

Data as a Tool for Racial Justice

By Melba V. Pearson

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The year 2020 was one of the most tumultuous years in recent history. It brought a great deal of uncertainty and fear due to a pandemic that ran wild, high-profile deaths of unarmed people of color, and an election cycle that mirrored Groundhog Day. The deaths of Breonna Taylor, Ahmaud Arbery, and George Floyd generated a more widespread demand for systemic change, as well as renewed focus on the area of criminal justice reform and prosecutorial discretion. While much of the focus has been on police, communities across the country have become more acutely aware of the power that prosecutors hold to bring justice or perpetuate injustice. As we explore how to improve the criminal justice system as a nation, some of the recurring themes include the need for more transparency around the work of a prosecutor, real accountability to the community, and ensuring that sentences are fair without disproportionately impacting marginalized groups.

What is the first step in making this happen? Often, prosecutors' offices start with the now-obligatory implicit bias training. While there is a place for such training in moving forward equity and racial justice, too many times the work ends there. A one-time course does little to undo years of learned behavior as well as unpack some of the drivers of inequality. Tiffany L. Green & Nao Hagiwara, *The Problem with Implicit Bias Training*, *Sci. Am.* (Aug. 28, 2020), <https://bit.ly/2LybNH8>. The place to start in solving any problem is identifying what the problem is and where the issues are emerging. Without a common language—a framing of the problem that all can agree upon—it is virtually impossible to move forward. *Data* are that common language. Data provide the evidence that lawyers have been trained to crave. Prosecutors' offices must begin by looking critically at their own files. It is easy to say that “we don't have a race problem here” or “our policies are race neutral, so they are not intended to harm any particular community.” Katie Benner, *Barr Says There Is No Systemic Racism in Policing*, *N.Y. Times* (June 7, 2020), <https://nyti.ms/38ouPc4>. However, you cannot know the impact of something unless you measure it. One can't measure the impact of a change in diet without stepping on the scale or seeing if clothing fits differently. Similarly, you cannot know the impact of policies without looking at the trends as well as the results.

Also important to this process is *what* you measure, as well as *how*. In most industries, there are clear metrics of success. Did you land a large client? How quickly do patients recover? What is the number of products sold for the month? By contrast, in prosecution, the metric of success often ends up being the number of convictions or crime rates. However, these factors do not fully reflect the communities' health and well-being. It does not tell us, for example, about community trust, support for survivors, or if outcomes are fair across racial and ethnic groups. It is time to look for a new way to measure success.

In 2017, researchers from Florida International University and Loyola University of Chicago began

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work on what became Prosecutorial Performance Indicators (PPIs). *Training*, Prosecutorial Performance Indicators, <https://bit.ly/3pYHSHc>. The project was funded by the John D. and Catherine T. MacArthur Foundation as part of its Safety and Justice Challenge. The result, which has just been launched, is a dashboard of 55 indicators, which assess prosecutorial progress on a monthly or quarterly basis toward three broad goals of Capacity and Efficiency; Community Safety and Wellbeing; and Fairness and Justice.

The project launched with prosecutors' offices in four cities: Chicago, Jacksonville, Milwaukee, and Tampa. Charleston and Philadelphia joined the project in 2020, with plans to expand researcher-prosecutor partnerships in new jurisdictions. The initial four offices have all created public-facing dashboards with their PPI results. In Florida, the release of the dashboards for Jacksonville (<https://sao4thdatadashboard.com/>) and Tampa (<https://www.sao13th.com/data>) was an unprecedented move towards prosecutorial data transparency in Florida—no other office has done so in state history.

What has been revealed by this work is that many offices face similar challenges, as revealed by their data. Diversion programs are one area of concern. Across the board, there are major racial disparities as to who successfully enrolls and completes diversion; defendants of color are less likely to be in diversion programs. The next step for offices is to determine why this is happening. Are the entrance fees to the program too cost prohibitive? Are the eligibility requirements too restrictive? Are some communities of color less likely to engage in a program due to distrust of the system—viewing this as more government intrusion on their lives despite the benefit it may provide? Once these questions are confronted, then policies can be changed to address this disparity.

Another challenge is diversity within prosecutors' offices. People of color are often absent in senior leadership. Offices find it difficult to hire and retain prosecutors of color. There are many reasons that can drive this, including the notorious low pay of prosecutors' offices, feelings of isolation once in the office, and not seeing a pathway into promotion. Again, elected prosecutors need to take the lead by meaningfully engaging with their staff to ascertain what is needed. Prosecutors' offices need to recruit from a wider area than their backyards—and can do so by forming partnerships with the National Black Law Students Association (<https://www.nblsa.org/>) and National Hispanic Bar Association (<https://hnba.com/>) as well as the National Black Prosecutors Association (<http://blackprosecutors.org/>), to name a few. Organizations such as these have job fairs that can bring diverse talent together with elected prosecutors who center diversity as part of their mission. In this post-COVID-19 world, we all have learned how to use videoconferencing in new ways. Reaching out to diverse talent from across the country has now been made much easier. Retention can be achieved by training, mentorship, and not shying away from tough racial discussions when the need arises. Many prosecutors of color reported feeling very isolated in the aftermath of George Floyd—processing feelings of hurt and horror, but also enduring insensitive comments from law enforcement colleagues compounded by community/family pressure to explain why they are in this field of work that can bring (and has brought) harm to communities of color. Elected prosecutors who wish to retain diverse prosecutors must be aware of this reality, then address it sensitively through listening sessions and policy change.

The year 2020 presented us with challenges, but also with opportunity. Large shifts can be made now that data and technology present tools to aid in the work. We are in a better position to create sustained change to ensure justice for all communities—but the work must be done intentionally—and without fear. Like Dr. Martin Luther King Jr. stated, the time is always right to do what is right.ⁿ