

# Career Motivations of State Prosecutors

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## ABSTRACT

*Because state prosecutors in the United States typically work in local offices, reformers often surmise that greater coordination within and among those offices will promote sound prosecution practices across the board. Real transformation, however, requires commitment not only from elected chief prosecutors but also from line prosecutors—the attorneys who handle the daily caseloads of the office. When these individuals’ amenability to reform goals and sense of professional identity is at odds with the leadership, the success and sustainability of reforms may be at risk.*

*To better understand this group of criminal justice professionals and their power to influence system reforms, we set out to learn what motivates state prosecutors to do their work. Using original interview data from more than 260 prosecutors in nine different offices, we identify four principal career motivations for working state prosecutors: (1) reinforcing one’s core absolutist identity, (2) gaining trial skills, (3) performing a valuable public service, and (4) sustaining a work-life balance. However, only two of these motivations—fulfilling one’s core identity and serving the public—are acceptable for applicants to voice in the hiring context, even in offices that employ a significant number of former defense attorneys. From this finding we offer a cautionary tale to job applicants as well as to office leaders, particularly chief prosecutors who want to reform office practices and to make those changes stick.*

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## INTRODUCTION

Although reformers are forever trying to change the work of criminal prosecutors in the United States, those efforts often fail in the long run. Why? Individual attorneys who work in prosecutors' offices approach the job with a variety of different professional self-images, and those images stay in place even when a new boss arrives with a new organizational plan or a new set of priorities for the office. Prosecutors have their own ideas about the best use of their talents and the expected arcs of their careers. Those career motivations provide one reason (among many) why it is so difficult to control the work of prosecutors from the top down.

The dream of centralized control is longstanding. It goes back at least to 1931, when a national commission (known as the Wickersham Commission) proposed that states should remove control of prosecutors from the local level and centralize it in the hands of the state attorney general.<sup>1</sup> A single chief prosecutor for the state could organize local offices, set policies for those offices, and monitor case-level decisions. In the Commission's view, greater central control would remove political patronage from the hiring of line prosecutors, thus increasing continuity within prosecutors' offices; this would give line prosecutors more time to accumulate experience and specialized skills that would meet the needs of even the most complex urban settings.<sup>2</sup> These plans for state-level control of prosecutors never amounted to much.<sup>3</sup>

<sup>1</sup> See generally NAT'L COMM'N ON LAW OBSERVANCE & ENF'T, REPORT ON PROSECUTION (1931).

<sup>2</sup> See *id.* at 9–21, 37–38; Ronald F. Wright, *The Wickersham Commission and Local Control of Criminal Prosecution*, 96 MARQ. L. REV. 1199, 1199–200 (2012).

<sup>3</sup> See Wright, *supra* note 2, at 1209–11, 1214–18. Currently, only a small handful of states (Alaska, Delaware, and Rhode Island) have a coordinated prosecution effort that is controlled at the state level; all of the states in this group have either small land mass, small populations, or both. ALASKA STAT. § 44.23.020 (2016); DEL. CODE ANN. tit. 29, § 2505 (2017); 42 R.I. GEN. LAWS § 42-9-4 (2007). See generally Tyler Yeargain, Comment, *Discretion Versus Supersession: Calibrating the Power Balance Between Local Prosecutors and State Officials*, 68 EMORY L.J. 95 (2018).

Decades later, President Lyndon Johnson's Commission on Law Enforcement and Administration of Justice revived the idea of centralized control over prosecutors.<sup>4</sup> Its report offered a nuanced and accurate portrait of individual prosecutors working in high-volume courts in an urban setting.<sup>5</sup> It acknowledged the reality of prosecutorial discretion. At the same time, the Commission found it troubling that prosecutors could bring a "middle-class background and attitude" to determine how "a poor, uneducated defendant" should fit "into his own society or culture."<sup>6</sup>

To address the problem of uninformed and inconsistent prosecutorial choices, the Commission endorsed three reforms. First, it suggested the use of written standards within prosecutors' offices because young, inexperienced prosecutors needed "clearly stated standards to guide them" in charging decisions.<sup>7</sup> These "established procedures" would set forth "the separate steps that a prosecutor should take" before deciding whether to charge or dismiss in any case.<sup>8</sup> Second, to ensure that individual prosecutors would actually follow office-wide policies, the Commission advocated for a more complete written record in each case.<sup>9</sup> Lastly, the Commission advocated for training programs that could reinforce the young prosecutor's use of office standards. Although law school prepares new attorneys for "trial aspects of the job," on-the-job training is necessary to prepare

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4 See generally PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967). The treatment of prosecutors in the Johnson Commission report is surprisingly thin. Other contributions to this Symposium issue explore issues of policing and punishment that received more complete coverage in the report. See, e.g., Roger A. Fairfax, Jr., *Foreword*, 86 GEO. WASH. L. REV. 1465 (2018).

5 See PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, *supra* note 4, at 127–28. The portrait included a frank description of the centrality of plea negotiations:

Partly in order to deal with volume, many courts have routinely adopted informal, invisible, administrative procedures for handling offenders. Prosecutors and magistrates dismiss cases; as many as half of those who are arrested are dismissed early in the process. Prosecutors negotiate charges with defense counsel in order to secure guilty pleas and thus avoid costly, time-consuming trials; in many courts 90 percent of all convictions result from the guilty pleas of defendants rather than from trial.

*Id.*

6 *Id.* at 127.

7 *Id.* at 133.

8 *Id.*

9 The files would reveal the basis for any decision to decline criminal charges; in cases that lead to criminal charges, the file should show background information about the defendant's background that the probation department assembles, along with an explicit statement of the terms of the deal. *Id.* at 133–36.

recent graduates for “administrative and law enforcement functions,” the Commissioners asserted.<sup>10</sup>

These 1967 recommendations never changed the typical organization of prosecutors’ offices.<sup>11</sup> Most offices kept their decentralized organization, leaving the important choices in most cases to individual prosecutor discretion.

The ideal of systematized prosecution remains attractive but elusive today, even in jurisdictions that have taken a turn toward progressive prosecution. Candidates to become the chief elected prosecutor in some large cities have embraced more progressive platforms, addressing the problems of mass incarceration, racial injustice, wrongful convictions, and the costs of conventional punishment models.<sup>12</sup> Some prosecutor offices have also developed “community prosecution” strategies: they stress public safety programs that operate both upstream and downstream from the criminal courtroom, as prosecutors add their efforts to prevention and reentry initiatives championed by other players in the criminal justice or social welfare systems.<sup>13</sup> These

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<sup>10</sup> *Id.* at 148. Comprehensive training would take the form of “curricula and programs for the preservice and inservice training of prosecutors.” *Id.*

<sup>11</sup> See HENRY RUTH & KEVIN R. REITZ, *THE CHALLENGE OF CRIME: RETHINKING OUR RESPONSE* 5 (2003).

<sup>12</sup> See generally Dana Carver Boehm, *The New Prosecutor’s Dilemma: Prosecutorial Ethics and the Evaluation of Actual Innocence*, 2014 UTAH L. REV. 613 (2014) (describing prosecutor efforts to prioritize elimination of wrongful convictions, particularly the creation of wrongful-conviction units inside prosecutor offices); Lissa Griffin & Ellen Yaroshefsky, *Ministers of Justice and Mass Incarceration*, 30 GEO. J. LEGAL ETHICS 301, 315–34 (2017) (describing prosecutor efforts to reverse their contributions to mass incarceration); David Alan Sklansky, *The Changing Political Landscape for Elected Prosecutors*, 14 OHIO ST. J. CRIM. L. 647, 647–49 (2017); Yeargain, *supra* note 3, at 102–07 (documenting the election of progressive prosecutors in Philadelphia, Chicago, Orlando, and numerous other cities, as well as their campaign promises to limit enforcement of low-level offenses, to reduce capital-punishment prosecutions, and to explore alternatives to incarceration); Alan Feuer, *Candidates Line Up Behind Legacy of Former Brooklyn District Attorney*, N.Y. TIMES (Apr. 9, 2017), <https://www.nytimes.com/2017/04/09/nyregion/brooklyn-district-attorney-democratic-candidates.html> [https://perma.cc/7YE7-ZRX8]; Chris Palmer, *6 Months In, Philly DA Larry Krasner Cementing National Stature Among Reform Advocates*, PHILA. INQUIRER (June 12, 2018, 1:05 PM), <http://www.philly.com/philly/news/crime/philly-district-attorney-larry-krasner-national-stature-reform-advocates-satana-deberry-real-just-ice-pac-george-soros-20180612.html> [https://perma.cc/JM2R-TZWW].

<sup>13</sup> For examples of some innovative programs, see Press Release, N.Y. Cty. Dist. Attorney’s Office, Manhattan DA’s Office, John Jay College of Criminal Justice, and Institute for Innovation in Prosecution Host Symposium on Intelligence-Driven Prosecution (June 3, 2016), [hereinafter Press Release, N.Y. Cty. Dist. Attorney’s Office] <https://www.manhattanda.org/manhattan-das-office-john-jay-college-criminal-justice-and-institute-innovation-prose/> [https://perma.cc/YZH6-4NPM] (news release describing initiatives in various district attorney’s offices throughout the country); Meg Reiss, *America’s New Breed of Prosecutors*, CRIME REP. (July 24, 2017), <https://thecrimereport.org/2017/07/24/americas-new-breed-of-prosecutors/> [https://perma.cc/E67H-PN6A].

initiatives are built on the hope that a chief prosecutor can take control of one office and turn around a troubled system.

In this liminal period when reform of prosecution offices—and of prosecution itself—is on the public agenda, the line prosecutors who work in these offices will profoundly shape the success of those reform efforts.<sup>14</sup> The line prosecutor has the capacity to implement or to impede the elected chief prosecutor's vision through her case management choices, courtroom behavior, and relationships with the bench and bar. For that reason, we think it's time to learn more about who these prosecutors are and why they do what they do professionally. What inspires them to choose this career, and what sustains them over the long haul? And is there any connection between their motivations and the likelihood that reformist campaign promises will lead to lasting change?

We are particularly interested in the way *state* prosecutors think about their careers, for two reasons. First, state courts in the United States handle far more criminal cases than federal courts;<sup>15</sup> state prosecutors, as a result, have the ability to change a sizable portion of the criminal justice landscape over the course of their careers. Secondly, state prosecution jobs are not sources of money and prestige in the legal profession.<sup>16</sup> State prosecutors earn considerably less money than federal prosecutors<sup>17</sup> and practice in less glamorous settings.

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14 Some current and former line prosecutors have even begun to voice publicly their concerns regarding the professional behavior of their peers. *See, e.g.,* Dylan Hayre, *How to Reform Criminal Justice, When Prosecutors Hold the Power*, WBUR: COGNOSCENTI (July 19, 2017), <http://www.wbur.org/cognoscenti/2017/07/19/prosecutors-reform-criminal-justice-dylan-hayre> [<https://perma.cc/86RF-XQKR>]; Adam Foss, Address at TED2016: A Prosecutor's Vision for a Better Justice System (Feb. 2016), [https://www.ted.com/talks/adam\\_foss\\_a\\_prosecutor\\_s\\_vision\\_for\\_a\\_better\\_justice\\_system/transcript](https://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system/transcript) [<https://perma.cc/NV84-BM75>].

15 *Compare Federal Judicial Caseload Statistics 2017*, U.S. COURTS, <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2017> [<https://perma.cc/DR8R-N5JT>] (75,861 criminal cases filed in U.S. district courts in 2017), *with Criminal Caseloads, 2016*, COURT STATISTICS PROJECT, <http://www.courtstatistics.org/NCSC-Analysis/Criminal/Criminal-Case-loads-2016.aspx> [<https://perma.cc/VQ8D-QUVU>] (17.8 million new criminal cases filed in state courts in 2016).

16 *See* Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 382, 386 (2001). In Sandefur's study of the 1995 Chicago bar, criminal prosecution received a prestige score of 33 on a scale of 100, while securities litigation received the highest score of 84. *Id.* Criminal defense work was seen as even less prestigious than prosecution, receiving a score of only 16. *Id.* at 387; *see also* JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982) (analyzing the nature, extent, causes, and effects of social differentiation among different types of lawyers).

17 *See Prosecution*, HARV. L. SCH., <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/prosecution/> [<https://perma.cc/XFV4-3CK9>] (listing starting salaries of \$35,000 for entry-level state prosecutors and \$55,700 for federal prosecutors).

Their offices are furnished with old metal filing cabinets and hand-me-down desks. They wear suits with frayed cuffs and drive twelve-year-old cars with worn tires. In short, to borrow language from Carrie Menkel-Meadow in her study of cause lawyers, we want to understand why professionals with “high investments in training and expertise” are willing to sacrifice “some forms of personal gain to attempt to achieve social justice.”<sup>18</sup>

To answer this question, we spoke with 267 state prosecutors in nine different offices in the United States, asking about their motivations for choosing and remaining in prosecution.<sup>19</sup> Prosecutors explained their professional commitment using four basic narratives: (1) *reinforcing one’s core absolutist identity*, (2) *gaining trial skills*, (3) *performing a valuable public service*, and (4) *sustaining a work-life balance*. These narrative threads are distinct, but they are not static or unconnected in a prosecutor’s life: for any particular prosecutor, a variety of motivations might compete for salience on any given day, or over the course of a career. Indeed, most of our prosecutors voiced at least two of these narratives just over the course of the interview. However, only two of the narratives—core identity and public-service commitment—are acceptable for job candidates to express at the time of hiring, even in offices that are known to employ attorneys with civil or criminal defense experience.

The presence of mixed motives is not surprising, given that people seldom act on the basis of a single, pure motive.<sup>20</sup> That said, the

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18 Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING 31, 38 (Austin Sarat & Stuart Scheingold eds., 1998).

19 This Article is the most recent in a series of works using original interview data to explore the inner workings of prosecutorial culture. Earlier installments explored the moderating role of experience among prosecutors, the images prosecutors invoke to describe their professional self-images and views of the defense bar, the difference between urban offices and other locales, and the impact of office social architecture and office size on the professional self-image of prosecutors. See generally Kay L. Levine & Ronald F. Wright, *Prosecution in 3-D*, 102 J. CRIM. L. & CRIMINOLOGY 1119 (2012); Ronald F. Wright & Kay L. Levine, *The Cure for Young Prosecutors’ Syndrome*, 56 ARIZ. L. REV. 1065 (2014) [hereinafter Wright & Levine, *The Cure for Young Prosecutors’ Syndrome*]; Ronald F. Wright, Kay L. Levine & Marc L. Miller, *The Many Faces of Prosecution*, 1 STAN. J. CRIM. L. & POL’Y 27 (2014); Kay L. Levine & Ronald F. Wright, *Images and Allusions in Prosecutors’ Morality Tales*, 5 VA. J. CRIM. L. 38 (2017) [hereinafter Levine & Wright, *Allusions*]; Ronald F. Wright & Kay L. Levine, *Place Matters in Prosecution Research*, 14 OHIO ST. J. CRIM. L. 675 (2017); Kay L. Levine & Ronald F. Wright, *Prosecutor Risk, Maturation, and Wrongful Conviction Practice*, 42 LAW & SOC. INQUIRY 648 (2017) [hereinafter Levine & Wright, *Prosecutor Risk*].

20 See Tigran W. Eldred, *Moral Courage in Indigent Defense*, 51 NEW ENG. L. REV. 97, 105–07 (2017) (describing a multitude of determinants for morally courageous conduct); Menkel-Meadow, *supra* note 18, at 38.

wide range of motivations among working prosecutors complicates the reform plans of newly elected prosecutors. Leaders in these offices need to convince the rank and file—specifically, prosecutors in midlevel management—to soften the core absolutist identity narrative in favor of more expansive accounts of the prosecutor’s role before reforms can take root. A new chief prosecutor must persuade respected attorneys within her office to reinterpret the prosecutor’s role; careful hiring and thoughtful monitoring of line prosecutors are also necessary to improve local prosecution.

Our empirical investigation into state prosecutors’ career motivations proceeds in three parts. In Part I, we describe the existing literature about attorney motivations, particularly public defender motivations, to provide a thought landscape for our assessment of prosecutorial motivations. Examining these perspectives on why defenders do what they do allows us to compare and contrast the perspectives voiced by these opposing sets of criminal justice actors. We also describe the methodology of our study, including our access to the offices that agreed to participate. In Part II, we introduce the four prosecutorial career narratives that we heard during our interviews, illustrating them with quotes from our interviews. At the close of this Part we consider how these narratives intersect and comment on the demographic or experience variables that seem to correlate with each narrative. In Part III, we explain how the game changes when prosecutors speak about the hiring priorities of their offices. On this terrain, two of the motivations—core identity and public service—emerge as the only acceptable narratives that a prospective hire can voice. We conclude by discussing the relevance of our findings for job applicants, office leadership, and the future of progressive prosecution models.

## I. THE LANDSCAPE FOR THIS STUDY

A few popular-press books by former prosecutors describe their own career motivations, or the motivations of their colleagues,<sup>21</sup> and there is no shortage of works by defense attorneys lambasting the apparent motivation of prosecutors they witnessed at work.<sup>22</sup> However,

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21 See, e.g., MARK BAKER, D.A.: PROSECUTORS IN THEIR OWN WORDS 78–79 (1999); DAVID HEILBRONER, *ROUGH JUSTICE: DAYS AND NIGHTS OF A YOUNG DA* (1990); ALICE VACHSS, *SEX CRIMES* (1993). These memoirs tend to focus on interesting or complicated cases handled by the author; they do not investigate the profession in a systematic way.

22 See, e.g., Laurie L. Levenson, *The Problem with Cynical Prosecutor’s Syndrome: Rethinking a Prosecutor’s Role in Post-Conviction Cases*, 20 *BERKELEY J. CRIM. L.* 335 (2015); Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?* 14 *GEO. J. LEGAL ETHICS* 355 (2001).

no previous work has examined the motivations of state prosecutors in a systematic fashion. We therefore begin our study by drawing from the scholarly literature about the motivations of attorneys in analogous settings: those who work in nonglamorous, low-paying jobs. From these works—particularly those that focus on public defenders—we can identify a range of motivations that might resonate with prosecutors. Following that review, we explain the methodology of our study.

### A. *Past Studies of Attorney Motivations*

Scholars have analyzed career motivations of lawyers who work in a variety of unprestigious practice contexts, such as poverty lawyers, lawyers working for nonprofits, and lawyers working for Christian organizations.<sup>23</sup> The career mindsets that these attorneys expressed were neither monolithic nor linear.

For example, while a few of the Chicago Legal Services lawyers whom Jack Katz studied in the 1970s took the job as a stepping stone to more prestigious work, most chose instead to adopt a “political, ‘poverty lawyer,’ or ‘counterculture’ perspective” on their work.<sup>24</sup> These attorneys conducted impact litigation to mitigate the effects of routinization and to remain positive about their ability to effect social change.<sup>25</sup> Replicating Katz’s study thirty-five years later, Marina Zaloznaya and Laura Beth Nielsen found that poverty lawyers in Chicago were principally motivated by a longstanding desire to promote social and economic justice, but they quickly became frustrated by their inability to serve all of those in need.<sup>26</sup> They expressed more skepticism than idealism and admitted that having compassion for clients was harder than they expected it would be.<sup>27</sup>

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<sup>23</sup> See, e.g., Menkel-Meadow, *supra* note 18; Joshua C. Wilson & Amanda Hollis-Brusky, *Lawyers for God and Neighbor: The Emergence of “Law as a Calling” as a Mobilizing Frame for Christian Lawyers*, 39 LAW & SOC. INQUIRY 416 (2014); Marina Zaloznaya & Laura Beth Nielsen, *Mechanisms and Consequences of Professional Marginality: The Case of Poverty Lawyers Revisited*, 36 LAW & SOC. INQUIRY 919 (2011).

<sup>24</sup> Jack Katz, *Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problem in the Legal Services Program*, 12 LAW & SOC’Y REV. 275, 276 (1978).

<sup>25</sup> *Id.* at 284.

<sup>26</sup> Zaloznaya & Nielsen, *supra* note 23; see also John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Layers in a Period of Market Crisis*, 42 LAW & SOC. INQUIRY 855 (2017); John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of “Public Interest Drift” in Law School*, 51 U.C. DAVIS L. REV. 1973 (2018) (finding that law students’ passion for public interest work—however long- or short-lived—is often linked to a desire to help their families and communities more generally).

<sup>27</sup> See Zaloznaya & Nielsen, *supra* note 23, at 938. The Christian lawyers in Wilson and Hollis-Brusky’s study voiced a similarly complex set of motivations, leading the authors to con-



Most relevant to our project, though, are the works discussing the career motivations of criminal defense attorneys in the United States. Public defenders, in particular, are the closest analogs to state prosecutors in the legal profession. Harvard law professor Charles Ogletree wrote one of the earliest works in this tradition, drawing on his own experience as a public defender.<sup>28</sup> He argued that public defenders derive inspiration from a sense of empathy (deep connection to one's clients) and heroism (winning cases through acquittals).<sup>29</sup> For Ogletree, these passionate emotions keep defenders focused on the important work they are doing and provide a buffer against the constant waves of disappointment and frustration that come with representing the disadvantaged in the criminal justice system.<sup>30</sup>

Ten years later, Georgetown law professor and former Philadelphia public defender Abbe Smith took issue with Ogletree's view, asserting that while these twin motivations might explain why people get into the field, they are not sufficient to sustain a career.<sup>31</sup> Deep friendship with each client is impossible to achieve and sometimes counterproductive, she said, and acquittals are too rare and unpredictable to define a defender's success.<sup>32</sup> Moreover, other customary explanations for pursuing a career in criminal defense—such as protecting the Bill of Rights or living up to one's core personality as an irreverent contrarian—are really just side benefits, not the source of one's professional pride. Smith argued instead that a career in the public defender's office can only be sustained when the lawyer has three things: respect for one's clients, an appreciation for the craft of defending, and a sense of outrage.<sup>33</sup>

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clude that the "Christian Lawyer's" identity has "fractur[ed]" into three parts. Wilson & Hollis-Brusky, *supra* note 23, at 422. In the first part, one's professional life should be intrinsically connected to one's religious motivations. In the second, Christian lawyers ought to use their professional skills to "seek broader social justice defined in predominantly liberal ways," while in the third iteration Christian lawyers should be "conservative culture warriors," working to defend conventional Christian morals and values. *Id.* at 422–23.

<sup>28</sup> See Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1239 (1993).

<sup>29</sup> *Id.* at 1242–43.

<sup>30</sup> See *id.* at 1271–73.

<sup>31</sup> See Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1222, 1233–35 (2004).

<sup>32</sup> See *id.* at 1225–29; see also Zaloznaya & Nielsen, *supra* note 23, at 931 (making a similar assertion in the poverty-lawyer context).

<sup>33</sup> Smith, *supra* note 31, at 1243–44, 1251–52, 1259; see also Charles P. Curtis, *The Ethics of Advocacy*, 4 STAN. L. REV. 3, 20 (1951); Eldred, *supra* note 20, at 104–05.

Margareth Etienne took a different approach to the career landscape of defense attorneys, asking whether public defenders ought to be understood as cause lawyers, rather than just representatives of their individual clients. In her interviews with forty defense attorneys, she found a range of motivations that are consistent with cause lawyering more generally: two examples are wanting to represent and assist one's community and living up to one's religious commitment to help the downtrodden.<sup>34</sup> Etienne also wondered whether there was a gender performance aspect to the job, given that public defender work encompassed the sort of "care" work that traditionally falls into feminine hands.<sup>35</sup>

Many of the above themes also appear in the work of Lisa J. McIntyre, who spent years with sixty public defenders in Cook County, Illinois.<sup>36</sup> The Cook County defenders clung firmly to the Bill of Rights ideal that Abbe Smith rejected as too simplistic;<sup>37</sup> they described fighting the system to keep it honest, and caring about their clients' rights more than about the clients themselves.<sup>38</sup> As for winning cases, which Charles Ogletree prioritized as a cornerstone of the job,<sup>39</sup> these defenders derived satisfaction from a smaller goal they called "outwit[ting] defeat"—keeping a jury out for longer than expected, throwing the prosecutor off his game, catching a witness by surprise during cross-examination, or giving a powerful closing argument, even if the jury ultimately came back with a guilty verdict.<sup>40</sup> And lastly, these defenders spoke about having fun with their cases—working with interesting facts or coming up with a novel theory that other people respected as clever or unexpected.<sup>41</sup> In short, McIntyre found that

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<sup>34</sup> See Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 J. CRIM. L. & CRIMINOLOGY 1195, 1216–18 (2005); see also Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175, 178 (1983–1984) (describing the defense attorney as political activist and social worker).

<sup>35</sup> Etienne, *supra* note 34, at 1220–21. But see SEYMOUR WISHMAN, *CONFESSIONS OF A CRIMINAL LAWYER* 38 (1981) (describing criminal defense work as inherently macho, due at least in part to the emotional detachment it requires, and asserting that he rarely came across a female attorney who was able to do the job well).

<sup>36</sup> See generally LISA J. MCINTYRE, *THE PUBLIC DEFENDER* (1987).

<sup>37</sup> See Smith, *supra* note 31 and accompanying text.

<sup>38</sup> See MCINTYRE, *supra* note 36, at 142–45; see also Babcock, *supra* note 34, at 177.

<sup>39</sup> See *supra* text accompanying notes 28–30.

<sup>40</sup> MCINTYRE, *supra* note 36, at 162, 162–63; see also Babcock, *supra* note 34, at 178 (describing the defense attorney as an "[e]gotist" who does the work because "[t]he heated facts of crime provide voyeuristic excitement"). Wishman offers similar anecdotes, telling readers that he delighted in keeping a jury out for much longer than expected as a way to "find some comfort in defeat." See WISHMAN, *supra* note 35, at 50.

<sup>41</sup> See, e.g., MCINTYRE, *supra* note 36, at 157.

the Cook County defenders looked for opportunities to use their wits and intellectual horsepower to satisfy their egos and to check the system.

In sum, the empirically based accounts of public defender motivations stress the variety of reasons why attorneys choose this work and remain in the job. The most prominent motives relate to the defense of principles and devotion to the lawyer's craft; supporting individual clients and changing particular outcomes appear secondary.

### *B. Methodology*

Armed with a collection of potential motivations derived from this literature, we set out to examine the career motivations of state prosecutors. Toward that end, we interviewed prosecutors in nine offices in the American Southeast and Southwest between 2010 and 2013. Some of the offices, which we call County Attorney Offices, handle only misdemeanors. Some handle only felonies (designated here as State's Attorney Offices), and still others handle a mixture of felonies and misdemeanors (labeled here as District Attorney Offices).

We selected offices for this research aiming for a variety of staff sizes, docket types, and political climates. All of the offices, save one, are located in urban and suburban areas; we did not choose rural offices because they have very small staffs, making it difficult to maintain the confidentiality of interviewees. We list the nine pseudonymous offices here, from smallest to largest, and note how many interviews we conducted in each location.<sup>42</sup>

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<sup>42</sup> Given the locations of these offices in the Southeast and Southwest, we drew inspiration for names from the Country Music Hall of Fame. See *Inductees List*, COUNTRY MUSIC HALL OF FAME & MUSEUM, <https://countrymusichalloffame.org/index.php/inductees> [<https://perma.cc/38MF-A48P>]. We do not claim that this collection of offices is a random sample of prosecutor offices across the United States; this is qualitative work that does not depend on random sampling. Our main goal was to speak with prosecutors in the sorts of offices that are normally overlooked in prosecution research, which almost exclusively focuses on offices in large, urban settings. See Levine & Wright, *Place Matters in Prosecution Research*, *supra* note 19. The number of attorneys on staff is approximate, to preserve the anonymity of the jurisdiction. For more information on our methodology and its necessary limitations, see Wright & Levine, *Young Prosecutors' Syndrome*, *supra* note 19, at 1076–80; and Levine & Wright, *Prosecutor Risk*, *supra* note 19, at 654–57.

TABLE 1: PARTICIPATING PROSECUTOR OFFICES

Office	Attorneys on Staff	Number of Interviews
Atkins District Attorney	15	15
Brooks County Attorney	20	14
Cline County Attorney	25	23
Dean State’s Attorney	35	19
Everly State’s Attorney	40	28
Flatt State’s Attorney	55	3
Gill District Attorney	80	76
Harris District Attorney	85	39
Parton District Attorney	300	50

Once the office leadership agreed to come on board, we contacted individual prosecutors for interviews. In most locations, we invited every attorney on staff to interview, and we were able to interview a majority, or even large majority, of the prosecutors in each office. In a few locations, our limited time in the city dictated that we select a subset of attorneys to invite for interviews; in those offices, we chose a sample that preserved the overall office blend in terms of race, gender, type of caseload, and years of experience.<sup>43</sup> We told individual prosecutors that the decision to participate was theirs alone and that their supervisors would never receive any information about identifiable individual participants.

In total, we interviewed 267 attorneys in these 9 offices,<sup>44</sup> following a semistructured format that produced interviews lasting between sixty and ninety minutes in most cases. With the permission of the interviewees, all interviews were audio-recorded, professionally transcribed, and coded using NVivo software.<sup>45</sup> We divided the transcripts into discrete subject-matter areas to identify common themes in the responses and recurring patterns among subgroups, then performed

<sup>43</sup> Only one office did not generate a large or representative sample of prosecutors who interviewed with us: Flatt County. The participation rate there was low because after the first few days of interviews, prosecutors in the office complained to the elected chief prosecutor that the authors of this study had published works unsympathetic to prosecutors; no additional prosecutors consented to an interview after that point.

<sup>44</sup> With the exception of the Parton District Attorney’s office, we conducted all interviews personally.

<sup>45</sup> We coded the transcripts ourselves and regularly performed inter-coder reliability checks.

more focused coding consistent with a grounded-theory approach.<sup>46</sup> This methodology is modeled on other in-depth, qualitative studies of lawyers that abound in socio-legal research.<sup>47</sup>

Among the 267 interviewees, almost half (128, 48%) were females and one-sixth (43, 16%) were persons of color. To maintain confidentiality, we deleted information (such as hometown or college) that would identify an interviewee as the source of a comment. In our use of quotations, we do not identify participants in this Article by race or ethnicity, although we do signify gender where relevant.<sup>48</sup>

Our interviews covered many aspects of the prosecutors' professional development, but four of our interview questions have special relevance here. First, we asked the interviewees why they originally took a job in the prosecutor's office. Second, we asked whether and why they wanted to stay. Third, we asked interviewees if they could see themselves joining the defense bar in the future. Fourth, we inquired about the office's hiring practices, particularly regarding job candidates with defense experience.

Our methodology—painting a portrait of prosecutorial motivations based on prosecutors' comments during interviews—is based on our belief that self-reflections reveal dimensions of prosecution that other research techniques might miss. To be sure, the interview data have serious limits because the speakers might not have been fully

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<sup>46</sup> Grounded theory begins with a process of open coding to identify general patterns of behavior, followed by focused coding, and then refinement of the initial concepts to produce a set of coded data categories that help explain the viewpoints expressed by our interviewees. See Ursula Castellano, *The Politics of Benchcraft: The Role of Judges in Mental Health Courts*, 42 LAW & SOC. INQUIRY 398, 405 (2017). For additional examples of grounded-theory qualitative work, see Herminia Ibarra, *Provisional Selves: Experimenting with Image and Identity in Professional Adaption*, 44 ADMIN. SCI. Q. 764, 771 (1999); L. Lingard et al., *A Certain Art of Uncertainty: Case Presentation and the Development of Professional Identity*, 56 SOC. SCI. & MED. 603, 606 (2003).

<sup>47</sup> See, e.g., Douglas NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM L. REV. 649, 655 (2012); Austin Sarat, *Between (the Presence of) Violence and (the Possibility of) Justice: Lawyering Against Capital Punishment*, in CAUSE LAWYERING, *supra* note 18, at 317, 317–46; Zaloznaya & Nielsen, *supra* note 23.

<sup>48</sup> Sometimes we switch the gender of the speaker when relating a quote (in situations that do not bear directly on gender, in our judgment) to better protect the speaker's identity. Prior scholars have argued that attempts to build a demographic profile of those who commit themselves to public service are generally unproductive. See, e.g., Menkel-Meadow, *supra* note 18, at 44. For that reason, we do not use our data to build demographic profiles of which sorts of prosecutors articulate which narratives. In Part II, however, we do comment on the connections we observed between certain demographic characteristics, prior experiences, or job history and a prosecutor's stated motivation for choosing or remaining in this career. This is in line with Menkel-Meadow's observation that "environments, situations, and circumstances are crucial and interact strongly with whatever individual motivations may be present." *Id.* at 38.

candid with us or with themselves; the temptation to present an edited view of oneself in an interview is strong, we realize. We did not have the opportunity to cross-check interviewees' employment files or to audit their case files. This is also not a longitudinal study; we captured each prosecutor's mindset at one particular point in time, and we acknowledge that future interviews with the same subjects might well reveal changes in the mindset over time.<sup>49</sup>

That said, we did notice some encouraging signs of candor during the interviews. Our respondents shared with us a remarkable number of private facts and opinions in these confidential interviews. For example, we heard about our interviewees' pregnancies, health issues, financial struggles, and psychiatric breakdowns. Two prosecutors revealed sexual harassment by sitting judges, while several others criticized the performance of their current bosses or identified racist or chauvinist behavior by prior bosses. A few others conspiratorially shared with us "dirty little secrets" of prosecution strategy about which scholars have long speculated,<sup>50</sup> like the effort to place offenders on probation today simply to increase the chances of incarceration tomorrow. The fact that our interviewees shared with us these private facts, unflattering opinions, and secret strategies suggests they felt comfortable enough with us to respond candidly to the questions that concern us in this Article. Overall, we try to maintain a posture of alert and critical interest, aware of the limits of our qualitative data while drawing inferences cautiously.

## II. CAREER MOTIVATION NARRATIVES IN THE PROSECUTORIAL PROFESSION

In describing why they originally chose prosecution and whether they now want to stay in prosecution, our interviewees traced four noticeable narratives about their professional motivations: first, prosecutors have a core absolutist personality that gravitates towards (and is reinforced in) law enforcement settings; second, prosecutors want to gain trial skills; third, prosecutors have a strong public-service commitment; and fourth, because of the job conditions of prosecution,

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<sup>49</sup> See David L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 313, 322–23 (2014) (describing the use of longitudinal data to measure lawyers' job satisfaction over time).

<sup>50</sup> See, e.g., Issa Kohler-Hausmann, *Misdemeanor Justice: Control Without Conviction*, 119 AM. J. SOC. 351, 366–74 (2013).

prosecutors enjoy significant work-life balance advantages over other types of attorneys.<sup>51</sup>

As we describe below, these narratives oftentimes mirror or complement the career motivations documented in studies of public defenders and other social-justice lawyers. We begin with a description of the two themes strongly supported by the prosecutorial memoir literature,<sup>52</sup> followed by a description of the two more complex narratives that emerged from our data. In the concluding Section, we discuss the intersections among the four themes and the impact of life and professional experiences that individuals bring with them to the job of prosecution.

### A. *Expressing a Core Absolutist Identity*

In the first narrative, prosecution expresses and validates a person's intrinsic commitment to rules, structure, and hardened categories of right and wrong.<sup>53</sup> From this perspective, prosecutors have “black and white” personalities;<sup>54</sup> they are people who deeply value order and accountability, and who react to violations of rules with “moral indignation” or “righteous indignation.”<sup>55</sup> For a prosecutor who is so motivated, a career in prosecution might be the only one he

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<sup>51</sup> These groupings represent four narratives, or stories that prosecutors tell about themselves, rather than four idealized types of individual prosecutors. We recognize that other personal stories might be found in the data and that these four narratives might be parsed more finely into a larger number of distinctions to answer different research questions, but these four tropes provided the most consistent answers to the main question we pose in this Article.

<sup>52</sup> See *supra* note 21.

<sup>53</sup> We coded for the “core absolutist identity narrative” when the interviewee did any of the following: (1) said prosecution is “who I am,” “in my heart” or “where I belong”; (2) described himself or herself as a “rule follower” or “black and white person” or as having “a strong sense of right and wrong”; (3) emphasized the importance of “holding people accountable” or of having “people take responsibility” for “consequences”; (4) expressed a strong bond with law enforcement; (5) equated illegal conduct with immoral conduct; (6) described his or her “moral compass” or sense of “moral indignation”; or (7) insisted that laws be enforced as they are written.

<sup>54</sup> See, e.g., Interviews with Prosecutors (2010–2013) (on file with authors) [hereinafter Prosecutor Interviews] (Gill 185; Gill 302; Everly 725; Harris 1049). Hereinafter, all references to interview transcripts refer to the pseudonymous office and a unique identifying number for the prosecuting attorney. To preserve anonymity of the attorneys and the offices as required under our confidentiality agreements, we do not indicate the date of the interview or the identity of the interviewer. Editors had access to the transcripts and confirmed the accuracy of the quotations and references.

<sup>55</sup> *Id.* (Everly 790; Parton 1380). The theme of order resonated particularly strongly in the Harris office. For example, Harris 1127 said he not only values order, he “crave[s] order.” His colleague, Harris 1125, said prosecutors are not merely rule enforcers, they “defin[e] the social mores” and “social rules” for others to follow.

ever seriously considers, or it might be the place he lands after a brief stint as a dissatisfied and unsettled defense or civil attorney.<sup>56</sup>

The close fit between the prosecutor's job and a person's "rulesy" personality<sup>57</sup> or strong internal "moral compass"<sup>58</sup> often appears early, in childhood behavior or in consistent life experiences, we were told. Harris 1310 said, "if you would have looked at who I was as a twelve-year-old, it was like a twelve-year-old prosecutor, honestly."<sup>59</sup> Everly 725 described herself like this: "Frankly, I was probably always quick to judge, even when I was a teenager, you know?" One prosecutor attributed her affinity for law and order to her German upbringing.<sup>60</sup> Another said she was raised as a Christian to believe God made both marriage and law; by implication, prosecutors are doing God's work by enforcing the law.<sup>61</sup>

For some, it's more than just the result of early socialization; it's an identity assigned from birth. "It's not something I want to *be*, it's something that I *am*. And so it's fairly ingrained in my identity. . . . It's like asking a zebra why it needs to be in the zebra exhibit at the zoo," declared Harris 1079. Dean 1200 elaborated a bit further, saying that prosecution goes onto a short list of traits that make him who he is: "There are three things that define me in my life: fatherhood, rowing, and prosecution." Others invoked corporeal metaphors to explain this commitment, asserting that prosecution is "in [my] blood," "at my core," or "where my heart lies,"<sup>62</sup> According to this vision, prosecution is more of a "calling" than a job.<sup>63</sup>

There is a strong irony in the core identity narrative concerning the comparison between prosecutors and defense attorneys. On the

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<sup>56</sup> See, e.g., *id.* (Flatt 510) (commenting that after a few years as a defense attorney, "I recognized that in my heart of hearts I was probably a prosecutor the whole time").

<sup>57</sup> *Id.* (Harris 1125).

<sup>58</sup> *Id.* (Cline 625).

<sup>59</sup> Two interviewees identified themselves as prosecutors at the age of 12: Dean 1250 and Harris 1310.

<sup>60</sup> See *id.* (Cline 575).

<sup>61</sup> *Id.* (Cline 555). Harris 1069 expressed a similar view, identifying himself as an Evangelical Christian who was committed to law and order. Parton 1540 called her job in prosecution "God's work."

<sup>62</sup> *Id.* (Gill 107; Gill 224; Harris 1125). Prosecutors are sometimes portrayed pejoratively as believing that they are "God's designated hitter in the World Series of Life." BAKER, *supra* note 21, at 133; see also HEILBRONER, *supra* note 21, at 75 (describing the "growing sense of self-righteousness" in his cohort at the Manhattan DA's office, "as if being an ADA were the most noble of all legal existences").

<sup>63</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Gill 320; Everly 735; Harris 1057; Dean 1215; Parton 1335). To this extent the prosecution core identity narrative mirrors the Christian lawyer narrative discussed by Wilson & Hollis-Brusky, *supra* note 23.



one hand, prosecutors see themselves as fundamentally different from criminal defense and other types of attorneys due to their near worship of rules, order, and accountability. But in describing their professional commitment as a form of personal morality, prosecutors' self-descriptive comments closely echo those of public defenders and other social-justice lawyers, who oftentimes explain *their* career motivation as a religious commitment or a moral imperative.<sup>64</sup> In other words, many professionals on both sides of the aisle believe themselves to be in service to some greater good, and would treat a switch to the other side as a rejection of fundamental values, religiously defined or otherwise.

The parallel ends, though, when we consider the consequences of living up to one's moral commitment. For the prosecutor, a morality based on absolutism leads to an embrace of the criminal justice system as a reliable, trustworthy source (or reflection) of state power.<sup>65</sup> According to this vision, society functions properly only when everyone follows the rules adopted by duly-elected government officials—"the rules are . . . what glue us all together," stressed Everly 790. Gill 290 went even further, alleging that the very basis of our free society rests on obedience to laws. In light of the implicit connection between order, freedom, and enforcement of law, the prosecutor's job is to hold transgressors accountable, to discourage questioning of the rules, and to deflect the tricks and charades of the defense attorney whose goal is to help a defendant evade responsibility.<sup>66</sup> Working within this narrative, prosecutors experience assaults on the adversary system as assaults on their personal integrity or even, as Cline 555 expressed, on their religious obligations.<sup>67</sup> Defense attorneys, by contrast, value these assaults as part of their commitment to the Bill of Rights<sup>68</sup> and

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<sup>64</sup> See, e.g., Babcock, *supra* note 34; Etienne, *supra* note 34. For example, one of Etienne's subjects described criminal defense work as "'God's work' because it involved . . . coming to the aid of society's outcasts," Etienne, *supra* note 34, at 1217, a theme echoed by Babcock, *supra* note 34, at 178. Another reported that his religious commitment to forgiveness inspired his choice of career. Etienne, *supra* note 34, at 1216–17.

<sup>65</sup> See H. RICHARD UVILLER, *VIRTUAL JUSTICE: THE FLAWED PROSECUTION OF CRIME IN AMERICA* 157 (1996).

<sup>66</sup> Cf. VACHSS, *supra* note 21, at 80–81 (describing a prosecutor's experience dodging a defense attorney's tricks).

<sup>67</sup> See Smith, *supra* note 31; Eldred, *supra* note 20. Like defense attorneys, prosecutors can be motivated by a sense of outrage. However, prosecutors are outraged by rule violation and efforts to escape punishment, rather than by the daily injustices caused by law enforcement and the courts over which defense attorneys lose sleep.

<sup>68</sup> See MCINTYRE, *supra* note 36.

see prosecutors' unwavering fidelity to the rules as arrogant self-righteousness.<sup>69</sup>

Along with the prosecutor's enthusiastic embrace of the formal criminal law comes personal loyalty to police officers, fellow prosecutors, or other "team" members.<sup>70</sup> Mutual trust and respect between prosecutors and police officers who work on the same team<sup>71</sup> is indispensable:

I have to believe that they're telling me the truth . . . [b]ecause I'm relying on what they're telling me to craft a proposed indictment. . . . But they also have to trust me, to know that I'm going to handle the case with as much care as they have and do everything with it that I can to make sure that their work is not . . . for naught,

insisted Harris 1105. In the most colorful description of a prosecutor's affinity for cops that we heard, Dean 1265 described himself as a "holster sniffer." In this narrative, leaving the office (particularly to become a defense attorney) would feel like a betrayal of the police.<sup>72</sup> This loyalty also extends to other prosecutors: "I don't know that I would want to stand up against somebody that I was once on the same side as and spout a bunch of stuff that I didn't necessarily believe," declared Harris 1126.

In the most extreme version of the absolutist narrative, prosecutors and lawyers pursue entirely different professions, where prosecution is noble and law is, well, not. For example, Gill 116 insisted, "I am not a lawyer, I am a prosecutor. . . . My wife wouldn't have married a lawyer." By distinguishing themselves in this fashion, prosecutors can insulate themselves from the negative qualities or public critique of attorneys:

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<sup>69</sup> See BAKER, *supra* note 21, at 133.

<sup>70</sup> Prosecutors with family members in law enforcement or in the military found this loyalty theme to be especially important, *see, e.g.*, Prosecutor Interviews, *supra* note 54 (Everly 765; Parton 1440); however, some of our interviewees revealed that they had lost faith in the police after several recent experiences with untrustworthy officers, *see, e.g., id.* (Parton 1440).

<sup>71</sup> See HEILBRONER, *supra* note 21, at 27 (describing self as member of the "law enforcement team" during his time in the prosecutor's office); *see also* Prosecutor Interviews, *supra* note 54 (Brooks 950 (expressing pride in being a member of law enforcement); Parton 1330 (declaring that prosecutors are "a continuation of law enforcement on the streets"))).

<sup>72</sup> See Prosecutor Interviews, *supra* note 54 (Parton 1515 (emphasizing his respect for police); Everly 735 (saying "I don't think I can cross-examine a cop or be rough on a cop that I probably trained")); Parton 1320 (saying that if he were to become a defense attorney, his fellow prosecutors might wait to see how he behaved but "[t]he cops, on the other hand, you'll never get it back with the cops"))).

I think of lawyers as being the people who put warnings on toasters, “don’t use it in the bath tub.” . . . [A]n awful lot of our profession for a good reason has fallen into disrepute . . . , so when people ask me, I’m a prosecutor, not a lawyer.<sup>73</sup>

Dean 1265 summarized it like this: “I think in general attorneys are pretentious, snobbish, holier-than-thou people.”

Although some literature penned by former defense attorneys suggests that these law-and-order types dominate the field of prosecution,<sup>74</sup> only about one-third of our interviewees (90/267) invoked the core absolutist identity narrative to describe themselves. Prosecutors who espouse this narrative thus appear to have an outsized influence among the defense bar (and perhaps in academic writing more generally), even if they do not dominate the profession numerically.

### B. *Gaining Trial Skills*

The second motivation we heard in the interviews focused on the litigation context of the prosecutor’s job: people join the profession to gain courtroom skills and trial experience.<sup>75</sup> Given that most of our prosecutors conducted only a handful of trials each year, the emphasis on trial skills was remarkable. Nonetheless, prosecutors think of themselves as trial lawyers because they are in court regularly for adversarial proceedings, and gaining courtroom experience was a common motivation voiced by our interviewees who had joined their offices straight from law school.<sup>76</sup>

The trial-attorney narrative stresses the skills involved in prosecution and treats the work as an interesting challenge rather than as a

<sup>73</sup> *Id.* (Harris 1071); *see also id.* (Everly 605).

<sup>74</sup> *See, e.g.,* Smith, *supra* note 22; Levenson, *supra* note 22.

<sup>75</sup> Working as a prosecutor to gain trial skills and courtroom experience is commonly thought to motivate white-collar prosecutors in U.S. Attorney’s offices, as they tend to stay for a few years and then join high-level defense practices. *See* Charles D. Weisselberg & Su Li, *Big Law’s Sixth Amendment: The Rise of Corporate White-Collar Practices in Large U.S. Law Firms*, 53 ARIZ. L. REV. 1221, 1229 (2011); David Zaring, *Against Being Against the Revolving Door*, 2013 U. ILL. L. REV. 507, 516, 521. Vachss and Heilbroner reported a similar pattern in the New York state prosecutors’ offices (Queens and Manhattan) in which they worked during the 1980s. *See* HEILBRONER, *supra* note 21, at 35; VACHSS, *supra* note 21, at 28.

<sup>76</sup> We coded for the “trial-attorney narrative” when an interviewee did any of the following: (1) emphasized that he or she likes to be in court, wishes he or she was in court more, or is not in court as much as expected; (2) expressed a desire for skills development or for getting better over time; (3) self-identified as a “trial lawyer”; (4) spoke about the theatrics or performance aspect of the job; (5) self-described as having a “competitive personality,” liking to “battle it out,” “liking to argue,” or “being active”; or (6) made comments about the job being “exciting” or “fun.”

personality litmus test: “I think good lawyers can go either way,” said Gill 320. From this perspective, the chief advantage of prosecution is the opportunity to be in court almost daily and to develop one’s litigation muscles, building a skill set that might have different uses over a lifetime. In this view, the prosecutor’s office is a “stepping stone”<sup>77</sup> or “political launching pad”<sup>78</sup> rather than a lifetime job.

For instance, Harris 1091 described the central attraction of prosecution as “the fact that I’m in court every day;” Gill 275 said his primary goal was to become “the best trial lawyer I can and try to learn from each trial.”<sup>79</sup> Prosecutors commented that trials are immensely fun, chaotic, electric, and theatrical experiences that allow attorneys to exercise their competitive nature in the courtroom.<sup>80</sup> The combative and intense nature of trial work led Gill 272 to describe prosecutors as “the fighter pilots of the legal profession” and Harris 1113 to praise her colleagues as “cerebral warriors.”

By emphasizing the skills involved with litigating cases, rather than the accountability dimension of prosecuting rule-breakers, this narrative echoes two of the themes from the defense side of the aisle: developing an appreciation for the craft of lawyering<sup>81</sup> and looking for small goals to achieve in each case, rather than focusing on the case outcome.<sup>82</sup> As in the defense setting, when prosecutors focus on honing their craft, they look for opportunities to acquire or to improve their skills—to “learn and grow,” said Harris 1089. They do not become lost in the rightness of their position and can build a buffer against the emotions that come with losing a case.<sup>83</sup> They also keep wins in perspective, as easy wins—particularly against hapless opponents—do not help make a person a better trial lawyer. Finally, they appreciate the chance to work with experienced, talented opponents and judges because they can learn from those attorneys no matter the case outcome.<sup>84</sup> In this sense, prosecutors who are motivated by skills

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<sup>77</sup> Prosecutor Interviews, *supra* note 54 (Everly 820).

<sup>78</sup> *Id.* (Flatt 500).

<sup>79</sup> *See also id.* (Atkins 1053).

<sup>80</sup> *See, e.g., id.* (Gill 116; Gill 164; Gill 290; Cline 555; Brooks 905; Dean 1200; Harris 1089; Harris 1245).

<sup>81</sup> *See* Smith, *supra* note 31, at 1251–52; Curtis, *supra* note 33, at 22.

<sup>82</sup> *See* MCINTYRE, *supra* note 36, at 162 (calling “outwit[ting] defeat” a measure of success).

<sup>83</sup> *See* Prosecutor Interviews, *supra* note 54 (Everly 795; Brooks 905).

<sup>84</sup> *See, e.g., id.* (Everly 815 (extolling the virtues of litigating against “fantastic” defense attorneys); Harris 1105 (“I like to go up against a very qualified defense attorney and really battle wits with what it means in the law.”)).

development share professional values with other litigators in both the public and private sphere.

What is more, because the trial attorney narrative emphasizes expanding one's skill set, rather than reinforcing a commitment to rules and accountability, it calls for a somewhat detached view of professional relationships among the "law enforcement team." The skills-oriented prosecutor treats others as professionals, and he expects everyone else to accord him the same respect: "I get along with the police officers, but I don't have . . . an intertwined personal relationship with them," Atkins 1059 declared. Everly 745 emphasized that prosecutors ought to do their own math, rather than accepting police reports word-for-word, because healthy skepticism is essential for the prosecutor to do his job correctly.<sup>85</sup> His colleague, Everly 800, described it this way: keeping a professional distance means not being "married" to the police, but rather "married to the criminal law."

In view of this need for detachment, the prosecutor-as-trial-attorney narrative highlights the dispassionate, logical nature of an attorney's work, eschewing blind faith in the rules or in the police: "[A]s attorneys, you know, we compartmentalize and we think logically, or at least we try to, and not with passion," declared Gill 146.<sup>86</sup> Voicing a similar view, Everly 820 explained that she did not consider herself to be a "rah-rah prosecutor" because "I don't feel like I'm just a prosecutor in my blood. I feel like I'm doing a good job . . . where I've been placed, and I think that I see all the sides of it." About one-third of the interviewees who expressed this motivation told us that when they were first looking for jobs out of law school, they interviewed with both defender offices and prosecutor offices; they were willing to go anywhere that offered them courtroom experience and did not have strong allegiances to either side.<sup>87</sup>

This sense of connectedness to the larger legal profession does not just exist at the start of one's career. Under the most highly developed version of this narrative, prosecutors are, and ought to think of themselves as, attorneys who share a skill set with other lawyers despite their specialized function: "I am a lawyer who just happens to be

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<sup>85</sup> See *id.* (Everly 745).

<sup>86</sup> See also *id.* (Dean 1235 (speaking about his ability to "disconnect" from passion, in favor of being logical)).

<sup>87</sup> Among the 117 attorneys who discussed the trial experience theme, 39 mentioned an openness to defense work early in their careers, while 40 expressed a lack of such openness and 38 did not mention the topic.

prosecuting,” explained Dean 1235.<sup>88</sup> Atkins 1017 went even further, suggesting that prosecutor and defense attorney roles “are essentially the same job.” Atkins 1019 echoed this point about commonalities and affiliation, saying that where he first practiced, “we all were doing the same thing, taking turns doing the same thing.”<sup>89</sup> Flatt 510 explained it even more eloquently: “[T]hey are still your colleague[s]; *we are all attorneys*. I think people get away from that and . . . they kind of think of themselves as a prosecutor and that’s it. No, you are an attorney first.”

Overall, trial experience was the second most common among the four narratives that we heard: 117 of our 267 prosecutors mentioned it. It was slightly more popular among male prosecutors than female prosecutors (49% of men mentioned it, compared to 40% of women) and among Black prosecutors compared to prosecutors of other races (64% versus 42%).<sup>90</sup>

### C. *Performing a Valuable Public Service*

Alongside the core absolutist identity narrative and the trial-skills narrative, we heard many stories about the prosecutor’s desire to perform public service for the local community.<sup>91</sup> This narrative emerged when prosecutors spoke in “idealist”<sup>92</sup> terms about the *social effects* of their work, rather than its fit with their affinity for rules or its ability to turn them into good trial lawyers. According to this narrative, prosecution is a form of public service, and prosecutors do the job—despite the long hours and inadequate pay—because they are deeply committed public servants who enjoy doing something good for society.

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<sup>88</sup> Dean 1235 also remarked that he would “rather be seen as a good lawyer than as a good prosecutor.”

<sup>89</sup> For the perspective that prosecutors and defenders are associates or members of one team, see Prosecutor Interviews, *supra* note 54 (Parton 1420; Cline 535; Cline 550; Dean 1280).

<sup>90</sup> The difference between male and female interviewees was not statistically significant ( $p=.17$ ), but the difference between black prosecutors and those of other races was significant. The chi-square statistic is 4.26 and the  $p$ -value is .04.

<sup>91</sup> For the public-service narrative, we identified the following phrases or concepts as important: helping or protecting victims (including specific stories about specific memorable victims); helping or protecting the community; “making a difference,” “having an impact,” “doing something important,” or “making the community a better place”; and identifying prosecutors as “good guys” or as “wearing the white hat.” The additional component of public service we describe, which involves doing good for defendants too, is associated with phrases like “doing the right thing” (in charging or plea offers that reflect a sense of balance), showing mercy to defendants or helping defendants get treatment instead of punishment, and refusing to file or dismissing bad cases.

<sup>92</sup> *Id.* (Gill 119).

In this theme, the image of the “community” features prominently: protecting the community, making the community better, and shaping the community are the principal tasks of the prosecutor. Everly 815 put it like this: prosecution “affords a tremendous opportunity to make a positive difference in the lives of individuals, I think, in the lives of a community.” Harris 1129 proudly said, “I am the one trying to keep the community safe.”<sup>93</sup> Sometimes prosecution draws on a family tradition of public service, or appears to resemble military service.<sup>94</sup> In short, the prosecutor sees himself as “champion of the people of the community,”<sup>95</sup> conjuring an image of the community that inspires some combination of pride, nostalgia, and affection.

The emphasis here is on promoting crime control and community safety rather than on enforcing criminal laws as a matter of “rulesy” character or faith in the code; it’s the difference between serving country and serving God.<sup>96</sup> An explicit affection for the victim population is often manifest in these remarks. For instance, Dean 1250, among many others, stressed the prosecutor’s role in protecting the helpless: “You are standing up for people that can’t stand for themselves,”<sup>97</sup> she asserted. Many other prosecutors told us stories about specific victims they had helped and showed us photos and thank-you cards they received from grateful victims.<sup>98</sup> More generally, Harris 1065 exclaimed, “I represent the good tax-paying, law-abiding citizens of the county, and I’m protecting them from the bad guys.” We frequently heard prosecutors describe themselves as “wearing the white hat” when describing the public-service component of their work;<sup>99</sup> a

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<sup>93</sup> This public-service theme also appeared among the prosecutors who contributed to Mark Baker’s book. See BAKER, *supra* note 21, at 43 (with one prosecutor explaining “I don’t know if I decided I was going to be the knight on the white horse coming into town and clearing up the streets, but I felt that I was doing good . . . and trying to make the community a better place”).

<sup>94</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Everly 710; Everly 735; Gill 290; Dean 1240; Harris 1103).

<sup>95</sup> UVILLER, *supra* note 65, at 158.

<sup>96</sup> See BAKER, *supra* note 21, at 52.

<sup>97</sup> See also VACHSS, *supra* note 21 (author began her career as a public defender and later became a prosecutor, writing that both jobs fulfilled her desire to make a difference).

<sup>98</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Everly 740; Brooks 930; Parton 1320; Parton 1485).

<sup>99</sup> See, e.g., *id.* (Cline 610; Dean 1205; Everly 710; Gill 296; Harris 1065; Parton 1490). For more on the significance of the white hat imagery, see Levine & Wright, *Allusions*, *supra* note 19, at 43–47. But note that some prosecutors have a more modest view of what they accomplish day to day. Cline 565, for example, admitted, “I am not saving the world. I’m doing important work but a lot of it is tedious.” See also BAKER, *supra* note 21, at 46 (“Many prosecutors feel less like white knights than assembly-line workers.”); HEILBRONER, *supra* note 21, at 36 (comment-

few even compared themselves to superheroes, with or without the cape.<sup>100</sup> This image calls to mind the “defense attorney as hero” portrait in Charles Ogletree’s work about public defenders, albeit with a different professional cast in the hero’s role.<sup>101</sup>

Yet we noticed another dimension to the prosecutor public-service narrative, one that goes beyond the surface desire to protect the public from menacing defendants. According to this more sophisticated version of the narrative, prosecutors recognize defendants as *members of the community*, not just as *threats to the community*. Once this dual status is acknowledged, the prosecutor must look out for the defendant’s interests too. Cline 570 expressed the point like this: “[P]rotecting the public is one thing, but a lot of these people are the public too, so if I can give somebody a break and I think that might help them, then maybe I should do that.”

A prosecutor who regards each defendant as a member of the community has plenty of opportunities to serve the defendant population. For example, she can weed out weak cases and propose sentences that trade incarceration for community-based alternatives such as restitution or community service. In fact, the sophisticated public-service prosecutor *takes pride* in being the person who dispenses mercy instead of punishment. “I love prosecution because a lot of times you can accomplish what you need to accomplish without having to have a conviction,” declared Cline 525. For example, many of our interviewees stressed how rewarding it was to get a defendant into a treatment program instead of jail, to help improve a life instead of ruining a life.<sup>102</sup>

A second dimension of looking out for the defendants involves fidelity to the Bill of Rights, particularly the provisions governing po-

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ing on the “assembly-line litigation, the battle of the forms” that comprised his existence as a prosecutor).

100 See, e.g., Prosecutor Interviews, *supra* note 54 (Gill 155 (discussing “being a hero”); Harris 1079 (“I had sort of that romantic popular idea of what a prosecutor was and what a prosecutor did, which [was] ‘I’m going to put on my cape, and I’m going to go join the crusade and fight for right.’”)).

101 See Ogletree, *supra* note 28, at 1275–77. Beyond the simplistic “hero” portrait, the prosecutor public-service narrative strikingly mirrors the defense attorney narrative about the goal of civil libertarianism: each set of attorneys claims to perform a vital service for the public, to protect the public from the “bad guys”—although defenders identify the bad guys as overzealous state actors (like corrupt police and bloodthirsty prosecutors), while prosecutors identify the bad guys as criminals. See Levine & Wright, *Allusions*, *supra* note 19, at 59.

102 See Prosecutor Interviews, *supra* note 54 (Cline 540; Gill 143; Gill 281; Everly 725; Harris 1057; Parton 1530).



lice behavior and fair trials.<sup>103</sup> For example, Harris 1073 told us she used her declination decisions to hold the police accountable for their mistakes; Atkins 1007 likewise focused on the prosecutor's responsibility to "do something" about cops who lie, including "ditching" their cases and talking with their supervisors. Countless others stressed the importance of being fair to defendants and of using dismissals to curb the excessive filing habits of their colleagues or to limit the reach of mandatory-minimum schemes.<sup>104</sup>

Related to this sense of balance in prosecutorial decisionmaking, the more nuanced public-service-commitment narrative includes more complex views of prosecution and defense counsel than we found in the core absolutist identity narrative; from this perspective, neither side is the exclusive source of integrity or help for disadvantaged populations. This narrative sometimes acknowledges the public-interest aspect of defense work too.<sup>105</sup> That being said, prosecutors tended to believe that even a good defense attorney's ability to effect early and lasting change was limited due to the client-centered and reactive nature of their work.<sup>106</sup> Because prosecutors can intervene early to junk a case that ought not to be litigated and can make treatment recommendations to the judiciary that will garner respect rather than suspicion, they believe they can "do more as a prosecutor to help [a] defendant than the best defense attorney on Earth."<sup>107</sup>

Overall, the public-service theme was the most frequent narrative we heard: almost two-thirds of our interviewees—174 of them—mentioned such ideas. Further, about one-third of the prosecutors we interviewed—86 of them—talked specifically about the rewards of doing the job to help defendants and their families, and this motivation cut across experience lines: it was just as prevalent among prosecutors with defense experience as among those without, and there were no significant differences among veteran and junior prosecutors. The overall frequency of this narrative contrasts sharply with the com-

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<sup>103</sup> See BAKER, *supra* note 21, at 74 (quoting a prosecutor as saying, "I believe in the Bill of Rights. They didn't put that shit in the Constitution for filler. They meant it. . . . All of those rights can be honored, and I can still convict you if you're a bad guy. And that's the way it ought to be. . . . I don't have any problem with that."); Prosecutor Interviews, *supra* note 54 (Dean 1235 (sharing an anecdote about coaching soccer where he tells his players, "if I'm not good enough to beat you by playing by the rules, then I don't deserve to"))).

<sup>104</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Everly 740; Brooks 935; Gill 137; Cline 625; Harris 1053; Atkins 1017; Harris 1113).

<sup>105</sup> See *id.* (Parton 1475; Parton 1505).

<sup>106</sup> See *id.* (Gill 266; Everly 720).

<sup>107</sup> *Id.* (Atkins 1009); see also *id.* (Everly 720 (describing the prosecutor's ability to "fix" things as the reason he is able to do more for defendants than a defense attorney can)).

mon academic assertion that prosecutors rarely display compassion for defendants.<sup>108</sup>

How might we account for the difference between our findings and the conventional academic view that prosecutors are oblivious to the harms that defendants suffer? Two possibilities strike us. First, academics and prosecutors likely disagree about how often defendants should get this sort of assistance: prosecutors believe they exercise mercy in appropriate cases, but academics—especially those who used to be defense attorneys—think the prosecutorial definition of what counts as an “appropriate case” is too stingy. From our vantage point we cannot say whose definition is the correct one, or even if there is one right definition to apply across all crimes. But we do think that conversation could educate insiders and outsiders alike about the constraints of practice and the virtues of seeing the system from a critical distance. Secondly, some of our interviewees may have promoted this image to make themselves look more progressive than they actually are because they assumed we—as academics—valued that approach to prosecution. In other words, their stated desire to help defendants may have resulted from impression management, rather than from a fully formed commitment.

But even if these tendencies are true, we should not reject this more comprehensive public-service narrative as meaningless prosecution propaganda. Recent changes in the political environment make this narrative salient, even if we are uncertain about the true extent of its current popularity among line prosecutors. In some urban jurisdictions, voters are demanding more progressive approaches to prosecution. A recent district attorney election in Brooklyn, for example, featured a slate of candidates, each of whom tried to position himself or herself as the most liberal in the field.<sup>109</sup> Philadelphia recently elected a former civil rights attorney with ties to the Black Lives Matter movement as its District Attorney.<sup>110</sup> In Manhattan, Chicago, and Nueces County, Texas, chief prosecutors are stepping back from pros-

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<sup>108</sup> See, e.g., MCINTYRE, *supra* note 36, at 146–48 (describing hostile relations between prosecutors and public defenders and noting that public defenders believe that “prosecutors will often do anything to win”); DANIEL S. MEDWED, *PROSECUTION COMPLEX* (2012); Smith, *supra* note 22, at 372–74.

<sup>109</sup> See Feuer, *supra* note 12.

<sup>110</sup> See Chris Brennan & Julia Terruso, *Krasner Declared Winner of Democratic Primary for DA in Philly*, PHILA. INQ. (May 17, 2017, 7:36 AM), <http://www.philly.com/philly/news/politics/city/Krasner-holds-early-lead-in-Democratic-primary-for-DA-in-Philly.html> [https://perma.cc/9SFU-H6A5]; *About the District Attorney*, City of Phila. Office of the Dist. Attorney, <http://www.phila.gov/districtattorney/aboutus/Pages/DistrictAttorney.aspx> [https://perma.cc/V2R2-KB9D].

ecuting low-level crimes, such as marijuana possession and turnstile jumping, “to ease the fear of arrest and prosecution faced disproportionately by low-income individuals and people of color.”<sup>111</sup> In other offices, new leaders have campaigned on and then established conviction-integrity units, signaling their commitment to truth, as opposed to finality, in both minor and serious felony cases.<sup>112</sup> In these sorts of offices, the willingness of even some line prosecutors to depict themselves as caring about defendants may provide fertile ground for these new approaches to take root and flourish.

#### *D. Sustaining a Work-Life Balance*

The final motivation that arose in our interviews centers on tangible aspects of the prosecutor’s day-to-day job, rather than on the prosecutor’s deeper commitments or service objectives.<sup>113</sup> According to this narrative, the regularity and camaraderie of prosecution allows a lawyer to maintain a rare balance between work and family commitments and to avoid unpleasant routines and personal encounters on the job that characterize other types of law practice. Other specialties, particularly private defense practice, require different habits and time-tables that are less appealing.

In this most pragmatic view of the job, a stable salary, predictable workday, and generous benefits package are major, readily identifiable advantages of prosecution work.<sup>114</sup> At the extreme, Atkins 1051 called prosecution work “paid retirement.” The appeal of government work seems particularly strong for new parents, who feel increased stress at home.<sup>115</sup> Brooks 935, who had recently had a child, summed it up like this: “It kind of works for me and my lifestyle and my family

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<sup>111</sup> See Reiss, *supra* note 13; Yeagain, *supra* note 3, at 102–07.

<sup>112</sup> Boehm, *supra* note 12; see also Sklansky, *supra* note 12.

<sup>113</sup> For this narrative we looked for comments about schedule (such as limited or flexible hours, the ability to have more time with family and children, or the predictability and stability of the workday and workplace), benefits, independence from supervisors and from billable hours, camaraderie of the office, variety of cases in the caseload, and the relative interest of criminal law compared to other forms of law.

<sup>114</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Cline 625; Brooks 940; Everly 755; Harris 1117).

<sup>115</sup> Many of these comments about favorable work hours came from female prosecutors with children. See *id.* (Brooks 965; Parton 1510 (stating that prosecution was a line of work that allowed her to “have babies if [she wanted] to have babies”). That is not to say that women didn’t express other career motivations, just that the work-life balance concern seemed to resonate particularly strongly with women who also had child care responsibilities. See generally ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND* (1997) (describing the pressures felt by women who are working parents).

that I, right now . . . , work for the government.”<sup>116</sup> A prosecutor in Cline, whose family members had major long-term health issues, agreed; she told us that she returned to government work largely because of the health benefits and limited working hours.<sup>117</sup>

Freedom from tracking billable hours is another big plus. Harris 1117 declared:

[What’s] attractive about . . . working in the prosecutor’s office [is that] . . . I don’t have to say, “I talked to somebody on the phone for fifteen minutes; okay, now I went to the bathroom, I can’t bill that.” . . . I get to work around 7:15, I have lunch, I am out of here at four o’clock. I don’t work on the weekends; I don’t worry about it at home.”<sup>118</sup>

Momentum and comfort matter too: Brooks 960 said she stays because “I could do this [job] with my eyes closed.”<sup>119</sup> Lastly, the camaraderie of the office environment and the intrigue of criminal law—in comparison to other types of law—offer an endless variety of interesting people, legal questions, factual issues, and evidentiary challenges to keep a person engaged for years.<sup>120</sup> This panoply of benefits appears in comments from public defenders, as well. Both McIntyre’s and Etienne’s research subjects, for example, talked about camaraderie, compensation, and improved hours (compared to law firms) as motivations for their work in the public defender’s office.<sup>121</sup>

There is a downside to this package of workplace conditions, though. Prosecutors regularly complain that the financial rewards of

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<sup>116</sup> See also Prosecutor Interviews, *supra* note 54 (Brooks 945 (mentioning that her new baby kept her “really busy” at home so she was “good” with government work for the time being)).

<sup>117</sup> See *id.* (Cline 525; Brooks 940; Cline 570). Some of the prosecutors in Mark Baker’s book likewise commented on the attraction of a stable, fairly calm workday: “You go to any state attorney’s office, and it’s really nine to five unless you’re in trial, and then you’re just working a little harder. Trials aren’t that frequent. The assistants sit around and talk about things.” BAKER, *supra* note 21, at 50.

<sup>118</sup> See also Prosecutor Interviews, *supra* note 54 (Brooks 950 (exclaiming that “billable hours are something that will kill people”)). Not keeping track of billable hours does not equate to a low stress environment, though. See Zaloznaya & Nielsen, *supra* note 23, at 931–32 (noting that nonprofit work can be demanding because of “the emotional investment and meager institutional support”).

<sup>119</sup> But see Prosecutor Interviews, *supra* note 54 (Brooks 935 (complaining that she needs a new challenge because she is bored at work)).

<sup>120</sup> See *id.* (Parton 1475; Cline 615; Gill 104; Everly 750 (explaining that “dealing with money . . . is [less interesting than] dealing with dead bodies”)).

<sup>121</sup> See MCINTYRE, *supra* note 36, at 114–16; Etienne, *supra* note 34, at 1222–23; see also Babcock, *supra* note 34, at 178 (discussing this theme as part of her “Egotist” reason for being a defense attorney).

prosecution are shockingly low, given the importance of the work they do.<sup>122</sup> It is thus not surprising that prosecutors sometimes get tempted by the significantly higher income that one can earn by representing private-paying clients in criminal defense or civil litigation fields. When prosecutors leave the office, we were told, “it’s usually to go and make more money. They are young lawyers; they are in their 30s and they have babies coming or they want their kids to go to private school or sometimes they just get tired of the system.”<sup>123</sup> Higher income may be especially important for younger attorneys, who need to pay off school loans that older prosecutors might never have incurred.<sup>124</sup> These concerns are not unique to prosecution, of course; past studies indicate a strong inverse correlation between financial pressure and employee retention rate for public-interest work generally.<sup>125</sup>

As with other public-interest lawyers,<sup>126</sup> the pursuit of a higher income does not necessarily signal a repudiation of the prosecutor’s ideals. It is more likely a reflection of hard choices imposed by economic and family realities:

The reason has never been “I don’t believe in what we are doing” or “I don’t think what we are doing is right.” It’s oftentimes “I’m a single mother. I need to be able to make my own hours, create my own workload because I have children who are at an age where they need more supervision.” . . . You know, there’ve been people who’ve told me, “I had to leave; I had to go somewhere else where I can make more money because I can’t continue to make ends meet. The cost of living has gone up too much. You know, when I started working here, gas was \$1.89 a gallon [and] now it’s \$3.70. And I’ve got three kids that I need to put through college and an ex-husband that won’t pay child support.”<sup>127</sup>

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122 Some prosecutors engaged in an internal dialogue, ruminating on the core absolutist identity and public-service narratives before turning to the personal costs necessary to earn the higher income of a private defense attorney. While Everly 800 admitted, “I’ll go where the most money is, to tell you the truth,” his colleague Everly 760 voiced a contrary opinion: “Money comes and goes . . . , can’t let that be the driver of your life.”

123 *Id.* (Everly 735).

124 *See, e.g., id.* (Harris 1129; Gill 302; Dean 1235; Everly 730; Everly 790; Everly 805). But the impact of student loans goes both ways. *See, e.g., id.* (Harris 1091 (describing the loan forgiveness program from law school as one reason for staying in prosecution longer)).

125 *See* CHI. BAR FOUND. & ILL. COAL. FOR EQUAL JUSTICE, INVESTING IN JUSTICE: A FRAMEWORK FOR EFFECTIVE RECRUITMENT AND RETENTION OF ILLINOIS LEGAL AID ATTORNEYS 6–8 (2006).

126 *See* Zaloznaya & Nielsen, *supra* note 23, at 934, 939.

127 Prosecutor Interviews, *supra* note 54 (Dean 1270).

Money woe notwithstanding, this narrative emphasizes that prosecution provides a secure platform from which an attorney can practice law instead of chasing clients. Parton 1520 said she would be miserable as a private attorney, likening the role to a “car salesman” who had to “advertise” herself to get clients. Brooks 955 said she wanted to stay in prosecution because “I don’t want to be a bill collector. . . . I want to practice law; I want[] to try cases. I don’t want to track people down for them to, you know, give me a few hundred dollars.” Everly 805, who spent a few years in private practice before returning to prosecution, emphasized the nonstop quality of the business and family sacrifices involved:

You have got clients, clients’ family bugging you round the clock, you know, twenty-four hours a day, seven days a week, and you have to answer the phone, you have to answer it, because there is money on the other end.

. . . .

. . . So you can be at Disney World with your family, but you’re checking your messages, and you’re thinking, “I’m losing money by being here” because there are no paid vacation days in private practice.

Prosecution also offers an attorney a real sense of independence as a decisionmaker, free from the hassle of working with clients.<sup>128</sup> Unlike other types of lawyers, prosecutors have no need to defer to and sympathize with clients to get the job done; they can make their own decisions about how to handle a case.<sup>129</sup> Thus they do not have to manage a client’s unrealistic expectations about how a case ought to resolve: “[Clients] expect the defense attorneys to believe them or work magic and you know, whatever. . . . I wouldn’t be able to put up

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128 Prosecutors relish a second sort of independence as well: independence from supervisors. Compared to associates in a law firm, prosecutors described themselves as fairly autonomous decisionmakers on their own cases. *See, e.g., id.* (Gill 242; Gill 308; Cline 535; Cline 585; Cline 630; Everly 705; Harris 1055; Harris 1128; Parton 1510). Everly 745, for example, explains, “Rather than having to decide, ‘Okay, well, I’m at this firm and the senior partner wants it organized this way, which is completely goofed up as far as I’m concerned, but okay, you know.’ I can do it my way here.”

Others were not so sanguine. Atkins 1021 reminded us that prosecutors in her office were at-will employees and not civil servants, stating you have autonomy but “be really careful about where you’re going to exercise” it. Brooks 960 was even more direct: prosecution is a “crazy balancing act,” she said, where the prosecutor is frequently torn between “what you believe,” “what you can live with,” “your boss and his political agenda,” and “the judge and his agenda as well.”

129 *See, e.g., id.* (Gill 287; Everly 730; Atkins 1019; Harris 1059; Parton 1440).

with that,” remarked Everly 745. Gill 242 used even more colorful language to describe this predicament:

Say the client is an obnoxious eighteen-year-old dropout who is a bully and is personally offensive, and the mother is a shrew and a harridan, and they insist that I do this or that, or they start telling me what to do. . . . I wouldn’t handle that well, and I would want to fire the client.

The ability to use one’s judgment, free from client demands or pressures, leads some prosecutors to regard themselves as the only lawyers who genuinely get to practice law.<sup>130</sup>

The prosecutor’s perception of autonomy is not just about being free from micromanagement; it is also about being able to avoid unsavory elements and uncomfortable situations. Some defendants are “creeps”<sup>131</sup> and others are “whiny,”<sup>132</sup> we were told. Worse still, some defendants abuse their attorneys in ways that prosecutors find intolerable. While victims can sometimes be difficult, prosecutors admit,<sup>133</sup> at least they do not act like “thug[s]” and “call me names,” insisted Everly 765. Parton 1500’s reaction to the defendant population was olfactory: she commented extensively on the smell of the jail and the defendants who are detained there, using phrases like “marinating,” “very ripe,” and “getting hit” with that smell. This prosecutor also insisted that she would not want to take orders from defendants on personal things: “Call my old lady”; “See about my car keys”; “Do this, do that,” was her impression of how clients speak to their attorneys.<sup>134</sup> This general antipathy to defendants is the converse of the nuanced public-service narrative that stresses the humanity of the defendant population and valorizes the prosecutor’s power to help, rather than to demean or punish.

In sum, the work-life balance narrative embraces somewhat pedestrian, unidealistic (but certainly not irrational) reasons to choose and to remain in a prosecutor’s office. The unappealing vision of life

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<sup>130</sup> See, e.g., *id.* (Cline 585 (“You get to practice law in a very pure sense.”); Everly 620 (“This is how you become a lawyer.”); Everly 790 (stating that prosecution is “one of the few jobs as an attorney you get to decide how clean or dirty you feel at the end of the day”)). But Gill 272 expressed a contrary view about whether prosecution is a genuine type of law practice, stating that “[other types of lawyers] are able to look at the facts of this case and nothing else . . . and maybe in some way they are true lawyers and I am not.” See also *id.* (Everly 750 (“I don’t want to go be a real lawyer.”)).

<sup>131</sup> *Id.* (Atkins 1013).

<sup>132</sup> *Id.* (Everly 785).

<sup>133</sup> See Wright & Levine, *The Cure for Young Prosecutors’ Syndrome*, *supra* note 19, at 1104–05 (commenting that prosecutors struggle to deal with untrustworthy and hostile victims).

<sup>134</sup> Prosecutor Interviews, *supra* note 54 (Parton 1500).

on the outside—hustling for clients, chasing money, yielding autonomy to clients in case-handling matters, and running the business of a law firm instead of simply practicing law—convinces some prosecutors to stay put even if they are not developing trial skills, do not regard prosecution as a reflection of their core identity, and are not passionate about public service.

Overall, 106 prosecutors invoked this theme, making it the third most popular narrative. No meaningful race or gender differences appeared among the attorneys who mentioned this theme in their interviews.

### *E. Relationships Among the Narratives*

As we have noted, the four narratives do not amount to four distinct personality types among prosecutors. A single interviewee sometimes invoked several different narratives to explain the attraction of prosecution. Nevertheless, the prosecutors who mentioned each of these narratives were not randomly distributed among the nine offices we visited.

Starting with basic demographic patterns shown in Table 2, we found that the race of the prosecutor was correlated with motivation in two instances: black prosecutors were significantly more likely than the group as a whole to use the trial-experience theme, and less likely to use the core-identity theme, although their overall numbers were too small to achieve statistical significance on the core identity finding.<sup>135</sup> Nonetheless, this pattern may reflect black prosecutors' ambivalence about enforcing the rules against minority defendants in a system plagued by systemic racism,<sup>136</sup> or a stronger commitment among lawyers of color to serve their communities in multiple ways.<sup>137</sup>

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<sup>135</sup> Among the twenty-five black prosecutors we interviewed, five mentioned the identity theme, eleven talked about the public-service-for-defendants theme, and sixteen discussed trial experience. The gap between black prosecutors and others for the trial experience theme was statistically significant: the chi-square statistic is 4.26 and the p-value is .04. The gap between black prosecutors and others for the identity theme was not quite statistically significant: the chi-square statistic is 2.36 and the p-value is .12. For the gap on the public-service-for-defendants theme, the chi-square statistic is 1.603 and the p-value is .21.

<sup>136</sup> Cf. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017) (describing the regret felt by a black former prosecutor about his role in perpetuating the disadvantages that the criminal justice system imposes on black men); Kenneth B. Nunn, *The "Darden Dilemma": Should African Americans Prosecute Crimes?*, 68 *FORDHAM L. REV.* 1473 (2000). But see JAMES FOREMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017) (describing the complicity and enthusiasm of many black leaders for criminal justice policies that contributed to mass incarceration trends).

<sup>137</sup> See, e.g., Etienne, *supra* note 34, at 1218–20.



It is also possible that law-student associations or bar organizations for persons of color provide significant mentoring for young lawyers from a wide range of specialties, an approach that explicitly or implicitly encourages these young attorneys to remain flexible in their career choices.

Gender, however, does not appear to be strongly correlated with any of the narratives. Men did express a slightly stronger preference for the trial-skills narrative than women—perhaps connected to their greater comfort expressing competitiveness—but otherwise, there were no meaningful gender differences in the use of the major narratives.

TABLE 2: ATTORNEY CHARACTERISTICS AND INVOCATION OF CAREER MOTIVATION THEMES

		Identity	Trial Experience	Public Service, General	Public Service for Defendants	Job Conditions	Total
All Pros.		89 (34%)	117 (44%)	173 (66%)	86 (33%)	106 (40%)	263
Race	Black	5 (20%)	16 (64%)*	17 (68%)	11 (44%)	10 (40%)	25
	White	77 (35%)	96 (44%)	145 (66%)	71 (32%)	92 (42%)	220
	Other	7 (39%)	5 (28%)	11 (61%)	4 (22%)	4 (22%)	18
Gender	Female	45 (35%)	51 (40%)	80 (63%)	38 (30%)	49 (39%)	127
	Male	44 (32%)	66 (49%)	93 (68%)	48 (35%)	57 (42%)	136
Prior Def. Exp.	No	52 (33%)	71 (45%)	112 (70%)*	49 (31%)	64 (40%)	159
	Yes	37 (35%)	45 (42%)	61 (58%)*	37 (35%)	42 (40%)	106
Years in Pros.	0–3	19 (28%)	41 (61%)*	41 (61%)	22 (33%)	34 (51%)*	67
	4–7	28 (33%)	34 (40%)	60 (71%)	28 (33%)	33 (39%)	85
	8–10	11 (32%)	11 (32%)	22 (65%)	12 (35%)	12 (35%)	34
	11 +	31 (40%)	31 (40%)	50 (65%)	24 (31%)	27 (35%)	77

\* Significant difference at  $p \leq 0.10$

One interesting finding in our data is the relative *unimportance* of experience. As Table 2 shows, newcomers and veterans alike talk about all four of the major narratives at roughly the same rate. For instance, prosecutors at all different levels of experience (zero to three

years, four to seven years, eight to ten years, and more than ten years) invoked the theme of defendant-oriented public service at roughly the same rate, within a tight range of thirty-one to thirty-five percent of the interviews.<sup>138</sup> For the broader, more conventional version of the public-interest theme, none of the experience cohorts diverged more than five percent from the combined pool rate of sixty-six percent. Prosecutors with more than ten years of experience invoked the core identity narrative in forty percent of their interviews (compared to thirty-four percent overall), while prosecutors with less than four years mentioned this theme in twenty-eight percent of their interviews, but this difference was not statistically significant.<sup>139</sup> Although one might expect that we would not find any veteran prosecutors who mentioned the trial-skills narrative—because they all would have left the office to pursue other opportunities—in fact we found dozens of veterans who still mentioned skills development. However, junior attorneys (zero to three years of prosecution experience) expressed interest in trial experience at a higher rate than their more experienced colleagues (sixty-one percent of that group, compared to forty-four percent overall) and the same held true for job conditions (fifty-one percent of the junior cohort, compared to forty percent overall).<sup>140</sup>

Moreover, having a history of prior defense work usually did not correlate with the reasons that prosecutors gave for entering or staying in the profession: most of the narratives appear in virtually the same measure among prosecutors who once worked as defense attorneys (either in paid positions or in unpaid positions during or after law school) and among those with no defense experience at all. Although this consistency might be expected among attorneys who stressed job conditions or trial skills, it was surprising with regard to the core identity narrative. Some of the most ardent supporters of this narrative—

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<sup>138</sup> Elite law school status did have some effect. Among the sixteen prosecutors who graduated from elite law schools (which we define as law schools ranked in the top twenty in the 2016 U.S. News ranking), nine expressed this defendant-oriented public-service theme. This was a higher rate than among graduates of other law schools. The chi-square statistic for this difference is 4.4; the p-value is .036. This is similar to prior survey findings about the inculcation of the value of pro bono work among elite law school graduates. See Ronit Dinovitzer & Bryant G. Garth, *Pro Bono as an Elite Strategy in Early Lawyer Careers*, in *PRIVATE LAWYERS AND THE PUBLIC INTEREST* 115, 126 (Robert Granfield & Lynn Mather eds., 2009) (surveying lawyers admitted to the bar in 2000 and finding that “elite law graduates rate pro bono opportunities more highly than do graduates of lower-tier law schools”).

<sup>139</sup> The chi-square statistic is 1.09 and the p-value is .30.

<sup>140</sup> These differences are statistically significant. For the trial-experience theme, the chi-square statistic is 10.16 and the p-value is .001; for the job-conditions theme, the chi-square statistic is 4.07 and the p-value is .04.

those who stressed that prosecution is where they *belonged*, where they felt most at home—were former defense attorneys. For many of these lawyers, having lived on the other side for a period of years convinced them that their true selves needed something different. And many of these lawyers insisted that, having found their true home in the profession, they would never leave. Prosecutors with prior defense experience were slightly less likely than the overall pool (fifty-eight percent versus seventy percent) to discuss the general public-service theme, perhaps suggesting that defense work had somewhat soured them on the defendant population or had already given them public-service opportunities, even if the move to prosecution offered something more or different.<sup>141</sup>

The overlap among the themes is also surprisingly even. A prosecutor who mentions public service for defendants is equally likely to mention core identity or job conditions as a second narrative, suggesting—oddly—that public service for defendants and commitment to accountability are not mutually exclusive approaches to the job. It might be the case that some of our interviewees mentally divide the defendant population into two distinct groups: those who deserve assistance and those who deserve the hammer. According to that view, a prosecutor could relish both her ability to help and her ability to insist on rule enforcement as beneficial features of the job, depending on which sort of defendant was in a given case. Prosecutors who mention the trial-experience theme are a bit more likely to mention the job-conditions theme as a second narrative, indicating a strong sense of pragmatism in this portion of the population. Similarly, there is some weak correlation between the core identity theme and the standard public-service narrative, suggesting that some prosecutors' moral commitment is to both rules and community service.<sup>142</sup> But once again, the striking fact is that the use of one narrative does not strongly predict the use of any other narrative.

On the other hand, the attorneys in some offices did raise particular themes more often than attorneys elsewhere. As Table 3 shows, the prosecutors in the Gill County District Attorney's office were the least likely to discuss core identity as their motivation: only nineteen percent of them raised this point, compared to thirty-four percent of the attorneys overall. The attorneys in Gill were also less inclined than

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<sup>141</sup> This difference is statically significant: the chi-square statistic is 4.66 and the p-value is .03.

<sup>142</sup> The correlation between trial experience and job conditions was weak, at 0.15; the correlation for core identity and public service was 0.14.

prosecutors in other offices to discuss job conditions. The prosecutors of the Harris County District Attorney's office were the most likely to invoke the core identity theme, while the Dean State Attorney's prosecutors had the strongest showing for both the standard public-service narrative and the trial-skills narrative.<sup>143</sup> Prosecutors in the Parton State Attorney's office were relatively uninterested in defendant-oriented public service compared to the prosecutors in the other interview sites.

TABLE 3: PROSECUTOR OFFICES AND INVOCATION OF CAREER MOTIVATION THEMES

	<b>Identity</b>	<b>Trial Experience</b>	<b>Public Service, General</b>	<b>Public Service for Defendants</b>	<b>Job Conditions</b>	<b>Total</b>
Atkins	5 (33%)	5 (33%)	9 (60%)	6 (40%)	6 (40%)	15
Brooks	3 (21%)	8 (57%)	8 (57%)	4 (29%)	7 (50%)	14
Cline	6 (26%)	8 (35%)	17 (74%)	14 (61%)*	14 (61%)*	23
Dean	8 (42%)	15 (79%)*	17 (89%)*	3 (16%)	8 (42%)	19
Everly	10 (36%)	15 (54%)	21 (75%)	9 (32%)	13 (46%)	28
Flatt	1 (33%)	2 (67%)	2 (67%)	2 (67%)	0 (0%)	3
Gill	14 (19%)*	28 (38%)	36 (49%)*	27 (36%)	20 (27%)*	74
Harris	23 (59%)*	19 (49%)	31 (79%)*	13 (33%)	18 (46%)	39
Parton	19 (40%)	17 (35%)	32 (67%)	8 (17%)*	20 (42%)	48
All Offices	89 (34%)	117 (44%)	173 (66%)	86 (33%)	106 (40%)	263

\* Significant difference at  $p \leq 0.10$

Because we only captured one moment in each prosecutor's career, we cannot determine whether this office-level variation is primarily due to different hiring strategies or to certain offices' cultivation and reinforcement of certain narratives in their workforces. Scholars have long observed that prosecution offices have certain cultures with respect to case-handling practices;<sup>144</sup> we believe this sense of culture is likely to extend to job motivations as well. For example, leadership often has been recognized as an important factor in setting the tone for filing and plea bargain approaches in a prosecution office.<sup>145</sup> We suspect that leadership has an influence here too. For example, the

<sup>143</sup> These differences are statistically significant, using the chi-square test.

<sup>144</sup> See generally MEDWED, *supra* note 108; PAMELA J. UTZ, *SETTLING THE FACTS: DISCRETION AND NEGOTIATION IN CRIMINAL COURT* (1978) (comparing practices of different prosecutors' offices).

<sup>145</sup> See ROY B. FLEMMING ET AL., *THE CRAFT OF JUSTICE* 49–76 (1992).

Dean Office prosecutors mentioned trial experience more often than other prosecutors, perhaps reflecting the leadership's emphasis on sharpening trial tactics and conducting a lot of trials.

Aside from leadership, some of these patterns also likely reflect the scope of the work involved. For instance, the interviewees in the Cline and Brooks County Attorney's offices mentioned job conditions more frequently than prosecutors in the pool overall. Those two offices deal only with misdemeanors,<sup>146</sup> suggesting that attorneys there appreciate the routine and nonstressful nature of the work in low-stakes cases—it is hard to imagine a felony prosecutor in any of our offices declaring that she could do the work with her “eyes closed,” as Brooks 960 did. It thus appears that office qualities, beyond just the individual preferences of each line prosecutor, can account for some differences in the career motivations that prosecutors discuss.

### III. THE HIRING SCENE

Up until this point, we have discussed all four career narratives on an equal footing. While more of our respondents invoked the public service and trial experience narratives than the other two, core identity and job conditions arose frequently enough during our interviews to deserve full attention.

In this Part, we discuss how the context shifts when prosecutors decide on hiring priorities for the office. In that setting, core identity and commitment to public service are the only acceptable motivations for a job candidate to voice (in most circumstances); trial skills, job conditions, and the defendant-oriented public-service narrative utterly disappear from the list of acceptable reasons that prospects can reveal. In other words, when it comes to recruitment, prosecutors look for one dimension—or two at most—in applicants for a complex, multidimensional job. For elected prosecutors and mid-level supervisors, the hiring process thus leaves them in the dark about how to identify and use the talents of their incoming attorneys effectively, and how to blend more textured motivations into an effective progressive vision for the office.

#### A. *Two Acceptable Narratives for Job Candidates*

A common hiring priority among prosecutors' offices is to choose candidates who are likely to stay for more than two or three years.<sup>147</sup>

<sup>146</sup> See Prosecutor Interviews, *supra* note 54 (Brooks 960; Cline 535).

<sup>147</sup> During the period of our interviews, none of our offices embraced the hiring pattern described by Vachss and Heilbroner in New York, that in which attorneys were explicitly hired

The office invests in the training of new attorneys but only benefits from that training a few years down the road. Thus, interviewers look for candidates who express enthusiasm to learn the work in the short run and the steadfastness to remain committed even after a few years pass. Which motivations signal to interviewers that the candidate combines these two qualities?

The core-identity theme, based on zeal for rules and accountability, indicates that the candidate inherently disfavors all options other than prosecution because any other legal job would cause personal disorientation. The standard public-service theme is second best as a signaling device because it rests on a sense of duty to community safety and to victims (which makes donning the white hat a part of one's permanent wardrobe, not just a temporary costume). Conversely, the trial-experience narrative suggests short-term enthusiasm but poses a high risk of early departure, and the job-conditions story raises questions about whether an applicant is sincerely dedicated to the core substance of prosecution work. In these latter narratives, the prosecution job appears more like a means to an end. Veteran prosecutors worry that job applicants who speak in these terms might resist the lessons they want to offer about the profession or might be quick to jump ship if a better opportunity comes along. In either case, candidates with these profiles do not clearly demonstrate a willingness to invest in the prosecution office for the long term.<sup>148</sup>

The nuanced, defendant-oriented public-service theme presents the most problems for a job candidate looking to impress a future prosecution employer. Being openly concerned about law enforcement errors or the plight of defendants suggests that a candidate is not really committed to the work of prosecution. Worse still, these attitudes foreshadow a likely future career move to the defense or even potential sabotage of office files. For instance, Parton 1365 said that when prosecutors, even as juniors, regularly point out good reasons to

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for three-year terms and very few people stayed longer than that. See HEILBRONER, *supra* note 21, at 283; VACHSS, *supra* note 21, at 17. We remain curious about which narratives are acceptable topics when a candidate is applying to that sort of office.

<sup>148</sup> None of our interviewees in the felony-only offices or unitary offices said it would be advisable for a job candidate to talk about trial experience as the principal reason for seeking employment, let alone to have a better work-life balance than other legal jobs might offer. This view was succinctly expressed by Everly 745, who said his office would not be interested in hiring somebody "who's going to come in and say, 'Yeah, I think I want to be here for three years and then I'm going to go cash that experience in.'" These pragmatic reasons might be more acceptable in a misdemeanor-only office, as indicated by Cline 530 (describing his own hiring experience, where he admitted he was seeking experience and believed his boss appreciated his candor).

deviate from office policies on plea deals, “[t]hey all sound like a defense attorney.” Her colleague Parton 1445 agreed, saying these sorts of attorneys invent “excuses that you would expect the defense attorney to come up with . . . [and] tend to be more critical of the victims in a case.” For this reason, many of our interviewees felt that these sorts of candidates ought not to be hired in the first place. As Parton 1335 phrased it, “prosecutors are reluctant to welcome a Trojan horse into the tent and give up all our secrets about how to prosecute cases and then have somebody leave and go back to the dark side.”<sup>149</sup>

### *B. Encouraging Hiring for Complex Office Goals*

As the above quotations show, there is a rational basis for using the core-identity theme and the standard version of the public-service theme as proxies for long-term commitment. Each of the themes offers some real but limited insight into the fit between the candidate and the legitimate training and retention goals of a prosecutor’s office. The hiring process operates with imperfect clues, where subtle distinctions are easy to miss. Looking through the narrow window of a candidate interview, one can understand why hiring attorneys might prefer clear signals.

Nonetheless, this shortcut misses some important truths. When a job candidate stays within the confines of the acceptable script, the interviewer does not learn much about who the person will be as a decisionmaker. If, instead, the hiring committee were to explore with each candidate the more complex motives and tasks of the modern prosecutor, both the office and the candidate would benefit. First, interviewers would be better positioned to gauge each candidate’s judgment and adaptability for the job he or she is actually seeking. Second, the candidate would see if the office understands the role of the prosecutor to involve more than the popular media portrait often allows, and could distinguish between offices that are content with the status quo and offices that embrace a progressive vision.<sup>150</sup> Eventually, a more layered, honest hiring process would lead to an office staff that possessed a wider range of experiences and opinions and was more prepared for the day-to-day realities of the work.

<sup>149</sup> See also Prosecutor Interviews, *supra* note 54 (Flatt 500 (expressing concern that people will take the job “to gain the experience so that they can take advantage of that experience to use it against the DA’s office later on rather than to benefit their client. . . . [T]hey want to learn the details of the people and whatever else and go make some money off it, and I guess that’s, they couldn’t be more American than that”)).

<sup>150</sup> See David Alan Sklansky, *The Nature and Function of Prosecutorial Power*, 106 J. CRIM. L. & CRIMINOLOGY 473, 76–77 (2016) (discussing the prosecutor’s multiple conflicting roles).

For example, in the offices we studied, the search for new prosecutors does not *automatically* exclude those with defense experience. With very few exceptions, our interviewees said that defense experience was not clearly disqualifying, and most said they considered it a tactical asset for a prosecutor to have criminal-litigation experience from the defense side.<sup>151</sup> Interviewees even referred to valued senior colleagues, or to the elected chief prosecutor, as examples of fine prosecutors who had spent time working on the defense side.<sup>152</sup> That being said, they admitted that a candidate with defense experience has an especially narrow range of options to describe his motives for changing positions. Specifically, interviewers want to hear the former defense attorney invoke the core-identity story: past defense attorneys must indicate that prosecution is the true right side for them—the best fit for their personality and character—after a failed experiment on the other side. Everly 825 put it like this: “I want somebody that comes in and says, ‘I just decided that prosecution is what I want to be. I want to be a career prosecutor.’” One of his colleagues said he was “looking for a certain philosophy and a certain mindset” among the people the office hires to ensure longevity and loyalty.<sup>153</sup> In the words of Dean 1205, “We want lifers.”

Dean 1235 expressed the background principle as follows:

If that [applicant’s] experience is “I worked in that particular area, I had a tremendous amount of trial experience but it wasn’t what I was looking for and I wanted, I think that I’m better suited or my personality is better suited for the prosecution side,” then I think that that carries with it some weight.

But we learned that the prosecution-is-a-better-natural-fit-for-me story is an easier sell for defense attorneys who have not been in the business too long. As Atkins 1007 explains, “I think that most of your twenty-year, twenty-five-year defense attorneys, especially in the public defense world, have a very strong commitment to defending the rights that are granted to everyone under the Constitution,” thereby

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<sup>151</sup> See, e.g., Prosecutor Interviews, *supra* note 54 (Everly 710 (“[I]t’s important that you understand the other side of the coin. You understand . . . the fact that you’re dealing with a human being.”); Everly 720 (“[H]aving somebody who’s done some defense work enables you to have somebody who’s better able to evaluate cases sometimes . . . .”); Everly 775 (“[They] understand what it takes to get a case resolved from a defense attorney’s perspective . . . .”); Cline 605 (“[Y]ou probably already have some trial skills, of course you have knowledge of the law; you know your way around a courtroom.”)).

<sup>152</sup> See, e.g., *id.* (Everly 730).

<sup>153</sup> *Id.* (Everly 750).



implying that such attorneys would not be particularly amenable to prosecuting people.<sup>154</sup> Moreover, an aging defense attorney might appear to be simply seeking an easier path to retirement. From Atkins 1007 again:

I would perceive them as thinking that they weren't going to have to work as hard—that that's why they want to take this job. That prosecuting is easy, someone hands you the case, and you go ask who, what, why, and when, and then you're done for the day kind of thing.<sup>155</sup>

And these comments come from a prosecutor who works in an office in which almost every attorney has a background in criminal defense!

This deep-seated ambivalence about the authentic value of defense experience for a prosecution office strikes us as unfortunate and counterproductive. Elected prosecutors and supervisors should acknowledge the full range of motives that attract and sustain good people in the office, and should particularly recognize that someone with defense experience can be a valuable prosecution colleague, even if she does not become a lifetime convert. This is the model on which Judge Advocate General's Corps attorneys operate, with recognized success, in some branches of the armed forces in the United States.<sup>156</sup> More generally, though, trial-experience motives, a desire to help defendants, and even job-condition reasons can all blend together with the core absolutist identity and standard public-service motives to form and support a healthy office. This mix of motives might even be essential to help an elected office leader reshape the vision of what it means to be a good prosecutor in an era when mass incarceration, wrongful convictions, and police shootings of suspects yield headline news stories on a regular basis.

For that reason, we ought to be concerned about a hiring process that exclusively looks for the identity and public-service narratives

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<sup>154</sup> See also Prosecutor Interviews, *supra* note 54 (Everly 785 (opining that when someone “with a career history of being a public defender shows up over here . . . , something doesn't ring true”)). This prosecutor also expressed doubts about people with a long history of civil practice who claim that their “lifelong dream is to be a prosecutor.” *Id.* (Everly 785).

<sup>155</sup> See also *id.* (Everly 745 (questioning whether a defense attorney seeking a prosecution position just wants a government job to get benefits, or to have an easier time at work)); Everly 765 (“[I]s it because the economy is bad and you're not making it on your own so you just want a sure paycheck? You don't really want to do the work but you just want the benefits?”)).

<sup>156</sup> See David Luban, *Lawfare and Legal Ethics in Guantanamo*, 60 STAN. L. REV. 1981, 1999 (2008). But see Dwight Stirling & Corey Lovato, *Wait, My Former Lawyer Represents Who? How Lackadaisical Side-Switching in the California National Guard Creates Conflicts of Interest, Imperils Client Confidences, and Erodes Trust in the Militia Legal System*, 25 B.U. PUB. INT. L.J. 427, 430 (2016).

(because of their clarity in revealing long-term interest) and rejects candidates who voice other valid reasons for wanting the job. In particular, offices that prioritize the identity narrative risk creating a workplace in which that identity dominates among line prosecutors, either because of who they are naturally or because of who they think they need to be in order to succeed there. When prosecutors intrinsically connect their work to an identity based primarily on fealty to rules and binary categories, any proposal to redefine the job can be unsettling and might prompt existential-level resistance.

In addition to these abstract concerns, the scope of prosecution work has been changing over the past two decades; today's prosecutors must have a larger skill set than the conventional prosecutor of prior generations. These changes go beyond the well-recognized shift from litigation to negotiation as the primary form of case resolution,<sup>157</sup> encompassing new roles in both the community and in the courthouse. Community prosecution programs, for example, ask prosecutors to perform a diverse array of noncourtroom functions, sometimes in prevention programs upstream from the criminal courts, and sometimes in reentry programs downstream from the courts.<sup>158</sup> The prosecution functions that stress community leadership on neighborhood issues or victim services may appeal more to (and likely require) the talents of personnel who adopt a broader public-service mission than the standard public-safety trope suggests. And an office that embraces goals for prosecutors working outside the courtroom may create more options for work schedules, locations, and other job conditions that might appeal to candidates looking for a work setting that is not strictly tied to the litigation calendar or downtown courthouse.

Alongside these community efforts, the standard courtroom prosecutorial role is evolving too, as prosecutors in some offices have become more conscientious and less reflexively contentious. Consider the recent policy changes we have seen in some New York, Illinois, and Texas prosecutors' offices,<sup>159</sup> reinforced by the work of nonprofit

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<sup>157</sup> See Gerard E. Lynch, *Our Administrative System of Criminal Justice*, 66 *FORDHAM L. REV.* 2117, 2124 (1998); see also BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009—STATISTICAL TABLES 24 tbl.21* (2013) (only two percent of charges against felony defendants are resolved through trial).

<sup>158</sup> See Dan Satterberg & Ronald Wright, *Prosecutors Must Learn to Listen to Critics and Communities*, *SEATTLE TIMES* (Oct. 26, 2016, 5:05 PM), <https://www.seattletimes.com/opinion/prosecutors-must-learn-to-listen-to-critics-and-communities/> [<https://perma.cc/4BNV-SUZH>]. But see Kay L. Levine, *The New Prosecution*, 40 *WAKE FOREST L. REV.* 1125, 1129 (2005) (describing resistance among some prosecutors to adapt from trial roles to other community prosecution roles).

<sup>159</sup> See Reiss, *supra* note 13.

groups such as Prosecutor Impact<sup>160</sup> and the Institute for Innovation in Prosecution,<sup>161</sup> to de-emphasize low-level crimes or even to decriminalize low-impact offenses. These policy shifts require prosecutors to embrace a more holistic, responsible conception of how law enforcement resources ought to be used, and to consider the detrimental impact of prosecution on traditionally disadvantaged groups. These new orientations call for prosecutors who understand the service-to-defendants theme as a primary function of the job; a personal focus on rules or an us-versus-them public-service mentality is a hindrance to getting that job done.

In sum, when an office expands the work of its prosecutors both inside and outside the courtroom, hiring that focuses on just one or two professional self-images is not likely to support the full range of office goals.<sup>162</sup> Diversification in hiring strategies is a necessary complement to diversification of job performance.

### CONCLUSION

Although the sources of career inspiration for state prosecutors are varied, our interviews identified several clear patterns: a tendency toward an absolutist identity, an urge to develop trial skills, a desire to serve the public (which sometimes includes defendants), and a focus on job conditions or work-life balance. These narratives cut across the profession in terms of race, gender, and experience, and also resemble some of the motivations expressed by public defenders and other lawyers for disadvantaged populations.

We have argued that progressive office leaders and scholars need to understand these narratives because they correlate with line prosecutors' amenability to change in the profession. For instance, a prosecutor who views prosecution as the only correct vehicle to enforce formal law prohibitions and to impose accountability on defendants might oppose some calls for heightened scrutiny of law enforcement. A prosecutor with this professional self-image also might circumvent

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<sup>160</sup> Prosecutor Impact is a nonprofit that aims to spread progressive-prosecution messages and to offer training and education to prosecutors nationwide. See *The (PI) Vision*, PROSECUTOR IMPACT, <https://prosecutorimpact.com/the-pi-vision/> [<https://perma.cc/53V9-LTLP>].

<sup>161</sup> The think tank is a collaboration between the Manhattan District Attorney's Office and the John Jay College of Criminal Justice. See *Our Work*, INST. FOR INNOVATION PROSECUTION, <https://nnscommunities.org/our-work/iip> [<https://perma.cc/6YQW-VYK7>]. In 2016 it hosted a symposium on "Intelligence Driven Prosecution." See Press Release, N.Y. Cty. Dist. Attorney's Office, *supra* note 13.

<sup>162</sup> See Sklansky, *supra* note 150, at 498–510 (describing the ideological, institutional, and operational flexibility required of prosecutors to fulfill multiple roles).

policies that call for compassion for factually guilty defendants in certain circumstances. Likewise, for prosecutors who conceive of their public-service duty in binary terms, where communities and victims fall on one side of the ledger and defendants fall on the other, reimagining the prosecutor's role to encompass service to defendants can be a colossal challenge. It might be especially difficult for both types of prosecutors to embrace alternatives to conventional punishment models, such as community-based treatment programs, as those sorts of settings seem to offer less accountability or community protection than confinement.

Other narratives, such as the defendant-oriented public-service theme, the trial-skills theme, and the job-conditions theme, open up more possibilities for change because they subordinate the conventional vision of the prosecution function in favor of a broader conception of the prosecutorial role. Given the range of intractable social problems that one finds looming in the criminal-court docket—family violence, alcohol abuse, poverty, illiteracy, drug addiction, mental illness, and homelessness—it is essential for twenty-first century prosecutors to think of themselves as more than just rule enforcers or defenders of the good guys. Problem-solving skills, and the broad set of motivations on which they necessarily rest, will define which prosecutors claim a place at the frontier of criminal justice reform.

For these reasons, office leaders seeking progressive reforms can and should appeal to values that reach beyond the law enforcement community when setting policy goals. The central, coordinated vision that leaders espouse should interweave expansive public-safety objectives with fiscal responsibility, pragmatism, and compassion. Likewise, leaders should recruit, hire, and retain attorneys who embrace a hybrid collection of motives for wanting to join the office. Finally, chief prosecutors must communicate their vision to a larger audience—because buy-in from the public will be necessary to give these new archetypes of prosecution some staying power.