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## **A Survey of Prosecutorial Philosophies and their Effects on Sentencing**

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A Survey of Prosecutorial Philosophies and their Effects on Sentencing.

An Honors College Project Thesis

Presented to

The Department of Political Science

Abilene Christian University

In Partial Fulfilment  
of the Requirements for  
McNair Honors Scholar

by

Bryan Briones

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This Project Thesis, directed and approved by the candidate's committee,  
has been accepted by the Honors College of Abilene Christian University  
in partial fulfillment of the requirements for the distinction

HONORS SCHOLAR  
[or: HONORS ASSOCIATE]

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## **Abstract**

In the criminal justice system, prosecutors (also known as District Attorneys) are granted discretion. Discretion gives prosecutors the ability to choose which cases to pursue, what plea deals to offer, and the suggested sentence for the crime. However, in the real world, prosecutors do not have as much power as many believe they do. While they do work in an important role, the media, T.V, movies, and even social media platforms have created a general misconception. In researching prosecutorial discretion, an attempt will be made to disprove any misconceptions and seek to educate society. The purpose of this study is to find what sentencing philosophies are being used in the field. In doing so, an attempt will be made to find a correlation between the sentencing philosophies at play and criminal justice statistics.

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The criminal justice system affects everyone in the United States of America, regardless of who you are. While we may not be personally in the system, we may know people who are. Even if that is not the case, there are strangers around us who possibly are, all of which could impact our lives and society as a whole. With that, how can we advance as a society and be the best we can be if we do not have peace in our streets? The peace can be affected by the men and women working in our Criminal Justice system.

Prosecutors also known as District Attorneys (DAs) are very powerful individuals in the Criminal Justice Sector. “The prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth.” (National District Attorneys Association, n.d.) The work of District Attorneys includes deciding what cases to take to trial, issuing plea bargains, and suggesting sentences for criminals.

With such an important job, there is a vast amount of discretion granted to prosecutors. In the Criminal Justice field, there are pockets of grey amid black and white. The black and white are whether or not an individual goes to jail. In these grey areas, prosecutors work to decide the black and white. These gray areas are what allow District Attorneys their discretion. No two cases are alike in the Criminal Justice sector. There are a plethora of variables and potential mitigating factors in cases.

With infinite factors and variables in the Criminal Justice sector, there are no set-in-stone means of working as a prosecutor. With a multitude of variables affecting cases, there are different means of executing the role of prosecutor given the context of the case. With the vast amount of discretion, prosecutors are able to fight crime in whatever environment they are faced



with. Often, prosecutors are forced to adapt to the environment they are in. Hence, prosecutors have varying philosophies.

This literature review will be discussing the role of District Attorneys. Following this, prosecutorial discretion, dismissal, plea bargains, and variables will be discussed.

This study seeks to identify the sentencing philosophies that are being used in the Criminal Justice sector. Following the collection of data, this study will aim to discover a correlation between the philosophies at play and criminal justice statistics. The statistics that will be used in this study will be sourced from the 2020 and 2021 United States Sentencing Commission's data reports. In conducting this research study, the goal is to create data that will be valuable to society, academia, the criminal justice sector, and government entities (politicians).

## **Review of Literature:**

### **District Attorneys**

Before inspecting the cogs of an important part of the Criminal Justice system, we need to determine what exactly is a District Attorney? Best defined by the Cornell Law School, “A district attorney is a public official who is appointed or elected to represent the state in criminal judicial proceedings in a particular judicial district or county; an appointed or elected official who prosecutes cases in a particular judicial district. A district attorney is also referred to as a public prosecutor, state’s attorney, or prosecuting attorney.” (WEX, 2021) In laymen’s terms, a prosecutor is someone who seeks and pursues justice. In criminal matters, the prosecutor has a say in all cases, from seeking charges to the charges, themselves, there are seemingly no limits to which crimes in which a prosecutor has a say, from misdemeanor cases (A, B, and C), and felony

cases, (State, 1<sup>st</sup> degree, 2<sup>nd</sup> degree, 3<sup>rd</sup> degree, and capital). For context, a misdemeanor charge is a charge where a fine can be imposed, and or no more than a year of jail time. Misdemeanors are the least severe types of crimes in the Criminal Justice system. “Felonies are the most serious types of criminal offenses. And according to the sentencing guidelines in Texas, the punishments can range from 180 days in jail to life in prison, as well as a fine of up to \$10,000 and community supervision. Felony crimes in Texas are broken down into various levels (called “degrees”) that are based on the severity of the offense and the type of punishment that’s considered appropriate.” (Gale Law Group, 2019)

## **Prosecutorial Discretion**

As previously mentioned, prosecutors are granted a vast amount of discretion. A prosecutor’s end goal is to pursue and fight crime. While doing so, they are tasked with choosing which cases are worthy of perusing. “Researchers found that prosecutors’ decisions were guided by two basic questions: “Can I prove the case?” and “Should I prove the case?” (Fredrick, Stemen, 2012) An example of this would be deciding whether or not to take seven-year-old Jimmy to court for stealing gum, or James the fifty-year-old convict who stole another car. While the decisions are not always that easy, they are decisions, nonetheless. . Additionally, some district attorneys also have interdepartmental or interoffice rules and procedures in regards to how they must work in regards to certain cases. Along with several other steps and regulations, the Federal Department of Justice has a list of procedures to follow before seeking or declining changes, such as: “Federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities; The nature and seriousness of the offense; The deterrent effect of prosecution; The person's culpability in connection with the offense; The person's history concerning criminal activity; The person's willingness to cooperate

in the investigation or prosecution of others; The person's circumstances; The interests of any victims; and The probable sentence or other consequences if the person is convicted." (United States Department of Justice, n.d) With that, prosecutors must also establish a basis for justifying their actions. District Attorneys must have a burden of proof, meaning that they cannot just take anyone to court on any number of charges. The prosecutor must have evidence and a solid justification for taking someone to trial

## **Dismissal**

In the criminal justice system, prosecutors also are allotted the discretion to drop cases, meaning that the cases do not go to trial. They are allotted such discretionary power through their prosecutorial discretion. Prosecutors do not have to, nor do they, take every single case that comes to their desk. District Attorneys can have several reasons for not taking an individual to court. Their reasons can include lack of evidence, value, time, resources, and many other variables, some of which are discussed in this section. To give an example, a prosecutor may not take a case to court for a speeding ticket of three miles per hour over the limit. However, will take a case to court for speeding twenty miles per hour over the limit. "Prosecutors can decline to charge entirely, citing their workloads, and leave enforcement to potential civil suits." (Bibas, 2010) There are several reasons for the use of this example. For instance, there may not be any value in taking a driver to court for going three miles over the speed limit. Additionally, the value of pursuing such a case takes valuable time and resources away from a city, both of which are scarce resources. As an example, the 2021 riots in New York set precedence. "According to the data, 118 arrests were made in the Bronx during the worst of the looting in early June. Since then, the NYPD says the Bronx District Attorney and the courts have dismissed most of those

cases — 73 in all. Eighteen cases remain open and there have been 19 convictions for mostly lesser counts like trespassing, counts which carry no jail time.” (Dienst, Copenhagen, 2021) The New York District Attorney’s office in this instance does not have the resources to pursue this many cases. Henceforth, they have dropped an overwhelming majority of the cases. NBC News reported further that the prosecutors are finding it hard to show the burden of proof in all of the cases. Thus, they will only be pursuing the most severe cases that they have at this time. (Dienst, Copenhagen, 2021)

Additional examples include Minnesota, Pennsylvania, and Missouri to name a few. “At least 36 people have been arrested on felony charges related to violent protests in St. Louis since May 29, (2020) and every one of them had the charges against them dismissed, according to a St. Louis police department spokesman.” (Varney, 2020) Alternatively, other offices have more resources and take all of their cases to trial, such as the district attorneys’ office in Washington D.C. In D.C., all cases related to the January 6<sup>th</sup> riots will be taken to court. “We are focused on using the law to the maximum extent possible,” Racine said, “to impose financial liability on those who planned and participated in the assault, and believe doing so will deter future illegal attacks.” (Cheny, 2022) This goes to show how different variables go into play when it comes to sentencing philosophies.

## **Plea Bargains**

When a prosecutor decides to take a case for prosecution, that is not the final say in the matter. Prosecutors can also use their discretion to offer a plea bargain. A plea bargain is essentially a deal between the defendant and the prosecutor. For example, the prosecutor could offer a deal in which if a defendant pleads guilty to a certain charge, all the other charges will be

dropped. The prosecutor can offer almost any type of deal at any time for several reasons. For instance, a prosecutor may have a stacked docket and does not have the time to be fighting in court all day for one case. Alternatively, a prosecutor may not have enough evidence to charge an individual for all alleged offenses. However, he or she may drop some charges if the defendant pleads guilty to the charge that the prosecutor can prove, henceforth securing a conviction and saving time and resources, which is also a benefit for the defendant being that legal fees are expensive and that he or she may get a reduced sentence. An additional but not common reason for a plea bargain is for information. A prosecutor will offer a reduced sentence to the defendant if they have pertinent information regarding a crime or criminal. In doing so, the defendant may be incentivized to speak when they otherwise would not. In short, plea deals are quite common. “Over 95 percent of federal defendants convicted of a felony or Class A misdemeanor offenses are adjudicated guilty based on a guilty plea rather than on a verdict at a trial.” (United States Sentencing Commission, 2015). Plea bargaining is a valuable tool that prosecutors have that saves valuable resources for the state and the defendant. Additionally, this tool gives potential access to bigger fish lurking who need to be brought to justice.

## **Variables**

Many variables impact the role of a district attorney. The variables can range from time, resources, politics, evidence, police offices, etc., all of which vary from office to office. For instance, “Prosecutors in the Study Offices often reported crushing caseloads. As a result, some prosecutors hurried through their screening and charging decisions, while others faced charging backlogs” (Gold, Deason Center, n.d)

In terms of politics, some prosecutors may or may not be compelled to act due to their principles. For example, “Bronx County District Attorney Robert Johnson (the "Bronx DA") steadfastly opposes the utilization of the death penalty. After the enactment of the death penalty in New York, the Bronx DA publicly announced that it was not his "present intention" to utilize the death penalty despite its widespread public and political support. Moreover, he later refused to state that there were any circumstances under which he would seek the death penalty” (DeMay, 1999) In this case, individual philosophies and morals are the deciding factors in terms of sentencing. In any case, in addition to the judge, jury, and defense attorney, it is the duty of prosecutors to see that justice is being served. The service of that justice will come to the people in a way that they see fit, with their philosophy and variables at play. Nevertheless, it is some form of justice that will be served.

In order to constrain prosecutorial discretion, there are safeguards set in place. In addition to ethics, there are mandated state and federal guidelines on how prosecutors are to utilize their discretion. Rogue prosecutors are prosecutors who do not abide by the law on legal ethics. For example, if a prosecutor were to go rouge, they would face disbarment. Meaning that they would lose their office, as well as their ability to practice law. Additionally, depending on how extreme the actions are, there may even be criminal charges. The American Bar Association has ethical standards that apply to all lawyers. For example, “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal

institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.” (American Bar Association, n.d)

## **Methodology**

To pursue the research project, a mixed-method approach was taken. The methods used were both qualitative and quantitative data to pursue the research. Additionally, the data collected was used to help formulate a conclusion to the study.

For starters, the study used researching quantitative data. This data came from scholarly peer-review articles and any information from professionals in the criminal justice field. This data was used to formulate a basis for the research study. Such as what is going on in the field, the entities at play, and any other unknown variables. Furthermore, the data was used to formulate research questions that will be utilized for the latter part of the research.

From information gathered via the literature review, the study was able to draft questions that would best serve the study. To formulate a basis, the first set of questions asked were used to find out information about the prosecutor. In doing so, not only would the interviewer be informed, but the study would also be able to compare different backgrounds to the information.

Moving forward, the interviewer then asked about the philosophies or guides that the prosecutor used and others being used in the field. The reason for this was to gain access to information that would otherwise be unable to the general public. In doing so, the study was then able to determine any correlation to statistical data. Following this set of questions, the study then asked questions relating to the variables and misconceptions that are faced by prosecutors. The goal of these questions was an attempt to further find any and all correlations between the work being done and the sentencing statistics.

Henceforth, qualitative data was used to fuel the quantitative research. By using the data, several research questions have been formulated. The interview questions created were then used in an interview with prosecutors. The questions were pertinent to their respective prosecutorial sentencing philosophies. Once their sentencing philosophy was discovered, the research then aimed to find how the said philosophy is used and how the prosecutor came to use that philosophy. Additionally, questions were asked about the history of the prosecutor's philosophy in their respective fields. Following the opening questions, the interview then transitioned to the second part of the interview. This section of the interview entailed questions that sought to find how the prosecutor feels about differing philosophies, such as how they affect the criminal justice field and their respective work. In closing, the prosecutors were then asked about any other variables that influence their decisions, and or their line of work.

With the interviews have been conducted and analyzed, the research then transitioned to the final part of the study. The closing part of the study gathered all data and compared the information to criminal justice statistics. In doing so, the study aimed to find a correlation between the prosecutorial sentencing philosophies at play and current criminal justice crime statistics, i.e the 121,852 cases reported nationally by the United States Sentencing Commission's



2020 and 2021 report. Following this, a report was then written that will seek to be of use to the general population, academia, the criminal justice sector, and government entities (politicians).

## **Prosecutor Interviews**

Over the course of the study, several interviews were conducted with prosecutors in varying areas. For the purpose of the study, at a minimum, at least one prosecutor was interviewed from a rural town, a small-medium-sized city, and a large city. Furthermore, while interviewing prosecutors at random, the study was able to interview prosecutors from varying backgrounds and demographics. In doing so the study was able to collect data that appropriately reflected prosecutors as a whole. In terms of the selection process, over one hundred emails were sent to prosecutors across Texas. Of the emails sent, there were seven responses, which then lead to five interviews being conducted. In the following interviews, the prosecutor's interviews sections of North, East, South, West, and Central Texas. With that, the following paragraphs will discuss the findings of the study. Additionally, a conclusion will be drawn from said findings.

First and foremost are sentencing philosophies. When asked about any philosophies that guide them in their job, the answer was the same across the board. "I don't really have a "philosophy" per se, as a prosecutor my goal is to seek justice and truth.", said a Houston prosecutor. That statement was further explained that as a prosecutor, seeking the best possible outcome for the community in accordance with the law is what is being sought. Additionally, the rules of ethics and sentencing guidelines are what guide prosecutors in their line of work. In terms of differing philosophies, the prosecutors who were interviewed all amazingly had similar responses. While there are prosecutors who have different party affiliations, backgrounds, and ideas, they all come to similar conclusions based on the aforementioned philosophy.

Furthermore, the term “burden of proof” was used quite frequently. For example, many prosecutors cited that the ability to show the burden of proof is a major element in deciding to take cases to trial. Of all five of the prosecutors interviewed, each discussed justice. In talking about justice, every one of them discussed what the word truly meant. As one prosecutor in Atascosa stated, “Justice is not about sending someone to prison.”. That prosecutor went on to say that justice is about providing the best outcome for the community and helping the defendant become a functioning member of society. Therefore, placing someone on parole with the stipulation(s) of attending rehab, parenting classes, or obtaining their GED is something that a vast majority of prosecutors are working towards.

Alternatively, some prosecutors mentioned prosecutors who do not follow the general philosophy. While rare, there are some “guilty first” prosecutors. These prosecutors see all of their defendants as guilty and will work towards getting them incarcerated. In addition, some prosecutors are, simply put, obsessed with winning. These prosecutors have a rather large ego and are very competitive, which leads them to take a vast majority of their cases to trial and seek an outcome that favors them. One prosecutor in Uvalde has labeled this as the “old school method”. “Many people believe that crime is a pipeline to prison.” The prosecutor went on to say that, prison is not the end-all solution to crime. Last, some prosecutors work in a way that clears their desks by sending all of their defendants to prison. This has been regarded as, “the easy route” as one prosecutor has called it when referring to prison. However, it is important to acknowledge that these types of prosecutors are indeed a rare breed, yet, it is important to acknowledge that they do still exist.

In terms of the referenced philosophy used among prosecutors, the philosophy has proven to be a challenge to prosecutors across the board. Among all prosecutors, several variables must

be taken into account while prosecuting cases. As stated by the Houston prosecutor, “While there is black and white in the field, no two cases are the same.” With that being said, prosecutors must work diligently to come to the best possible outcome for their respected state/community and defendant. Due to an abundance of cases and a plethora of variables, it makes for a very difficult job. While trying to make the best possible outcome that results in bettering society and lowering recidivism rates, there are a lot of other factors and misconceptions about prosecutors.

When it comes to variables outside of cases, social media has created a very negative connotation regarding prosecutors. There is no shortage of misinformation when it comes to prosecutors. As an example, prosecutors do not bring felonies, a grand jury does. Even though a prosecutor files the charges, it is up to the jury to decide whether or not the charges are applicable given the evidence provided. From which, the jury goes on to give their decision (guilty, not guilty, or no decision), and if found guilty, give a sentence that they feel is just. For example, a fine of 5,000 dollars and ten years in jail, if it is within the confines of the statute. Additionally, nothing is easy about prosecuting a case. Social media and television have glamorized the role of prosecutors and have greatly misinformed the public about the real world. “Everyone has watched a lawyer movie, or Law & Order a time or two, but the real world is far from what you see on t.v”, stated the Jeff Davis County Attorney. The prosecutor stated that real court is ugly and vicious. In some cases, it is a gruesome dog fight that could last for weeks at a time. While many people imagine a sharp-dressed lawyer yelling and going home in thirty minutes with a guilty verdict, there is far more than what meets the eye in the real world. For example, one lawyer went on the discuss how outside of television, people do not understand just how complex court is. The lawyer went on to cite the numerous rules, procedures, extensive

evidence, and several lengthy processes. In sum, while prosecutors have vast amounts of discretion, this goes to show that it is not an easy tool to use given the circumstances.

With that, the anti-police sentiment that the United States has seen throughout 2020-2021 (which is still ongoing) has also affected prosecutors, henceforth, making the role of a prosecutor harder with little support from the public. As the Jeff Davis county prosecutor stated, “It is a tough time to be a public official.”. It is not hard to find a post on social media that shows the government or law enforcement in a negative light. More often than not, it is rare to see a positive post about the governor, president, politicians, etc. All of which, in addition to recent experiences have led to a distrust in government and the system. One prosecutor went on to explain the difficulties in picking juries for trial. “During voir dire (jury selection process) I have to ask people how they feel about the government and law enforcement.”, stated the Jeff Davis County Attorney. With such hate towards those entities, those jurors are biased and make the job of the prosecutor much more difficult. While the public has made the job more difficult, one prosecutor went on to state how law enforcement in some instances is in the same category. “I have had some officers get upset with the lengthy questions I have to ask. Other times, I have had officers upset with me because I didn’t take a certain case to trial or dropped the charges.”. While this may be rare, this goes to show how anybody can have misinterpretation about our criminal justice system, and or the sheer difficulty of a job prosecutors are being faced with. Especially considering the public not being in favor of the government, and or the criminal justice given the current state of affairs.

While several minor variables also affect prosecutors, two major ones have a connection that will be discussed. The Covid-19 pandemic and funding/resources have greatly hindered the work of prosecutors. Due to the pandemic, courtrooms across the nation have been closed,

meaning that there have been no cases tried in the past year, and the backlog has grown exponentially. While some prosecutors have the privilege of working cases online and or in a safe environment (socially distanced court/open-air courtrooms) is something that a majority of counties/cities cannot afford. Regarding resources, across the board, all prosecutors are underfunded. In terms of a rural town, the prosecutor interviewed works in conjunction with what is called the County Court at Law, which only has six trials a year. All the while, 1,000 cases are filed in a year. In terms of a large city, one prosecutor gave statistics in terms of issues being faced by their office. In this large city with a population of well over a million, there are 350 prosecutors with currently 42,000 active cases. Furthermore, a prosecutor near the Texas-Mexico border has cited an influx of border crime; which has contributed to an increase in human trafficking, and at least two high-speed pursuits a day. With these statistics, prosecutors have resorted to using plea bargains to achieve the goals with which they have been tasked. While this may seem like a scapegoat for prosecutors, plea bargains have been a benefit to all parties included. Many individuals are allowed to better their own lives and community. As for the prosecutors, they are working to improve society, lower incarceration rates, and work towards lowering recidivism rates.

Building off of the last paragraph, prosecutors are not only calling for Covid resources and more lawyers. There are several other variables at play that are affecting prosecutors in the criminal justice system. For instance, some prosecutors are still facing the impact of Hurricane Harvey. While the city is still rebuilding as of 2022, the courthouse is still incomplete. With the courthouse still under construction, prosecutors are having to get on a shuttle to travel to court from the office. While many prosecutors would enjoy more judges, lawyers, or even police officers, there are many needs that many people would often overlook. For example, some rural

towns and even average-sized cities do not have an in-house translator. In some cases, a translator is outsourced from the city, some entities are having to have a conference call with a translator to hold court or even answer basic questions. Additionally, some prosecutors do not have an investigator. Of the interviewed prosecutors, one stated that they have to individually investigate all of their cases. Which entails taking time out of their day to personally go out and speak with witnesses, officers, etc. Lastly, all of the five prosecutors interviewed are calling for mental health and drug rehabilitation programs. These prosecutors are finding that many people in their communities are needing this type of assistance, and sadly they either do not know/have the resources to help them, or simply do not have enough to adequately help the community.

## **Data**

In reviewing the interviews, there was not a strong correlation between the interviews and the statistics from the United States Sentencing Commission. Of the 121,852 cases reported nationally only 10,250 were not sent to prison. Of the 10,250, they were either sentenced to probation or a fine for example, in lieu of being sent to prison. While the numbers do not provide a direct correlation to the interviews, it is possible that in the future the data will match what was found in the interviews. However, it is worth noting that crimes such as drug possession have shown fewer prison sentences. Whether that is due to changes in legislation, an argument can be made in favor of prosecutors working to improve the community and keeping individuals out of prisons via alternative methods.

## **Conclusion**

In sum, prosecutors have been tasked with a job that is misunderstood and under-supported. With the current state of affairs, support is rapidly depleting with no end in

sight. Without a major change, there will be no increase in support for those in the criminal justice sector for a long time to come. As for the cases, statistically, prosecutors will never catch up on their work. Additionally, crimes are being committed faster than what cases can be resolved daily which is adding to the backlogged system. Again, unless major changes are made to the system, we can expect to see this trend continue for what could be generations. As previously stated this has led to an increase in plea bargains. All of which is in an attempt to resolve cases and reduce the amount of Americans incarcerated, being that a majority of prisons are full/overpopulated. One prosecutor went on to say, “The prisons are so full, that even when I have to send someone to prison, they are not in there long.” As of current times, a correlation cannot be drawn between prosecutors and criminal justice statistics. This is due to a plethora of variables such as the Covid-19 pandemic, for example, moreover, the number of cases being faced by prosecutors. However, in roughly the next ten years, we could be seeing the effects of the current state of prosecutors, i.e the underfunding, overworked prosecutors, an extreme number of growing cases, etc. While this study was only able to interview five prosecutors due to lack of availability or internal reasoning( i.g city manager approval), further interviews would only strengthen the findings of the study. In conclusion, a vast majority of prosecutors are working towards a good cause with the tools they have been given, but that are not adequate for the current state of affairs.

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## Appendix: A

ABILENE CHRISTIAN UNIVERSITY  
*Educating Students for Christian Service and Leadership Throughout the World*

Office of Research and Sponsored Programs  
320 Hardin Administration Building, ACU Box 29103, Abilene, Texas 79699-9103  
325-674-2885



October 12, 2021

Bryan Briones  
Department of Political Science  
ACU Box 29143  
Abilene Christian University

Dear Bryan,

On behalf of the Institutional Review Board, I am pleased to inform you that your project titled "A survey of prosecutorial philosophies and their effects on sentencing",

(IRB#21-118 ) is exempt from review under Federal Policy for the Protection of Human Subjects.

If at any time the details of this project change, please resubmit to the IRB so the committee can determine whether or not the exempt status is still applicable.

I wish you well with your work.

Sincerely,

*Megan Roth*

Megan Roth, Ph.D.  
Director of Research and Sponsored Programs

## Appendix: B

21-118

Date of Approval: 10/12/2021

### Informed Consent Form

**Title of Study:** A survey of prosecutorial philosophies and their effects on sentencing.

**Investigators:**

Bryan Briones, B.A. (Perusing), Abilene Christian University

You may be eligible to partake in a research study. This form provides important information, including the risks and benefits to you, the potential participant. Please read this form carefully and ask any questions you may have regarding the procedures, your involvement, and any risks or benefits you may experience. You may also wish to discuss your participation with other people, such as a family member.

Also, please note that your participation is entirely voluntary. You may decline to participate or withdraw from the study at any time and for any reason without any penalty or loss of benefits to which you are otherwise entitled.

Please contact the Principal Investigator if you have any questions or concerns regarding this study or if at any time you wish to withdraw. This contact information may be found at the end of this form.

**Purpose:**

The purpose of this research is to investigate the effects of prosecutorial philosophies and their effects on sentencing.

**Procedure:**

This project will involve the completion of a Zoom, phone call, or in-person interview. You will then be interviewed regarding prosecutorial philosophies and their effects on sentencing. The interview is designed to last approximately 30-60 minutes. Consent forms will be sent, signed, and received via email.

**Risks and Discomforts:**

There are minimal risks associated with this project, mainly mild psychological stress that an interview question might prompt or trigger. If for any reason, you begin to experience discomfort or stress during this project, you may end your participation at any time without penalty or negative consequences. As with any data collection, there is a small risk regarding keeping responses confidential. To protect your information provisions for confidentiality are described

in the next section.

**Provisions for Confidentiality:**

Your identity will remain anonymous, and you will not be identified individually. Interviews and all recorded information will not be identified using your name, we will only identify interviews using a numerical system. All recorded information will be stored securely and only individuals who are directly involved in the research process will have access to this information. All information will be kept as long as is scientifically useful; most information of this sort is kept for five years after the publication of results. Results from this study may be presented at research festivals and conferences; this information may also be presented at professional meetings or in publications. You will not be identified individually; results will be analyzed by looking at the group as a whole. Data collected will be observed by research staff who are responsible for protecting the rights and well-being of the individuals who participate in research. Additionally, the Institutional Review Board of Abilene Christian University has the right to access the informed consent forms and study documents at any time.

**Compensation:**

There is no compensation for your participation, but you will be given the possible opportunity to learn relevant information about yourself and the criminal justice field regarding prosecutors.

**Participant Rights:**

Your participation in this research is completely voluntary. There will be no penalty for refusal to participate, and you have the ability to withdraw your consent and participation at any time. There will be no penalty for removing yourself from the study, and you have the ability to request that all previously gathered information be removed from the study immediately upon withdrawal.

**Contacts:**

You may contact any of the researchers at the following addresses and phone numbers if you have any desire to discuss your participation in the study, or request information about the results of the study:

Bryan Briones, B.A. (Pursuing)  
Bab18c@acu.edu  
(210)291-8366

Neal Coates, Ph.D.  
[coatesn@acu.edu](mailto:coatesn@acu.edu)  
(325)674-2917

Megan Roth, Ph.D.  
[megan.roth@acu.edu](mailto:megan.roth@acu.edu)  
(325)674-2885

If you have concerns about this study or general questions about your rights as a research participant, you may contact ACU's Chair of the Institutional Review Board and Director of the Office of Research and Sponsored Programs, Megan Roth, Ph.D at:

(325) 674-2885  
megan.roth@acu.edu  
328 Hardin Administration  
ACU Box 29103  
Abilene, TX 79699

**Consent:**

I have been fully informed about the procedures listed here. I am aware of what I will be asked to do and the benefits of my participation. I have read and fully understand this consent form. I sign it freely and voluntarily. A copy of this form will be given to me via email.

Sign here:

Date:

Investigator Signature:

Date:

## Appendix: C

**Table 4**  
**SENTENCE TYPE BY TYPE OF CRIME**  
**Fiscal Year 2020**

National											
TYPE OF CRIME	TOTAL	Prison Only		Prison and Alternatives		Probation and Alternatives		Probation Only		Fine Only	
		N	%	N	%	N	%	N	%	N	%
TOTAL	64,565	57,550	89.1	1,751	2.7	1,098	1.7	3,845	6.0	321	0.5
Administration of Justice	542	346	63.8	38	7.0	33	6.1	119	22.0	6	1.1
Antitrust	11	6	54.5	1	9.1	0	0.0	4	36.4	0	0.0
Arson	48	45	93.8	1	2.1	0	0.0	2	4.2	0	0.0
Assault	618	508	82.2	35	5.7	7	1.1	61	9.9	7	1.1
Bribery/Corruption	240	149	62.1	5	2.1	34	14.2	50	20.8	2	0.8
Burglary/Trespass	39	26	66.7	5	12.8	0	0.0	8	20.5	0	0.0
Child Pornography	1,023	1,003	98.0	12	1.2	3	0.3	5	0.5	0	0.0
Commercialized Vice	53	36	67.9	6	11.3	1	1.9	10	18.9	0	0.0
Drug Possession	439	251	57.2	4	0.9	5	1.1	120	27.3	59	13.4
Drug Trafficking	16,390	15,299	93.3	521	3.2	150	0.9	416	2.5	4	0.0
Environmental	137	37	27.0	4	2.9	17	12.4	66	48.2	13	9.5
Extortion/Racketeering	120	74	61.7	6	5.0	5	4.2	34	28.3	1	0.8
Firearms	7,539	6,800	90.2	284	3.8	139	1.8	314	4.2	2	0.0
Food and Drug	33	13	39.4	0	0.0	4	12.1	16	48.5	0	0.0
Forgery/Counter/Copyright	198	150	75.8	17	8.6	6	3.0	25	12.6	0	0.0
Fraud/Theft/Embezzlement	4,823	3,234	67.1	238	4.9	331	6.9	964	20.0	56	1.2
Immigration	26,561	24,865	93.6	324	1.2	215	0.8	1,153	4.3	4	0.0
Individual Rights	70	54	77.1	1	1.4	1	1.4	13	18.6	1	1.4
Kidnapping	66	58	87.9	8	12.1	0	0.0	0	0.0	0	0.0
Manslaughter	38	32	84.2	2	5.3	0	0.0	4	10.5	0	0.0
Money Laundering	880	731	83.1	32	3.6	41	4.7	76	8.6	0	0.0
Murder	294	283	96.3	10	3.4	0	0.0	1	0.3	0	0.0
National Defense	165	139	84.2	7	4.2	3	1.8	11	6.7	5	3.0
Obscenity/Other Sex Offenses	318	264	83.0	35	11.0	4	1.3	15	4.7	0	0.0
Prison Offenses	457	420	91.9	22	4.8	4	0.9	11	2.4	0	0.0
Robbery	1,316	1,242	94.4	52	4.0	10	0.8	12	0.9	0	0.0
Sexual Abuse	881	857	97.3	20	2.3	1	0.1	3	0.3	0	0.0
Stalking/Harassing	225	177	78.7	27	12.0	7	3.1	14	6.2	0	0.0
Tax	366	231	63.1	22	6.0	40	10.9	72	19.7	1	0.3
Other	675	220	32.6	12	1.8	37	5.5	246	36.4	160	23.7

Of the 64,565 National cases, no cases were excluded.

Alternatives include all cases in which offenders received conditions of confinement as described in USSG §5C1.1.

SOURCE: U.S. Sentencing Commission, 2020 Datafile, USSCFY20.

## Appendix: D

**Table 4**  
**SENTENCE TYPE BY TYPE OF CRIME**  
**Fiscal Year 2021**

**National**

TYPE OF CRIME	TOTAL	Prison Only		Prison and Alternatives		Probation and Alternatives		Probation Only		Fine Only	
		N	%	N	%	N	%	N	%	N	%
TOTAL	57,287	50,648	88.4	1,653	2.9	1,049	1.8	3,527	6.2	410	0.7
Administration of Justice	512	342	66.8	27	5.3	31	6.1	110	21.5	2	0.4
Antitrust	6	1	16.7	0	0.0	3	50.0	1	16.7	1	16.7
Arson	79	74	93.7	3	3.8	1	1.3	1	1.3	0	0.0
Assault	668	574	85.9	27	4.0	9	1.3	53	7.9	5	0.7
Bribery/Corruption	247	158	64.0	21	8.5	27	10.9	40	16.2	1	0.4
Burglary/Trespass	64	53	82.8	4	6.3	2	3.1	4	6.3	1	1.6
Child Pornography	1,215	1,179	97.0	20	1.6	4	0.3	12	1.0	0	0.0
Commercialized Vice	114	62	54.4	3	2.6	15	13.2	22	19.3	12	10.5
Drug Possession	309	110	35.6	1	0.3	10	3.2	106	34.3	82	26.5
Drug Trafficking	17,608	16,307	92.6	683	3.9	168	1.0	450	2.6	0	0.0
Environmental	173	36	20.8	4	2.3	12	6.9	107	61.8	14	8.1
Extortion/Racketeering	116	83	71.6	5	4.3	4	3.4	24	20.7	0	0.0
Firearms	8,151	7,515	92.2	161	2.0	103	1.3	370	4.5	2	0.0
Food and Drug	47	19	40.4	1	2.1	5	10.6	19	40.4	3	6.4
Forgery/Counter/Copyright	137	103	75.2	4	2.9	8	5.8	22	16.1	0	0.0
Fraud/Theft/Embezzlement	4,571	2,982	65.2	220	4.8	301	6.6	1,014	22.2	54	1.2
Immigration	16,937	15,897	93.9	267	1.6	199	1.2	573	3.4	1	0.0
Individual Rights	69	29	42.0	1	1.4	7	10.1	21	30.4	11	15.9
Kidnapping	92	90	97.8	1	1.1	0	0.0	1	1.1	0	0.0
Manslaughter	56	49	87.5	6	10.7	1	1.8	0	0.0	0	0.0
Money Laundering	1,028	867	84.3	41	4.0	32	3.1	88	8.6	0	0.0
Murder	257	248	96.5	8	3.1	0	0.0	1	0.4	0	0.0
National Defense	217	182	83.9	7	3.2	2	0.9	11	5.1	15	6.9
Obscenity/Other Sex Offenses	298	266	89.3	22	7.4	2	0.7	8	2.7	0	0.0
Prison Offenses	532	494	92.9	19	3.6	5	0.9	14	2.6	0	0.0
Robbery	1,300	1,245	95.8	30	2.3	5	0.4	20	1.5	0	0.0
Sexual Abuse	1,062	1,032	97.2	25	2.4	1	0.1	4	0.4	0	0.0
Stalking/Harassing	219	180	82.2	14	6.4	8	3.7	17	7.8	0	0.0
Tax	421	244	58.0	27	6.4	46	10.9	104	24.7	0	0.0
Other	782	227	29.0	1	0.1	38	4.9	310	39.6	206	26.3

Of the 57,287 National cases, no cases were excluded.

Alternatives include all cases in which offenders received conditions of confinement as described in USSG §5C1.1.

SOURCE: U.S. Sentencing Commission, 2021 Datafile, USSCFY21.

