

Chapter 5

Selective Prosecution: Plea Negotiations and Charging Decisions by Prosecutors

5.1	Scope of Chapter	5-1
5.2	Overview	5-2
	A. The Scope and Consequences of Prosecutorial Discretion	
	B. Studies of Prosecutorial Decision-Making and Racial Disparities	
5.3	Equal Protection Limits on Selective Prosecution	5-5
	A. Identifying Selective Prosecution	
	B. Potential Benefits of Raising Selective Prosecution Claims	
	C. Selective Prosecution Distinguished from Selective Enforcement	
	D. Elements of a Selective Prosecution Claim	
	E. First Prong of a Selective Prosecution Claim: Discriminatory Effect	
	F. Second Prong of a Selective Prosecution Claim: Discriminatory Intent	
	G. Gathering Evidence to Support Selective Prosecution Claims	
5.4	Making Out a Claim of Selective Prosecution	5-21
	A. Obtaining Discovery Relevant to a Selective Prosecution Claim	
	B. Selective Prosecution Motion	
	C. Burden of Proof and Relief	
	D. Evidentiary Hearing	
	E. Success on the Merits	
5.5	Beyond Litigation	5-26
