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Do Black Prosecutors Matter?
The Effect of Descriptive Representation in the American Criminal Justice System

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Abstract

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By Chelsea A. Jackson

In the era of Mass Incarceration, activists, politicians, and scholars alike have criticized the U.S. criminal justice system for incarcerating too many Americans and perpetuating racial and class disparities. One more recent solution posited is an increase in minority representation among local prosecutors. Despite their virtually unrestricted discretion and interdependent role in the criminal justice system writ large, district attorneys are overwhelmingly white. This study uses multivariate regression and two-sample t-tests to evaluate the effect of Black district attorneys on incarceration rates and racial disparities. I find that Black prosecutors are less punitive than their white counterparts are, and have narrower racial disparities.

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Table of Contents

Chapter Title	Page Numbers
List of Tables and Figures	x
Introduction	1 - 7
1. The American Prosecutor as an Institution and Political Actor	8 -18
2. Why Would Black Prosecutors matter?	19 - 48
3. Do Black Prosecutors Affect Punitiveness and Racial Disparities?	49 - 64
4. How Do Black Prosecutors Compare to Non-black Prosecutors?	65 – 74
Conclusion	75 - 78
Appendix	79 - 84
Bibliography	84 - 98

List of Tables and Figures

Table/ Figure	Title	Page Number
Table 2.1	County Characteristics and the Likelihood of a Black District Attorney	45
Table 3.1	Prosecutor Racial Statistics	54
Figure 3.1	Average Jail Incarceration and Prosecutor Race	57
Table 3.2	Multivariate Analysis Prosecutor Race on Punitiveness and Racial Disparities	61
Table 4.1	Population Matched T-Test Jail Incarceration by Prosecutor Race	69
Table 4.2	Population Matched T-Test Black Jail Incarceration by Prosecutor Race	69
Table 4.3	Population Matched T-Test White Jail Incarceration by Prosecutor Race	70
Table 4.4	Population Matched T-Test Black- White Jail Incarceration Disparity by Prosecutor Race	70
Table 4.5	Black Population Matched T-Test Jail Incarceration by Prosecutor Race	71
Table 4.6	Black Population Matched T-Test Black Jail Incarceration by Prosecutor Race	84 - 98
Table 4.7	Black Population Matched T-Test White Jail Incarceration by Prosecutor Race	73
Table 4.8	Black Population Matched T-Test Black- White Jail Incarceration Disparity by Prosecutor Race	73

Introduction

Kenneth Thompson, who served as the Kings County, NY District Attorney from 2013 until his death in 2016, and Leon Cannizzaro Jr., the Orleans Parish, LA District Attorney who was elected in 2008, were both elected at the county level. These two Democratic prosecutors served urban constituencies (Brooklyn and New Orleans respectively), faced pressures to be “tough on crime” and pursued harsh sentences for the defendants they prosecuted. Although Thompson was elected later than Cannizzaro, the two things that differentiated them most were their criminal justice policy choices and races. Thompson was African-American and Cannizzaro is white. Thompson prioritized reform, practicing leniency in small quantity drug cases, and clearing hundreds of thousands of quality of life warrants from the system (Hall 2016). On the other hand, Cannizzaro has continuously prosecuted small quantity drug cases, overseen ethically questionable prosecutorial conduct in his office, and repeatedly defended questionable prosecutions¹ (Blinder 2017; Robertson and Liptak 2011; Wines 2018). What explains the juxtaposition of Thompson’s “Begin-Again” Program--which continues to resolve summons for low-level offenses and to re-purchase guns in Brooklyn communities—and Cannizzaro’s litigation campaign to ensure a 13-year sentence for possession of less than 3 grams of marijuana? (Brooklyn District Attorney's Office n.d.; Williams 2015)

¹ In 2017, seven plaintiffs filed against Cannizzaro’s office for its use of fake subpoenas to coerce witnesses and crime victims into meeting with prosecutors. The office has also been before the U.S. Supreme Court on charges of prosecutorial misconduct, in particular, withholding evidence from the defense counsel. These Brady violations have resulted in a series of wrongful convictions and exonerations (Blinder 2017; Robertson and Liptak 2011; Wines 2018).

Expansive prosecutorial discretion allows these two elected officials to pursue completely different policy agendas. It allows prosecutors to affect citizens' lives and determine the information judges and juries encounter. The decision to prosecute and to pursue specific charges rests solely in the hand of the prosecutor, constraining the options of both the judge and jury at trial. Locally elected prosecutors like Thompson and Cannizzaro play a particularly central role in this process. Most prosecutions occur in the state rather than federal judicial system, and 95% of criminal cases are decided by plea bargain rather than by a jury trial (Prison Policy Initiative 2017; Ross 2006, 717). As just two of 2,400 elected district attorneys in the United States, the differences between their approaches to prosecution create questions about what influences prosecutorial decision-making (Justice for All 2015).

Could race be the mechanism of difference between Thompson and Cannizzaro? This question is a springboard to explore the potential effects of demographic characteristics on prosecutorial decision-making and the subsequent criminal justice outcomes. Previous scholarship has examined the interactions of these characteristics with three other criminal justice actors—police officers, judges, and juries. However, despite their central role in indicting, charging, convicting, and recommending sentences for millions of Americans, district attorneys have not been studied as extensively (Gordon and Huber 2002). This dearth of examination is particularly concerning in world's largest criminal justice system. American prisons and jails hold more than 2.3 million people and contact nearly 5 million more through probation and parole—a phenomenon referred to as *mass incarceration* (Prison Policy Initiative 2017). Central to mass incarceration are its institutions and actors, among them police officers, judges,

juries, and prosecutors. The role of each actor in the U.S. criminal justice system is substantial and interconnected, but only the prosecutor has virtually no oversight (Davis 2007).

The prosecutor's discretionary power is wielded without public scrutiny because the American legal system is complex, and shrouded by a black box of institutional immunity and little accountability. Line prosecutors (i.e. assistant district attorneys) make charging decisions with only the oversight of the elected district attorney, who has virtually no oversight or accountability. Furthermore, the convictions they achieve are largely excluded from public discourse unless the rates are being lauded or criticized during an election. Although they are selecting their local prosecutors in forty-six states, an uninformed electorate cannot adequately hold prosecutors accountable (Gordon and Huber 2002; Pfaff 2017). In light of the unchecked power and unclear accountability, the demographics of American prosecutors' offices may have a profound impact on incarceration outcomes.

Diversity is an existing problem in the ranks of elected American district attorneys. Ninety-five percent of district attorneys are white, compared to only 61% of the American public (Justice for All 2017; U.S. Census Bureau 2017). Prosecutors of color like Ken Thompson are extremely underrepresented among the ranks of local prosecutors, which could have implications for their policy decisions. If his racial background informed Ken Thompson's reformist policies, electing more prosecutors of color may be a viable solution to mass incarceration. Prosecutorial reformism is particularly salient with regard to non-violent drug offenses, a major contributor to the U.S. prison population, because reform efforts often focus on low-level offenders

(Alexander 2010; Forman 2017, 221). Nationwide, African-Americans are more likely to: be arrested, to be charged with a more serious offense, to experience pre-trial detention, to be convicted, and to be sentenced to longer terms of incarceration than their white counterparts (Ghandnoosh 2015). Black prosecutors have the discretion to address injustices in every decision after arrest, and perhaps to pursue racial parity in the criminal justice system.

Although prosecutors may not be the only criminal justice officials who contribute to these disparities in the system, their discretionary decisions are the most difficult to challenge, and thus exact the greatest consequences (Davis 2007). Recognizing this immense power, and that it is wielded almost exclusively by white prosecutors leads me to ask if Black prosecutors matter? Could minority representation in the prosecutor's office bear any relationship to punitiveness, racial disparities, and prosecutorial discretion? Specifically, are criminal justice outcomes different with Black prosecutors compared to white prosecutors? And if so, how does the race of the prosecutor make a difference?

Descriptive representation among prosecutors has been understudied in both political science and sociology. Legal scholars like Angela J. Davis and Jeffry Pokorak have written about the impact of an overwhelmingly white league of prosecutors, but there are very few if any empirical projects on the subject. A 2009 study of descriptive representation among federal court workers did explore the effect of Black prosecutors, along with judges, defense attorneys, and probation officers on racial disparities (Farrell, Ward, and Rousseau 2009). They found that increased representation of Black prosecutors decreased the disparity between Black and white incarcerations at the federal

district-court level. Since the vast majority of cases are state rather than federal cases, the impact of Black district attorneys—largely elected at the county level—would be more applicable to the larger debate on mass incarceration and prosecutorial reform.

The race of the prosecutor may influence their decisions at every step of the adjudication process and have a variety of consequences. Prosecutorial decisions are influenced by a variety of legal and social characteristics, including ideology and worldview. However similar experiences of racial discrimination and cultural socialization may be, Black Americans have diverse interests and preferences. As elected officials, Black prosecutors should represent these diverse interests.

In the face of crime, the diverse preferences of Black communities inspire three possible responses: punitiveness, color-blindness, and reformism. Concerned about wrongful convictions, police brutality and the history of racism in the United States, Black communities have a tenuous relationship with the criminal justice system (Peffly and Hurtwitz 2010). The history of under policing and the disregard of Black crime victims, along with individual ideas about fairness and respectability may push Black prosecutors to be more punitive, focused on eliminating the criminal element. Color-blind prosecutors continue the practices and policies of their predecessors, leaving no impact on everyday cases and larger trends. Or, troubled by miscarriages of justice and pervasive racial disparities, reformist Black prosecutors actively seek justice and incarcerate fewer people.

Previous findings, specifically in Michael Fortner's *Black Silent Majority* and James Forman Jr.'s *Locking Up Our Own* suggest that Black communities and officials are not simply reformist liberals. In fact, I expect Black prosecutors to be *more* punitive

than their white counterparts, because the combination of political, institutional, and personal incentives to be punitive are persuasive. Since prosecutors are elected, they are responsible for the conviction rates to their constituents in every election cycle. A punitive constituency that prioritizes public safety wants a prosecutor with high conviction rates. More punitive district attorneys have higher jail incarceration rates and racial disparities between white and black residents. Conviction rates and the adversarial nature of the criminal justice system generate internal competition and the desire to win amongst prosecutors. Concerns in low-income communities of color about crime and personal emphasis on individual choice also encourage punitiveness. Cumulatively, these incentives to be punitive should lead Black prosecutors to have high incarceration rates and racial disparities.

Chapter one situates this study in the history of American prosecutors and their role in the criminal justice system: their evolution, elections, discretion and power. It closes with a description of local prosecutors in the United States as of 2014, and the small numbers of black prosecutors. The discretionary power of prosecutors significantly tips the scales on behalf of the state and establishes the immense discretion and power afforded to district attorneys. Next, Chapter two lays the theoretical groundwork for the study, exploring descriptive representation amongst legislative and municipal officials, police officers, judges, and prosecutors. Based on the literature here, I expect Black prosecutors to be more punitive than their white counterparts. Despite evidence in congressional and mayoral politics that Black representatives correspond to liberal policy decisions, general punitiveness and universal concerns about crime create different dynamics for elected prosecutors.

Chapters three and four are empirical, and describe the data, variables and methods of the models included in this study. Chapter three is a multivariate regression that tests the effect of prosecutor race on the incarceration rates and racial disparities of the entire sample of counties (N=356). I find weak support for the idea that Black prosecutors are more punitive than their white counterparts. Chapter four uses t-tests comparing counties with Black district attorneys to counties with white district attorneys. This comparison is a pseudo-experimental test to determine potential differences between Black and non-black prosecutors. I found that Black prosecutors have significantly lower incarceration rates and narrower racial disparities than White prosecutors do. Finally, the conclusion evaluates the results in the larger context of the paper and makes suggestions for continued research. Overall, the literature and empirical evidence suggest that Black prosecutors *do* matter, incarcerating fewer African-Americans and reducing racial disparities in the counties where they are elected.

Chapter 1

The American Prosecutor as an Institution and Political Actor

Prosecutors in the United States are among the most powerful public officials. They prosecute crimes on behalf of the state, or in the case of federal prosecutors, the United States of America. Prosecutors at the local-level are often referred to as *district attorneys* and are mostly elected, although some are appointed. Unlike many other aspects of the U.S. criminal justice system, the district attorney was not imported from Europe, and is a uniquely American institution. These officials and their subordinates decide to file or drop cases, determine which charges to seek, and make critical sentence recommendations. Collectively, these decisions are *prosecutorial discretion*, shaping the critical interactions between prosecutors and police officers, judges, and juries. The unique level of discretion afforded to prosecutors in the American criminal justice system emerged from the new nation's ideas about liberty and justice.

Public prosecutors emerged in colonial America in the 19th century amid rejection of the British common-law system. English common-law, based in the philosophical view that crimes were committed against individuals, originally allowed victims to act as prosecutor, judge, and jury. As the population grew and the legal system developed, victims or their surrogates retained private attorneys to charge individuals with crimes in the courts (Gottschalk 2006). This system of justice excluded the poor and uneducated that could neither understand the legal system nor afford legal assistance. Viewing this system as inefficient, elitist, and potentially vindictive, Americans eradicated private prosecutions and elected for public ones--making crime a state building project. In this new nation, crime was primarily an offense against society as a whole rather than a

private matter between the offender and victim (Worrall 2008). This philosophical understanding of crime positions the prosecutor as a representative of “the people” (Davis 2007). The American view of prosecutors as protectors of the public interest paved the way for their accumulation of power through legislation and judicial decisions.

The new republic rejected the British centralized government and opted to continue the localized court system that developed during the colonial period (Worrall 2008). Originally, these local public prosecutors were appointed, as were the U.S. Attorney General and U.S. Attorneys established in the Judiciary Act of 1789. Local district attorneys were not elected until the emergence of Jacksonian democracy in the 1820s and 1830s. Jacksonian democracy was a political philosophy that encouraged the popular election of public officials as the path to true democracy, by holding officials accountable to all citizens (Anglo-Saxon men) rather than an elite few (Davis 2007).

In the context of the judiciary though, the idea of representation itself is more contested, because of the bureaucratic nature of judicial actors. In this literature, the divide between passive (whether the bureaucracy has the same demographic origins as the population it serves) and active (representational influence on policy making and implementation) representation is more polarized (Wilkins and Williams 2008). Judicial representation is often lauded for its symbolic benefits—promoting a narrative of inclusiveness and increasing institutional legitimacy rather than substantive impact—affecting the interpretation of statutes (Ifill 1997). In the bureaucracy, actor discretion and issue salience are necessary conditions for active representation, but these values conflict with the institutional expectations of impartiality, disinterest and fairness (Ifill

1997). The expectation that judicial officials should be neutral arbiters who enact policy with an even hand complicates the expectations of descriptive representation.

However, unlike judgeships, which were also democratized in this period, the decisions and activities of prosecutors are not public record. Elections as a democratic method of accountability actually augmented and cemented the district attorney's immense power and discretion, while virtually eliminating oversight. Rather than being appointed by local officials, and subsequently serving at their bequest, prosecutors would only be accountable to the electorate. Their complete autonomy in the decision to prosecute, their power to influence previous and future discretionary decisions by other criminal justice actors, coupled limited means of accountability makes prosecutors perhaps the most powerful officials in the criminal justice system (Curtis 1996; Gordon and Huber 2002; Ross 2006; Davis 2007).

Limited Accountability

As an elected officer, the political incentives for prosecutors to appear "tough on crime" to ensure reelection may be the most salient. The U.S. has over 2,400 elected prosecutors from 46 states, and 85% are full-time public officials (Pfaff 2017, 128-129; Justice for All 2017). Largely elected at the county level, these officials are evaluated almost entirely by their conviction rates (Nugent-Borakove and Budzilowicz 2007). All elected prosecutors face the same pressures to respond to crime and public punitiveness and ensure their reelection by producing high rates of conviction and few acquittals.

In prosecutorial elections, the "optimal voter strategy" is to re-elect District Attorneys with convictions and punish those who lose at trial, regardless of the circumstances that precipitated acquittal (Gordon and Huber 2002, 335). Conviction rates

are not necessarily the best metric to evaluate prosecutors, however. Neither prosecutors nor the public can know the true guilt or innocence of suspects, and prosecutors can easily skew conviction rates by padding their records with easy convictions and avoiding difficult ones, regardless of guilt or innocence (Gordon and Huber 2002, 334-337).

Despite these problems, the optimal voter strategy persists regardless of voter ideology and the amount of information on individual cases because the public opposes crime and criminals. Thus, crime is a political concern, and punitiveness—expressed through conviction rates—is a function of the game between the pivotal voter and the prosecutor. As voters continue to prioritize convictions and prosecutors continue to prioritize re-election, punitiveness will continue and worsen. Beyond electoral failures, prosecutors also operate with virtually no judicial or executive oversight, leaving the system open to abuses of power and prosecutorial misconduct.

Discretion

The power these new civil servants derived from the American state building project operates through discretion. Prosecutorial discretion is the decision whether or not to pursue charges against an individual defendant, which charges to pursue, and what to negotiate in plea-bargaining. All of these decisions are the sole responsibility of prosecutors, who lack both judicial review and external oversight. The sole decision to prosecute has been protected by the U.S. Supreme Court, which identifies discretion as “ill-suited to judicial review” (*Wayte v. United States* 1985). The majority concluded that reducing prosecutorial discretion could inhibit the job function of law enforcement, delay criminal proceedings, and undermine prosecutorial effectiveness. However, the majority of America’s political institutions practice “checks and balances” through accountability

measures external to the institution itself (Davis 2007). Police officers are subject to reprimand for their decisions and judicial decisions can be overturned through the appellate process. Meanwhile, prosecutors largely escape scrutiny.

Although it contributes to problems in the system, prosecutorial discretion does serve two primary purposes. First, it prevents the prosecution of offenses that have become socially acceptable, like adultery, and combats the proliferation of legislation criminalizing an exorbitant number of offenses (Davis 2007, 12). Secondly, prosecutorial discretion allows the state to manage its limited resources to prosecute cases according to individual circumstances and the strength of the evidence, rather than according to rigid guidelines. Two of the most influential decisions made by prosecutors are the initial charging decision and plea-bargaining. Unlike the police officer's discretionary decision to stop or arrest, or the constrained sentencing decisions of judges, the prosecutorial decision to file or drop charges against a defendant is virtually unreviewable. This charging decision can only be challenged as discriminatory "selective prosecution" where it is the defendant's burden to show that the state failed to prosecute "similarly situated defendants" (*U.S. v Armstrong* 1996).

The seriousness of the crime, strength of the evidence, existing criminal record of the defendant, characteristics of the victim, and victim credibility all contribute to the charging decision (Albonetti 1987). Aside from these legal factors, prosecutors also consider their existing caseload, the availability of resources to prosecute an additional case and the likelihood of conviction. Based on these factors, and virtually non-existent supervision, prosecutors have the ability to pursue conviction (even if the defendant is innocent); to decline to indict (despite apparent guilt); or to arbitrarily discriminate

against different suspects accused of the same crime based on various characteristics with little to no accountability for their decisions (Gordon and Huber 2002).

Prosecutors use their discretion to evaluate the cost and likelihood of conviction and the cost to the public through the risk of reoffending (Albonetti 1991). This “bounded rationality,” suggests that when knowledge is incomplete, actors try to decrease uncertainty through habit and social structure (Albonetti 1987, 295). Since prosecuting attorneys can never determine the absolute guilt or innocence of a defendant, their discretion operates in consistent uncertainty. In this murky environment, it is perfectly logical to make decisions based on past experiences, biases, prejudices, and understanding of the existing evidence and facts of the case. The decisions to indict or drop charges, and the severity of charges to pursue may operate in the same way that judicial sentencing decisions are made, through calculation and the weighing of both legal and extralegal factors.

Albonetti’s theory of “causal attribution” is the mechanism for personal and environmental forces thought to contribute to behavior in sentencing behavior (Albonetti 1987; 1991). In the same way that judges use offender characteristics, pretrial decision outcomes, and statutory harshness to predict the likelihood of future criminal activity in sentencing, prosecutors also use social and environmental factors—like race, gender, age, and neighborhood—to make decisions. In light of this bounded rationality, bias in the decision to prosecute is ingrained in the institution itself through the professional practices and institutional incentives of district attorneys, rather than maintained by a few intentionally biased “bad apples” (Gonzalez Van Cleve 2016). For example, racialized perceptions of a crime’s severity and risk to the public shape drug policy and

enforcement practices. The ease and speed of attaining a conviction are somewhat based on the resources of the defendant, and their ability to hire effective defense counsel. The racial coding of drugs and drug users sustain disparities between Black and white Americans, although they use drugs at roughly the same rates (Murakawa 2010; National Survey on Drug Use and Health 2013). Thus, the decision to prosecute a Black male defendant for felony possession with intent to distribute, while charging a white woman with possession and recommending rehabilitation for having the same amount of crack cocaine is facilitated by social and institutional factors rather than individual racism.

Race, Bias, and Prosecution

Discretion is an entry point for biases in the criminal justice system. Police officers have used their discretion to advance racial profiling by choosing to disproportionately stop people of color (Harris 1999). Judicial discretion has resulted in longer sentences for Black defendants than their white counterparts, and contributes to long-standing racial disparities in incarceration rates (Bushway and Piehl 2001). Similarly, the discretion of district attorneys is an opportunity for both unconscious and conscious biases to infect the prosecution process. In light of the risks of increased racial disparity and injustice, prosecutors are uniquely positioned and empowered to remedy injustices most effectively and efficiently (Davis 1998). Their ability to decline prosecution can act as a check on discriminatory arrest patterns, and the charges they choose to pursue constrain the sentencing decisions of the judge. However, when they fail to actively engage these disparities, prosecutors become a party to injustice rather than protectors of justice.

Both the initial charging decision and plea bargaining processes have the least counterbalancing input from the defense attorney, and are points where biased discretion can have disastrous effects. Unconscious racism, attitudes and beliefs in cultural and historical heritage that attach negative feelings and opinions to non-whites, may taint presumably “race-neutral” decision making (Davis 1998). Wilson (1987) and Sampson and Wilson (1995) observed that larger portions of African Americans live in environments of extreme poverty, and urban neighborhoods of extreme disadvantage, which produce the highest violent crime rates. This raises the possibility that African Americans apprehended by the police are more likely to be seen as dangerous serious offenders, so a suspect's race becomes tied to other legally relevant characteristics that ultimately influence case processes. Even without overtly racist “bad apples,” failure to actively engage racial differences in legally relevant factors perpetuates racism in institutions and cultural practices (Gonzalez Van Cleve 2017). Without the accountability measures governing their counterparts on the police force and the judicial bench, prosecutors have the unique ability to reverse, sustain, or exacerbate existing disparities through charging decisions and plea bargaining.

The vast majority of criminal cases in the United States do not go to trial before a jury. About 95% of cases conclude because of a defendant entering a guilty plea. In plea agreements, the prosecutors and defendants negotiate to reduce or dismiss some charges in exchange for a guilty plea to a lesser offense or lighter sentence. Plea-bargaining allows the district attorney to maintain their conviction record while conserving the costly resources used in often-lengthy criminal trials. It also protects defendants against the possibility of being convicted on more charges and receiving harsher sentences (Ross

2006; Curtis 1996). Although plea decisions must be approved in a hearing, judges can neither assess the strength or weakness of the case against a defendant, nor determine if prosecutors used coercive incentives to attain a guilty plea. Thus, they overwhelmingly rubberstamp the plea agreements presented by the prosecution (Ross 2006). This is particularly damning for low-income defendants, who often are encouraged to plead guilty—even if they are innocent—to return home or to avoid remitting cash bail. The plea bargaining process gives district attorneys immense power, allowing them to subvert defense counsel, to undercut arraignment judges, and to profoundly impact the lives of the people whose cases they decide.

Plea-bargaining, the decision to drop charges, the decision of which charges to apply, criminal statutes that strengthen sentences and reduce judicial discretion all contribute to the accumulation of prosecutorial power (Curtis 1996; Ross 2006; Wooldredge). Moreover, although some states require grand jury indictments for felony charges, even that process is completely controlled by the prosecuting attorney. Prosecutors decide which witnesses appear, choose the order of their testimony, decide what evidence is presented, interpret the law for the jury, and make the recommendation for indictment--all without the defendant or defense counsel present (Davis 1998). Thus, even though grand juries may have been intended to be a check on prosecutorial power, they undermine the adversarial nature of the legal system by excluding the defense counsel.

The dominance of plea bargaining reduces the effectiveness of defense counsel because the deck is often stacked in favor of the state--so much so that defendants routinely plead guilty to crimes they did not commit (Bowers 2008). Federalization of

criminal justice allows federal, state or both courts to prosecute an individual. Rather than resulting in an abundance of dual prosecutions, the limited resources of federal prosecutors—U.S. Attorneys—means that state prosecutors try cases with dual jurisdiction. Although the likelihood is low, the threat of dual prosecution gives local prosecutors additional advantage in the plea bargaining process. The fact that federal defendants tend to spend more time in prison for a similar offense incentivizes defendants on the state level to plead guilty to avoid federal charges and the additional time that accompanies them. This erodes trust in institutions and the intended effects of criminal justice and undermines the intended purpose of plea-bargaining. Defendants should be able to plea-bargain based on the strength of the prosecution's case, but federalization decreases incentives for compromise and reduces the bargaining power of the accused (Curtis 1996).

The decision to drop charges overturns the police decision to arrest a suspect, while the charges pursued constrain the options of the jury in the few cases that make it to trial, and sentencing ability of the judge after conviction. The proliferation of criminal statutes allows prosecutors wide discretion in the charges they pursue in individual cases. State-level legislatures pass state law, criminalizing certain behavior, while the U.S. Congress has the ability to define federal offenses (Dennis 1996). This overlapping jurisdiction often provides multiple offenses that fit the same facts of the case, and allows the prosecutor to bargain with the defendant to ensure a guilty plea. Aside from bargaining power, the array of criminal statutes also allows the prosecutor to constrain the sentencing decisions of judges. Efforts to reform sentencing practices and decrease racial and class disparities have created a “displaced discretion,” where decisions in

sentencing are unintentionally transferred from judges to prosecutors (Wooldredge, Griffin, and Rauschenberg 2005, 864). A series of studies that found disparate sentencing along racial and socioeconomic lines encouraged the development of sentencing commissions, mandatory minimum legislation, and sentencing guidelines (Bushway and Piehl 2001; Albonetti 1991; Bonneau and Rice 2009). All three of these tools reduce judicial discretion, while empowering prosecutors to select the charges they pursue according to the punitiveness of the sentences associated with them.

This power transfer between judges and prosecutors has substantial, albeit unintended consequences. The prosecutor's decision to pursue an offense with a 15 or 20-year mandatory minimum provides exceptional leverage in the plea bargaining process, previously wielded from the bench during sentencing hearings (Curtis 1996; Ross 2006; Wooldredge, Griffin, and Rauschenberg 2005). To be sure, these innovations have not transferred all judicial power to prosecutors, but they have certainly contributed to changes in prosecutorial decision-making. In each aspect of their discretion, prosecutors act as a check on other criminal justice actors--and maintain the ability to usurp their power--while remaining completely free from being held accountable themselves.

Chapter 2

Why Would Black Prosecutors Matter?

Prosecutors have immense power, and a unique organizational structure that uniquely situates them to address injustices in the criminal justice system. Racial bias, both conscious and unconscious, contributes to enduring racial disparities in arrest, incarceration, and sentencing. Here, race conscious prosecutors could use their discretion as a check on these biases. Although people of color are not exclusively race conscious, prosecutors of color may be more likely to address racially salient flaws. However, the ranks of American district attorneys are still overwhelmingly white. Outside of Virginia and Mississippi (which have the largest concentrations of Black district attorneys), only 1% are African-American (Justice for All 2017). The enduring racial and economic disparities in the U.S. criminal justice system have not yet prompted a revolution in representation amongst prosecutors.

Existing literature suggests that descriptive representation increases institutional legitimacy, helps compensate for past and present injustices, and includes the interests and perspectives of underrepresented groups in the political process, and increases minority esteem and capacity to pursue leadership (Mansbridge 1999; Dovi 2002). These benefits have been studied extensively in legislative and bureaucratic institutions, and less so in the criminal justice system. To address this gap, this thesis explores the relationship between descriptive representation and mass incarceration outcomes, through the district attorney. This Chapter opens with Black representation in the U.S. Congress, one of the first desegregated political institutions and the subsequent theories about surrogate representation and substantive representation that develop from it. Next, I move

to urban politics and the influx of Black mayors and city councilmen elected in the 1970s and 1980s after the civil rights movement. The next site of Black political incorporation was the judicial branch, as Black judges began to take the bench in the 1980s. Finally, the Chapter explores descriptive representation within the criminal justice system through police officers and prosecutors, tracing the history of Black police and prosecutors and the challenges they face lays the theoretical groundwork for the empirics of this project.

Representation

Representation takes three forms in democratic society: descriptive, symbolic, and substantive. Descriptive representatives mirror the social or demographic group of their constituents. These representatives who look like their constituents can be simply symbolic, giving the appearance of inclusion without integrating group interests into political discourse. Substantive representatives, on the other hand, advocate for the interests of their constituents--whether they share identities or not (Pitkin 1967; Mansbridge 1999). Descriptive representation in and of itself is symbolic, because simply the presence of shared identities does not indicate shared interests. However, demographic similarities also generate shared experiences that serve as a cue to the polity that their representative will advocate for their political interests. A powerful symbol of democracy, descriptive representation is the manifestation of the progress achieved in race relations and institutional development and benefits the polity and political institutions, both substantively and symbolically (Tate 2003). Consequently, African-Americans have recognized the importance incorporation into American political institutions. Increased descriptive representation incorporates Black political and social

interests into policy agendas in legislative and municipal politics, but also amongst judges and police officers.

The substantive interests of Black communities in public safety, welfare, education, and employment in the wake of the civil rights struggles drove their pursuit of Black representatives. African-Americans became mayors, city councilmen, police officers, municipal bureaucrats, and judges throughout the 1970s and 1980s. Evident in Chapter 1, prosecutors have a central role in the criminal justice system and can directly address racially salient concerns.

Descriptive Representation in Legislative Politics

Linked fate, the perceived link between individual fate and the fate of the race built and maintained through a shared experience of racial discrimination and community institutions, begins to explain the benefits of demographic representation (Dawson 1994, 56-61). Similar experiences of discrimination and cultural socialization generate similar interests, and racial identity can be used as an imperfect proxy for policy interests. It suggests that shared identities breed trust and understanding that may result in better advocacy of the interests of the constituency (Mansbridge 1999). In legislative literature, primarily focused on the U.S. Congress, there are mixed results about the impact of identity congruence between the representative and the represented. In general, though, studies have found substantial impact on agenda setting, political efficacy, and political participation (Minta and Sinclair-Chapman 2013; Tate 2003).

For more than fifty years, minorities in the U.S. House of Representatives have used a diversity infrastructure to keep civil rights and social welfare—established minority interests—on the congressional agenda (Minta and Sinclair-Chapman 2013).

This diversity infrastructure operates most plainly in congressional caucuses that promote group interests through information and resource sharing. The increase in Black members of Congress from 1951 to 2004 has a positive relationship with the number of congressional hearings on civil rights and social welfare issues despite their decline in public dialogue (Minta and Sinclair-Chapman 2013). Black citizens express more satisfaction with their Congressional representatives when they are Black—even once controlling for party, seniority, and gender (Tate 2001). When compared to Black constituents with a white member of Congress, those with a Black member of Congress were 31% more likely to contact their representative. The trend is consistent across racial lines, as White constituents are more likely to contact and have more favorable views of white representatives (Gay 2002). This increased likelihood of contact suggests that descriptive representation facilitates improved communication with constituents.

Shared racial identity helps constituents of color overcome the historical discrimination that inhibited open communication and political participation (Mansbridge 1999). This particularly benefits the recipients of surrogate representation, a common phenomenon in racial and ethnic politics, in which descriptive representatives serve constituents that do not elect them directly. Adam Clayton Powell (D-NY 1945-1971) directly represented Harlem, New York but consistently pursued the interests of all Black Americans, as a staunch opponent of Jim Crow laws and advocate of anti-lynching legislation. Powell represented one half of the African-American voice in Congress for his first ten years in office as the second Black representative in the body. In this climate of racial hostility, these surrogate representatives were the only embodiment of Black interests in the deliberations of the lower Congressional chamber. Powell's actions as a

surrogate representative support the retributive aspect of descriptive representation, allowing for the compensation of past and continued injustice both *de facto* and *de jure* (U.S. Government Printing Office, 2008).

In addition to its substantive impact, descriptive representation provides symbolic benefits to politically underrepresented groups. The exclusion of women and racial and ethnic groups from positions of political power created a social narrative that these groups should not or cannot rule (Mansbridge 1999). The mere presence of racial and ethnic minorities and women in political institutions directly conflicts this narrative, although not without caveats. Descriptive representation increases the esteem of group members and their capacity to pursue membership, but may also erode cross-cleavage ties and isolate majority constituents (Dovi 2002; Mansbridge 1999; Gay 2002). Furthermore, inclusion of underrepresented groups promotes political efficacy—citizen faith and trust in government—that can increase participation in the institutions of government (Bobo and Gilliam 1990). In addition to its substantive aspects, the symbolic benefits of descriptive representation ameliorate past and continued injustices, combat the narrative that members of the group cannot or should not rule, and increases the *de facto* legitimacy of the political institutions themselves (Dovi 2002; Mansbridge 1999).

Despite these potential benefits, descriptive representation has not been consistently lauded for increasing the substantive representation of those it affects. Pitkin argues that descriptive representation leaves little room for accountability because it focuses on what representatives *are* rather than what they *do* (Pitkin 1967; emphasis original). Although both Black and White constituents were more likely to contact representatives of their own race, neither group's overall perception of Congress as an

institution was impacted by descriptive representation, which challenges the argument of institutional legitimacy (Gay 2002). There is also evidence that Black constituents may place less emphasis on descriptive representation when their substantive interests are being represented—feeling equally well represented by a member of Congress who shares their policy preferences regardless of race (Gay 2002). When non-descriptive representatives have, for various reasons, greater ability to represent the substantive interests of their constituents, this is a major argument against descriptive representation (Mansbridge 1999).

Descriptive Representation in Urban Politics

Although the breadth of work on descriptive representation in the legislative literature is unrivaled, there are many studies on local and municipal politics, which also examine the effects of descriptive representation. From the 1960s to 1980s Black political power grew, not only in the U.S. Congress, but also in mayorships, city council seats, and other local offices. The first Black mayor of a major U.S. city was Carl Stokes, elected in Cleveland, Ohio in 1967. In the 1970s Atlanta, Los Angeles, Detroit and Washington D.C. all elected their first Black mayors. Between 1965 and 1993, more than 300 African-Americans were elected to city councils across the country, achieving a level of urban representation surpassing that of the Reconstruction period after the abolition of chattel slavery (PBS 2005; Brown 2011). These triumphs of Black political representation provided both symbolic and material messages to an America emerging from the Civil Rights Movement.

The election of Black mayors like Atlanta's Maynard Jackson lead to increased municipal employment of African-Americans, including Black police officers, and the

bureaucratic appointment of Black professionals, particularly in housing authorities (Eisinger 1982; Mladenka 1989; Kerr et al. 2013). This visual representation facilitated material benefits, with increased spending in racially salient policy areas, economic and community development (Brown 2007; Hopkins and McCabe 2012). Although Black mayorships and city council victories had the potential to bring great benefit to communities of color, the nationwide recession of the late 1970s and early 1980s hit America's urban areas the hardest. Assuming control of "hollow prizes," municipal Black representatives battled fleeing white and middle class residents amid a mass commercial exodus to the suburbs (Brown 2011, 19-22). In addition to these economic disadvantages, cities in the 1970s and 1980s grappled with federalism, as the policy decisions and funding choices of state and federal governments constrained municipal power. Finally, newly elected Black officials faced an existing power structure, both economic and political, operated by and for white Americans for centuries (Brown 2011).

These economic, institutional and political challenges significantly constrained the choices of local Black officials, creating a mismatch between the expectations of Black communities and urban reality. Despite challenges, increasing Black representation amongst municipal officials not only increased political efficacy and participation; it also promoted substantive changes that benefitted Black communities. Black mayors increased the number of city contracts awarded to Black-owned businesses, hired and appointed more Black municipal employees, and promoted quality of life and public safety spending (Karnig and Welch 1980; Eisinger 1982; Browning, Marshall, and Tabb 1984; Stone 1989). Concerns about public safety abounded across the country, as urban communities demanded more Black police officers and better responses to crime. Violent

crime rates increased in cities in this period, first coinciding with heroin in the late 1960s and then the even more deadly and addictive crack cocaine in the 1980s (Forman 2017). Like their counterparts in the U.S. Congress, the presence of descriptive representatives in city halls and state capitals provided both symbolic and substantive representation to African-Americans in spending, housing, civil rights, and public safety.

Descriptive Representation in Law Enforcement and Sentencing

The positive effects of Black mayors and city council members who share a phenotype with their constituents should translate to the increasing numbers of Black municipal bureaucrats and frontline workers. By extension, Black police officers, municipal court judges and prosecutors, whether elected district attorneys or assistant district attorneys should promote the interests of Black communities. Expanding descriptive representation should continue to improve political deliberation, maintain minority interests on the political agenda, increase minority political efficacy, and promote institutional legitimacy (Dovi 730, 2002).

Since the end of slavery, the substantive interests of African-Americans have primarily focused on addressing education, housing, employment, civil rights issues within the criminal justice system, and reducing crime and increasing public safety (Browning, Marshall, and Tabb 1984). A variation of the “Marshall Plan” of World War II, Black communities advocated for employment, better schools and housing, and increased law enforcement while addressing police brutality (Forman 2017). This “all of the above” approach to addressing the problems of America’s cities motivated these communities to look for Black representatives to improve their communities.

Even if shared views about the criminal justice system are mechanisms of descriptive representation, self-perpetuating institutional culture may convolute its translation into substantive representation. Judicial institutions have more pronounced organizational socialization than legislatures, which undermine the potential impact of lived experience on actor decisions. Although legislatures do have organizational values and expectations, these institutional preferences are not intended to inhibit external factors from influencing decision-making. In police departments, judicial chambers, and prosecutor's offices learning the required behaviors to be recognized as a member of the organization is a direct result of adopting the behaviors and preferences consistent with organizational goals—exclusive of individual experience or ideology (Wilkins and Williams 2008). Organizational socialization hinders the link between passive and active representation, and is intended to do so (Wilkins and Williams 2008). The goal of socialization is to emphasize institutional values and objectives while minimizing the effect of external characteristics. The struggle between representation and socialization is evident in the mixed results on the benefits of descriptive representation of police officers, judges, and ultimately prosecutors.

Black Police Officers

Consistently requested by Black communities since the Civil War, the first Black police officers were hired in the late 1940s and 1950s. These new municipal bureaucrats were widely mistreated and were victims of discrimination. In Atlanta, Georgia for instance, the first Black police were hired in 1948, but could only patrol Black areas and could not exercise police authority over whites until the late 1960s (Mauer 2006). Despite these disadvantages, Black communities fought intensely for Black officers, believing

that diverse police forces would simultaneously address police brutality and underpolicing. By the 1970s, Black police chiefs and criminal justice leaders became increasingly common, particularly in urban areas (Forman 2017, 78-80). In 1995, Washington, DC had the highest percentage of Black police officers in the nation--69% of the metropolitan force (Weitzer 2000). Black communities had varied reasons for requesting black police. Some advocates claimed they would be better crime fighters than their white counterparts, because they could gain the trust of the community, allowing them to cultivate informants and better attack Black victimization (Fortner 2015). Others, fraught with the consequences of white indifference to Black crime and victimization, felt that Black officers could better police their communities. Without a lens of racism, Black police could better differentiate between law-abiding and criminal black citizens, reducing the unwarranted harassment and abuse of the innocent (Forman 2017).

Studies suggest that Black police officers may contradict inherent assumptions about descriptive representation, and not have the expected positive impact on Black communities. Whether motivated by punitiveness, unconscious internalized bias, or organizational socialization, Black officers are not always better for Black communities. Nicholas Alex's 1969 study of Black policemen helped him develop the theory of double marginality to explain this phenomenon. Double marginality is the lack of acceptance that Black police officers experience from both the black community because of their association with state authority, and their fellow officers because of their race (Alex 1969). Membership in a minority group carries expectations of linked fate and material impact that are in contention with the expectations associated with the role of police officer (Campbell 1980; Bolton 2004).

Double marginality forces Black officers to identify as either police first or Black first, and this choice has significant impacts on their behavior and attitudes. This choice is guided by intense socialization during recruitment, training, and daily engagement (Sun and Payne 2004). Training and daily engagement encourages officers to adopt behaviors and preferences consistent with organizational goals and minimize the influence of their personal values and characteristics (Wilkins and Williams 2008). Alex mechanizes this socialization in two ways, arguing that “hardliners” take a racially punitive approach while “professionals” practice racial neutrality (Alex 1969). This professionalism has two sides, evident in the two disparate quotes about Black police officers. A Black officer in Prince George’s County, Maryland sees himself as a race neutral arbiter of the law stating: “...A group of black teens will yell ‘Hey soul brother!’ So I get out and explain to them that I’m not their soul brother or their friend, I’m a policeman” (Forman 2017, 110). A Black woman in Metropolitan County, Washington, DC sees officers as problematic, no matter their race. “White officers treat blacks bad and black officers treat blacks bad. There is no justice for the poor black man” (Weitzer and Tuch 2006, 106). This polarized anecdotal evidence explains why descriptive representation and the substantive interests of Black communities are not necessarily congruent.

If descriptive representation has an impact in policing, passive representation—the presence of Black police officers—should affect the behavior of those officers in favor of Black interests. This expectation has been tested on racial profiling, interpersonal conflict, arrests, deadly force, and community evaluation. Despite their discretion in motor stops and the saliency of racial profiling to the Black community, an increase in Black police officers did not reduce racial disparities in vehicle stops in San Diego

(Wilkins and Williams 2008). Black New York Police Department officers were found to be more likely to use deadly force than their white counterparts are in an effort to assert authority over the predominantly Black youth they encountered (Leinen 1984). In Cincinnati, Ohio Black police officers were 81.7 times more likely to arrest Black suspects than their white counterparts. Over time, though, this disparity lessened. Black officers decreased over time as they gained years of service on the force. The study also found that white officers were more likely to arrest suspects, regardless of their race, than their Black counterparts (Brown and Frank 2006). A series of interviews in three Washington, DC neighborhoods found that residents actually prefer interracial teams of officers to police their communities (Weitzer 2000). A Washington, DC youth says simply, “I prefer an individual that is going to uphold the law truthfully rather than worry about someone of my own race. Who’s to say that I will be treated fair just because it’s someone of my own race? I don’t think so” (Weitzer and Tuch 2006).

Contrary to these works, some researchers have found differences between Black and White officers. Sun and Payne examined two police departments—one in a predominately black and one in a predominately white neighborhood—in an unnamed northeastern city found a mixed result in interpersonal conflicts including verbal disputes and physical conflicts. Coercive responses to these conflicts ranged from commands and verbal threats (low), to search and physical restraint (medium), to arrest and deadly force (high). Supportive responses included offering physical assistance and information (high), emphasizing citizen compliance and satisfaction (medium), and showing concern (low). On these measures, Sun and Payne found that Black officers were more coercive than their white counterparts in responding to conflict, but were also more likely to offer

supportive responses in Black communities than their white counterparts. Surprisingly, they also found that Black and White officers tended to behave similarly in racially mixed communities (Sun and Payne 2004).

In public opinion data, Black police officers also perform differently than their white counterparts. In 2016, 57% of Black police officers perceived deadly black-police encounters as signs of a broader problem, compared to only 27% of their white counterparts (Pew 2016). Although more Black officers view these encounters as signs of a broader problem, their opinions do not quite align with either their white counterparts or the Black public. Nearly 80% of African-Americans feel that deadly shootings of African-Americans by police are indicative of a larger problem (Pew 2016). Whites are also more inclined to believe police shootings are isolated incidents than the general public. Seventy-two percent of white officers believe police shootings are isolated incidents, as do 44% of white civilians. Black officers are also more likely than white officers to believe that body cameras, which record police-civilian encounters, would change police behavior. Seventy-one percent of Black officers believe that body cameras would encourage appropriate police behavior, compared to 46% of white officers (Pew 2016). The policy optimism of Black officers and differences between officers of color, white police, and Black and white civilians provide support for Alex's theory of double marginality. Black officers align neither completely with their white counterparts nor with Black civilians, and the proficient gaps between Black communities and white officers highlight the social distance between them.

Why do Black police officers have different ideas and opinions than both civilian African-Americans and their white counterparts? Riksheim and Chermak claim that there

are only “blue cops,” and that the color of the uniform is the only thing that matters--not the color of the officer’s skin (1993). The group acculturation among African-Americans and resulting racial bonding through linked fate explains the proximity to minority communities of Black officers relative to their white colleagues. The intense career socialization in the police academy, during field training, and the on the force pressure that Black officers face to be more like their white counterparts, causes them to value occupational subculture more than their racial identity (Sun and Payne 2004; Weitzer and Tuch 2006). To this point, negative police-community relations drive a wedge between Black police officers and Black civilians, perpetuated by institutional factors that breed distrust on both sides. Concentrated poverty and crime concentrate police interactions and the likelihood of misconduct in communities of color (Brunson and Gau 2015). Although African-Americans may be descriptively represented on the police force, the tensions between communities of color and police are not automatically expiated.

Yet, another theory to explain the unique positioning of Black officers is that they overcompensate for personal experiences of racial discrimination. Hardliners enforce the law more harshly than their white counterparts for two purposes. First, the newfound power of the badge is a novelty to Blacks who have traditionally been denied institutional power in society. Once they become police, these officers revel in and ultimately abuse their new power. On the other hand, the desire to prove that being an officer is more salient than their racial identity may cause Black officers to overcompensate in an effort to prove to their white colleagues that they are not showing racial favoritism (Weitzer 2000). Alex’s concept, double marginality, helps us to understand Black police as uniquely situated street-level bureaucrats. Although descriptive representation has some

positive affect amongst police officers--reflecting opinions more like communities of color than white officers-- it has different and more nuanced implications than descriptive representation in electoral politics.

Black Judges

Like their counterparts in blue, Black judges first joined the bench in the latter part of the 20th century. Judges are appointed at the federal level, and elected or appointed at the local level, depending on the laws of that state. Since the 1980s and 1990s, there was a proliferation of research on the impact of Black judges, who began to take the bench in substantial numbers in the 1970s. Advocates of increasing minority representation on the bench argued that Black judges provide symbolic and substantive representation for Black people and create a more equitable society. Symbolic representation provides pride, inspiration, and status for black Americans. One-third of Black judges thought symbolic representation was an important function of their service on the bench (Bonneau and Rice 2009). However, substantive representation, defined in this context as the ability to advance the best interests of Black communities by reducing the traces of racism in the legal system, is also important. Judges can provide this substantive representation by decreasing racial disparities and avoiding incarceration where possible. By being less likely to discriminate against Black defendants in sentence harshness, Black judges can contribute to the solution of narrowing racial disparities (Welch, Combs, Gruhl 1988).

Bushway and Piehl challenge the evaluation of sentencing disparities, differentiating between warranted disparities--variations in sentencing outcomes due to legally relevant factors like criminal history and crime severity--and unwarranted

disparities--where variation is the result of extralegal factors like race and gender, that remain even after controlling for legally relevant factors (2001, 734-735). They find that warranted and unwarranted disparities have correlations that complicate conventional understandings. Race and other extralegal factors, particularly socioeconomic factors, can predict criminal history and crime severity. This confounding problem creates and perpetuates disparity by increasing the impact of criminal history and crime severity, because those considerations are already included in the sentencing guidelines (Bushway and Piehl 2001). Albonetti also lends support to the mixed findings on race-based sentencing outcomes. His analysis of multivariate studies found that Black and Hispanic defendants are sentenced more harshly than their white counterparts, while acknowledging that other studies suggest minorities might actually fare better, receiving shorter sentences than similarly situated white defendants (Albonetti 1991 247-249).

Two of the studies that examine the race of the judge find mixed results as well. Welch, Combs, and Gruhl (1988) found that because white judges tended to treat white defendants more leniently, Black state court judges were more evenhanded than their white counterparts were. In overall sentence severity, though, White judges were found to treat both defendants equally and Black judges tended to be more lenient on Black defendants. Bonneau and Rice (2009) compared Black and White justices on state supreme courts and found that when a state had no intermediate appellate court, the court had less discretion over its docket. Here, Black judges tended to behave like their white counterparts. In states with an intermediate court, the justices had more discretion in choosing their docket, and Black justices were more likely to overturn convictions than their white counterparts were. The authors suggest that in run of the mill cases--more

likely to occupy the docket in states without an intermediate court--Black and White justices may behave similarly because of their ideological homogeneity on criminal cases and their extensive experience on the bench.

The symbolic effects of Black judges—whether there is a strong causal link between diversity of the federal judiciary and legitimacy of the institution—are more evident. Scherer and Curry's experimental design used vignettes with alternate frames. The treatment group read a hypothetical news article about an unprecedented increase in minority representation on the federal bench. The control group's article focused on the federal judiciary but had no mention of increased minority representation. Participants were then questioned in an evaluation survey, and researchers found that institutional legitimacy increased among Black members of the treatment group. After being primed about more Black federal judges, Black participants felt more respect for and understanding of the federal bench as an institution (Scherer and Curry 2010).

On the other hand, anecdotal evidence suggests that Black judges may be driven not only by their experience as jurists, but also by their personal beliefs about respectability and racial uplift. The following quote from a Black judge to a young Black juvenile charged with armed robbery captures this sentiment.

"...Dr. King didn't march and die so that you could be a fool, so that you could be out on the street, getting high, carrying a gun, and robbing people. No, young man that was not his dream, that was not his dream at all...Life is not easy as a Black person, but it is easier than it was, and you better stop being a thug and start taking advantage of the opportunities your ancestors sacrificed for" (Forman 2017, 4-5).

The literature provides mixed results on the substantive effects of Black judges, and identifies a crucial difficulty in evaluating descriptive representation and criminal justice outcomes--the interdependence of its actors. The primary role of judges in the

system is to determine sentencing outcomes, but these very outcomes are the result of a combination of decisions from a variety of actors (Bonneau and Rice 2009; Bushway and Piehl 2001). By the time a drug case appears before the judge, the discretionary decisions of other criminal justice actors have already constrained the choices available. The officer's decision to stop, search, and arrest the civilian for breaking the law may have been driven by bias. The district attorney, or their subordinate, decides to charge the defendant with a felony as opposed to a misdemeanor, and constructs a plea deal to ensure a conviction. Despite these complications, studies have found some differences between Black judges and their counterparts in judicial decision-making.

Descriptive Representation in the Criminal Justice System

Perhaps the most directly related study to my research question is Farrell, Ward, and Rousseau's 2009 study on federal court works. The study explores the impact of descriptive representation among federal district court workers including judges, defense attorneys, probation officers and prosecutors on sentence disparities for African-American defendants. They compared data from 89 federal districts for Black and White defendants from 2000 to 2002 and focused on whether or not the defendant was sentenced to prison or to a lesser punishment like probation. The authors expected to find that sentencing disparities between black and white defendants would be lower in districts with more Black judges, prosecutors, defenders, and probation officers. However, they found that simply being African-American increased the likelihood of incarceration by 13.2%, even after controlling for legally relevant variables like crime severity and prior criminal record. Districts with more black judges and prosecutors were less likely to send defendants to prison, while the increased presence of black defense

attorneys and probation officers was correlated with a higher likelihood of defendant incarceration. When tested individually, black prosecutors and probation officers have a statistically significant relationship with the incarceration of Black defendants in federal district courts. Perhaps their most compelling finding is that the increased representation of Black prosecutors decreases the disparity between white and black imprisonment. When the percentage of prosecutors who are Black in a jurisdiction is 50% greater than the proportion of blacks in that jurisdiction's population, the disparity disappears completely. At lower levels of representation, blacks are more likely to be incarcerated than whites, and the opposite is true at higher levels of representation (Farrell, Ward, and Rousseau 2009).

Although this study excludes black police officers, it has profound implications for the study of Black prosecutors and descriptive representation. In the federal court system, the head prosecutors are U.S. attorneys, appointed by the President of the United States. Although the prosecutorial nature of the federal system is more centralized than that of state courts, the assistant U.S. attorneys report to the political appointee in the same way that assistant district attorneys report to the locally elected district attorney. This suggests that descriptive representation amongst line prosecutors may have substantive impacts on incarceration outcomes and criminal justice policy. Another study that explores prosecutor race focuses on capital punishment, and finds that the prosecutors in states that permit capital punishment are 97.5 white while the defendants they prosecute are overwhelmingly Black (Pokorak 1997). Pokorak theorized that this extreme racial disparity between district attorneys and the death row population facilitates both unconscious and conscious bias against both defendants and victims. Not

only were prosecutors overwhelmingly pursuing the death penalty against Black defendants, but were doing so almost exclusively in cases with white victims. This finding supports lasting concerns in Black communities about *laissez faire* policing and the devaluation of black victims.

Although prosecutors are representatives of the government rather than the victims of the crimes they prosecute, the relationship between district attorneys and victims is indispensable. The effects of prosecutorial representation may not only benefit Black defendants, but Black crime victims as well, potentially addressing the “dual frustration” of poor urban communities of rampant crime and racial discrimination (Alexander 2010). Institutional socialization, electoral pressures and organizational incentives to be tough on crime may be driving the behavior of Black district attorneys, like police officers and judges. Based on the literature explored here, Black prosecutors may have different ideas about the criminal justice system, individual choice, and the substantive interests of the Black community that may lead them to behave differently than their white counterparts.

History of Black Prosecutors and the Challenges They Face

For most of America’s history, prosecutorial discretion was the exclusive province of white men. Today white men still dominate, as 79% of elected prosecutors were white men in 2014 (Justice for All 2014). However, in 1935 New York assistant district attorney Eunice Carter became one of the first Black prosecutors. Mrs. Carter was the first Black woman to earn a law degree from Fordham University, and was appointed by New York Mayor LaGuardia in 1935. Mrs. Carter used her experience with prosecuting prostitutes to bust one of New York City’s biggest organized crime heads,

Charles "Lucky" Luciano who funded the brothels and a series of other criminal enterprises (Gray 2007). Carter was originally assigned to the Harlem Women's Court, where she prosecuted sex workers from the predominantly Black, Manhattan neighborhood. Although Carter traced the prostitution rings up to an organized crime boss, her original assignment was addressing crime and vice in a Black area. This was typical of Black prosecutors, who usually broke into the ranks through appointments as assistant district attorneys charged with addressing crime Black communities. The first Black elected district attorney was Robert T. Johnson, who was elected in Bronx County, New York in 1988 (Smith 2012). As New York City's longest-serving district attorney, Johnson served from 1989 until he was elected to the New York State Supreme Court in 2015.

Though his initial election was contested in 1988, Johnson was subsequently re-elected with little opposition, pointing to the power of incumbency and the weaknesses of prosecutorial elections. Johnson's tenure as the head prosecutor for one of the country's most diverse areas was both rewarding and tenuous. After taking an open stance against the New York Police Department's "stop-and-frisk" tactic—a random search procedure that disproportionately affects Black and Latino men—Johnson received support from many in the Bronx community (Mueller 2015). However, Johnson was also been widely criticized, for his low conviction rates (relative to other New York boroughs). Johnson's office declined to prosecute 23% of all arrests in 2011 (Glaberson 2013). Rather than being revered for using their discretion to filter out weak cases or unlawful arrests, Johnson was chastised by other criminal justice officials and the media for "allowing potentially dangerous defendants to go free" (Mueller 2015). Constant delays and

underfunded courts also made Johnson's borough the most backlogged in the city. It also happens to be the most diverse², and the poorest (Census Bureau 2013; Glaberson 2013).

This backlog has generated rightful resentment amongst crime victims and their families, who can wait longer than 5 years to see murder and rape cases go to trial. In the Bronx, Black communities struggle with the two sides of Johnson's policies. On one hand, declining to prosecute cases means fewer people languish in jail. However, the court backlog denies crime victims justice, sometimes setting defendants free because of excessive delays (Glaberson 2013). This continues a long history of both under and over policing of Black Americans, which began in the wake of slavery and Jim Crow. Explicit discrimination in the courts, police brutality, and the consistent under investigation and prosecution of intraracial crime has undermined the legitimacy of the criminal justice system (Perkinson 2010). Despite this, Black communities have always had a vested interest in public safety and have consistently advocated for the presence of Black officials.

The salience of crime and public safety in Black public discourse throughout the decline of urban America generates tendencies toward punitiveness. A 1979 special edition of *Ebony* was titled simply "Black on Black Crime" explored the "crime epidemic that took more Black lives in 1977 than all 9 years of the Vietnam War combined." ("Personal Injury" 1979, 39). The intraracial nature of violent and property crime as a primary driver of the crime wave of the 1980s and 1990s was not lost on Black communities. They understood that punitive measures like gun laws, mandatory

² The Bronx, New York is demographically diverse with 55.1% Hispanic, 29.3% Black and 10% white. Sixty percent of Bronx residents speak a non-English language, and the high population density of the borough contributes to residential integration and mixed income communities (Census 2013; Data USA 2018).

minimums, and drug laws would primarily affect poor young Black men but supported them anyway. Driven by fear of criminal victimization and the politics of respectability--middle and upper class African-Americans, both citizens and political officials, supported punitive responses to crime (Fortner 2015; Forman 2017).

In cities with Black elected officials, Black politicians embraced both reformist and punitive policies in response to crime but primarily gained support for only punitive measures. In 1970s, Washington, DC City Council Chairman John A. Wilson said that “Waiting until society solves the root social and economic problems, when right now we can reduce the loss of life, the bodily harm, and loss of property that result from crime and accident makes no sense” (Forman 2017, 64). Some black officials openly shunned Black ‘criminals’ as disreputable embarrassments to the race. “...A massive campaign to re-educate Blacks to see black criminals among them for what they are, not heroes but deadly enemies--cowardly, two-bit punks who cheat, rob, maim and murder and in general make decent people’s lives miserable” (Moore 1979, 118). Winston E. Moore, Chicago Housing Authority chief of security in 1979, exemplifies the punitive attitude of many leaders in the Black community (Forman 2017; Moore 1979; Fortner 2015). Black mayors also underscored punitiveness. Washington, DC Mayor Marion Barry called drug dealers “the scourge of the earth,” and when Atlanta’s Maynard Jackson said that in drug and gun sales that resulted in death, sellers “deserve to roast” (Forman 2017, 165-166).

Black mayors and city councilmen further responded to these concerns by overseeing the hiring of the first Black police chiefs and police executives. Black judges elected and appointed in the 1970s and 1980s prompted considerable scholarly inquiry into their potential impact on the decision to incarcerate, sentencing decisions, and

decisions to overturn (Bonneau 2009; Albonetti 1991; Welch, Combs, and Gruhl 1988; Bushway and Piehl 2001). These newly seated Black officials not only visually represented their constituents, but also addressed their material concerns about public safety and crime (Forman 2017, Mauer 2006). As Black officials came to power in the 1970s and 1980s, crime was increasing in urban areas first coinciding with heroin and later the crack epidemic. If Black criminal justice officials share the views—even to some extent—of other African-Americans, they may have different views than their white counterparts.

Both race and education suggest that Black representatives may have different views than their white counterparts because of their lived experience, particularly when interacting with the criminal justice system. African-Americans are almost twice as likely to feel that they “personally have been treated unfairly by the police”, than their white counterparts. Education also plays a role, as more educated African Americans are significantly more likely to perceive discrimination relative to those with less education. In addition, those with formal education are more likely to see discriminatory police encounters as more indicative of the system as a whole rather than as isolated incidents (Peffley and Hurwitz 2010, 42-52). Beyond individual encounters, the influence of residential segregation may also increase the salience of descriptive representation.

Notwithstanding calls for descriptive representation and its benefits for communities of color, the controversial nature of criminal justice policy continues to isolate Black prosecutors from both their white colleagues and the communities they serve. Melba Pearson, a Black prosecutor in south Florida recounts:

“When I arrived at the job, I realized immediately I was in the minority. The lack of diversity in prosecutor’s offices is sometimes the result of a failure in

recruitment; it is also, due to the misconception that prosecutors only “hold people down.” I’ve been called a *persecutor* and a *sellout* (emphasis original), and have been accused of just wanting to lock up young black men for a living” (Pearson 2016).

Like Pearson, albeit in different circumstances, former Los Angeles assistant district attorney Christopher Darden was also called an “Uncle Tom” for his role in the 1994 trial of NFL player “O.J.” Simpson. As the only African-American prosecutor on the case, Darden felt he received racial backlash simply for doing his job, both during the trial and after the non-guilty verdict (Starkey 2016).

Racial politics suggests the experiences of the prosecutors, as Black Americans should increase their understanding of discrimination, racial disparities, and the role of systemic racism in the socioeconomic position of the defendants they prosecute. Education also plays a role, as more educated African Americans are significantly more likely to perceive discrimination relative to those with less education. Also, those with formal education are more likely to see discriminatory police encounters as more indicative of the system as a whole rather than as isolated incidents (Peffley and Hurwitz 2010, 42-52). Both of these social factors—race and education—suggest that Black prosecutors may have different holistic views of the criminal justice system than their white counterparts, which could inform their decision making and the way they represent their constituents.

To determine if Black prosecutors are different than their white counterparts I turn to the basic demographics of U.S. prosecutors in 2014. Of the nearly 2,400 elected District Attorneys in 2014, only 63 (2.6%) of them were Black (Justice for All 2014). Black prosecutors in this data set on average are located in fairly large Democratic counties with sizeable Black populations. The average population size for counties with

a Black prosecutor is about 640,000--the size of a large city. The average Democratic vote share in the 2012 presidential election was 60% in these jurisdictions, and the average Black population 33% of the total.

I further examine these characteristics in table 2.1. Table 2.1 presents a correlation matrix indicating which factors increase the likelihood of electing a Black prosecutor. The violent crime rate is the number of rape, murders, robberies, and assaults committed per 100,000 residents. The property crime rate includes misdemeanors, burglaries, and arson among others per 100,000 residents. The 2012 Democratic vote share is the percentage of votes received by Barack Obama in his presidential re-election. The Black and White jail incarceration rates are average the number of Blacks and whites being held in jail per 100,000 residents aged 15 to 64. The black population in the percentage of residents that identify as Black or African-American, and the total population is a count from the U.S. Census. The stars in the table correlate to relationship strength, the closer a value is to one, the stronger it is. The closer to zero, the weaker it is.

There is a weak, but negative relationship between the presence of a Black prosecutor and the property crime rate, suggesting that fewer property crimes per 100,000 residents increase the likelihood of having a Black prosecutor. The Democratic vote share has a moderate positive relationship, confirming that counties that are more Democratic are more likely to elect Black prosecutors. The arrest rate and jail incarceration rate have weak positive relationships, suggesting that more arrests and people held in jail per 100,000 residents increases the likelihood of a Black elected district attorney. Finally, the likelihood of having a Black prosecutor increases as the Black population increases.

	Black Prosecutor	2	3	4	5	6	7	8	9	10
Black Prosecutor	1									
Violent Crime Rate	-0.04	1								
Property Crime Rate	-0.07	0.95	1							
2012 Democratic Vote Share	0.54	0.12	0.13	1						
Arrest Rate	0.25	-0.05	-0.02	0.31	1					
Black Jail Incarceration	-0.13	-0.16	-0.18	-0.1	0.21	1				
White Jail Incarceration	0.07	0.002	0.04	0.08	0.51	0.53	1			
Jail Incarceration Rate	0.228	-0.08	-0.03	0.12	0.49	0.48	0.65	1		
Black Population	0.288	0.12	0.19	0.26	0.12	-0.05	-0.05	0.39	1	
Total Population	-0.03	0.52	0.46	0.07	-0.23	-0.45	-0.45	-0.33	0.15	1

Why Would Black Prosecutors Matter?

The cross-pressures of political expediency, institutional incentives, and expansive discretion suggest that Black prosecutors may exhibit three potential patterns of behavior. The literatures on criminal justice policy, prosecutors, and descriptive representation point to different theories about black prosecutors and their behavior. One theory holds that all prosecutors should be racially indifferent, even African-Americans because immense discretion and the lack of judicial review create perverse and universal incentives to incarcerate more people. Racially indifferent prosecutors maintain the status quo, and have no significant effect punitiveness. Racial indifference suggests that

institutional socialization and racial solidarity cancel out one another. Color-blind prosecutorial policy perpetuates existing racial disparities, regardless of the personal identities of the prosecutor implementing it (Gonzalez Van Cleve 2016). As an elected officer, the political incentives for prosecutors to appear "tough on crime" to ensure reelection may outweigh the effect of racial identity. The U.S. has over 2,400 elected prosecutors from 46 states, and 85% are full-time public officials (Pfaff 2017, 128-129; Justice for All 2017). Largely elected at the county level, these officials are evaluated by a simple performance based metric: conviction rates. The 63 Black elected prosecutors, likely face the same pressures as their white counterparts to respond to crime and public punitiveness (Justice for All 2015).

Another theory promotes the idea of racial individualism, which should make Black prosecutors *more* punitive than their white counterparts because they view punishment as the justified response to crime. Wrapped in the language of respectability politics and lauding themselves guardians of the community, these conscious Black prosecutors prod the system to value the lives of Black victims. Rather than being self-interested arbiters of the law, Black individualists understand themselves as protectors of the Black community, believing just as that rampant crime and violence were the racial justice issues in the system (Forman 2017). These prosecutors hold attitudes about criminality informed by respectability politics, and exhibit decreased racial empathy. The individual ability of these prosecutors to overcome discrimination leads them to frame mass incarceration and racial disparities as results of poor individual choices rather than larger institutional problems. Rather than understanding the circumstances of Black defendant through a lens of racial and societal discrimination, these prosecutors perceive

criminality as a non-racial issue. This dampens the corrective effect of linked fate and highlights the importance of individual choice (Fortner 2015; Forman 2017).

On the other hand, racially empathetic prosecutors are less punitive than their white counterparts, decreasing racial disparities and overall incarceration by using their discretion to pursue fewer cases. Racial identity is salient to these prosecutors, and their grounding in linked fate—their connectedness to other Black people—inspires them to address institutional biases and historical discrimination. This is supported by evidence that demographic representation increases substantive representation for communities of color. The interests of the Black community to increase fairness in the criminal justice system and reduce racial disparities should result from having a Black prosecutor. This may not necessarily decrease punitiveness however, because concerns about crime that drive support for high conviction rates persist regardless of race and other demographic descriptors. Racial politics suggests the experiences of the prosecutors, as Black Americans should increase their understanding of discrimination, racial disparities, and the role of systemic racism in the socioeconomic position of the defendants they prosecute. Therefore, the presence of Black prosecutors should reduce racial disparities in the criminal justice system, but may maintain overall punitiveness and incarceration rates (Farrell, Ward, and Rousseau 2009; Alexander 2010).

Based on these theories, I expect racial conservatism and predict that Black prosecutors will be racial individualists and increase incarceration rates, while actually increasing racial disparities. As Fortner and Forman recount, punitiveness abounds in Black communities and their elected officials in the face of crime (Fortner 2015; Forman 2017). Intent on protecting Black victims of crime and pursuing a respectable image of

African-Americans, Black prosecutors may not be liberal in criminal justice policy. The null hypothesis would be that Black prosecutors have no effect on incarceration rates or racial disparities. Perhaps descriptive representation cannot override the intrinsic complications of the institution that is being diversified, and is simply symbolically beneficial.

In the next Chapter, I test my hypothesis that Black prosecutors are more punitive than their white counterparts are. Using multivariate regression, I measure the effect of Black prosecutors on incarceration rates and racial disparities. This model controls for a variety of factors including population, crime rates and political identification. Regardless of representation in the prosecutor's office, the theoretical and methodological interdependence of outcomes across decision stages in the Criminal Justice System may provide no corrective effect on punitiveness or racial disparities. After a brief review of relevant literature, I describe the statistical techniques and results of the regression tests.

Chapter 3

Do Black Prosecutors Affect Punitiveness and Racial Disparities?

Proponents of democracy and representation suggest that there are unique benefits when representatives reflect their constituents. John Stuart Mill stated, “What qualifies a man to represent is his *representativeness*—not what he does, but what he is, or is like” (Pitkin 1967, 8-10, emphasis added). This statement has found some support in both public opinion and direct examinations of the effect of descriptive representation. In the legislative branch, constituents exhibit more political efficacy, are more likely to contact their representatives, and are more likely to believe that their interests are being represented when descriptive representation is present. Particularly when the members of a group have previously been excluded from political participation—like African-Americans—their presence within political institutions not only increases legitimacy, it also improves the operation of the institution itself by providing perspectives that were previously unrepresented.

The presence of abundant discretion and the ability to affect issues that are salient to minority interests unite Black officers, judges, and prosecutors. Linked fate suggests that demographic representation should increase substantive representation for communities of color. After all, Black prosecutors are more likely to be elected in counties with larger Black populations and higher proportions of Democratic voters. The interests of the Black community to increase fairness in the criminal justice system and reduce racial disparities should lead Black prosecutors to be less punitive than their colleagues. This may not necessarily be true however, because concerns about crime that drive support for high conviction rates persist regardless of race and other demographic descriptors. Like their counterparts on the bench, Prosecutors also face the implications

of electoral politics and the general punitiveness of the American polity and desire to be "tough on crime." These pressures may combine with personal ideology to make Black prosecutors more punitive than their counterparts.

Prosecutors operate in a structure shaped by judicial and police norms, institutional bias, and the interdependence of decisions made by police on their decision to prosecute and all those that follow. Attitudes about criminality, informed by their individual experiences in overcoming racism and respectability politics, actually decrease racial empathy. Rather than understanding the circumstances of Black defendant through a lens of racial and societal discrimination, Black prosecutors perceive criminality as a non-racial issue. This dampens the corrective effect of linked fate and highlights the importance of individual choice, increasing punitiveness.

Simultaneously, the intense institutional socialization of prosecutors as protectors of the common good and attorneys of the state works to undermine the influence of personal beliefs and characteristics. This socialization may disable linked fate and even respectability politics for Black prosecutors. The political and organizational incentives and rational decision-making inherent to the office suggest that Black prosecutors may be no different on punitiveness or racial disparities from their colleagues. The constant push and pull of racial identity and career aspiration undermine the potential effect of linked fate, encouraging a focus on prosecutions as victories, rather than sites of disparity and racial implications. The combination of institutional socialization, social and institutional pressures severely undermine the likelihood that increasing descriptive representation among prosecutors will promote the interests of minority groups in criminal justice implementation.

Literature Review

The literature suggests that the presence of Black officials has an effect on racially salient outcomes related to that office. In the legislative arena, the presence of Black members of Congress increased the number of Congressional hearings focused on civil rights and housing (Minta and Sinclair-Chapman 2013). In urban politics, Black mayors and city councilmembers increased Black municipal employees, contracts awarded to minority owned businesses, and spending in economic and community development (Brown 2007; Hopkins and McCabe 2012). The decisions of newly seated Black officials cleanly aligned with the primary policy interests of most African-Americans. Better and more affordable housing, affirmative action initiatives, and addressing the ills of racial discrimination are non-controversial policy improvements. In criminal justice policy however, the substantive interests of Black communities are more contested. Increasingly concentrated in poor urban communities, African-Americans have significant concerns about crime as the victimization rate for both violent and property crimes skyrocketed in America's cities. Public safety concerns bred punitiveness, including support for increasingly harsh drug laws, mandatory minimums, and parole revocations (Fortner 2015; Forman 2017). Simultaneously, police brutality, racial disparities and a history of disregard to black crime victims explain why African-Americans are almost twice as likely to feel that the criminal justice system is racially discriminatory (Peffley and Hurwitz 2010). These conflicting interests--punitiveness and reformism--prevent consensus within the community and isolate Black criminal justice actors.

Unlike legislative and municipal officials, Black police officers and prosecutors face “double marginality,” which places them at odds with both their white counterparts and the Black community. If they represent punitive interests, they address victimization but perpetuate stereotypes of Black criminality and end up incarcerating young Black men. On the other hand, if they represent reformist interests, they can reduce carceral contact and over-policing in Black communities, but may fail to reduce crime. On the street level, police officer race has been evaluated for its potential effects on arrests, use of force, and motor vehicle stops (Brown and Frank 2006; Leinen 1984; Sun and Payne 2004). Although the results were mixed, there is statistical and anecdotal evidence that Black police officers both behave and are perceived differently than their white counterparts. Finally, judicial models have examined sentencing decisions, appellate decisions, and racial disparities (Welch, Combs, and Gruhl 1988; Bushway and Piehl 2001). In certain institutional contexts, Black justices were more likely to overturn convictions, more even-handed in the decision to incarcerate, and gave more lenient sentences to Black defendants than their white counterparts.

Hypotheses

The mixed nature of the substantive impact in criminal justice politics is the result of the diversity of preferences without the Black community. Police officers, judges, and prosecutors do not have the preference consensus of legislative and urban officials, and must make constrained choices in how they do their jobs. The combination of available theories suggests a nuanced relationship between race and the district attorney. The presence of Black prosecutors may increase political efficacy, indicate linked fate, and allow for the representation of African-American interests. I expect strong career

socialization, electoral incentives to be tough on crime, and public punitiveness to encourage Black prosecutors to take the punitive approach. As such, I hypothesize that the presence of Black district attorneys (relative to white lead prosecutors) should coincide with a greater likelihood of filing charges, which should subsequently increase racial disparities.

I expect Black prosecutors to be more punitive than their white counterparts and increase racial disparities. Although I cannot detect the mechanisms of this relationship at the county level, I suspect that strong ideologies about respectability and representing the Black community are at work. As educated African-Americans who have exceeded despite racial discrimination, Black prosecutors may view racial disparities within the criminal justice system as the result of individual choices and moral failure, rather than institutional bias and structural racism. Beyond this, based on the literature in descriptive representation, Black prosecutors may aim to compensate for the history of under enforcement in Black communities and failure to protect Black crime victims, representing the interests of the punitive “Black Silent Majority” (Fortner 2015). This assumes the prosecutor is responding to inherent and retroactive punitiveness in the Black community and/or disproportionate victimization of African-Americans. A positive relationship between prosecutor race and incarceration rates, and a positive relationship between prosecutor race and racial disparity would provide support for this theory.

Data and Methods

This project evaluates district attorneys elected at the county level to test this hypothesis that Black prosecutors will be more punitive. There are also twelve cities included in the model: Baltimore, MD; New York City, New York; and ten cities in

Virginia. These are included because their prosecutors are elected at the city-level. The universe of cases analyzed in this study is from the 2014 Reflective Democracy Campaign Justice for All prosecutor data set, which lists prosecutors as of November 2013. The original data contained the names, racial identification, gender, and electoral district for 2400 district attorneys and attorney generals. I removed 179 cases whose electoral districts were not counties or cities. After hand coding the race of approximately 165 attorneys marked “unknown” through biographies, newspaper articles, and searches on LinkedIn, I took a random sample from the remaining 2221 cases. After randomly selecting 400 counties using a number generator, I added the prosecutors coded as “Black/African-American” back to the sample and removed the cases with significant missing data, leaving a sample size of 356. The racial statistics for the original data set (local elected prosecutors as of November 2013) and the sample are displayed below.

Table 3.1: Prosecutor Racial Statistics				
Prosecutor Race	U.S.		Included in Analysis	
	Frequency	% of Prosecutors	Frequency	% of Prosecutors
Black	56	2.52%	36	10.36%
White	2121	95.50%	313	87.39%
Asian	9	0.41%	1	0.28%
Latino/ Hispanic	33	1.49%	7	1.97%
Native	2	0.09%	0	0.00%
Total	2221	100.00%	356	100.00%

My sample overrepresents Black prosecutors, which make up 10.36% and 2.52% of the sample and the country respectively. The sample excludes 20 Black prosecutors, because their electoral districts are neither counties nor cities. Whites make up 87.4% of the

sample, Asian and Latino/ Hispanic prosecutors make up 2.25% collectively. This table also provides information about the county-level elected prosecutors across the United States. Ninety-five percent of elected prosecutors in the U.S. are white, 2.52% are Black, and 1.9% are Asian and Latino/Hispanic.

Dependent Variables

I collected the dependent variables from a variety of sources. All of the data is from 2014. I hand coded the county jail incarceration rate, Black jail incarceration rate and White jail incarceration rate from the Vera Institute “Incarceration Trends” map. The rates are per 100,000 residents aged 15 to 64 (Vera 2017). The jail incarceration rate is a measure of punitiveness. It is the average number of people being held in jail per day within that county in 2014. This rate includes both those being held in pre-trial detention and serving sentences in county jails. The Black incarceration rate is the average number of Black people being held in county jails in 2014, and the white incarceration rate is the average number of White people being held in county jails in 2014. I calculated the Black: White jail incarceration disparity as a proportion of the Black and White jail incarceration rates. The Black: White jail incarceration disparity in particular is a measure of racial disparity.

Independent Variables

Race and gender are my primary independent variables. I code both as dummy variables. A value of one is a Black prosecutor, and all other prosecutors receive a value of zero. Black Prosecutors include those identified as Black and African-American. The names and locations of the sample’s 36 Black prosecutors are listed in the appendix. White prosecutors are identified as white. “Other Prosecutor” includes Asian, Latino/

Hispanic, and Native American prosecutors. Prosecutors identified as mixed race are coded under both of their racial identities. For example, the prosecutor in Moniteau, MO has a value of “1” for both the Black Prosecutor and White Prosecutor variables in the data set. In the models, the values (0,1) for “Black Prosecutor” and “Male Prosecutor” act as the baselines to measure the effect of race and gender on incarceration outcomes. The table below is a cross tabulation of the gender and racial breakdown of the sample. There are 36 Black, 313 white, one Asian and seven Latino/ Hispanic, and no Native American prosecutors in this sample. The sample includes 296 male prosecutors and 60 female, and gender is also broken down by race.

Race × Gender Contingency Table			
	Male	Female	Total
Black	29	7	36
White	261	51	313
Asian	1	0	1
Hispanic	5	2	7
Native	0	0	0
Total	296	60	356

Control Variables

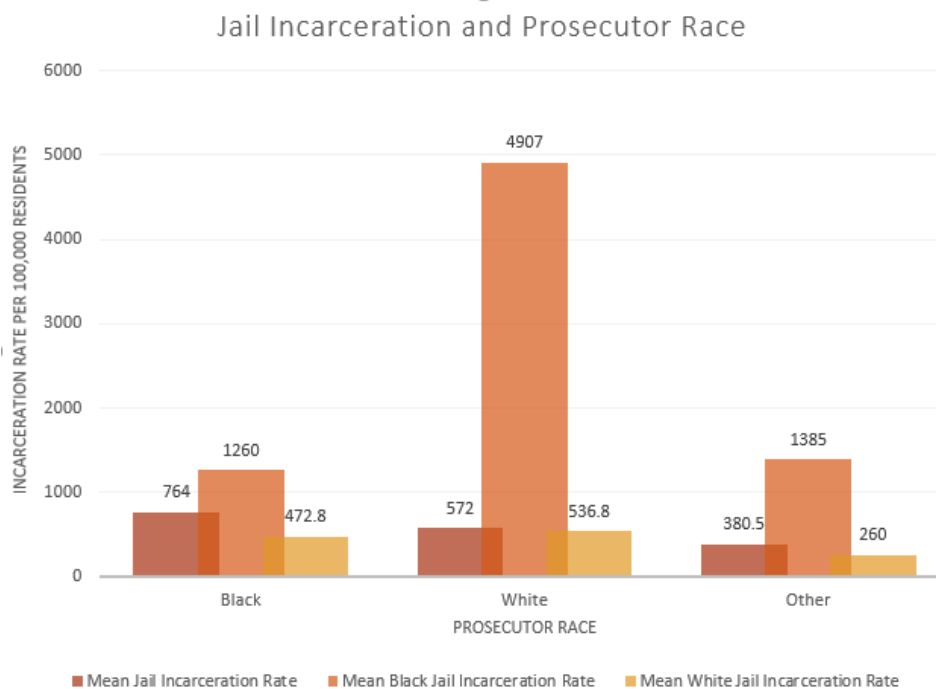
The population data, including the total county population and Black population are from the 2014 Census (U.S. Census Bureau 2014). The county population is included as a count of residents, while the county Black population is percentage of the total population. I calculated the 2012 presidential election Democratic vote share as a proportion of the votes cast for Barack Obama out of the total votes cast in the county (Rogers and Cage 2012). I code violent crime and property crime rates per100, 000 residents at the county level using the 2014 FBI Uniform Crime Report (2014 Crime in the United States, FBI: UCR). Finally, I tabulated the county arrest data from the Office of Juvenile Justice and Delinquency Prevention Easy Access to FBI Arrest Statistics

(EZAUCR) (Easy Access to FBI Uniform Crime Report 2014). The values from EZAUCR were arrest counts. I calculated the arrest rate by dividing the arrest count by the total county population, and multiplied the quotient by 100,000. After discovering significant swaths of missing data, I then went to state justice departments to find additional information for the states and counties missing from the FBI data for 2014. The states and sources of the individual county level arrest rates are listed in the appendix.

Pre-Model Analysis

The descriptive statistics of the sample suggest that Black prosecutors may be less punitive. Figure 3.1 shows the average jail incarceration rate for counties with Black, White, and Hispanic/Asian prosecutors.

Figure 3.1



On average, jail incarceration rates (per 100,000 residents) for Black district attorneys is 764, for white district attorneys 572, and 380.5 for Hispanic and Asian district attorneys. The jail incarceration rates for African-Americans go in the opposite direction. On average, the Black jail incarceration rates (per 100,000 residents) are 4,907 for white district attorneys, 1,260 for Black district attorneys, and 1,385 for Asian/Hispanic district attorneys. On average, counties with White prosecutors have 3,647 more Black people in jail per 100,000 residents than counties with Black prosecutors. Finally, white jail incarceration rates (per 100,000 residents) on average are 472 for Black district attorneys, 536 for white district attorneys, and 260 for Asian and Hispanic district attorneys. The average Black to White jail incarceration disparity is lower in counties with Black prosecutors than their white, Hispanic, and Asian counterparts. For counties with a white prosecutor, the Black jail incarceration rate is 9.5 times higher than the White jail incarceration rate. The disparities for Hispanic/ Latino/ Asian and Black are 8.3 and 4.98 respectively. The difference between counties with White and Black district attorneys is 4.82, a 52% increase. The descriptive statistics of the random sample lend support to the alternate hypothesis--that Black prosecutors are *less* punitive than their white counterparts toward Blacks and reduce racial disparities. The simple averages of jail incarceration disparity by prosecutor race suggest that Black prosecutors may have a reformist effect--narrowing racial disparities. For a deeper test on whether or not Black prosecutors charge more people than their white counterparts and whether they narrow the disparities between white and Black defendants, I use regression analysis.

Tests

Using multivariate regression analysis, I look to see if having a Black prosecutor has a statistically significant relationship with punitiveness and racial disparities. This model also includes Latino/ Hispanic, and Asian prosecutors in the variable “Prosecutor Other” to evaluate their effect on punitiveness and racial disparities. The OLS Regression uses the equation:

$$Y_i = \beta_0 + \beta_{\text{Prosecutor Race}} + \beta_{\text{Prosecutor Gender}} + \beta_{\text{Arrest Rate}} + \beta_{\text{Violent Crime}} + \beta_{\text{Property Crime}} + \beta_{\text{Black Population}} + \beta_{\text{Total Population}} + \beta_{\text{2012 Democratic Vote Share}} + \epsilon_i$$

In this model, the dependent variable (Y_i): jail incarceration rate, is a result of the race of the prosecutor, gender of the prosecutor, county arrest rate, violent crime rate, property crime rate, percent of the county population that is African-American, total county population, the Democratic vote share in the 2012 Presidential election, and the standard error (ϵ_i). I test four variation of the dependent variable: measures of punitiveness and racial disparity; County jail incarceration rate (Y_1), Black jail incarceration rate (Y_2), White jail incarceration rate (Y_3), and the Black: White Jail Incarceration Disparity (Y_4). Based on my Racial Individualism theory, I expect Black district attorneys to have positive relationships with all four, indicating that descriptive representation in the district attorney’s office leads to a higher overall incarceration rate, more Black and White people incarcerated, and larger disparities between the two groups.

Empirical Results and Analysis

Model 1- Multivariate Regression

Unlike the descriptive statistics, the multivariate regression results do not indicate that Black prosecutors correlate with lower incarceration rates. The regression model for

the overall jail incarceration rate supports the Racial Individualism theory, while I cannot reject the null hypothesis for the other three variables: Black jail incarceration, white jail incarceration, and the Black: White jail incarceration disparity. The presence of a Black prosecutor increases the overall jail incarceration rate, shown by the positive and significant relationship between Black prosecutors and the jail incarceration rate. The relationship between prosecutor race and the other independent variables do not follow the same pattern. The presence of a Black elected district attorney has not statistically significant relationship with the Black jail incarceration rate, the white jail incarceration rate, and the Black-white racial disparity. I display the results from the OLS linear regression for punitiveness and racial disparities in Table 3.2.

Table 3.2								
Multivariate Analysis								
Prosecutor Race on Punitiveness and Racial Disparities								
	Jail Incarceration Rate		Black Jail Incarceration Rate		White Jail Incarceration Rate		Black: White Jail Incarceration Disparity	
	B	SE	B	SE	B	SE	B	SE
Black Prosecutor	0.298	(0.128)**	-0.104	(0.253)	-0.171	(0.208)	-0.918	(1.903)
Male Prosecutor	-0.045	(0.094)	0.134	(0.142)	-0.022	(0.123)	2.35	(2.008)
Arrest Rate	0.000	(0.000)*	0.000	(0.000)	0.000	(0.000)**	-0.000	(0.000)*
Violent Crime Rate	-0.000	(0.000)	0.000	(0.000)	-0.000	(0.000)	0.003	(0.002)*
Property Crime Rate	0.000	(0.000)**	0.000	(0.000)	0.000	(0.000)**	-0.001	(0.000)
Total Population (logged)	-0.171	(0.035)***	-0.179	(0.056)***	-0.272	(0.053)***	-0.945	(1.594)
% Black Population (logged)	0.090	(0.039)**	-0.248	(0.052)***	-0.028	(0.052)	-1.56	(1.122)
2012 Presidential Democratic Vote Share	-0.069	(0.235)	-0.039	(0.368)	0.043	(0.306)	0.423	(7.745)
Prosecutor Asian or Latino/Hispanic	0.229	(0.110)**	0.039	(0.311)	0.039	(0.172)	-0.485	(3.562)
Constant	8.042	(0.443)***	8.236	(0.676)***	8.427	(0.688)***	13.875	(15.59)
Number of Observations	270		270		270		268	
F Statistic	6.42		5.29		5.75		1.64	
R ² Value	0.156		0.0204		0.238		0.031	
p-value	0.000***		0.000***		0.000***		0.104*	

*** p-value \leq 0.001 ** p-value \leq 0.05 * p-value \leq 0.1

These results lend support to my hypothesis, with a coefficient that suggests that having a black prosecutor increases the overall jail incarceration rate. Having a Hispanic or Asian prosecutor is significantly correlated with the jail incarceration rate. The coefficient 0.298 translates to a 35% increase in the jail incarceration rate with a Black prosecutor and 26% with a Hispanic/ Latino/ Asian prosecutor. These results are surprising, but I suspect they may be driven by differences in the jail incarceration rates by race. The arrest rate and property crime rate are positive but the coefficients are so small as to be negligible. The total population has a negative effect, where Black population all has a positive effect, while the total population has a negative coefficient. The gender of the prosecutor, violent crime rate, and Democratic vote share in the 2012 Presidential election are insignificant ($p = 0.05$). Although the R^2 shows that this model only explains about 16% of the variance in the jail incarceration rate, the entire model is statistically significant ($\text{Prob} > F \leq 0.05$).

Next, I regress the black jail incarceration rate on my dependent variables. Here, the only significant variables are the Black population and total population. Both have a negative coefficient; therefore, a higher total population and larger Black population correlate with a decrease in the Black jail incarceration rate. This suggests that counties with small black populations have higher rates of Black incarceration. These results also support the racial indifference theory, since both prosecutor race and gender are insignificant.

The white incarceration rate, on the other hand, correlates with the arrest rate, property crime rate, and total population. Higher arrest and property crime rates correlate with increases in the white incarceration rate. As more crimes are committed, more

people are arrested, and subsequently incarcerated. This raises questions about the Black incarceration rate since the same two measures are insignificant in the previous model. Why are property crime rates insignificant to Black jail incarceration rates, when they have an impact on white jail incarceration rates? Again, the total population has a negative relationship with the jail incarceration rate, meaning that larger populations have fewer people in jail per 100,000 residents.

Finally, the last set of regressions examines the relationship between my independent variables and the disparity in Black and White jail incarceration rates. However, the model fails to achieve a significant p-value of less than 0.1, so it is insignificant.

Overall, the punitiveness results lead us to accept the null hypothesis, supporting racial indifference. The one exception is on overall incarceration, which supports racial individualism. Counties with prosecutors of color have higher overall incarceration rates than their white counterparts. The jail incarceration rate is 35% and 26% higher than the mean for Black and Latino/Asian prosecutors respectively. Why are Black prosecutors more punitive than their white counterparts are? I assumed that higher white jail incarceration rates would explain the difference, when I test this model with white jail incarceration as a dependent variable; I have to accept the null hypothesis. Therefore, based on the literature, Black prosecutors (and other prosecutors of color to a lesser extent) are increase punitiveness, perhaps responding to the interests of their constituents and simply pursuing more cases.

To be sure, these models have some limitations, primarily the low R^2 values, which indicate that the model being tested does not explain a majority of the variation in

our dependent variables. The low explanatory power of my regression models is partially due to the weak measures of prosecutor punitiveness. Ideally, the conviction rates from each county would give us a better indication of the punitiveness of the respective prosecutors. However, the literature on prosecutorial elections suggests that conviction rates are not the best measure of prosecutorial discretion because they excluded the cases that district attorneys declined to prosecute (Albonetti 1991). This is a standard limitation in prosecutorial research because the charging decision is completely discretionary and requires little if any documentation. To address some of the shortcomings of the regression model, I include three additional models in the next Chapter.

Chapter 4

How Do Black Prosecutors Compare to Non-Black Prosecutors?

Ramel Edwards was arrested in front of his apartment building in the Bronx, New York in November of 2014. After a brief conversation with a friend who had gotten a ticket from police, Ramel retired to the steps of his building. The officers approached and questioned him, and after requesting backup, they ordered Edwards to a wall and aggressively frisked him. Concerned about brutality, Edwards willfully submitted to arrest. Yet, once in custody, Edwards was charged with resisting arrest. After his arraignment judge set the bail at \$500, he sat in jail for two years. Unable to pay the cash bail, Edwards seriously contemplated the plea deals consistently offered to him, despite his innocence. In 2016, Ramel was released after the Bronx Freedom Fund's low-income pre-conviction project paid the \$500 bail (The Bail Project, 2018). The resisting arrest charge was later dropped. Although this anecdote begins with the police, the power of the prosecutor is evident throughout Ramel Edwards's story. After he was arrested, the Bronx District Attorney's office charged him with resisting arrest, in compliance with the confrontational officers who arrested him. The same office then decided to drop the case, after two years of detaining Mr. Edwards (The Bail Project 2018). This example of prosecutorial discretion is harrowing, but also points to the importance of prosecutors, how they are selected, and how they wield their discretion.

In the U.S. local prosecutors are elected, and face political incentives to ensure re-election as all elected officials do. These district attorneys and their subordinates have discretionary power unrivaled by any other criminal justice official. Their unreviewable decision to prosecute and determine which charges to pursue is bolstered by: federal

statutory overlap, plea-bargaining, penalty harshness, and reduced judicial discretion (Curtis 1996; Gordon and Huber 2002; Ross 2006; Wooldredge 2005). These institutional features both interconnect and differentiate prosecutors, police officers, and judges.

All three actors have discretion that fundamentally impacts a defendant's carceral experience: the officer's decision to arrest, the prosecutor's decision to prosecute, her recommendation to change or accept a plea bargain or trial, and the judge's decision in sentencing. Racial bias influences all of these decisions, explored in Chapter 1, yet African-Americans are woefully underrepresented in the criminal justice system. Increased numbers of Black police officers and judges in the 1980s and 1990s put to the test the reasons that Black communities have requested descriptive representation. Although gains have been made in policing and the judiciary, only 5% of America's elected district attorneys are people of color. There are not many Black prosecutors, as I showed in Chapter one, but they are more likely in counties that are highly Democratic with a large Black population. In light of the dearth of prosecutors of color, will increasing descriptive representation fulfill its benefits for their Black constituents?

African-Americans have diverse interests and perspectives on criminal justice, juggling concerns about crime with enduring criticisms of racial disparities and mistreatment by criminal justice officials (Forman 2017). Black police officers, judges, and prosecutors face unique constraints and incentives to both crack down on crime and reform a racially biased system. A study on descriptive representation among federal court workers found that increased Black prosecutorial representation reduces the Black-white imprisonment disparity. At low levels of representation, Blacks are more likely to be incarcerated than their white counterparts are. But, in federal district courts, the

overrepresentation of Black prosecutors completely eliminated this disparity (Farrell, Ward, and Rousseau 2009).

In the regression analysis in the previous Chapter, Black prosecutors were correlated with higher overall jail incarceration rates, but had no significant relationship with racial disparities in incarceration. To further test if Black prosecutors matter, I compare a smaller subset of districts with prosecutors of different races but comparable population sizes to see if there are differences in punitiveness and racial disparities.

Data and Methods

In the regression tests of the original sample of 356 counties, the small sample size of Black prosecutors may be skewing the results. So, I matched samples of equal sizes in an attempt to address this problem. The pair assignments for these matches are in Appendix One and Two respectively. In the first, I match each county with a Black prosecutor to a county with a white prosecutor based on the county's total population. I then compare the two on my dependent variables: jail incarceration rates and racial disparities. I included this because I thought counties with similar population sizes would be comparable on other metrics. After testing this model, I suspected that matching the counties based on population size was incomplete, so I added an additional test to the project. In the second matched set of 72 observations, each county with a Black prosecutor is matched to a county with a White prosecutor based on the Black population percentage since Black prosecutors are more likely to be elected in counties with a larger Black population.

A statistically significant difference between the Black and White prosecutors would indicate that Black prosecutors are different from their counterparts, and allow me

to reject the null hypothesis. I expect Black prosecutors to have a higher mean jail incarceration rate and narrower racial disparities than white prosecutors, consistent with racial individualism.

Both Two-sample t-tests use data split according to prosecutor race. This technique allows us to determine whether the difference between Black and White prosecutors on incarceration rates and racial disparities are significant, or due to random chance. These models test the statistical significance of the following equation on punitiveness and racial disparity:

$$t = \frac{\mu_{\text{White Prosecutor}} - \mu_{\text{Black Prosecutor}}}{SE(\bar{d})}$$

The four dependent variables tested are jail incarceration rate, Black jail incarceration rate, white jail incarceration rate, and Black: White jail incarceration disparity.

Empirical Results and Analysis

Population Matched t-test

This is a comparison of the 36 Black prosecutors counties to 36 white prosecutor counties, based on their total population size. All four t-tests in this model are statistically insignificant, so when compared based on population size, there are no discernable differences between the two samples.

Table 4.1				
Population Matched <i>t</i> -Test				
Jail Incarceration Rate (logged) by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	95% Confidence Interval
White	36	6.00	0.1604	5.679 – 6.329
Black	36	6.23	0.1283	5.974 – 6.495
Combined	72	6.12	0.1029	5.914 – 6.324
Difference		-0.23	0.2054	-0.64 – 0.179
<i>t</i> Value = -1.12				
Satterthwaite's Degrees of Freedom = 66.77				
Difference = Mean (0) – Mean (1)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.133	0.267	0.867	

The average jail incarceration rate (per 100,000 residents) is 403 people for these 36 white prosecutors, and 507 people for the Black prosecutors. The difference between these two averages is insignificant, as evident in the high p-values. Thus, the jail incarceration rates in the 36 Black DA counties and 36 white DA counties are not statistically distinct. The same is true for the Black jail incarceration rate, white jail incarceration rate, and Black to white incarceration disparity, shown below.

Table 4.2				
Population Matched <i>t</i> -Test				
Black Jail Incarceration Rate (logged) by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	95% Confidence Interval
White	36	6.73	0.1612	6.399 - 7.054
Black	36	6.62	0.2003	6.209 - 7.023
Combined	72	6.67	0.1279	6.417 - 6.926
Difference		-0.111	0.2572	-0.402 - 0.624
<i>t</i> Value = -1.12				
Satterthwaite's Degrees of Freedom= 66.93				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.666	0.668	0.334	

The average Black jail incarceration rate (per 100,000 residents) is 750 people for Black prosecutors and 837 for white prosecutors. Again, the difference between these two averages is insignificant.

Table 4.3				
Population Matched <i>t</i> -Test				
White Jail Incarceration Rate (logged) by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	95% Confidence Interval
White	35	5.53	0.1149	5.29 - 5.76
Black	36	5.39	0.2091	4.97 - 5.82
Combined	71	5.46	0.1196	5.22 - 5.699
Difference		0.132	0.239	-0.346 - 0.611
<i>t</i> Value = 0.5546				
Satterthwaite's Degrees of Freedom= 54.23				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.7093	0.5814	0.2907	

For the white jail incarceration rate, the average is 252 people for white prosecutors and 219 for Black prosecutors. These two averages are statistically indistinct.

Table 4.4				
Population Matched <i>t</i> -Test				
Black: White Jail Incarceration Disparity by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	95% Confidence Interval
White	35	4.66	0.5983	3.44 - 5.88
Black	36	4.86	0.8824	3.07 - 6.65
Combined	71	4.76	0.5322	3.7 - 5.82
Difference		-0.201	1.066	-2.33 - 1.93
<i>t</i> Value = -0.1886				
Satterthwaite's Degrees of Freedom= 61.25				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.4255	0.851	0.5745	

In counties with a white prosecutor, the Black jail incarceration rate is 4.66 times higher than the white jail incarceration rate. In counties with a black prosecutor, the Black jail incarceration rate is 4.86 times higher than the white jail incarceration rate.

Again, the difference between the two averages is insignificant. These null results suggest that counties of similar population sizes have similar incarceration rates and racial disparities. However, the model does not consider the comparability in the Black population, which is positively correlated with the presence of a Black prosecutor. To account for this, in tables 4.5-4.8, I match the two samples according to their Black population percentages.

For tables 4.5 – 4.8 I use a new matching scheme that compares the 36 counties with Black district attorneys to 36 counties with white district attorneys, matched by Black population. The pairs and descriptive statistics are in Appendix 2. I find weak support for the racial empathy hypothesis. Three of the four models are not significant at $p=0.1$. On all four independent variables, Black prosecutors had fewer people incarcerated and more narrow racial disparities than their white colleagues did in counties with similar Black population percentages.

Table 4.5				
Black Population Matched <i>t</i> -Test				
Jail Incarceration Rate by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	90 % Confidence Interval
White	36	1255.9	347.62	550.27 - 1961.69
Black	36	750.99	179.45	386.69 - 1115.29
Combined	72	1003.5	196.52	611.64 - 1395.34
Difference		504.98	391.21	-279.88 - 1289.86
<i>t</i> Value = 1.29				
Satterthwaite's Degrees of Freedom= 52.42				
Difference = Mean (White) – Mean (Black)				
	Difference < 0		Difference = 0	
p-value	0.8988		0.2024	
			Difference > 0	
			0.1012	

*** $p\text{-value} \leq 0.001$ ** $p\text{-value} \leq 0.05$ * $p\text{-value} \leq 0.1$

Table 4.5 shows the average jail incarceration rate for the 72 counties in this model, separated by race. On average, counties with white prosecutors have 1255 people in jail

per 100,000 while counties with Black prosecutors have 750 people in jail. White prosecutors incarcerated 504 *more* people per 100,000 residents than African-American prosecutors. These results just miss the p-value of 0.1, perhaps due to the small sample size. This is a different result than the other tests, and for counties with similar Black population sizes, White prosecutors are more punitive than Black prosecutors are.

Below, table 4.6 shows the results for the Black jail incarceration rate.

Table 4.6				
Black Population Matched <i>t</i> -Test				
Black Jail Incarceration Rate by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	90% Confidence Interval
White	36	1887.1	384.08	1107.3 - 2666.8
Black	36	1229.8	217.7	787.87 - 1671.8
Combined	72	1558.4	222.6	1114.5 - 2002.4
Difference	*	657.2	441.49	-227.41 - 1541.9
<i>t</i> Value = 1.49				
Satterthwaite's Degrees of Freedom= 55.39				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	*Difference = 0	*Difference > 0	
p-value	0.9289	0.1423	0.0711	

*** p-value ≤ 0.001 ** p-value ≤ 0.05 * p-value ≤ 0.1

Counties with white and Black district attorneys have black jail incarceration rates of 1,887 and 1,229 respectively. Counties led by white district attorneys have, on average, 657 *more* African-Americans being held in jail than their Black counterparts. This difference is significant at the p=0.1 level. White prosecutors also have higher white jail incarceration rates in this model, with 1,332 whites in jail per 100,000 residents, compared to Black prosecutors who have 465 whites in jail per 100,000 residents.

Table 4.7				
Black Population Matched <i>t</i> -Test				
White Jail Incarceration Rate by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	90% Confidence Interval
White	36	1332.2	662.4	-12.54 - 2676.95
Black	36	465.46	143.4	174.39 - 756.53
Combined	72	898.83	340.38	220.13 - 1577.5
Difference		866.75	677.7	-504.95 - 2238.4
<i>t</i> Value = 1.28 Satterthwaite's Degrees of Freedom= 38.27				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.8957	0.2086	0.1043	

*** p-value ≤ 0.001 ** p-value ≤ 0.05 * p-value ≤ 0.1

The results from Table 4.7 are insignificant at $p=0.1$. Based on this standard, the differences between Black and white prosecutors on the white jail incarceration rate are insignificant. Black district attorneys have lower Black incarceration rates and should subsequently have smaller racial disparities, shown below in table 4.8

Table 4.8				
Model 4 Black Population Matched <i>t</i> -Test				
Black: White Jail Incarceration Disparity by Prosecutor Race				
Group Assignment	Observations	Mean	Standard Error	90% Confidence Interval
White	36	11.14	4.95	1.09 - 21.19
Black	36	4.86	0.882	3.07 - 6.65
Combined	72	8	2.52	2.97 - 13.03
Difference		6.278	5.03	-3.91 - 16.46
<i>t</i> Value = 1.25 Satterthwaite's Degrees of Freedom= 37.22				
Difference = Mean (White) – Mean (Black)				
	Difference < 0	Difference = 0	Difference > 0	
p-value	0.8902	0.2196	0.1098	

*** p-value ≤ 0.001 ** p-value ≤ 0.05 * p-value ≤ 0.1

Following the expectations of racial empathy, Black prosecutors have much narrower racial disparities than their white counterparts when matched by Black population size do. White prosecutors have 11.14 times more Blacks than whites being held in jail per 100,000 residents. The 6.3-point difference between Black and White DAs is especially jarring because the two samples have similar Black population sizes. Although this

difference fails to reach statistical significance at the $p=0.1$ level, the different averages are jarring. In districts with white prosecutors, Black people are disproportionately held in jail, even relative to counties with the same percentage of Black residents.

Analysis and Conclusion

In the previous Chapter, the regression analysis found a correlation between Blacks prosecutors and higher overall jail incarceration rates, while failing to reject the null hypothesis on racial disparity measures. However, in light of the extremely small sample of Black prosecutors and low explanatory values (R^2), I suspected that the OLS regression models were missing some trends. In this Chapter, I used two-sample matched t-tests to directly compare counties with Black and non-black district attorneys. These findings are on par with the substantive effects of descriptive representation: correction of previous injustices and incorporation of minority interests into the political agenda (Dovi 2002). Black prosecutors are in fact, less punitive and better on racial disparities than their white counterparts are, providing support for the alternate hypothesis. When compared to 36 white prosecutors in counties with similar Black population sizes, Black prosecutors incarcerated 504 *fewer* people overall. Counties led by Black district attorneys also incarcerated 657 *fewer* Blacks, and reduced racial disparities by 6.3 points. Thus, in model 4 we rejected the null hypothesis and found that Black prosecutors do in fact matter, and counties with descriptive representation in the district attorney's office are different from those lacking it.

Conclusion

Implications and Discussion

Political scientists and social scientists have understudied descriptive representation amongst locally elected district attorneys. In fact, this thesis may be the first multivariate analysis of prosecutors of color and incarceration outcomes. Building on previous scholarship about descriptive representation in the legislative branch and amongst other criminal justice actors—police and judges—I argue that there are differences between prosecutors of color in general, and Black prosecutors in particular, and their white counterparts. The models demonstrate support for this argument, and suggest that Black prosecutors *do* matter, but not always in the positive ways we associate with descriptive representation. The presence of a Black prosecutor has a relationship with higher jail incarceration rates, supporting the hypothesis that Black prosecutors are more punitive than their white counterparts are. For other dependent variables race of the prosecutor did not matter.

My analyses revealed a surprising difference in punitiveness, opening new windows of exploration around descriptive representation. The null results of the racial disparity tests provide a new opportunity to determine why the jail incarceration rate tends to be higher in counties with prosecutors of color. Based on the literature explored here, Black prosecutors may have different ideas about respectability and the role of individual choice that may lead them to be more punitive than their white counterparts. Or, rather than being more punitive, Black prosecutors may be just as punitive as their white counterparts, but are more even handed between Black and White defendants, increasing the overall incarceration rate.

The results of the matched pair comparison are surprising, and dynamic. Compared to counties in the sample with non-Black prosecutors, Black prosecutors incarcerate *fewer Black residents* per 100,000 residents and have narrower racial disparities. The gap between black and white jail incarceration rates is more than *6 percentage points lower*, on average, in counties with descriptive representatives in the district attorney's office, than in counties with non-black prosecutors. When compared to counties with white prosecutors but similar Black population percentages, I find a stronger relationship between district attorney race and incarceration outcomes. Overall, Black prosecutors incarcerate *504 fewer residents* and *657 fewer African-Americans* per 100,000. Black district attorneys have the biggest effect on racial disparities in this comparison, reducing the Black to white jail incarceration disparity by *6.3 percentage points*. Rather than a black incarceration rate that is 11.14 times the white jail incarceration rate, Black DA counties have an average of only 4.86 time as many jailed Blacks as whites. This offers a bright outlook on race's potential influence on prosecutorial discretion and carceral outcomes.

Institutional socialization, electoral pressures and organizational incentives to be tough on crime are not nullifying Black prosecutors' ability to reduce racial disparities. Linked fate and substantive representation of the Black communities' interests may be driving the dynamic differences between the two samples. To be sure, the limited reach of the sample and statistical technique moderate the weight of the findings.

Overall, though, the race of the prosecutor does correlate with jail incarceration rates and racial disparities. Rather than just performing like their white counterparts, Black prosecutors are approaching their duties differently, which translates into different

incarceration rates. These results suggest that more prosecutors of color are a potential solution to enduring racial disparities in the criminal justice system. If the presence of a Black prosecutor is enough to reduce disparities, what other factors can address mass incarceration outcomes?

Future studies should evaluate these questions with different methodological techniques and incorporate the theoretical and institutional characteristics explored in this paper. I would like to do an in depth case study of one district attorney's office to open the lid of the prosecutorial black box. In a specialized study, I could regress prosecutor race directly against clearer measures of prosecutorial discretion like conviction rates and the number of cases declined prosecution. Through this study, I could also evaluate the effects of line prosecutors, with access to the demographic statistics of the office. Finally, exploring punitiveness and racial disparities in one district would create a test kitchen for reform through the power of empirics.

My current research is only scratching the surface of descriptive representation and prosecutors. Questions remain. Do Black district attorneys perform differently in jury trials with discovery and jury selection? Are elected prosecutors of color constrained by the racial demographics of their offices? Are Black line prosecutors making a difference in punitiveness and racial disparities regardless of the elected district attorney's race? What do Black prosecutors think about their influence and motivations? Could county-level conviction rate data reveal new patterns that support either the racial individualism or racial empathy theory? These questions are important, particularly since 95% of elected American prosecutors are white and the demographic breakdowns of local district attorneys officers are unknown.

As the innovator of a new type of prosecutor that is publicly rather than privately motivated, it is important to evaluate America's prosecutorial project. Particularly in light of the immense discretion, lack of judicial oversight, dearth of external accountability, and extreme underrepresentation of people of color among prosecutors. Future studies should explore all four of these understudied areas in prosecutorial politics. To be sure, there are significant data limitations, because the work of prosecutors is largely shrouded from public view. Perhaps a county or state-level case study of a prosecutor's office would provide access to conviction rate and line prosecutor descriptive statistics. Finally, this paper combines theory from political science, African-American Studies, and criminology and reveals the advantages of a multidisciplinary approach to political questions, particularly around race and justice.

In criminal justice politics, engaging the criminology literature—and the holes in it—is crucial to understanding the political institutions and actors that contribute to the world's largest criminal justice apparatus. In a nation that incarcerates such a large proportion of our residents relative to other countries, it is important to look to other scholarship to evaluate our institutions and assumptions. In racial and ethnic politics, branching into prosecutorial politics is important and should be studied, especially since increasing descriptive representation has been posited as a potential solution to mass incarceration. As political scientists, our scholarship should engage with policy proposals to evaluate their effectiveness before implementation. Exploring the role of race of the prosecutor in the American criminal justice system may reveal a great deal about the enduring relationship between race, social, and political outcomes.

Appendix 1

Black Prosecutor Name	Pair Number	County (Black DA)	County (White DA)	BDA Population	WDA Population	BDA % Black	WDA % Black
P. David Soares	1	Albany NY	Fayette KY	308171	311848	13.1	14.5
Brenda F. Mitchell	2	Bolivar MS	Leflore MS	33349	11822	64.2	62.6
Charles C. Bailey	3	Camp TX	Red River TX	12621	11822	18.2	62.6
C. Kent Haney	4	Coahoma MS	Marion County MS	24807	12446	75.5	18.8
Craig Watkins	5	Dallas TX	Harris TX	2518638	15543	23.2	2.9
Ismael Ozanne	6	Dane WI	Kane IL	516284	20454	5.5	3.2
Robert James	7	DeKalb GA	Lake IL	722161	25868	55.4	33.5
Gregory Edwards	8	Dougherty GA	Bowie TX	92407	29778	71.8	28.6
Leon Stanback	9	Durham NC	Henrico VA	294460	31422	38.7	74.2
Robert Evans	10	Edgecombe NC	Colbert AL	54933	39166	59	42.1
Curtis Hill Jr.	11	Elkhart IN	Yolo CA	201971	40704	6.4	30.7
La Bravia J. Jenkins	12	Fredricksburg City VA	Caroline VA	29158	52081	22.6	23.2
Paul Howard Jr.	13	Fulton GA	Mecklenburg NC	1034187	54543	44.1	17
Anton A. Bell	14	Hampton City VA	Clarke GA	136879	56466	50.3	5.2
Robert Shuler Smith	15	Hinds MS	Lafayette LA	243729	88493	73.3	8.7
Stuart Dunnings III	16	Ingham MI	Fayette KY	289531	93275	11.8	25.9
Erleigh Norville Wiley	17	Kaufman TX	LaPorte IN	111236	96370	10.8	3
Marvin Wiggins	18	Kemper MS	Jefferson Davis MS	10163	104691	60.1	4
Tony Rogers	19	La Paz AZ	Jones IA	20231	111444	1.4	12.4
Bela J. Chain III	20	Lafayette MS	Marshall VA	52930	122669	23.6	26.6
Bernard A. Carter	21	Lake IN	Delaware PA	490228	181945	25.9	9.1
E.J. Bilbo Mitchell	22	Lauderdale MS	Huntington IN	79739	207590	44.1	3
Jackie Lacey	23	Los Angeles CA	NYC	10112255	215867	8.6	10.4
Shirley C. Byers	24	Marshall MS	Natchitoches LA	36234	235644	49.3	25.9
Shayne Healea	25	Moniteau MO	Moultrie OH	15856	254174	5.9	33.8
Howard E. Gwynn	26	Newport News City VA	Vanderburgh IN	182965	311848	40.8	14.5
Gregory Underwood	27	Norfolk City VA	Lafayette TX	245428	321634	41.3	29.5
R. Seth Williams	28	Philadelphia PA	Middlesex MA	1559062	562960	43.4	21.5
David L. Brewer	29	Pike MS	Tift GA	40058	527306	54	5.7
Stephanie N. Morales	30	Portsmouth City VA	Dubuque IA	96435	705186	53.3	7.4
Angela Alsobrooks	31	Prince George's County MD	Gwinett GA	904430	877922	64.6	27.3
Michael N. Herring	32	Richmond City VA	Brazos TX	217853	1012539	47.4	32.1
Ellen Mitchell	33	Saline KS	Pickaway OH	55755	1569182	4.1	4.7
Lyndia Ramsey	34	Sussex VA	Jefferson Davis MS	11767	2066423	59.7	10.5
Kym L. Worthy	35	Wayne MI	Clark NV	1764804	4455105	39.8	18.9
Patrick Jennings	36	Woodbury IA	Tompkins NY	102286	8516502	2.4	23

Black Prosecutor	County	State	Total Population	% Black Population
Tony Rogers	La Paz	AZ	20231	1.4
Jackie Lacey	Los Angeles	CA	10112255	8.6
Gregory Edwards	Dougherty	GA	92407	71.8
Paul Howard Jr.	Fulton	GA	1034187	44.1
Robert James	DeKalb	GA	722161	55.4
Patrick Jennings	Woodbury	IA	102286	2.4
Bernard A. Carter	Lake	IN	490228	25.9
Curtis Hill Jr.	Elkhart	IN	201971	6.4
Ellen Mitchell	Saline	KS	55755	4.1
Angela Alsobrooks	Prince George's County	MD	904430	64.6
Kym L. Worthy	Wayne	MI	1764804	39.8
Stuart Dunning III	Ingham	MI	289531	11.8
Shayne Healea	Moniteau County	MO	15856	5.9
Bela J. Chain III	Lafayette	MS	52930	23.6
Brenda F. Mitchell	Bolivar	MS	33349	64.2
C. Kent Haney	Coahoma	MS	24807	75.5
David L. Brewer	Pike	MS	40058	54.0
E.J. Bilbo Mitchell	Lauderdale	MS	79739	44.1
Marvin Wiggins	Kemper	MS	10163	60.1
Robert Shuler Smith	Hinds	MS	243729	73.3
Shirley C. Byers	Marshall	MS	36234	49.3
Leon Stanback	Durham	NC	294460	38.7
Robert Evans	Edgecombe	NC	54933	59.0
P. David Soares	Albany	NY	308171	13.1
R. Seth Williams	Philadelphia	PA	1559062	43.4
Charles C. Bailey	Camp	TX	12621	18.2
Craig Watkins	Dallas	TX	2518638	23.2
Erleigh Norville Wiley	Kaufman	TX	111236	10.8
Anton A. Bell	Hampton City	VA	136879	50.3
Gregory Underwood	Norfolk City	VA	245428	41.3
Howard E. Gwynn	Newport News City	VA	182965	40.8
La Bravia J. Jenkins	Fredricksburg City	VA	29158	22.6
Lyndia Ramsey	SUSSEX COUNTY	VA	11767	59.7
Michael N. Herring	Richmond City	VA	217853	47.4
Stephanie N. Morales	Portsmouth City	VA	96435	53.3
Ismael Ozanne	Dane	WI	516284	5.5

Arrest Rate Data by State

AL	http://www.alea.gov/Documents/Documents/CrimeInAlabama-2014.pdf
AZ	http://www.azdps.gov/sites/default/files/media/Crime_In_Arizona_Report_2014.pdf
CA	https://openjustice.doj.ca.gov/crime-statistics/arrests
CO	https://www.colorado.gov/pacific/dcj-ors/ors-crimestats
IA	http://www.dps.state.ia.us/commis/ucr/2014/iacrime_2014.shtml
GA	http://services.georgia.gov/gbi/crimestats/pages/crimeStatsForm.xhtml
ID	https://www.isp.idaho.gov/BCI/ucr/crimeinidaho2016.html
IL	http://www.isp.state.il.us/docs/cii/cii15/cii15_SectionI_Pg11_to_244.pdf
IN	http://drugs.indiana.edu/main/GIS_table.php?page_group=62&tablename=Table6.13a&cp_num=11&county=89
KS	http://www.kansas.gov/kbi/stats/docs/pdf/2014%20Adult%20Arrests%20by%20Agency.pdf
KY	http://www.kentuckystatepolice.org/pdf/cik_2014.pdf
MI	http://www.michigan.gov/documents/msp/Annual_Arrests_by_County_493254_7.pdf
MN	https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2014-MN-Crime-Book.pdf
MO	http://www.mshp.dps.missouri.gov/ibi_apps/WFServlet
MS	http://www.mississippicure.org/
NC	http://crimereporting.ncsbi.gov/Reports.aspx
NE	http://www.nebraska.gov/crime_commission/arrest/arrest.cgi
NJ	http://www.nj.gov/oag/newsreleases15/2013_Uniform-Crime-Report.pdf
NV	http://rccd.nv.gov/uploadedFiles/gsdnvgov/content/About/UCR/2014%20Crime%20In%20Nevada%20(2).pdf
NY	http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/index.htm

OH	http://www.ocjs.ohio.gov/crime_stats_reports.stm
PA	http://ucr.psp.state.pa.us/ibi_apps/WFServlet
TX	http://www.dps.texas.gov/administration/crime_records/pages/crimestatistics.htm
UT	https://site.utah.gov/dps-criminal/wp-content/uploads/sites/15/2016/02/2014-Crime-in-Uah.pdf
VA	http://www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2014.pdf
WA	http://www.waspc.org/assets/CJIS/ciw%202014%20small.pdf
WI	https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data
WV	https://www.wvsp.gov/about/Documents/CrimeStatistics/2012wvcrimes.pdf

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