficult; it is not about ideology, but about inconsistency in how the judge will respond to facts.” Indeed, several prosecutors noted that predictability or consistency in judicial decision making was very important. As another prosecutor noted, “if the judge is predictable, it is easier to negotiate with the defense; if the judge is inconsistent, this makes it harder to make a deal.” To combat such inconsistency, prosecutors acknowledged that they may try to limit the judge’s discretion by limiting the number of charges that the defendant must plead to, which then limits the judge’s sentencing options.

**B. Relationships with Defense Attorneys**

While judges may affect what the prosecutor can do, the relationship with the defense attorney may affect the ease with which prosecutors do their job. In Southeastern County, prosecutors’ opinions about their relationship to defense attorneys varied significantly by experience level. For example, some newer prosecutors, who work exclusively in misdemeanor court, had very antagonistic relationships with defense attorneys. As one newer prosecutor noted, “The [public defender] needs a good relationship with the prosecutor to get good deals. But if there is a bad relationship with a [public defender], the worst that can happen for a prosecutor is that they will have to try every case, which is what I love to do.” As this prosecutor stated, the antagonistic relationship often resulted in “punishing” the public defender in some way by, for example, calling cases early or scheduling several cases for that particular defense attorney in a row to make it tougher for the defense attorney to prepare. More experienced prosecutors in Southeastern County saw the defense as very important, primarily as conduits for information about cases. They noted that they would listen to what “trusted and respected” defense attorneys
have to say about clients and may reconsider a plea offer or charge based on new information about the client. In contrast, for those defense attorneys that prosecutors did not respect, several prosecutors stated that they would “make them work for it.” However, prosecutors at all levels were quick to point out that this did not translate into seeking to make it tough for the defendant or punishing the defendant for the behavior of the attorney. Moreover, prosecutors noted that if defense attorneys were cooperative, then they would get more cooperation from the prosecutor in the form of uncontested continuances or a break without an objection; yet these prosecutors noted that a good relationship did not mean that they tailored decisions to defense attorneys.

More experienced prosecutors in both jurisdictions also noted the need for a good relationship with defense attorneys to ensure an efficient system, noting that the defense can penalize the prosecutor with a lot of motions and continuances. As one prosecutor in Midwestern County noted, “courthouses were small enough towns that all parties know each other so that no one benefits from having a bad relationship; but a good relationship gets a more efficient outcome.” Indeed, unit managers in both jurisdictions claimed that it was imperative that prosecutors work with the public defender’s office to ensure case flow. According to one unit manager in Midwestern County, public defenders were “willing to bend the rules to make the system work smoother, and, in turn, prosecutors were willing to bend rules for them.” This bending of the rules pertained to procedural rules, such as changing the way cases were set for trial to accommodate the public defender’s schedule.

Prosecutors generally saw the largest benefit of a good relationship with defense attorneys as a better flow of information and a more just resolution of a case. According to several prosecutors, they felt they rarely had enough information about a defendant or his social background and that this was the type of information a good relationship with defense attorneys
provided; an antagonistic relationship made defense attorneys less inclined to come to prosecutors with additional information, waiting until trial to introduce it. A good relationship with the defense was also seen as benefiting the prosecution. According to an experienced prosecutor, “The judge sees a good relationship between the prosecutor and defense and is more willing to listen to a prosecutor’s arguments. It narrows the issues if you trust someone and you can focus only on what the differences are about, for example, why a party is seeking a continuance or why one party is filing a particular motion.”

The idea expressed in focus groups that prosecutors value good working relationships with defense attorneys but do not change their decisions based on those relationships was reinforced in the responses to the general survey. Forty-three percent of respondents considered good relationships with defense attorneys to be an important or very important criterion for evaluating their individual success as prosecutors, while only 10 percent considered it to be of little importance or unimportant (Figure 22). Nearly three-quarters of respondents (72 percent) also indicated that they would very rarely or never consider altering their decisions for defense attorneys they respect; yet, this indicates that some proportion of prosecutors would consider alter decisions for defense attorneys (Figure 23). Finally, 85 percent of respondents said they would very rarely or never tailor their decisions to gain or maintain the trust of defense attorneys; again, indicating that some proportion would (Figure 24).
Figure 23. Response to question: “Good relations with defense bar is important to individual success”

Figure 24. Response to question: “I would consider altering my decisions for defense attorneys who I respect”
Based on the responses, prosecutors did not alter their decisions merely because of good relationships with defense attorneys. Rather, good relationships were valued for other reasons—because good working relationships promote efficiency in case processing and because mutual trust fosters open communication. Good communication, in turn, can affect prosecutors’ decisions indirectly by providing prosecutors with important information about defendants or the circumstances surrounding a case that may not otherwise come to their attention.

C. Relationships with Law Enforcement Officers

Of primary concern in both jurisdictions was the relationship between prosecutors and law enforcement officers. In both jurisdictions, relationships with law enforcement have deteriorated in recent years, primarily due to a change in leadership in each jurisdiction’s primary urban police department. This has affected the political relationship between law enforcement and the prosecutors’ offices that has then trickled down to the daily interactions between individual police officers and prosecutors. In turn, this has influenced relationships that are already characterized by tension and has introduced a new level of acrimony between the two groups.
As the chief prosecutor in Southeastern County noted, “there is an institutional tension that always exists with law enforcement, since prosecutors have an obligation to scrutinize cases brought by law enforcement and must decline to prosecute some cases.” This tension often resulted in pressure being applied to prosecutors to accept cases. Generally, this pressure was felt most directly by newer prosecutors who may be less confident in their ability to confront law enforcement officers or decline their cases; in turn, these prosecutors may be more likely to accept questionable cases due to such pressure. As the Deputy in Southeastern County noted, “young prosecutors feel tension when they have face to face interactions with officers because the prosecutor may have to tell the officer ‘no’, which people do not say to law enforcement.” The Deputy pointed out that it is difficult to instruct young prosecutors how to overcome this tension because of the authority of law enforcement that comes with the gun, badge, and uniform. According to prosecutors, the mechanisms for dealing with such pressure generally involved making evidentiary arguments about the justification for not taking a case or deflecting responsibility for decisions to other actors in the system. Yet, in some instances, prosecutors succumb to the pressure from law enforcement and accept cases they would not otherwise accept. This happens even with experienced prosecutors, who admitted that they had on several occasions accepted unwinnable cases due to pressure during screening. Often acceptance of weak cases derives from pressure applied by officers with whom prosecutors have a good relationship. Nonetheless, prosecutors were instructed to build good working relationships with law enforcement’ much like defense attorneys, law enforcement was seen as a conduit for quality information.

This contrast between a philosophical commitment to good working relationships and an operational tension between police and prosecutors was also evident in responses to the general
survey. Over half of respondents (56 percent) considered good relationships with law enforcement officers to an important or very important criterion for evaluating their individual success, while only 5 percent considered it to be of little importance or unimportant (Figure 26). Thirty-six percent of respondents indicated that they frequently or very frequently felt pressure from law enforcement officers to accept cases for prosecution (Figure 27) and 15 percent of respondents said they occasionally accept cases for prosecution because of pressure from law enforcement (Figure 28).

**Figure 26. Response to question: “Good relationships with law enforcement officers is important to individual success”**

![Bar chart showing responses to question about the importance of good relationships with law enforcement officers. The chart compares respondents from Midwestern County and Southeastern County. The highest percentage of respondents in both counties found good relationships to be important or very important, with a smaller percentage finding them of little importance or unimportant.](chart.png)
While prosecutors recognized the conflicts in working relationships with law enforcement, some did acknowledge that the law enforcement officer assigned to a case does impact the way a case is handled. For example, if an officer is not very good at testifying on the stand, prosecutors will avoid calling the officer to testify at trial, which limits the way evidence is presented. This may affect plea offers as well as prosecutors seek to dispose of cases in order to avoid having...
officers testify. As one experienced prosecutor in Southeastern County noted, “prosecutors learn quickly the difference between officers who want to do a good job and those who do not and that is considered when prioritizing cases.” This was echoed in Midwestern County where prosecutors noted that if they have less confidence in the use of police at trial, they may work harder to get a plea. One prosecutor in Midwestern County argued that “past experiences or knowledge of particular cops affects a case from start to finish.” According to this prosecutor, prosecutors “were less likely to charge a case if a “bad cop” is on the case and more likely to give a light offer in a plea when a “bad cop” is involved.”

Both jurisdictions have also been affected by changes in the largest municipal police departments in each county. According to all respondents in each jurisdiction, the municipal police department focused on arrests but not investigation of cases. As a result, according to nearly all respondents, the quality of information and the quality of cases coming from the primary police department in each jurisdiction has deteriorated. In turn, many cases are not prosecuted or are dismissed because of a lack of quality information.

In Midwestern County the change in focus from investigations to arrests accompanied a reorganization within the police department, which affected the quality of information delivered to prosecutors. According to the chief prosecutor in Midwestern County, “the police chief disbanded the specialized units and put the emphasis on response to crime rather than resolution of cases; as a result, the quality of cases is going down dramatically because the most experienced law enforcement officers are not working on investigating cases.” According to the chief prosecutor, “all of this leads to high declination rate and high dismissal rates.” The reorganization in the police department has also affected the types of cases the prosecutor’s office gets. As one Deputy in Midwestern County commented, the prosecutor’s office “can only
deal with the cases brought by the police department. And the police department has started to
dee emphasis certain cases such as officer-initiated offenses and undercover police
investigations.” According to the unit manager of the drug unit in Midwestern County, this
meant a significant decrease in large-scale drug offenses and an increase in low-level drug cases.

The Deputy in Southeastern County pointed out a similar pattern of law enforcement
focusing on arrest and not investigation. As the Deputy noted, this had practical implications for
the prosecutor’s office: “the police officer’s goal is to get probable cause to make an arrest, but
they do not finish the investigation necessary to move from probable cause to beyond a
reasonable doubt.” In both jurisdictions, prosecutors described increasing conflict with officers
over such issues. In Southeastern County, the chief prosecutor responded by putting very
experienced prosecutors at the screening desk who, according to the chief prosecutor, “know
what to look for and can get more respect from the officer.” As a result of more stringent
screening processes, the primary police department in Southeastern County has also stopped
seeking pre-warrant approval by the prosecutor’s office. As a result, according to the chief
prosecutor, many more cases are declined at the screening stage. Indeed, according to the chief
prosecutors in both jurisdictions, the result of changes in law enforcement has been an increase
in cases declined for prosecution, pended for additional information, or dismissed due to poor
follow-up investigation.

D. Relationships as Constraints

Prosecuting cases relies on a web of relationships with other justice system actors. Of
primary concern in both Midwestern County and Southeastern County was the relationship
between prosecutors and law enforcement officers – the pressure law enforcement officers often
applied to prosecutors to accept cases, the quality of officer testimony and its impact on plea
offers, and, perhaps most importantly, the deteriorating relationships following changes to primary law enforcement agencies. The impact of law enforcement was felt throughout the prosecutorial process. The influence the judges and defense attorneys was less pronounced, perhaps because prosecutors appear less reliant on judges and defense attorneys for information. In this sense, law enforcement to a certain extent determined the content of a case, while judges and defense attorney merely shaped how prosecutors would approach the case.

V. IMPLICATIONS OF THE FINDINGS

The findings from Midwestern County and Southeastern County have both practical and theoretical implications. On the one hand, how these two offices were affected by rules, resources, and relationships potentially can assist other prosecutors’ offices in navigating these constraints and crafting responses to them. On the other hand, the significant impact of these constraints on discretion in these two offices can assist in refining existing theories of prosecutorial decision making and in expanding notions of the practical constraints and consequences of decisions.

A. Understanding the Impact of Rules

Our finding that internal office rules or policies impact decision making is not particularly new. In a comprehensive study of prosecutorial decision making in the early 1980s, Leonard Mellon, Joan Jacoby, and Marion Brewer highlighted the influence of policies on screening decisions in ten prosecutors’ offices in the United States.\(^53\) In each of these offices, the authors found an overarching “prosecutorial policy” that “significantly affect[ed] the so-called

\(^53\) Mellon, Jacoby & Brewer, supra note __. The ten offices included: Wayne County, Michigan; King County, New York; San Diego County, California; Dade County, Florida; King County, Washington; Orleans Parish, Louisiana; Lake County, Indiana; Salt Lake County, Utah; Norfolk County, Virginia; and Boulder County, Colorado. The authors were primarily concerned with screening decisions and the different approaches prosecutors’ offices took to screening cases. Based on observation of case screenings and reviews of policy documents, the authors created a typology of prosecutorial policy styles – a perspective or philosophy for evaluating cases at screening.
‘discretionary’ decisions made” by prosecutors.54 These prosecutorial policies addressed how individual prosecutors should evaluate cases at screening and included: a legal sufficiency policy that examines cases for the presence of all legal elements of the crime listed in arrest reports; a system efficiency policy that examines cases for the potential for speedy and early disposition; a defendant rehabilitation policy that examines cases for the potential for early diversion; and a trial sufficiency policy that examines cases for potential success at trial.55

At first glance, these policies may appear to be more prosecutorial philosophies than clear rules; however, according to Mellon, Jacoby, and Brewer, these policies are purposively adopted by the chief prosecutor in a jurisdiction and transmitted to line prosecutors as written directives, clear standards for charging, guidelines for accepting cases, and mandates for particular dispositions.56 Moreover, once transmitted to line prosecutors, adherence to these policies is generally monitored by supervisors.57 In this sense, the policies are more than philosophies – they are rules that prosecutors must follow.

54 Id, at 53.

55 Id at 60-68. More importantly, according to the authors, these policies required individual prosecutors to focus on particular aspects of a case and resulted in variation in screening outcomes across jurisdictions. For example, a legal sufficiency policy likely resulted in a higher percentage of cases accepted at screening than a trial sufficiency policy; the latter requires a strict screening of cases for potential evidentiary and constitutional deficiencies, while the former requires only an examination for the presence of the elements of the crime. Indeed, Mellon, Jacoby, and Brewer describe a change in prosecutorial policy from a trial sufficiency policy to a legal sufficiency policy in the King County, Washington, District Attorney’s office. See, Mellon, Jacoby, and Brewer, supra note __, at 69. The authors note that the test for accepting cases at screening shifted from “‘Can you win this case?’ [to] ‘Can this case survive motions?’” at 69. According to the authors, the policy shift resulted in a significant increase in the percentage of cases accepted for prosecution.

56 Mellon, Jacoby, and Brewer, supra note __ at 58, fn. 15. The authors note several written forms of transmittal, including policy documents; operating procedures, guidelines, and instructions; administrative procedures, guidelines and instructions; letters and memoranda; recurring reports; and reports specified for exceptional situations. They also highlight unwritten forms of transmittal: staff meetings and conferences; verbal reports in specified situations.

57 For example, Mellon, Jacoby, and Brewer describe the Orleans Parish, Louisiana District Attorney’s office as operating under a trial sufficiency policy and the District Attorney “require[ing] that all cases with less than a reasonable chance of successful prosecution be rejected. The office had extensive feedback, review, and approval mechanisms. These enabled the District Attorney to monitor the flow of cases through the office and helped to insure adherence to his policies.” Id at 67.
Marc Miller and Ronald Wright similarly demonstrate that prosecutorial decision making can be controlled through internal regulation.\footnote{Miller & Wright, supra note__} In their examination of decision making in the Orleans Parish, Louisiana, District Attorney’s office, Miller and Wright show that several types of rules governed decision making in the office. Some rules derived from criminal procedural constraints or restrictions created by substantive criminal law.\footnote{See, e.g., Miller & Wright, supra note __ (arguing that constitutional criminal procedure – such as search and seizure – and substantive criminal law constrain prosecutors’ decisions).} More importantly, Miller and Wright argue that agency-level social norms also developed through adherence to office priorities or policy directives and acted as internal regulations on decision making.\footnote{Miller & Wright, supra note __ (arguing that internal social norms have the force of law within prosecutors’ offices).} In this sense, it is not just formal, written rules or directives (as discussed by Mellon, Jacoby, and Brewer) that can dictate decision making processes; rather, it is the routine production and enforcement of social norms that can create rules within a prosecutor’ office that constrain and regulate the discretion of individual line prosecutors. Like written rules, these social norms can express clear standards for charging, guidelines for accepting cases, and mandates for particular dispositions and are generally followed by line prosecutors. Again, these social norms (like office policies) act as rules that prosecutors must follow.

As these studies imply, internal regulation likely occurs in most offices to a greater or lesser extent. The studies by Mellon, Jacoby, and Brewer and by Miller and Wright, however, imply that the specific policies or social norms are top-down policies or norms – created, transmitted, and enforced by the chief prosecutor.\footnote{See, e.g., Miller & Wright, supra note __, at 154, stating that “chief prosecutors often set office policies designed to keep the declinations of individual attorneys in line with their own priorities” and “The chief prosecutor sets priorities among all the available criminal charges to reflect the current values of the legislature and the local public.”; see also Mellon, Jacoby, & Brewer, supra note __, stating in several places, for example, that “the Prosecuting Attorney of King County made major changes in his charging policy” (at 68) and that “the District Attorney [of Boulder County, Colorado] instituted a plea bargaining reform” (at 66).} The findings from Midwestern and Southeastern

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Counties, however, indicate that this internal regulation may occur at a fairly low level of aggregation within *specific units*. Although the chief prosecutors in Midwestern and Southeastern Counties communicated a clear prosecutorial philosophy, they created a very limited number of office-wide rules that dictated how prosecutors were to handle cases. Rather, they relied on unit managers to translate their philosophy into policies and allowed unit-specific social norms to develop that regulated the decision making of individual prosecutors.

In both Midwestern and Southeastern Counties, a complex system of unit-specific rules dictated outcomes for a wide array of offenses and decision points. Rules did not cover all offenses or decisions; but the rules that did exist were seen as largely binding by prosecutors and called for prosecutors to decline certain cases at screening, charge cases in a particular way, and offer specific charges or sentences in plea offers. In some instances, these rules derived from generally unwritten directives from unit managers; in other instances, they derived from norms of practice within units. Prosecutors did agree that they could disregard these rules if they could justify their reasoning to supervisors and colleagues; however, prosecutors also noted that peer pressure within each unit tended to normalize most responses.

The presence of unit-specific rule making should raise doubts about the capacity for internal regulation as a mechanism for ensuring office-wide consistency in approach and outcome. Because the unit-specific rules in Midwestern and Southeastern Counties were created by individual unit managers, the rules were unorganized – uncoordinated across units and not always expressed as formal policies; rather, rules evolved and could shift with a change in unit managers or in the composition of the unit, creating opportunities for inconsistencies across units and over time. Although the chief prosecutors in these jurisdictions closely supervised unit managers, given the size and diversity of the offices, there existed opportunities for unit-specific
policies to deviate from each other.\textsuperscript{62} As such, chief prosecutors relying on a unit-specific policy making approach should be cognizant of the potential for such variability. Allowing unit-specific policies and norms to develop may result in simple differences in attitudes about the appropriate sentence recommended in a plea offer or it may result in more fundamental differences in the overall approach to evaluating cases.

Chief prosecutors can address this challenge in several ways. In Southeastern County, the office maintains a flat management structure, with unit managers reporting directly to the chief prosecutor; in this way, the chief prosecutor can exercise greater oversight of policy making within units even in a relatively large office. The office also organizes units around specific offense types (person, property, drugs, etc.), with no two units prosecuting the same offense type; in this way, the chief prosecutor can eliminate the potential for conflicting policies and norms of practice that address the same offenses. In Midwestern County, the office similarly organizes units around specific offense types with one exception – five general crimes units. Since these five units are supervised by five different unit managers yet prosecute the same types of offenses, there is a greater possibility of inconsistency in policies and outcomes. The solution has been increased monitoring by the chief prosecutor using the office’s electronic case management system. Using detailed monthly reports on case outcomes, the deputy prosecutor overseeing these five units convenes regular meetings with unit managers to examine and address inconsistencies in outcomes across units. In this way, the chief prosecutor similarly can

\textsuperscript{62} Our findings also demonstrate that particular policies may evolve throughout the prosecutorial process, implying that prosecutors may rely on different policies at different points in time. For example, in Southeastern County prosecutors generally relied on a trial sufficiency standard to evaluate cases at screening (i.e. evaluated a cases for its potential success at trial). However, due to a lack of courtroom availability, prosecutors relied on a system efficiency standard as a case moved through the system; in other words, at later stages of the process, prosecutors were evaluating cases based on whether there were sufficient resources to justify proceeding with the case. Moreover, the policy types developed by Mellon, Jacoby, and Brewer likely interact at screening more than the authors imply. In Midwestern County, for example, screening decisions were a combination of trial sufficiency, system efficiency, and defendant rehabilitation policies.
eliminate the potential for conflicting policies and norms of practice through regular monitoring of actual case outcomes.

For socio-legal scholars, the presence of unit-specific policy making shifts our approach to understanding the effectiveness of internal regulation. While internal regulation may exist, it may at a very low level of aggregation, may be quite variable within an individual office, and may be highly dependent on interactions among a few individual prosecutors within a unit. Moreover, given the impact of external resource constraints on prosecutors’ offices, the sources of such variability in internal regulation may be difficult to ascertain.

B. Understanding the Impact of Resources

A significant challenge facing prosecutors’ offices is a lack of resources. Prosecutors often struggle with securing adequate resources within their own offices to maintain staffing levels, to update technology, and to investigate cases. Several theories contemplate the influence of resources constraints on decision making and empirical studies have confirmed the impact of resource limitations on prosecutorial policies. Often overlooked, however, is the impact that

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63 See note __, detailing recent media coverage of cuts to prosecutors’ budgets.
64 Most of these theories derive from Max Weber’s theories of formally rational law and substantively rational law and view prosecutorial decision making as a balance between these two versions of law, MAX WEBER, ECONOMY AND SOCIETY (1968). Formally rational law occurs when courtroom decision making is based only on legally relevant factors and consistent rules of action; in other words, outcomes under a formally rational system “are primarily the result of legal rules and criteria applied equally” to all cases. In contrast, substantively rational law occurs when courtroom decision making is based on factors outside the law individually applied to particular cases; in other words, outcomes under a substantively rational system are not guided solely by adherence to processes but also by reference to “extralegal” goals and outcomes, such as social equality and justice or the practical consequences of decisions for individuals (e.g. the defendant, the victim, the prosecutor, etc.) and organizations (e.g. the court, the prosecutor’s office, etc.). For reviews see, e.g., Joachim Savelsberg, Law that Does Not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law, 97 THE AMERICAN JOURNAL OF SOCIOLOGY 1346-1381 (1992) (describing Weber’s concepts and applying them to historical changes in American criminal law); see also Dixon, supra note __ (applying Weber’s concepts to examine sentencing under Minnesota’s sentencing guidelines). For a review of substantively rational law as applied to sentencing, see, Daniel P. Mears, The Sociology of Sentencing: Reconceptualizing Decisionmaking Processes and Outcomes. 32 LAW & SOCIETY REV 667-724.
65 See, e.g., Mellon, Jacoby, & Brewer, supra note __, at 61 (arguing that the chief prosecutor in Wayne County, Indiana had a set of “well developed and documented office procedures” to create a system efficiency policy of screening cases; such an approach, according to the authors, was “essential because the Prosecuting Attorney suffers severe funding deficiencies;” see also, Miller & Wright, supra note __ at 148 (noting that resources limits often
external resources – primarily court resources – may have on the prosecution process and the mechanisms that translate resource constraints into constraints on discretion.

Several theoretical perspectives seek to explain prosecutorial decision making. The focal concerns perspective perhaps has been used the most often to explain the impact of resources on decision making in the criminal justice system. This perspective argues that, in addition to the consideration of legal and evidentiary criteria, courtroom decision making revolves around three primary “focal concerns:” blameworthiness of the offender, dangerousness of the offender, and the practical constraints and consequences of decisions for offenders and organizations.

According to this theory, courtroom actors’ decision making begins with legal factors (e.g. strength of the evidence, offense severity, defendant criminal history) as “benchmarks” for decisions but then incorporates subjective determinations of blameworthiness, dangerousness, and the consequences of sentences based on particular case/defendant characteristics (e.g.

force prosecutors to prioritize cases and these priorities are not always in line with the chances of obtaining a successful conviction).

Once of the best known theories of prosecutorial decision making is Celesta Albonetti’s uncertainty/causal attribution theory. See, generally, Albonetti, supra note __ (1986) (arguing that courtroom actors seek certainty in case outcomes, operate with little information and, as such, are uncertain in their decision making); see also, e.g., Ulmer, Kurlycheck, & Kramer, supra note __, at 428. According to Albonetti decision making reflects the use of bounded rationality, with courtroom actors making decisions based on limited information about a defendant’s character or a particular case. This limited access to information produces uncertainty that courtroom actors seek to minimize by engaging in “uncertainty management” behavior. Albonetti combines the uncertainty avoidance perspective with causal attribution, arguing that courtroom actors make subjective attributions from stereotypes of defendant and case characteristics to reduce decision-making uncertainty, linking these characteristics to evaluations of the likelihood of future criminality or the potential impact of sentences. In the end, according to the uncertainty/causal attribution theory, courtroom actors rely on substantively rational criteria to make decisions in order to reduce uncertainty. Prosecutorial outcomes, thus, result from an interaction between the formal considerations of criminal and procedural laws and the substantive considerations of prosecutors about individual offender and case characteristics. We do not rely on Albonetti’s theory here largely because it focuses primarily on assumptions about prosecutors’ evaluation of case specific factors and leaves little room for external factors such as external resources to affect decisions. As such, we focus on other theories that more specifically address the impact of resources on decision making.

See, generally, Darrell Steffensmeier & Stephen Demuth, Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?, 65 American Sociological Rev 705-729 (2000); Darrell Steffensmeier, Jeffery T. Ulmer, & John H. Kramer, The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male, 36 Criminology 763-797 (1998). While this perspective has been applied primarily to sentencing decisions, recent research has begun to apply these concepts in the analyses of prosecutorial decisions, see, e.g., Kramer & Ulmer, supra note __; Ulmer, Kurlycheck, & Kramer, supra note __.

For a straightforward description of these three focal concerns as they apply to prosecutorial decision making, see, e.g., Ulmer, Kurlycheck, & Kramer, supra note __.
defendant race, gender). More importantly, the perspective recognizes that courtroom actors operate under the need for or goal of organizational efficiency, and, thus decisions may be based on concerns about the consequences of decisions on organizations (e.g., the need to dispose of cases, avoid case backlogs, and conserve resources). In fact, efficiency is generally seen as a concern that may supersede both formal legal rules and other focal concerns of courtroom actors.

Much of the empirical work relying on the focal concerns perspective has found strong support for the impact of resources (measured primarily by caseloads) on case outcomes. Although internal resource constraints – staffing, caseloads – certainly impact prosecutors, the findings in Midwestern and Southeastern Counties point to external resources as a more critical constraint. Prosecutors in our study routinely had to alter their screening, charging, and plea bargaining strategies to account for decreasing trial availability. We find that prosecutors in many instances had to significantly reduce charges, renegotiate plea offers, or simply dismiss cases in response to reductions in courtroom space, shortened court calendars, and judicially initiated continuances. While not entirely constrained by such external resources, the chief prosecutors in Midwestern and Southeastern Counties clearly saw the lack of adequate court resources as limiting their ability to fully prosecute cases. Moreover, in several instances, external resource constraints forced prosecutors to dismiss cases or reduce plea offers although they felt such decisions were not the appropriate or right decisions. As predicted by the focal concerns perspective, such resource constraints superseded prosecutors’ evaluations of convictability and case strength.

69 Steffensmeier & Demuth, supra note__.
70 See, e.g., Dixon, supra note __; Engen & Steen, supra note __.
71 See, e.g., Engen & Steen, supra note __; Kramer & Ulmer, supra note__.
72 For a review of research relying on the focal concerns perspective, see Jeffery T. Ulmer, Recent Developments and New Directions in Sentencing Research, JUSTICE QUARTERLY, 29, 1-40 (2012) (reviewing research on courtroom decision making over the last 20 years).
These findings have several implications for future research on prosecutorial decision making. Perhaps, most obviously, research relying on the focal concerns perspective must account for and model the impact of such external resource constraints; in many instances, internal resources may have little impact on case outcomes. In Southeastern County, for example, internal resource constraints appeared to have little impact on decision making. At screening, the office accepted cases based on a trial sufficiency standard (i.e. probability of success at trial); in our interviews, prosecutors described few instances in which caseloads or staffing shortages affected screening decisions, charging decisions, dismissals, or plea offers. Research examining decision making in the office would likely find little impact of internal resource constraints on case outcomes. However, external resource constraints forced prosecutors in the office to reduce pleas and dismiss cases – including cases with strong evidence and a high probability of success at trial. Thus, to accurately understand the relationship between resources and decision making, research would have to incorporate measures of these external resource constraints.

The significant impact of external resources also raises several questions about the extent to which prosecutors make decisions “in the shadow of the trial.” Scholars argue that prosecutors evaluate case-level factors in terms of how those factors influence predictions of convictability and probable sentence at trial. Generally, researchers examine strength of the evidence, serious

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of the offense, and defendant criminal history to determine the predicted strength of the case and use this to examine associations with case outcomes; stronger cases are predicted to have a lower likelihood of dismissal, higher likelihood of guilty pleas, and more serious charges and longer sentences accepted in plea offers based on the expected outcomes these cases would achieve at trial. The findings in Midwestern and Southeastern Counties suggest two adjustments to such theories.

First, these theories assume unlimited access to trials. As the findings in Midwestern and Southeastern Counties show, however, courtrooms are increasingly unavailable to try all cases. As such, prosecutors often make decisions not based on predictions about outcomes at trial, but based on predictions that there will be a trial. In other words, the shadow of the trial is not the probable outcome of the trial, as originally assumed; rather, in an environment of external resource constraints, the shadow of the trial is the probability of the trial itself. Second, the limited availability of courtroom space significantly alters the way researchers relying on the shadow of the trial thesis should evaluate case strength. Our findings imply that case strength is not determined entirely by case-specific factors. Prosecutors in Midwestern and Southeastern Counties argued that even strong cases (i.e. those with a high probability of success at trial) may receive reduced plea offers or be dismissed in the face of external resource constraints. As such, prosecutors often determine whether a case is strong only relative to other cases at a specific point in time. In other words, the predicted strength of a case cannot be determined using a static measure, as originally assumed; rather, in an environment of external resource constraints, case strength becomes a relative measure that changes over time and is dependent on the content of cases prosecuted contemporaneously. Thus, there is a need to model trial availability in research examining case outcomes and to further explore the proposition that prosecutors make decisions
“in the shadow of the trial” when the likelihood of the trial is greatly diminished due to decreasing court resources.

Beyond these more academic considerations, the impact of external resources raises implications for chief prosecutors as well. Yet, addressing this challenge may be beyond the ability of any individual chief prosecutor. Chief prosecutors may lobby for increased court resources or may work with court personnel to increase efficiencies, but the impact of either course may be quite limited. Prosecutor can, however, alter internal office policies and priorities. In Midwestern County, the primary response to external resource constraints has been to shift internal resources to the screening decision and the diversion of cases out of the system. Stricter screening procedures and increased use of diversion programs result in lower acceptance rates which alleviate some of the pressure in courtrooms. In Southeastern County, the primary solution has been to ‘roundtable’ cases; when court resource constraints begin to affect case flow, individual units evaluate cases to determine which cases are the best candidates for dismissal, for decreases in plea offers, or for continuance for trial.

Both solutions work to ensure that the most important cases move forward and both solutions have benefits. In Midwestern County, the stricter screening process may produce more efficient outcomes as the office expends fewer resources on cases that may ultimately necessitate a dismissal. In Southeastern County, the use of roundtables may produce more consistent outcomes as the office considers the totality of cases in making decisions and weighs the relative merits of cases against each other.

Both solutions also come with potential costs. High declination rates at screening can create additional tension between the prosecutor’s office and law enforcement; this can also create political problems if high declination rates gain media attention or are used for political
advantage in elections. Moreover, the creation of adequate diversion options in Midwestern County has required a significant amount of work by the chief prosecutor – working with outside agencies to develop and implement programs to help divert cases. The political and time costs of developing such a solution may be difficult for some prosecutors to undertake. Similarly, the use of roundtables in Southeastern County may not be the most efficient use of internal office resources as a response to external resource constraints; roundtabl ing to adjust plea offers and dismiss cases occurs after cases have been accepted and prosecutors have invested potentially significant amounts of time and effort in interviewing witnesses, producing discovery, and preparing for trial. The use of roundtables also takes the individual prosecutor out of the decision making process; in the long term, this may damage the relationship of the individual prosecutor to others in the courtroom workgroup, as these other actors see the individual prosecutor as less in control of a case.

C. Understanding the Impact of Relationships

Like rules and resources, research has long recognized the potential impact of relationships on decision making in the criminal justice system. The court communities perspective, for example, argues that courtroom decision making is often the product of courtroom social contexts. According to this perspective, a community is formed among regular courtroom workgroup members – judges, prosecutors, defense attorneys, other courtroom personnel. Through regular interactions over a long period of time, this workgroup forms a set of interdependent relationships and produces a local legal culture characterized by shared traditions,

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74 For a description of the court communities perspective, see generally, EISENSTEIN & JACOB, supra note ___; EISENSTEIN ET AL., supra note ___; for research combining the focal concerns perspective with the court communities perspective, see, e.g., Ulmer, Kurlycheck, & Kramer, supra note___; Johnson, supra note ___; Kramer & Ulmer, supra note ___.
75 EISENSTEIN & JACOB, supra note __
values, and norms.76 For example, day-to-day interactions produce a set of shared expectations about the value or prioritization of cases, the proper resolution of cases, and how other courtroom actors will behave in future interactions.77 In the end, these workgroups establish “going rates” and norms that determine decisions in most cases and that make the decision making process more predictable.78

The court communities perspective acknowledges that these going rates and norms develop for a variety of reasons. Similar to the focal concerns perspective, the court communities model sees local legal norms as often developed to ensure efficiency, such as the speedy resolution of “typical” cases to control caseloads and case flow.79 Members of the courtroom workgroup also generally find it in their professional interests to abide by the values and norms of the court community; workgroup members who violate these shared values and norms can face informal sanctioning by other members of the workgroup, such as increased use of motions or continuances by opposing counsel or changes in case scheduling.80 Prosecutors also appear to have a “downstream orientation” that leads them to anticipate and consider how other actors not yet involved in the process will respond to a case.81 Thus, according to the court communities thesis, in addition to efficiency, decision making may be governed by a need to maintain good relationships with other courtroom actors and to gain the trust of other courtroom actors to achieve desired outcomes in the long term.

The findings from Midwestern and Southeastern Counties certainly support the court communities perspective. Prosecutors in both jurisdictions acknowledged that in some instances they made decisions based on the expectations of judges, worked to maintain good relationships

76 EISENSTEIN ET AL., supra note __
77 ULMER, supra note __
78 Id; EISENSTEIN & JACOB, supra note __; EISENSTEIN ET AL., supra note __.
79 See, e.g., Dixon, supra note __; Engen & Steen, supra note __.
80 EISENSTEIN & JACOB, supra note __
81 See, e.g., Frohmann, supra note __.
with defense attorneys, and used continuances and case scheduling to reward or punish trusted defense attorneys; they also acknowledged relying on “going rates” for offenses when making decisions, however, they did not state explicitly that these going rates were the product of interactions with judges and defense attorneys. Overall, prosecutors did not portray their relationships with courtroom actors as particularly constraining. This may be due to structural elements that prevent such relationships from significantly influencing decision making. For example, the rotation of judges through courtrooms in Southeastern County likely attenuated the influence of judges on decision making. Moreover, in both jurisdictions the lack of courtroom space and the resulting lack of predictability in the occurrence of trials likely prevented prosecutors and defense attorneys from developing informal agreements about going rates for offenses. On the other hand, prosecutors may not have been aware of how these relationships affected decision making; because of the pervasive sense of prosecutorial autonomy expressed in both offices, they may not have seen their actions as influenced by their role in the court community or they may have chosen to think that they were not significantly influenced by the other members of the courtroom workgroup.

Midwestern and Southeastern Counties also provide an opportunity to examine how external shocks – in this case, court resource constraints – influence the courtroom workgroup. Although many prosecutors blamed the lack of available courtroom space and reductions in court operating hours on judges (which was partially true), resource constraints were also due to reductions in state funding for trial courts. As such, these resource reductions altered the environment within

[82] This is similar to events in many states. A recent symposium sponsored by the Kentucky Law Journal, the ABA and the National Center for State Courts, focused exclusively on state court underfunding. According to an ABA article summarizing the focus of the symposium, “The crisis has left justice stranded by closed courts, led to job losses and furloughs for court personnel; civil cases have been suspended and court personnel in many jurisdictions are scrambling for basic office supplies,” see Betsy M. Adeboyje & Alexandra Buller, Cuts to State Courts Are Focus of Symposium, ABA Now (September 23, 2011, available at http://www.abanow.org/2011/09/cuts-to-state-court-focus-of-symposium/ (last accessed February 28, 2012). The article goes on to note that “at least six states
which court communities operated and changed behavior of courtroom workgroup members. As noted above, such external resource constraints often forced prosecutors in Midwestern and Southeastern Counties to make decisions that they would not otherwise make. As prosecutors’ decision making becomes increasingly influenced by external resources, other courtroom actors in each jurisdiction may be less confident in their ability to predict prosecutorial behavior in future interactions, potentially disrupting the set of shared expectations about the value of cases and the proper resolution of cases. In the long term, these resource shocks may disrupt the routine production of local legal culture. While the court communities perspective anticipates such external shocks (e.g., changes in elected officials), additional research is needed to understand how members of the courtroom workgroup respond to such shocks and how those responses are perceived by other actors.

In Midwestern and Southeastern Counties, the offices’ responses to changes in external resources may partially mitigate such shocks to the court community. The use of roundables in Southeastern County, for example, is an attempt to provide consistency to case outcomes when external shocks require changes in decision making; although individual prosecutors may have less control over decisions, the courtroom workgroup may still perceive decision making as consistent at the unit level (i.e., in the aggregate). In Midwestern County, stricter screening procedures may decrease the number of cases entering the system to an extent that courtroom workgroup members may not perceive a change in prosecutorial decision making after cases are filed; rather, they may only perceive the reduction in caseloads. This latter solution, however, potentially affects relationships with other actors, namely law enforcement.

Close their courts one day a week because of inadequate funding. New Hampshire suspended all civil cases for one year to deal with overwhelming backlogs made worse by inadequate funding. In New York, a $178 million cut in the state court system almost immediately led to 500 people being laid off. Last year, 40 states slashed state court funding.”
Our findings show that a more important relationship to consider within the court communities perspective is prosecutors’ relationships with law enforcement officers. In both Midwestern and Southeastern Counties, prosecutors noted the pressure law enforcement officers often applied to prosecutors to accept cases. Prosecutors at all experience levels admitted that, in some instances, they succumbed to the pressure from law enforcement and accepted weak cases that they would not have otherwise accepted. Less experienced prosecutors, however, were seen as more susceptible to such pressure. Such influences are likely typical in most prosecutors’ offices. Chief prosecutors may respond to law enforcement pressure at screening by placing the most experienced prosecutors in charge of screening (as the chief prosecutor did in Southeastern County) or by pairing inexperienced and experienced prosecutors and allowing these more experienced prosecutors to act as mentors (as the chief prosecutor did in Midwestern County).

More importantly for both the court communities perspective and chief prosecutors, however, may be the external shock to the law enforcement/prosecutor relationship experienced in both Midwestern and Southeastern Counties. Both jurisdictions have been significantly affected by changes in the largest municipal police departments in each county. According to all respondents, the quality of information and the quality of cases coming from the police department has deteriorated due to a decrease in law enforcement emphasis on investigations and an increased emphasis on patrol and arrests. According the chief prosecutors in both jurisdictions, this shift in the policy of police departments resulted in an increase in cases declined for prosecution, pended for additional information, or dismissed due to poor follow-up investigation. This prosecutorial shift, in turn, affected relationships between individual prosecutors and officers, with relationships deteriorating and tensions increasing. Indeed, many prosecutors described some officers as applying increasing pressure to accept cases at screening...
the primary locus of tension between law enforcement and prosecutors. Yet, prosecutors also described officers as caring less about cases once accepted. According to prosecutors, since officers were not devoting attention to investigations, officers cared less about testifying on the stand and prosecutors increasingly sought to dispose of cases early through generous plea offers in order to avoid having an officer testify. Thus, such shifts in agency policies may alter prosecutorial decision making and act as additional shock to courtroom workgroups and relationships throughout the system.

D. Beyond Rules, Resources, and Relationships

While the findings from Midwestern County and Southeastern County may provide some understanding of prosecutorial decision making, there remain several limitations to the research. Most importantly, perhaps, the analyses rely on two fairly large prosecutors’ offices. The Midwestern County prosecutor’s office employs approximately 125 prosecutors who handle roughly 30,000 felony and misdemeanor cases per year; the Southeastern County prosecutor’s office employs 75 prosecutors who handle roughly 13,500 felony and misdemeanor cases and close to 100,000 traffic cases per year. The majority of prosecutors’ offices in the United States are not nearly as large as these. Thus, the decision-making processes, the constraints on decision making, and the attitudes prosecutors express about their roles in the criminal justice system may vary greatly from those of smaller (or larger) prosecutors’ offices.

Nonetheless, the influence of rules, resources, and relationships on decision making in these two jurisdictions help to highlight the context in which prosecutorial decision making occurs. Understanding that these constraints may trump evaluations of strength of the evidence, severity of the offense, and defendant criminal history, should inform and expand both research and practice. Future evaluations should be cognizant of these internal and external constraints when
assessing the impact of case-level factors on both decision making process and case outcomes. Moreover, chief prosecutors should be mindful of the influences that external resources and relationships can play on case outcomes in their offices.

VI. CONCLUSION

Understanding prosecutorial decision making is no easy task. In any individual case, prosecutors make innumerable subtle decisions that propel a case forward or hold it back or that increase the exposure a defendant may face upon conviction or decrease that exposure. In any individual case, these decisions are based on a complex evaluation of case-level factors and a calculation of expected and desired outcomes. Although it may be clear which case-level factors are associated with particular outcomes or which are expected to influence decisions, these subtle decisions about cases are not made in a vacuum. The public perceive prosecutorial discretion in individual cases as being nearly unbounded, yet individual cases exist within a system that often shapes and constrains that discretion. In Midwestern County and Southeastern County we found that decisions were often determined by, or at least limited by, internal rules, external resource constraints, and a balancing of interdependent relationships. Thus, in the end, individual prosecutorial discretion is not nearly as unbounded as traditionally thought.