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Taking a Deeper Dive into Progressive Prosecution: Evaluating the Trend Through the Lens of Geography: Part One: Internal Constraints

Madison McWithey
Boston College Law School, madison.mcwithey@bc.edu

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TAKING A DEEPER DIVE INTO PROGRESSIVE PROSECUTION: EVALUATING THE TREND THROUGH THE LENS OF GEOGRAPHY

PART ONE: INTERNAL CONSTRAINTS

MADISON MCWITHEY*

Abstract: “Progressive prosecution” has injected new life into criminal justice reform. This trend, which calls for less punishment, less prosecution of many lower-level crimes, and more diversion programs, has taken hold in large cities like Philadelphia, Chicago, Boston, and Houston, as well as in smaller rural districts. Despite the hype, however, progressive prosecution has its limitations. This article discusses four of those limitations and analyzes their effect on progressive prosecution’s likelihood of success in both urban and rural districts. Although many factors constrain progressive prosecution, this article addresses two types: internal and external. Part One discusses internal constraints, including the traditional motivations of individual prosecutors and prosecutors’ reliance upon “line” or assistant prosecutors. Part Two addresses external constraints such as the police and availability of resources. Taken together, Parts One and Two emphasize that an evaluation of progressive prosecution’s merits must take a nuanced, contextual perspective.

INTRODUCTION: THE PHENOMENON OF THE PROGRESSIVE PROSECUTOR

In the past decade, the United States has experienced something of an awakening regarding criminal justice. Politicians on both sides of the aisle have recognized that “tough justice” does not always lead to the most just results.¹ They have also realized that it is very expensive for a state to incarcerate hundreds of thousands of citizens every day.² These concerns have led to an

* Madison McWithey J.D. Boston College Law School, 2020.

¹ See Justin McCarthy, *Americans’ Views Shift on Toughness of System*, GALLUP (Oct. 20, 2016), <https://news.gallup.com/poll/196568/americans-views-shift-toughness-justice-system.aspx> [<https://perma.cc/NK2D-D9LX>]. A 2016 Gallup poll demonstrated a shift in attitudes towards the “toughness” of the criminal justice system. *Id.* Nearly half of Americans polled believe that the justice system is “not tough enough,” down from 65% in 2003. *Id.* See also Emily Bazelon & Miriam Krinsky, *There’s a Wave of New Prosecutors and They Mean Justice*, N.Y. TIMES (Dec. 11, 2018), <https://www.nytimes.com/2018/12/11/opinion/how-local-prosecutors-can-reform-their-justice-systems.html?searchResultPosition=5> [<https://perma.cc/F9YU-KE62>] (describing both Republican and Democratic prosecutors committed to criminal justice reform).

² See generally J.C. Oleson, *The Punitive Coma*, 90 CAL. L. REV. 829, 832 (2002) (“The incarcerated population has reached dizzying new levels in the last few years, but the rapid growth of the

appetite for reform. As a result, a new version of the chief prosecutor has emerged: the progressive prosecutor.³

The progressive spirit has not traditionally pervaded the head prosecutor role.⁴ For decades, prosecutors across the country have advocated for a tough-on-crime mentality aimed at keeping communities safe by incarcerating as many criminals as possible.⁵ Democratic and Republican candidates alike held this position.⁶ But a recent bipartisan shift has transformed the debate on criminal justice, and a push to be “smart on crime” has taken the lead.⁷

Progressive prosecution’s potential is enormous. Once elected, progressive prosecutors can implement new policies to solve issues that affect Ameri-

American prison system is nothing new To argue that American prisons are expensive and crowded is to beat a long-dead horse.”)

³ See generally Bazelon & Krinsky, *supra* note 1 (providing an overview of newly elected progressive prosecutors and their policies).

⁴ See Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 751–52 (2018) (noting that “traditional prosecutors have used their enforcement powers in a heavy-handed manner to punish marginalized individuals”).

⁵ See generally RIGHT ON CRIME, <http://rightoncrime.com> [<https://perma.cc/F8EY-C87Y>] (providing research and commentary on criminal justice reform issues such as overcriminalization and substance abuse). As a result of these efforts, state and federal spending on corrections has grown 400% over the past twenty years, reaching \$60 billion total. *Id.*

⁶ See Natasha Camhi, *Criminal Justice Reform Has Made It Into Both Party Platforms*, BRENNAN CTR. FOR JUST., (Aug. 1, 2016), <https://www.brennancenter.org/blog/criminal-justice-reform-has-made-it-both-party-platforms-thats-big-deal> [<https://perma.cc/MS33-2HNB>] (outlining the embrace of criminal justice reform by both Democrats and Republicans); Arit John, *A Timeline of the Rise and Fall of “Tough on Crime” Drug Sentencing*, THE ATLANTIC (Apr. 22, 2014), <https://www.theatlantic.com/politics/archive/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/> [<https://perma.cc/4VXS-KXEU>] (highlighting milestones in the “smart on crime” movement).

⁷ See Ed Chung, *Smart on Crime: An Alternative to the Tough vs. Soft Debate*, CTR. FOR AM. PROGRESS (May 12, 2017), <https://www.americanprogress.org/issues/criminal-justice/news/2017/05/12/432238/smart-crime-alternative-tough-vs-soft-debate/> [<https://perma.cc/RJ75-CML2>]. The “Right on Crime” movement has formed as an effort to fight against mass incarceration in conservative, southern states. RIGHT ON CRIME, *supra* note 5. This initiative utilizes traditional conservative ideas—including constitutionally limited government, personal responsibility, and concern for taxpayer dollars—to pursue criminal justice reforms in a way that constituents from red states can get behind. *Id.* President Trump, a conservative Republican, signed the First Step Act on December 21, 2018. Ames Grawert & Tim Lau, *How the First Step Act Became Law—and What Happens Next*, BRENNAN CTR. FOR JUST. (Jan. 4, 2019), <https://www.brennancenter.org/blog/how-first-step-act-became-law-and-what-happens-next> [<https://perma.cc/28YT-9H72>]. The Act provides provisions for sentencing reform including “shortening [the] mandatory minimum sentences for some non-violent drug offenses” and lowering the sentence imposed by the federal “three strikes” rule. Nicholas Fandos & Maggie Haberman, *Trump Embraces a Path to Revise U.S. Sentencing and Prison Laws*, N.Y. TIMES (Nov. 14, 2018), <https://www.nytimes.com/2018/11/14/us/politics/prison-sentencing-trump.html> [<https://perma.cc/8B5V-NUUP>]. The Act “makes the Fair Sentencing Act retroactive,” in an effort to extend the Fair Sentencing Act’s goal of “reduc[ing] the sentencing disparity between crack and powder cocaine offenses.” Grawert & Lau, *supra*. The Act “will require federal prisons to offer programs to reduce recidivism . . . and expand the cap on ‘good time credit’ from around forty-seven to fifty-four days per year.” *Id.*

cans every day.⁸ By tackling issues at the local level, progressive prosecution provides an avenue to conduct real change.⁹ As this article makes clear, however, the success of these reforms can ultimately depend on the progressive prosecutor's environment.

Because progressive prosecution is a relatively new development on the legal scene, there is still "no roadmap" to follow.¹⁰ Progressive candidates have raised issues like racial inequity and police brutality, and have pledged to exercise prosecutorial discretion in an effort to combat mass incarceration.¹¹ To date, they have utilized a variety of mechanisms to execute a "more balanced approach to criminal justice."¹² But the novelty of progressive prosecution allows candidates to create their own rules and determine for themselves how they will contribute to this growing movement.

And because the movement is still in its infancy, "progressive prosecutors" defy easy categorization. Kim Ogg, running as an openly gay progressive prosecutor with a campaign promise to decriminalize marijuana possession, unseated Republican Devon Anderson in Harris County, Texas.¹³ In eastern Mississippi, Scott Colom used the campaign slogan "Tough, Smart, Fair" to defeat an incumbent who served as head prosecutor for over twenty-five years.¹⁴ Larry Krasner

⁸ James B. Jacobs, *Criminal Justice in the United States: A Primer*, 49 AM. STUD. J. (2007), <http://www.asjournal.org/49-2007/criminal-justice-in-the-united-states/> [<https://perma.cc/F82S-VRSW>] ("Most criminal justice activity is conducted under the auspices of state and local governments. . . . Prosecution is a county-level function.").

⁹ See *id.* (emphasizing that "[e]ach state legislature promulgates that state's criminal law, which is enforced by state and county prosecutors, adjudicated in local and state-level courts, and punished in state prisons or local jails").

¹⁰ See David Alan Sklansky, *The Progressive Prosecutor's Handbook*, 50 U.C. DAVIS L. REV. ONLINE 25, 26–40 (2017), <https://lawreview.law.ucdavis.edu/online/vol50/Sklansky.pdf> [<https://perma.cc/76CX-BPM2>] (discussing the lack of "best practices" for prosecutors and offering ten ideas for progressive DAs); see also Abbe Smith, *The Prosecutors I Like: A Very Short Essay*, 16 OHIO ST. J. CRIM. L. 411, 419 (2019) (discussing how DAs Larry Krasner and Kim Foxx offer a "helpful blueprint" for understanding progressive prosecution).

¹¹ Sklansky, *supra* note 10, at 26.

¹² *Id.* at 25–27.

¹³ Meagan Flynn, *In Hotly Contested District Attorney's Race, Ogg Defeats Anderson*, HOUS. PRESS (Nov. 8, 2016), <https://www.houstonpress.com/news/in-hotly-contested-district-attorneys-race-ogg-defeats-anderson-updated-8932062> [<https://perma.cc/N3NE-BRGS>]; Eli Hager, *Against the Trump Tide*, THE MARSHALL PROJECT (Jan. 25, 2017), <https://www.themarshallproject.org/2017/01/25/against-the-trump-tide> [<https://perma.cc/V47C-YT3F>]; Brian Rogers, *Houston District Attorney Proud of First Year in Office*, HOUS. CHRON. (Dec. 29, 2017), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-district-attorney-proud-of-first-year-in-12462622.php> [<https://perma.cc/U7ZC-WZ3S>]. Houston, Harris County's largest city, was home to over 2.2 million people as of 2018. *Texas Cities by Population*, CUBIT, https://www.texas-demographics.com/cities_by_population [<https://perma.cc/P8JM-EB5F>].

¹⁴ Nick Tabor, *What if Prosecutors Wanted to Keep People Out of Prison?*, N.Y. MAG. (Mar. 27, 2018), <http://nymag.com/intelligencer/2018/03/what-if-prosecutors-wanted-to-keep-people-out-of-prison.html> [<https://perma.cc/95MN-NQUU>]. Colom's opponent frequently "sought . . . 12 to 15 years

shocked the citizens of Philadelphia when he announced his decision to run for district attorney (“DA”) in 2017; he was a criminal defense attorney known for regularly suing the Philadelphia Police Department.¹⁵ Without any prosecutorial experience, Krasner decisively beat his Republican opponent, a career prosecutor.¹⁶ And Nueces County, Texas—a Trump-supporting constituency—elected Mark Gonzalez, a former defense attorney, into the head prosecutor position.¹⁷ He is a unique member of this new class of chief prosecutors: Gonzalez tattooed “Not Guilty” across his chest to symbolize his past defense work and is a member a biker “gang.”¹⁸ The success of these diverse candidates demonstrates not only that progressive prosecution can lead to successful campaigns across the United States, but that an itch for reform exists in cities and towns of all sizes.

I. INTERNAL CONSTRAINTS TO PROGRESSIVE PROSECUTION

It is not always easy to implement new policy. Elected prosecutors must work to overcome significant constraints that hamper their ability to pursue a progressive agenda effectively.¹⁹ This Part focuses on two such constraints: the motivations of attorneys working in a prosecutor’s office and the chief prosecutor’s reliance on line attorneys.²⁰

First, successful progressive prosecutors must understand the underlying motivations of their subordinates. Line prosecutors may be of the traditional mold, favoring heavy-handed sentences, tough-on-crime policies, and high

for first-time crack offenses.” *Id.* Colom crafted the slogan “Tough, Smart, Fair” to communicate “that he didn’t plan to let violent criminals roam free.” *Id.*

¹⁵ Jennifer Gonnerman, *Larry Krasner’s Campaign to End Mass Incarceration*, NEW YORKER (Oct. 29, 2018), <https://www.newyorker.com/magazine/2018/10/29/larry-krasners-campaign-to-end-mass-incarceration> [https://perma.cc/37VS-QD42].

¹⁶ *Id.*; Chris Brennan & Aubrey Whelan, *Larry Krasner Wins Race for Philly DA*, PHILA. INQUIRER (Nov. 7, 2017), <https://www.inquirer.com/philly/news/politics/city/larry-krasner-wins-race-for-philly-da-20171107.html> [https://perma.cc/5NWL-H287].

¹⁷ Timothy Bella, *The Most Unlikely D.A. in America*, POLITICO (May 6, 2018), <https://www.politico.com/magazine/story/2018/05/06/most-unlikely-district-attorney-in-america-mark-gonzalez-218322> [https://perma.cc/5JS4-YH2X].

¹⁸ *Id.* Gonzalez is a proud member of the Calaveras motorcycle club, sporting the Calaveras symbol on his belt buckle. *Id.* Gonzalez joined the Calaveras after serving as the members’ defense attorney for the “occasional DUI- or marijuana-related case.” *Id.* Although the group insists that they are a “charity group,” the Calaveras has been deemed a gang by the state of Texas, making Gonzalez a “registered gang member.” *Id.*

¹⁹ See Smith, *supra* note 10, at 417 (describing the challenges Kim Foxx in Cook County faces in her role, including “an established office culture that resists doing things differently, county budget cuts, hostility from some judges, and hostility from the Fraternal Order of Police”).

²⁰ See *infra* notes 21–92 and accompanying text.

incarceration rates.²¹ Progressive prosecutors who ignore the motivations of line prosecutors risk thwarting their own progressive agendas.²²

In *Career Motivations of State Prosecutors*, Ronald Wright and Kay Levine interviewed assistant district attorneys (“ADAs”) about their reasons for pursuing a career as a prosecutor.²³ The most common of these included: “1) reinforcing one’s core absolutist identity, 2) gaining trial skills, 3) performing a public service, and 4) sustaining a work-life balance.”²⁴ The first of these means that prosecuting provides some with a mechanism to reinforce their own internal moral code.²⁵ The second highlights the extensive trial experience prosecutors develop from their constant court appearances.²⁶ The third emphasizes the desire of prosecutors to contribute to their communities, and reflects the idealistic or social work nature of the job.²⁷ The last theme focuses on the prosecutor’s daily routine, which provides for “regularity and camaraderie.”²⁸

These motivations offer a holistic view into how prosecutors view themselves as individuals and players in the criminal justice system.²⁹ Progressive prosecutors likely relate most strongly to the public service narrative and take a more optimistic view of the office as a place for reform.³⁰ But these reform-

²¹ See Angela J. Davis, *Can a Good Person Be a Good Prosecutor?*, 87 FORDHAML. REV. ONLINE 8, 8–10 (2018), <http://fordhamlawreview.org/wp-content/uploads/2018/09/Davis-8.pdf> [<https://perma.cc/CP8R-KZW6>] (citing that “70 percent of people in jail have never been convicted of a crime and are locked up because they cannot afford bail”).

²² See *infra* note 71.

²³ Ronald F. Wright & Kay L. Levine, *Career Motivations of State Prosecutors*, 86 GEO. WASH. L. REV. 1668, 1672 (2018) [hereinafter *Career Motivations of State Prosecutors*]. The article presents data from over 260 prosecutors from nine different offices about their motivations behind being state prosecutors. *Id.* at 1677, 1679. The authors argue that for effective reforms to occur, it is paramount for chief prosecutors to comprehend the motivations of their line prosecutors. *Id.* at 1709.

²⁴ *Id.* at 1672. Wright and Levine noted that “most . . . prosecutors voiced at least two [of the four] 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.” *Id.*

²⁵ *Id.* at 1681.

²⁶ *Id.* at 1686. Prosecutors consider themselves trial attorneys. *Id.* at 1687. This label emphasizes the “need for detachment,” the stressful nature of being in court, and the strategic wisdom needed to be successful. *Id.*

²⁷ *Id.* at 1688–89.

²⁸ *Id.* at 1693.

²⁹ See *id.* at 1671, 1680–98 (examining and dissecting the four identified motivations for prosecutors).

³⁰ See *id.* at 1688–91 (describing how some prosecutors who fit within the public service narrative “recognize defendants as *members* of the community, not just as *threats* to the community” and feel the responsibility to “hold the police accountable for their mistakes”) (emphasis added).

minded prosecutors must remember that the majority of the individuals that they supervise may fall into one or more different categories.³¹

Second, head prosecutors must rely upon line prosecutors to carry out their policies on a day-to-day basis. Prosecutors are often entrusted to use their discretion when deciding whether an individual goes to prison, or is charged with a crime in the first place.³² Unfortunately, DAs have no choice but to depend on line prosecutors, as the nature of their position includes other duties and responsibilities that leave little time for direct supervision and actual prosecution of cases.³³

II. USING GEOGRAPHY AS A LENS

In *Place Matters in Prosecution Research*, Ronald Wright and Kay Levine warn against broad generalizations about prosecutorial behavior that are based on data from large urban offices alone.³⁴ The authors note that the majority of state prosecutors work in settings wholly unlike that of the large, urban office.³⁵ Unfortunately, research on prosecution typically focuses on such large, urban offices, from which data is more readily available.³⁶ But because data from only one type of office can provide a skewed, inaccurate picture of prosecution as a whole, it is necessary to analyze constraints on progressive prosecution through the lens of geography.

For example, there are significant differences between the counties of Dallas and Nueces, Texas. John Creuzot, District Attorney of Dallas County, manages over three hundred attorneys.³⁷ By contrast, Nueces County DA Mark Gonzalez supervises a group of less than twenty ADAs.³⁸

³¹ *Id.* The authors note that most of the prosecutors interviewed identified with more than one of the narratives. *Id.* at 1672. This shows that individuals have nuanced views of their position as ADAs and of what they hope to get out of their job. *Id.*

³² *The Paradox of Progressive Prosecution*, *supra* note 4, at 760–61.

³³ *Id.* at 760 (stating that “head prosecutors cannot try every case”).

³⁴ Ronald F. Wright & Kay L. Levine, *Place Matters in Prosecution Research*, 14 OHIO ST. J. CRIM. L. 675, 677 (2017) (discussing how DAs’ offices vary in size and location and how researchers should be wary of making generalizations based on one type of office).

³⁵ *Id.*

³⁶ *Id.* at 678. The authors note that most books and articles published in the last fifty years on the subject of prosecutorial behavior focus on Chicago, Los Angeles, Washington, Philadelphia, and New York. *Id.* This should not be a surprise, because those cities are home to prestigious universities where many criminal law and procedure academics begin their career. *Id.*

³⁷ *District Attorney’s Office Organizational Chart*, DALL. COUNTY, TEX. (May 10, 2019), https://www.dallascounty.org/Assets/uploads/docs/district-attorney/org-chart/DA_OrgChart_110119.pdf [<https://perma.cc/73L3-DLTA>].

³⁸ *Staff Directory List*, NUECES COUNTY, TEX., https://www.nuecesco.com/commissioners-court/advanced-components/list-detail-pages/staff-directory-list/-seldept-3dallascounty.org/Assets/uploads/docs/district-attorney/org-chart/DA_OrgChart_110119.pdf [<https://perma.cc/CGK5-JPLY>].

Parts III–VI of this two-part article will discuss the impact of geography on the four aforementioned constraints on progressive prosecution: the traditional motivations of prosecutors, head prosecutors’ reliance upon line prosecutors, police accountability, and the availability of resources. The effect of these four constraints varies depending on the size and geographical location of a prosecutor’s office. Parts III–VI sections are each divided into two parts—urban and rural—to address the issues facing each environment separately.³⁹

III. PROSECUTOR MOTIVATIONS

A. *The Urban Environment*

Trial experience is a marketable skill. Private firms emphasize to clients the value of attorney experience in the courtroom.⁴⁰ Trials are increasingly rare, however, so firms’ junior associates often lack opportunities to try cases.⁴¹

Prosecutorial work is perhaps the best way for a young lawyer to gain trial experience. But if the desire to gain such experience is that young lawyer’s chief motivation, she may eventually move on to the private sector to cash in on her valuable skill set.⁴² And in a large legal market with a myriad of career opportunities, she can likely make such a career move with relative ease.⁴³

³⁹ See generally *Urban Area*, NAT’L GEOGRAPHIC, <https://www.nationalgeographic.org/encyclopedia/urban-area/> [<https://perma.cc/5CV7-WN23>] (defining “urban area” as the “region surrounding a city”). When referring to an “urban” office, I am describing DAs’ offices found in large, urban cities that are centers of major metropolitan areas. These include, but are not limited to, Chicago, Los Angeles, New York, Houston, Philadelphia, Boston, and Dallas. In contrast, the “rural” offices I am referencing serve a significantly smaller population.

⁴⁰ See Richard T. Boylan & Cheryl X. Long, *Salaries, Plea Rates, and the Career Objectives of Federal Prosecutors*, 48 J.L. & ECON. 627, 628 (2005) (explaining that “trial experience is beneficial because it enables lawyers in high-salary districts to gain employment in large, high-paying law firms”).

⁴¹ See Mark Herrmann, *Most Cases Settle. Should That Affect Your Thinking?*, ABOVE THE LAW (Aug. 13, 2018), <https://abovethelaw.com/2018/08/most-cases-settle-should-that-affect-your-thinking/> [<https://perma.cc/94UA-AAFM>]. Just 3% of cases make it to trial. *Id.* The irony is that most firms want to demonstrate their attorneys’ extensive trial experience, but odds are a given case will never make it inside a courtroom. *Id.*; see also Tracy W. McCormack & Christopher J. Bodnar, *Honesty Is the Best Policy: It’s Time to Disclose Lack of Jury Trial Experience*, 23 GEO. J. LEGAL ETHICS 155, 156–57 (2010) (discussing how “the days of the trial lawyer are essentially gone” and arguing that litigators at big law firms should reveal to clients their lack of jury trial experience).

⁴² See Boylan & Long, *supra* note 40, at 649 (concluding that lawyers “may view government positions as an opportunity to accumulate human capital that may benefit their future careers in the private sector”).

⁴³ See Joe Patrice, *What’s the Best City for Lawyers?*, ABOVE THE LAW (June 21, 2010), <https://abovethelaw.com/2019/06/whats-the-best-city-for-lawyers/> [<https://perma.cc/RR4B-D582>] (discussing a list, based in part on “the density of jobs for lawyers in each city,” that includes Washington DC, Houston, Chicago, and Miami in four of the top five spots).

For the progressive chief prosecutor in an urban environment, however, a high turnover rate can create difficulties. Young line prosecutors seeking trial experience may be less likely to buy in to their chief's progressive agenda. Further, progressive chief prosecutors may be wasting their time developing young line attorneys who are bound for private firms.

Aside from creating a high turnover rate, prosecutors who prioritize trial experience above all else may also prove to be too combative to successfully carry out their chief's progressive agenda. Such prosecutors may fight for the harshest sentence available to practice their advocacy skills, even when the circumstances of a case might suggest a more lenient sentence is appropriate. When prosecutors are motivated to excel as trial advocates, prosecution becomes a means to an end rather than a way to do justice. Progressive prosecution, on the other hand, seeks to remedy the criminal justice system's inherent inequalities by relaxing its rigid rules; in many cases, progressive prosecution is simply the avoidance of prosecution, and is therefore incompatible with the career goals of prosecutors seeking trial experience. Urban prosecutors should also be wary of prosecutors motivated by an "absolutist identity."⁴⁴ "Absolutists" demonstrate "black and white" personalities and firmly established moral values.⁴⁵ Such a prosecutor might refer to herself as wearing the "white hat" of justice.⁴⁶

Line prosecutors who believe in a strict distinction between "good guys" and "bad guys" can create serious headaches for progressive prosecutors.⁴⁷ After all, progressive prosecutors seek to introduce nuance into the criminal justice system. They believe that not all criminal defendants are "bad guys."⁴⁸ Those who believe in an inherent binary distinction between victims and de-

⁴⁴ *Career Motivations of State Prosecutors*, *supra* note 23, at 1681. Of the 263 prosecutors whom Wright and Levine interviewed, 34% mentioned their identity as part of their career motivation. *Id.* at 1699.

⁴⁵ *Id.* at 1681.

⁴⁶ Kay L. Levine & Ronald F. Wright, *Images and Allusions in Prosecutors' Morality Tales*, 5 VA. J. CRIM. L. 38, 43 (2017). The image of the prosecutor wearing the "white hat" derives from "imagery of old western movies in which the sheriff wears the white hat and the outlaw the black hat." *Id.* at 44. Prosecutors who see themselves as wearing white hats view their position as the "savior and protector of the community" and as "inherently on the side of the truth." *Id.* at 43–44.

⁴⁷ *See id.* at 47 (noting that the "flipside" of the prosecutorial "white hat" places the "black hat" on defense attorneys, thereby "conflat[ing] the attorney with his client, making the former vicariously liable for the sins and crimes of the latter").

⁴⁸ In fact, many defendants are practically doomed from the start due to the implicit racial bias in the criminal justice system. *See Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> [<https://perma.cc/M6H6-N9RE>] (noting that "African-Americans are incarcerated at more than five times the rate of whites"); *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> [<https://perma.cc/VUK9-YER9>] (highlighting the disproportionate impact of tough-on-crime policies on racial minorities).

fendants, on the other hand, may struggle to move towards a more flexible, progressive methodology to prosecution.

The absolutist identity is particularly worrisome in the urban environment. Due to the larger population surrounding urban offices, the number of individuals that go through the system can lead some prosecutors to make generalizations that reinforce their good guy/bad guy dichotomy. An ADA in a busy urban office who lacks the time and resources to understand a defendant's background may fall back on convenient stereotypes. As the ADA's experience "confirms" these stereotypes, the cyclical nature of the system continues. Prosecutors with this self-righteous, values-based persona are less likely to look past their preconceived generalizations and buy into progressive prosecution.

Unlike those motivated by a desire to gain trial experience or by an "absolutist identity," prosecutors motivated by a commitment to public service are the most likely to advance their chief prosecutor's progressive agenda.⁴⁹ Public service-minded prosecutors are more willing to adjust to progressive prosecution's more flexible standards.⁵⁰ As increasingly popular community programs and diversion courts lighten the load of the prison system, prosecutors need to be able to fulfill the "social worker" aspect of their position. By filling an office with individuals focused on public service, a progressive prosecutor has an increased likelihood of success in implementing their policies.

B. The Rural Environment

Rural prosecutors likewise seek to develop trial experience, express their "absolutist identities," and perform public service. But these career motivations play out differently in the rural setting, and are less likely to harm chief prosecutors' progressive policies than they are in the urban environment.

Rural district attorneys' desire for trial experience produces different results in the rural setting. First, fewer legal opportunities exist in the rural environment.⁵¹ Large, private law firms are not typically located in smaller, rural towns. There are simply not as many places to take the trial skills practiced at the DA's office and utilize them as a marketable skill.⁵²

⁴⁹ See *Career Motivations of State Prosecutors*, *supra* note 23, at 1688. Not all prosecutors who identified with this narrative claimed that they were merely protectors of innocent, "law-abiding" community members; rather, some understood that serving the community includes defendants as well, and that the position of prosecutor includes looking out for those community members' best interests, too. *Id.* at 1689–90.

⁵⁰ See *id.* at 1699. Of a sample of 236 prosecutors, 66% mentioned performing a public service as a career motivation. *Id.*

⁵¹ There is a reason that there are only a handful of ADAs at each office!

⁵² See generally Jack Karp, *No Country for Old Lawyers: Rural U.S. Faces a Legal Desert*, LAW360 (Jan. 27, 2019), <https://www.law360.com/articles/1121543/no-country-for-old-lawyers-rural->

In addition, due to the smaller population of rural areas—and as a result, a smaller bar—those attorneys that are motivated by gaining trial experience cannot afford to be overly combative.⁵³ A prosecutor that challenges defense counsel at every point in a criminal trial will not make many friends.⁵⁴ Few prosecutors want to have an excessively adversarial relationship with other attorneys, particularly because in the smaller, rural environment, prosecutors will interact with the same opposing counsel multiple times throughout their career and therefore need to preserve their reputation.

Rural prosecutors have plenty of trial opportunities that come through their system.⁵⁵ But their motivation to acquire trial experience is less likely to be a means to an end: for many prosecutors in rural offices, being a successful prosecutor is their end.⁵⁶

As in the urban environment, rural progressive prosecutors are likely to encounter ADAs motivated by an “absolutist identity.”⁵⁷ Prosecutors with this motivation feel like they have a sense of who are the “good guys” and the “bad guys” and feel obliged to handle these individuals accordingly.⁵⁸ This motivation will likely be less problematic in a rural office, however.

Unlike their urban counterparts, rural prosecutors have a more intimate relationship with their community and its members, which can lead to a more flexible approach when dealing with criminal defendants. The good guy/bad

u-s-faces-a-legal-desert [<https://perma.cc/E8YA-4AEB>] (discussing attempts made by rural towns to attract younger lawyers to practice law).

⁵³ See generally Michael W. McKay, *Our Reputation Does Matter*, 52 LA. B.J. 260, 260 (2004) (discussing the importance of a lawyer’s reputation to “our system of justice and the rule of law”).

⁵⁴ See Mark Baer, *Aggressive Lawyering Is Counter-Productive*, HUFFINGTON POST (Jan. 23, 2014), https://www.huffpost.com/entry/aggressive-lawyering-is-c_n_4205508?guccounter=1&guce_referrer=https://perma.cc/2U6T-33FT (explaining the disadvantages of overly aggressive lawyers, including their poor reputation among judges and unwillingness to resolve cases for the client quickly).

⁵⁵ Telephone Interview with Greg McCaffrey, District Attorney, Livingston County, New York (Mar. 27, 2019). Livingston County, New York’s District Attorney’s office has about 400 felony cases per year. *Id.* With four attorneys and a DA who tries cases, each prosecutor must handle an average of eighty felony cases per year. *Id.* Also, due to the realities of smaller offices, rural prosecutors get the opportunity to try a variety of cases instead of staying within a single crime division, which only adds to the trial skills rural prosecutors get to cultivate throughout their time as a prosecutor. *Id.*

⁵⁶ DA McCaffrey also discussed how most of the prosecutors in his office have no plans of moving elsewhere or changing jobs anytime soon. *Id.*

⁵⁷ See *Career Motivations of State Prosecutors*, *supra* note 23, at 1677, 1681–82, 1685. Although the authors of the study did not interview rural prosecutors, they found that a significant portion of prosecutors interviewed displayed signs of an absolutist identity. *Id.* at 1677, 1682. The authors also note that other literature suggests that “law-and-order types dominate the field of prosecution.” *Id.* at 1685.

⁵⁸ See *id.* at 1683 (defining an absolutist prosecutor as one who believes that “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”).

guy distinction becomes hazier when prosecutors' firsthand knowledge of their community gives them a more complete understanding of individuals who come through their office. Knowing more about an individual's background and relationship to their community can only help ensure that justice is better served. A less rigid line of who the "bad guys" are introduces nuance into the criminal justice system, which is exactly what progressive prosecution call for.

Finally, as in the urban environment, progressive prosecutors can only benefit by seeking out those line prosecutors who feel motivated by their ability to perform a public service.⁵⁹ Particularly in closer-knit communities, public service-minded prosecutors can further progressive policies by understanding the path to justice may not mean the same thing for every individual that comes through the system. To best serve the community, sometimes justice may be served by giving an individual a second chance, whether that means letting a petty crime go or by putting that individual into specialized treatment.

Prosecutors' motivations provide great insight into how they see their role within the criminal justice system. A progressive prosecutor needs to understand these motivations—and what they mean for progressive prosecution—to best serve the community and get line prosecutors to work with them.

IV. RELIANCE UPON LINE PROSECUTORS

A. *The Urban Environment*

Urban DAs do much of their work beyond the courthouse. They supervise their subordinates, serve as the face of the office to the community, set policy, perform administrative duties, and communicate with various community leaders.⁶⁰

These responsibilities leave little time for actually trying cases. In fact, most DAs do not try cases once they are elected.⁶¹ And if the top prosecutor does step into the courtroom, it is usually due to the high-profile nature of the

⁵⁹ See *id.* at 1689–90 (noting that public service-minded prosecutors view themselves as “champion[s] of the people of the community” while also “recogniz[ing] defendants as members of the community”).

⁶⁰ Telephone Interview with Susan Hawk, Former District Attorney of Dallas County, (Mar. 27, 2019). One way that DAs interact with the community is through holding town halls. *Id.* Usually, these are held in different neighborhoods and give constituents an opportunity to engage with their elected official and share their thoughts and concerns. *Id.*

⁶¹ See John Eligon, *For Top Prosecutor, Court Appearances Are Rare*, N.Y. TIMES (Apr. 9, 2019), <https://cityroom.blogs.nytimes.com/2010/04/09/for-top-prosecutor-court-appearances-are-rare/> [<https://perma.cc/B4JX-89JE>] (discussing the infrequency of court appearances by Manhattan DA Cyrus Vance and his predecessor Robert Morgenthau); see also Catherine Elton, *The Law According to Rachael Rollins*, BOS. MAG. (Aug. 6, 2019), <https://www.bostonmagazine.com/news/2019/08/06/rachael-rollins> [<https://perma.cc/GD33-ZD53>] (noting that progressive prosecutor Rachael Rollins spends a large amount of her time at speaking engagements).

case.⁶² Some elected DAs even make it a “campaign promise” to be in the courtroom trying a case.⁶³ But overall, the reality that DAs are generally not trying cases has not changed with the influx of progressive prosecutors.⁶⁴

Line prosecutors are therefore left to carry out the orders of the head prosecutor and perform the day-to-day courtroom work. If line prosecutors do not wish to follow through with progressive initiatives, however, their bosses might not notice.⁶⁵ With some of the largest DA’s offices employing over three hundred attorneys, it would be very difficult for a top prosecutor to comprehend how each line prosecutor acts in her role, especially because most prosecutorial misconduct can continue to occur in secrecy.⁶⁶

For example, if a top prosecutor sends a memo to two hundred ADAs banning the practice of overcharging to induce a plea bargain, how could she be sure that this behavior stopped?⁶⁷ Top prosecutors must rely on their line prosecutors and trust that they will carry out their policies without receiving much assurance in return. ADAs often report to “section chiefs” who head up different divisions inside the office, and by whom ADAs most likely must run decisions. But section chiefs cannot double-check every decision given the high volume of cases in a single division.⁶⁸ Moreover, section chiefs themselves may likewise reject their chief’s new, progressive tactics.

⁶² Elignon, *supra* note 61.

⁶³ See Sarah Mervosh, *Dallas DA Susan Hawk to Personally Try Murder Case This Week*, DALL. NEWS (Nov. 10, 2015), <https://www.dallasnews.com/news/crime/2015/11/10/dallas-da-susan-hawk-to-personally-try-murder-case-this-week> [<https://perma.cc/7UL9-C9YL>]. DA Hawk followed through on this promise by serving as second chair on a murder case—the first time in thirty years the elected DA in Dallas had done so. *Id.*

⁶⁴ Larry Krasner has not tried a case since his election in 2017. Ryan Briggs, *Philly DA Krasner Wants to Personally Try Cases in 2019*, WHY (Dec. 18, 2018), <https://why.org/articles/philly-da-krasner-wants-to-personally-try-cases-in-2019/> [<https://perma.cc/3N5R-SC8H>]. Krasner claims that he will make an effort to try cases during his tenure; he has also stated that even though he thinks it is important to choose strategically which cases he tries, he would also like to try “very mundane ordinary cases” to serve as an example to his line prosecutors. *Id.*

⁶⁵ Refusing to obey orders could go unnoticed due to the sheer number of cases in the docket. DAs have to rely on deputy chiefs in various departments. See Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959, 961, 963 (2009) (discussing the lack of oversight “subordinates” receive at DAs’ offices).

⁶⁶ Krasner’s office has over 300 attorneys. Gonnerman, *supra* note 15. Tactics such as witness bribing, failure to disclose helpful evidence, and grand jury misconduct are hard to uncover. See Bennett L. Gershman, *The New Prosecutors*, 53 U. PITT. L. REV. 393, 397, 400–01, 436 (1992) (discussing prosecutorial misconduct and recommending policies to limit it).

⁶⁷ See Kyle Graham, *Overcharging*, 11 OHIO ST. J. CRIM. L. 701, 703 (2014) (defining overcharging as the prosecutorial strategy used to “catalyze plea bargains”).

⁶⁸ Adam M. Gershowitz & Laura R. Killinger, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 NW. U. L. REV. 261, 267, 270 (2011) (describing the “excessive” case load ADAs in large counties face).

So how does a progressive prosecutor ensure that line prosecutors follow his or her policy initiatives? Unfortunately, options are few. One solution is to replace any or all of the remaining prosecutors from the previous administration who are actively working against the progressive prosecutor's agenda. But it is unrealistic to assume a progressive prosecutor in an urban city would enter office and immediately fire every single ADA. Even firing a small portion of prosecutors would likely result in hysteria.⁶⁹ A top prosecutor could aim to seek out the individuals most blatantly opposed to the new agenda, but defiant disregard is not likely the norm.⁷⁰ Line prosecutors have an incentive to conceal their contempt for office policy to keep their jobs.

Another issue is the structure of many urban county DA offices. Typically, each ADA only works within a specific stage of the overall case process.⁷¹ For example, a line prosecutor might only work on presenting indictments to the grand jury. Once the case enters the next phase of litigation, however, that line prosecutor may never touch the case again.⁷² This set-up makes line prosecutors' work seem like a single step in a never-ending assembly line. When many prosecutors touch a single case, it is not always easy to determine exactly where things went wrong or who acted in defiance of progressive policies.⁷³

Further, urban offices may be required to adopt a "machine mentality" to handle their massive caseloads.⁷⁴ In Cook County, Illinois, with an office of some eight hundred prosecutors, the average workload was seventy-five felo-

⁶⁹ Ben Austen, *In Philadelphia, Progressive D.A. Tests the Power—and Learns the Limits—of His Office*, N.Y. TIMES (Oct. 30, 2018), <https://www.nytimes.com/2018/10/30/magazine/larry-krasner-philadelphia-district-attorney-progressive.html> [<https://perma.cc/BNS6-JVPV>]. When Krasner took office in Philadelphia, he inherited a staff of over 600 individuals. *Id.* On Krasner's fourth day in office, he let thirty prosecutors go. *Id.* This act was labeled the "Snow Day Massacre." *Id.* Within the following months, a total of eighty attorneys had departed the Philadelphia office. *Id.*

⁷⁰ Open sabotage remains a possibility, however. Houston District Attorney Kim Ogg has stated that "line prosecutors had worked actively against her when she was taking over last year, even deleting electronic files on a controversial case." *Id.*

⁷¹ Telephone Interview with Susan Hawk, *supra* note 60.

⁷² See generally Bibas, *supra* note 65, at 1012 (noting that some "line prosecutors who err at an early stage of a case may never see their errors come to fruition later in the case, under another prosecutor"); Telephone Interview with Susan Hawk, *supra* note 60 (describing the process of prosecuting a criminal defendant in a big city).

⁷³ See Bibas, *supra* note 65, at 1001 (describing the lack of supervision over line attorneys in many prosecutors' offices).

⁷⁴ See Zach Despart & Keri Blakinger, *Kim Ogg's Request for 100 More Prosecutors Criticized by Reformers*, HOUS. CHRON. (Feb. 4, 2019), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Ogg-at-odds-with-progressives-over-push-for-more-13599424.php> [<https://perma.cc/2VJC-JXFZ>]. Houston DA Kim Ogg recently requested an additional one hundred prosecutors at her office. *Id.* She argued that in the wake of Hurricane Harvey, Harris County's caseload jumped from 15,000 to 26,423 in a single week, so prosecutors were not always able to provide adequate attention to every case in their docket. *Id.* Critics claim that adding prosecutors runs counter to Ogg's push for progressive prosecution and would inevitably lead to more criminal defendants in jail. *Id.*

nies and 331 misdemeanors per year for each prosecutor in the office.⁷⁵ Prosecutors in Harris County, Texas can expect an average of 457 case filings per year: 165 felonies and 292 misdemeanors.⁷⁶ The unfortunate result of such excessive caseloads is that line prosecutors do not have the time or mental capacity to scrutinize each case in the way victims, their families, and criminal defendants deserve.

The need for urban DAs to rely on their line prosecutors places the impact of progressive prosecution at risk. Unfortunately, most of the issues mentioned above are just part and parcel of urban DA's offices and will not change without a serious overhaul of the status quo. Urban offices cannot reduce their caseload or the amount of personnel required to handle it. Progressive prosecutors Larry Krasner and Rachael Rollins cannot ignore their administrative duties and focus primarily on their subordinates in the courtroom: serving as the face of the community is one of their most important duties. As much as the high-profile progressive prosecutors hope to carry out their policy objectives promised during campaign season, the practicalities of these offices may prove that the reality is much more difficult than they imagined.

B. The Rural Environment

Line prosecutors pose less of a threat to rural progressive prosecutors. Progressive prosecutors in smaller rural offices can have more of a grip over their staff. Having less people to supervise allows for quicker recognition of problems and more collaboration. Rural DAs still must perform administrative and public duties, but this facet of the position takes up less time than it would in an urban setting.⁷⁷ These DAs can therefore try more cases and put their policies into action without predominantly relying upon line prosecutors.⁷⁸

For example, to keep up with the demanding caseload, Mark Gonzalez personally runs double grand juries every week in Nueces County, a small rural district.⁷⁹ DA Gonzalez participates in trials; in 2019, he won a murder

⁷⁵ Gershowitz & Killinger, *supra* note 68, at 268. The data is from 2006. *Id.* The authors note that criminal filings have “tended to increase rather than contract.” *Id.* at 272–73. For example, in Dallas County, felony filings increased by 10% between 2005 and 2009. *Id.*

⁷⁶ *Id.* at 269.

⁷⁷ See Telephone Interview with Greg McCaffrey, *supra* note 55. McCaffrey noted that the only time when this may not be true is during campaign season. He related that he still must spend a portion of his time fulfilling his administrative and public duties, such as going out with civic groups, but he still spends the largest percentage of his time during the week working on cases. *Id.*

⁷⁸ *Id.* For example, Greg McCaffrey stated he gets to “cherry pick” the cases that he wants to prosecute and take the lead on. Then, he delegates the remaining cases to the other four attorneys. *Id.* McCaffrey noted that he chooses to maintain a heavy caseload in order to “lead by example.” *Id.*

⁷⁹ Tim Acosta, *Here's Nueces County District Attorney Gonzalez's Top Priorities*, CORPUS CHRISTI CALLER TIMES (Oct. 18, 2018), <https://www.caller.com/story/news/local/2018/10/18/heres->

case.⁸⁰ In Salem County, New Jersey, chief prosecutor John Lenahan oversees just eleven attorneys.⁸¹ Greg McCaffrey, the District Attorney of Livingston County, New York, has a staff of only six attorneys.⁸² DA Scott Colom of Circuit Court Sixteen in rural Mississippi has a staff of only five lawyers and remains involved in the courtroom.⁸³ He has prioritized reviewing cases prior to the grand jury stage to ensure that any cases lacking sufficient evidence are kept out earlier in the process.⁸⁴

Additionally, instead of a single line prosecutor helping out with only one stage of the process as is common in the urban environment, each attorney has her own caseload that they stay with from beginning to end. Prosecutors in these offices are not restricted to trying one type of case, but instead must work on different types of cases on an as-needed basis.⁸⁵ The top prosecutor may hand off a case to a particular attorney for any given reason.⁸⁶ This approach

nueces-county-district-attorney-mark-gonzalezs-top-priorities/1664548002/ [https://perma.cc/P9NX-D5QS].

⁸⁰ Eleanor Dearman, *Trial Begins Next Week for Man Charged in Pregnant Girlfriend's Death*, CORPUS CHRISTI CALLER TIMES (Feb. 27, 2019), <https://www.caller.com/story/news/crime/2019/02/27/trial-begins-next-week-man-charged-pregnant-girlfriends-death/2995481002/> [https://perma.cc/G6AH-DV43]. In early 2019, Mark Gonzalez successfully prosecuted Arturo Garza, who was accused of beating his pregnant girlfriend to death. Eleanor Dearman, *Arturo Garza Sentenced to Life in Prison Without Parole*, CORPUS CHRISTI CALLER TIMES (Mar. 14, 2019), <https://www.caller.com/story/news/crime/2019/03/14/arturo-garza-gets-life-killing-pregnant-girlfriend/3162687002/> [https://perma.cc/UJ3S-HLQZ].

⁸¹ *SCPO Organization*, SALEM COUNTY PROSECUTOR'S OFFICE, <https://www.salemcountyprosecutor.org/scpo-organization> [https://perma.cc/9XXC-8FCV] Salem County has a population of around sixty-six thousand. *About the SCPO*, SALEM COUNTY PROSECUTOR'S OFFICE, <https://www.salemcountyprosecutor.org/about-the-scpo> [https://perma.cc/UY4A-229U].

⁸² McCaffrey, *supra* note 55. Out of a total of six attorneys on staff, two work solely on misdemeanors and traffic violations. The other four attorneys rotate being "on call" with law enforcement and work on felony cases. Along with these six attorneys, two secretaries and an investigator report directly to McCaffrey. *Id.*

⁸³ Tabor, *supra* note 14.

⁸⁴ Steve Rogers, *Achieving Some of Goals, DA Says*, DAILY TIMES LEADER (May 18, 2018), <https://www.dailytimesleader.com/content/achieving-some-goals-da-says> [https://perma.cc/G3A5-WHN8].

⁸⁵ In the urban environment, new prosecutors "graduate" into the various units available at a DA's office. See Kay L. Levine & Ronald F. Wright, *Prosecution in 3-D*, 102 J. CRIM. L. & CRIMINOLOGY 1119, 1144 (2012). New prosecutors start their career in the misdemeanor unit and later move into the narcotics unit, crimes against property unit, or juvenile unit. *Id.* After another extended period of time, prosecutors move into one of the more highly regarded units—including crimes against persons or habitual felon unit. *Id.* at 1141. Rural prosecutors, on the other hand, become "generalists" and have the ability to try different types of felony cases. McCaffrey, *supra* note 55.

⁸⁶ McCaffrey, *supra* note 55.

allows chief prosecutors to find out when an attorney handled a case in a manner at odds with the office's progressive policy.⁸⁷

Another advantage for progressive prosecutors in rural counties is that their line prosecutors often come to reside in the town, either for the affordable price of living, the community's good public schools, or proximity to family. Many urban-dwellers eventually move to the suburbs to raise a family, which can lead to a high turnover rate for jobs in big cities.⁸⁸ The turnover then causes a lack of stability in urban offices, which already experience disarray due to the constant demands of the job.

By contrast, rural counties do not face excessive turnover. Line prosecutors in rural counties will likely stay put for the foreseeable future.⁸⁹ This creates a DA's office filled with experienced prosecutors; indeed, many are career prosecutors.⁹⁰ Prosecutors with this level of community commitment make these smaller offices unique. These offices are more stable, and progressive prosecutors need not spend valuable time filling open positions with candidates who share their progressive values.

Still, career prosecutors can have fixed sentiments towards certain crimes or types of defendants that may make them unwilling to bend to new policy change. Due to the nature of a smaller office, however, progressive prosecutors can personally talk to their line prosecutors and come to an understanding together. Rural progressive chief prosecutors do not have to rely on section chiefs to carry out policy on their behalf. Nor do they have to rely on distant, office-wide messages to reach their line prosecutors; instead, they can share their vision of the office directly with their team and encourage collaboration with others.

Further, because of their smaller caseloads, rural ADAs will likely not get burnt out as quickly as they might in larger urban offices.⁹¹ Rural ADAs can expect to handle forty to fifty cases in a single week, offering them a much more manageable work-life balance than that of an urban prosecutor.⁹² The smaller docket permits attorneys to work hard at their job, but also does not

⁸⁷ In reality, it would probably be very unlikely that this happens to a case in these rural counties anyways. By having few staff attorneys, lead prosecutors have the ability to supervise and communicate with their staff in a way that busy, resource-starved urban prosecutors cannot.

⁸⁸ See Alicia Adamczyk, *Millennials Are Fleeing Big Cities for the Suburbs*, CNBC (Sept. 19, 2019), <https://www.cnbc.com/2019/09/29/millennials-are-fleeing-big-cities-for-the-suburbs.html> [<https://perma.cc/H9U8-8SDQ>].

⁸⁹ McCaffrey, *supra* note 55.

⁹⁰ *Id.* Greg McCaffrey discussed how two of the six attorneys on his staff have worked at the Livingston County District Attorney's office for eighteen and eleven years. The others came from different offices.

⁹¹ *Id.*

⁹² *Id.*

force them to put in excessive hours per week to prepare cases. In turn, prosecutors have enough time to do their due diligence on each of their cases. The community reaps the benefits of preparation and thoughtful prosecution.

Intimate involvement with their communities and staff allows rural progressive prosecutors to avoid many of the problems that urban prosecutors face. Rural line prosecutors lack the power to thwart their chiefs' progressive agendas. The office culture of most rural offices provides progressive prosecution a real chance to make an impact on the community.

CONCLUSION

Like other scholarship before it, this article is both hopeful for the success of progressive prosecution and wary of overselling the trend's impact. Determining how progressive prosecution can make a difference requires careful, nuanced evaluation.

Based on an analysis of progressive prosecution through two internal constraints—traditional prosecutor motivations and reliance upon line prosecutors—the rural environment provides the greatest likelihood for progressive prosecution's success. In rural offices, head prosecutors can more effectively achieve their goals by exerting control over a smaller group of line prosecutors that have the time to work diligently on each case. The ability to foster personal relationships with their line prosecutors gives rural progressive prosecutors a huge advantage over their urban counterparts. Still, this conclusion does not imply that progressive prosecution is doomed to fail in the urban environment.

Part Two of this article will consider two external constraints that progressive prosecutors face; namely, police accountability and the availability of resources. Taken as a whole, these constraints show the uphill battle progressive prosecutors must overcome once they enter office.

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